

**Calendar No. 421**

107TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
{ 107-162

**AVIATION DELAY PREVENTION ACT**

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**R E P O R T**

OF THE

**COMMITTEE ON COMMERCE, SCIENCE, AND  
TRANSPORTATION**

ON

**S. 633**



JUNE 13, 2002.—Ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE

99-010

WASHINGTON : 2002

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

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### AVIATION DELAY PREVENTION ACT

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Mr. HOLLINGS, from the Committee on Commerce, Science, and  
Transportation, submitted the following

### REPORT

[To accompany S. 633]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 633) to provide for the review and management of airport congestion, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill (as amended) do pass.

#### PURPOSE OF THE BILL

The purpose of this bill, as reported, is to expedite the environmental processes related to the review and management of airport capacity projects, reduce airport congestion, and for other purposes.

#### BACKGROUND AND NEEDS

Prior to September 11, 2001, major delays and congestion had become an increasing problem at our nation's airports. Capacity of the aviation system had not been keeping up with demand, and traveler frustration was at an all-time high. While the events of September 11 caused an immediate and significant drop-off in air travel, consumer confidence is beginning to return, and air travel is beginning to rebound. Current estimates indicate that air travel will return to pre-September 11 levels, and we will again be faced with a capacity crisis.

The Federal Aviation Administration (FAA) has been working with air carriers to mitigate delays at airports. While new technologies and schedule changes provided some relief prior to September 11, it has become clear that expanding the system's capacity will be necessary to adequately address this problem. FAA esti-

mates that by 2013 there will be one billion commercial air passengers in the U.S., up by more than 300 million from 2000. Expanding the system must be a national priority or our economy, our communities, and the millions of Americans travelling will suffer.

Prior to September 11, according to the Department of Transportation (DOT), one in four flights would arrive late. Between 1995–2000, departure and arrival delays increased 33 percent, and in the year 2000 alone, DOT reported an almost 19 percent increase in departure and arrival delays. Historically, weather accounts for 70 percent of the delays that occur at our nation's airports.

Today, with the exception of four airports that are subject to flight limitations, airlines are free to schedule flights to meet demand. Each carrier develops its own schedules. Carriers have recognized that at times scheduling can exceed capacity, but an individual carrier will not unilaterally cut its flights because another carrier could then add flights. A carrier has little incentive to reduce flights if the result is the loss of business to a competitor. However, some carriers have made an effort to address capacity issues at larger airports. For example, United Airlines announced that it would cut flights and replace others with larger aircraft at five of its hubs. Delta revamped its entire schedule at Hartsfield Atlanta International Airport, spreading its arrivals and departures over 12 time periods (banks) instead of 10. American has also changed its flight patterns at Chicago O'Hare in an effort to reduce delays.

In April 2001, DOT/FAA issued capacity benchmarks for each of the largest airports (31 facilities) in the U.S. These benchmarks, which focused on arrivals and departures, raise the issue of "demand management"—leaving two choices: incurring additional delays or mandating fewer flights.

The U.S. cannot continue with an air transportation system that does not meet the needs of the public. Efforts to reduce delays involve many issues including: increasing capacity at airports; increasing air traffic control (ATC) capacity and efficiency (e.g., the use of satellites to more precisely track aircraft); changing carrier scheduling practices; and ensuring that the FAA has a chief operating officer (COO) to run the ATC system.

Over the last several years, it has been recognized that given growing demand, capacity had to be increased. For example, in 1997, the congressionally-created National Civil Aviation Review Commission (NCARC) found that gridlock in the skies is a certainty in the near future unless the ATC system is modernized and infrastructure is expanded. In January 1997, the White House Commission on Aviation Security and Safety, chaired by Vice President Gore, recommended that modernization of the ATC system be expedited from 2015 to 2005. Likewise, in 1995 and 1996, the Senate Committee on Commerce, Science, and Transportation (Committee) recognized that the FAA needed more funding to meet the growing demand on the system.

To address concerns that the need to expand our airports was not given a high enough priority, Congress passed in 1999 the Wendell H. Ford Aviation Investment and Reform Act (AIR-21; P.L. 106-181). This legislation increased funding for airport construction from \$1.9 billion (FY 2000) to \$3.2–3.4 billion (FY 2001–03), and increased passenger facility charges from \$3.00 to \$4.50 to further

enable airports to fund airport expansion projects. AIR-21 also increased funding for ATC equipment. While AIR-21 provides critical funding to build new runways and buy new ATC equipment, additional expedited processes are needed to meet the ever growing demand for capacity.

In the next 10 years, several runways will be built, but more must be done to promote viable options to expand capacity. There is simply not enough runway space in the country to land all of the current and projected flights. Expanding airport capacity, while complex, essentially comes down to building more runways and using improved technology. At some airports, expanding runways can dramatically increase capacity—in some cases by 50 percent.

In the last 25 years, only one new major airport, Denver International Airport, has been built, and at a cost of more than \$6 billion. Denver is already in the process of adding a new 16,000 foot runway. A smaller airport opened in Arkansas, and three military bases slated for closing have been converted to civilian use under an FAA program created by Congress. In a report to Congress last May, the FAA noted that out of the top 31 airports, 18 are involved in the various stages of studying, planning, or constructing new runways. The cost of a new runway can range from \$50 million (Boston's Logan is planning a short runway for commuter flights) to \$850 million (St. Louis) and can take 10 years or longer to complete.

Airports begin the runway planning process when an existing runway reaches 60 percent of its capacity. The FAA traffic growth forecasts assume about a 3–4 percent growth in traffic traditionally. Ideally, at the end of the approximately 10-year completion process, the existing runway is at capacity and a new one is ready to be opened. However, delays in the process also occur. A May 2001 report by the FAA highlighted a number of areas where changes could be made to facilitate the completion of the environmental review process and mitigation of local concerns.

Runway construction is a complicated task, involving state and local officials, state environmental laws and procedures, Federal environmental processes or reviews, issuance of state and Federal permits (e.g., permits for storm water systems or for actions that affect wetlands), and legal challenges. The Environmental Impact Statement (EIS) process can involve up to 40 different statutes and many Federal agencies. It also must include an analysis of how the runway will impact the FAA's air traffic control operations and ability to coordinate flight paths and traffic that will result from the new runway (e.g., some proposed runway configurations may not increase capacity because of aircraft traffic flow patterns). The time needed to build a runway includes consideration of a number of factors, including the following:

- Local determination on whether or not to build a runway, and the location of the runway.
- The formal National Environmental Policy Act (NEPA) process—the FAA is the lead agency for the EIS for all airport construction projects.
- Within 60 days of the final FAA decision—(Record of Decision, or ROD), legal challenges must be filed.
- Permits to build the airport (state and/or Federal) must then be obtained.

- And finally, construction—which can take 3–4 years.

The FAA has been sued many times on its RODs, but has never lost a challenge. The EIS process can involve many Federal agencies with different expertise and responsibilities, and requires their approval or sign-off for various aspects of a project. Each project is unique and the FAA holds public meetings to solicit comments at various stages of the process. For example, in St. Louis, the FAA received and responded to over 15,000 comments regarding a new runway. The thoroughness of that review and analysis was noted by the court in upholding the challenge to the FAA's St. Louis ROD.

Efforts to streamline this long and cumbersome process, without changing the existing environmental laws and rights of various communities, are the basis for S. 633. The Administration, as part of AIR-21, was directed to report to Congress on how to improve the environmental review process for runway construction. A report was released in May 2001, as noted earlier.

S. 633 seeks to address delay problems in three ways: by requiring FAA to expedite and streamline the airport construction process; by allowing carriers to talk about reducing flights or changing schedules where needed; and, by increasing the salary for the FAA COO.

#### SUMMARY OF MAJOR PROVISIONS

S. 633 directs the Secretary to develop and implement an expedited coordinated environmental review process for airport capacity-enhancement projects that provides for: (1) coordination among Federal, regional, state, and local agencies concerned with the preparation of EISs or environmental assessments under the NEPA; (2) an expedited and coordinated process for environmental reviews that ensures that all necessary reviews and permits are done concurrently and not consecutively; and (3) a date certain for completing all environmental reviews.

S. 633 directs the Secretary of Transportation to review and report to specified congressional committees on air carrier overscheduling at large hub airports.

This bill amends Federal aviation law to authorize an air carrier to file with the Secretary a request for authority for a group of two or more air carriers to discuss cooperative scheduling arrangements, provided its sole purpose is to reach an agreement between or among such carriers to reduce overscheduling and flight delays during peak hours of operation and periods of inclement weather at any large hub airport. It authorizes the Secretary to approve such an agreement only if it will reduce congestion at the affected airport, will not reduce service to small communities, and is not adverse to the public interest. Additionally, it enables the Secretary to exempt such arrangements from U.S. antitrust laws if it is found to be in the public interest.

#### LEGISLATIVE HISTORY

On March 27, 2001, Senator Hutchison introduced S. 633, a bill to provide for the review and management of airport congestion. The bill was originally cosponsored by Senator Rockefeller. Senator McCain subsequently cosponsored the bill.

On March 29, 2001, the Committee held a hearing on S. 633 and the need to expedite expansion to minimize congestion at U.S. airports.

On August 2, 2001, the Committee ordered S. 633 to be reported with an amendment in the nature of a substitute by voice vote.

#### ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

#### CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

##### *S. 633—Aviation Delay Prevention Act*

Summary: S. 633 would allow the Federal Aviation Administration (FAA) to provide some airport operators with grants to construct and equip certain types of control towers. The bill would authorize the FAA to accept fees from airport operators so it could hire more staff to expedite the planning and environmental review of runway construction projects. S. 633 would allow the Secretary of Transportation to exempt air carriers from antitrust laws through 2005, under certain conditions. In addition, the bill would expand the requirements for a study on air quality in passenger cabins on commercial aircraft that is required under current law. Finally, the bill would require the Department of Transportation to prepare a report on overscheduling, flight cancellations, and the status of runway construction.

Based on information from the FAA and historical spending patterns, CBO estimates that implementing S. 633 would cost \$47 million over the 2002–2006 period, subject to appropriation of the necessary amounts. By allowing FAA to receive and spend fees to hire additional staff S. 633 would affect direct spending; therefore, pay-as-you-go procedures would apply, but CBO estimates that any such effects would be negligible.

S. 633 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) because it would place a duty upon certain airport authorities (public entities) to study options for increasing their capacity. CBO estimates, however, that the costs of this mandate would not exceed the threshold established in that act (\$56 million in 2001, adjusted annually for inflation). Other provisions of the bill would benefit certain state and local governments by amending existing grant programs to broaden eligibility and reduce required matching funds. This bill contains no new private-sector mandates as defined in UMRA.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 633 is shown in the following table. For this estimate we assume that the bill will be enacted near the start of 2002 and that the estimated amounts will be provided each year. The costs of this legislation fall within budget function 400 (transportation).

	By fiscal year, in millions of dollars—				
	2002	2003	2004	2005	2006
CHANGES IN SPENDING SUBJECT TO APPROPRIATION <sup>a,b</sup>					
Estimated Authorization Level .....	1	5	6	7	7
Estimated Outlays .....	5	13	12	9	8

<sup>a</sup>Enactment of S. 633 also would have a negligible impact on direct spending.

<sup>b</sup>A portion of the estimated outlays would come from contract authority already provided to FAA under current law. Use of that authority, however, is subject to approval in annual appropriations acts.

Basis of estimate: CBO estimates that implementing S. 633 would cost \$47 million over the 2002–2006 period, assuming appropriation of the necessary amounts. The bill also would have a negligible effect on direct spending.

#### *Spending subject to appropriation*

CBO estimates that providing federal grants for control tower construction would cost about \$22 million over the 2002–2006 period. In addition, CBO estimates that federal assistance for operating these towers would cost an additional \$25 million over this period.

Control Towers. S. 633 would authorize the FAA to provide grants to airport operators to construct and equip control towers. Such grants could be no more than \$1.1 million per tower. Based on information from the FAA and the American Association of Airport Executives, CBO estimates that FAA would provide grants for about 20 control towers over the next five years. Under the bill, grants would be made from the Airport Improvement Program (AIP), which is funded with contract authority (a mandatory form of budget authority) through 2003. S. 633 would not change the total amount of contract authority available to the Airport Improvement Program. Expenditures from AIP contract authority are governed by obligation limitations contained in annual appropriation acts, and are considered discretionary spending. Assuming appropriation acts increase the obligation limitation for this program by the necessary amounts, CBO estimates that implementing S. 633 would cost about \$22 million over the 2002–2006 period.

Operation of Control Towers. The additional towers constructed under the bill would be eligible to participate in the Contract Tower program. Under that program, the FAA shares the cost of operating towers with airport operators. FAA spends on average \$35,000 annually to support each contract tower. CBO estimates that supporting 20 additional towers would cost about \$7 million a year. Because the FAA would incur operating costs only after the towers are constructed and equipped, CBO estimates that FAA would spend about \$25 million over the 2002–2006 period to support additional towers, assuming appropriations of the necessary amounts.

Study on Air Quality. S. 633 would require the National Academy of Sciences to work with the Centers for Disease Control and Prevention to measure the air quality in passenger cabins on commercial aircraft. The bill would require the FAA to report the results of the study by January 31, 2002. Based on information from the National Academy of Sciences, CBO estimates that completing the study would cost about \$1 million in 2002, subject to the availability of appropriated funds.



**Antitrust Exemption.** Under the bill, air carriers could cooperate to limit flights at airports where scheduled flights exceed capacity if the Secretary of Transportation determines that such agreements are necessary to reduce travel delays due to congestion or bad weather. S. 633 would require that a representative of the Department of Transportation monitor discussions among airlines for this purpose, and that any discussions be open to the public. Based on information from the Department of Transportation, CBO estimates that the annual cost of monitoring discussions between air carriers would be negligible and subject to the availability of appropriated funds.

*Direct spending*

S. 633 would allow the FAA to accept fees from airport operators in order to hire more attorneys and environmental specialists to expedite the planning and environmental review of runway construction projects. Based on the number of airport operators that are likely to participate and the cost of qualified employees, CBO estimates FAA would collect about \$3 million a year over the 2002–2006 period. These payments could then be spent without further appropriation action to plan and conduct environmental reviews. Because the additional collections and spending would be approximately equal in each year, we estimate that the net impact on direct spending of this provision would be negligible.

**Pay-as-you-go considerations:** The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. CBO estimates that enacting S. 633 would have a negligible effect on direct spending.

**Estimated impact on state, local, and tribal governments:** S. 633 would require certain airport authorities to establish a delay reduction task force or to conduct a capacity enhancement study to determine means of increasing airport capacity. This requirement would be a mandate under UMRA, but CBO estimates that the cost of complying with the mandate would not exceed the threshold established by that act (\$56 million in 2001, adjusted annually for inflation). Airport authorities would incur costs only to manage the task force or study and to produce a report. The costs of developing alternatives to enhance capacity would be paid by the Federal Aviation Administration through grants and technical assistance.

The bill would authorize grants to state and local governments that abut certain airports to develop land use compatibility plans with the goal of making land areas around airports compatible with aircraft operations. The bill also would amend an existing grant program that provides funds to install air traffic control towers by expanding eligibility for the grants and lowering matching fund requirements from 25 percent of the project cost to 10 percent.

**Estimated impact on the private sector:** This bill contains no new private-sector mandates as defined in UMRA.

**Previous CBO estimates:** On May 18, 2001, CBO transmitted a cost estimate for H.R. 1407, as ordered reported by the House Committee on Transportation and Infrastructure on May 16, 2001. That version of the bill would require representatives of the Department of Transportation to monitor certain discussions among airlines and would result in negligible costs.

On June 22, 2001, CBO transmitted a cost estimate for H.R. 1407, as ordered reported by the House Committee on the Judiciary on June 20, 2001. That version of the bill would require representatives of the Department of Justice to monitor certain discussions among airlines and also would result in negligible costs.

Estimate prepared by: Federal Costs: Mark Hadley; Impact on State, Local, and Tribal Governments: Susan Sieg Thompkins; and Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

#### REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

Because S. 633 does not create any new programs, the legislation will have no additional regulatory impact, and will result in no additional reporting requirements for businesses or individuals. The legislation will have no further effect on the number or types of individuals and businesses regulated, the economic impact of such regulation, the personal privacy of affected individuals, or the paperwork required from such individuals and businesses.

#### NUMBER OF PERSONS COVERED

S. 633 is intended to improve airport capacity management and reduce airport congestion in the United States. The number of persons covered should be consistent with current levels of individuals effected.

#### ECONOMIC IMPACT

S. 633 does not authorize or appropriate any funds or expenditures. Its intended purpose to improve the nation's airport capacity needs should have a beneficial impact on the economy of the United States.

#### PRIVACY

S. 633 will not have an adverse effect on the personal privacy of any individuals that will be impacted by this legislation.

#### PAPERWORK

S. 633 will have a minimal impact on current paperwork levels, and seeks to reduce duplication in some areas. The legislation requires the DOT to identify reasonable alternatives that exist to capacity enhancement projects for publication in the Federal Register, and to identify airports which cause significant delays to the national air transportation system. Airports that are identified as contributing considerably to air traffic delays in the U.S. will be required to generate a study on the matter, or develop a task force to submit recommendations for capacity enhancement.

Additionally, the Department is required to produce a number of reports on aviation capacity issues, including an annual report on air carrier scheduling practices over the next 5 years, and must ensure that transcripts of any scheduled "delay reduction meetings" are made available for public release.

## SECTION-BY-SECTION ANALYSIS

*Section 1. Short Title*

Section 1 designates the short title of the bill as the “Aviation Delay Prevention Act.”

*Section 2. Table of Sections*

Section 2 cites the title of each section of the legislation.

*Section 101. Definitions*

Section 101 sets out definitions for the terms “air carrier,” “enplanement,” “large hub airport,” “overscheduling,” and “Secretary.” These are based on existing definitions except for “overscheduling,” which would mean the airline practice of scheduling more departures at a particular time than the airport can accommodate.

*Section 102. DOT Study and Report*

Section 102 requires DOT to complete a study, within 12 months of enactment, of all large hub airports (approximately the top 31 airports in regard to total passenger enplanements). The study would determine the hourly capacity of each airport and the hours in which overscheduling takes place. It would also provide an analysis of what authority DOT has to mitigate congestion and any recommendations for providing DOT with additional authority: (1) to alleviate airport congestion and overscheduling; and (2) to expedite construction related to airport capacity expansion. This study would be repeated every year for five years.

*Section 103. Delay Reduction Meetings*

Section 103 allows the Secretary to call for meetings between air carriers and the FAA Administrator to consider flight reductions at heavily congested airports if the Secretary and Administrator determine that conditions necessitate such discussions. Any meetings that are called will be chaired by the Administrator and will be open to all scheduled air carriers only to discuss the conditions that prompted the meeting, and the air carriers must be informed of these conditions at least two days prior to meeting. Any delay reduction proposals are required to be made to the Administrator rather than to another carrier. The DOT is required to be represented at any meetings, and the Administrator must make a transcript of the meeting available to the public within three working days.

This section also mandates that the Secretary develop procedures for this program within 30 days, and requests air carriers to file a request with the Secretary to participate in this program. The Secretary will also have the option of developing a program to address the unique situation presented by inclement weather.

*Section 104. Chief Operating Officer*

Section 104 removes statutory restrictions on the annual pay rate for the Chief Operating Officer of the Air Traffic Organization within the FAA.

*Section 105. Passenger Facility Fee Definitional Changes*

Section 105 permits the use of passenger facility fees at large hub airports to finance expansion that will facilitate the ability of a competing air carrier to provide air service if that air carrier intends to initiate new or expand existing service at the airport, but is not a carrier at that facility. It is intended to provide a new entrant or non-dominant carrier at that airport an outlet to enter the market.

*Section 106. DOT Rulemaking to Define On-Time Departure*

Section 106 requires the Secretary to define “on-time departure” through rulemaking required by AIR-21. The definition must be determined within 120 days of enactment of this Act, and must be made available to passengers in an efficient and reliable manner.

*Section 107. Construction of Air Traffic Control Towers*

Section 107 expands the Secretary’s ability to provide grants to airports for building, improving or purchasing ATC equipment for non-approach control towers. To receive a grant, the airports are required to participate in the FAA Contract Tower Program or pilot program and provide 10 percent of the cost of the project. Numerous airports without towers have expressed an interest in participating in this program. Issues such as funding for specific tower equipment continue to be raised and are addressed through this provision.

The benefits of the Contract Tower Program have been compelling to date and the Committee is convinced that additional actions going forward to enhance it are warranted. The need to upgrade and enhance tower buildings, facilities, and equipment must be addressed. Facilities and equipment resource limitations have increasingly necessitated that airport sponsors in smaller communities build contract towers on their own that meet standards acceptable to the FAA.

As a result, the Committee believes that airport sponsors in these smaller communities should have the added flexibility to utilize AIP funds to construct and equip tower facilities based on current FAA contract tower construction standards.

The result will be a local/federal partnership providing substantial aviation safety/capacity/efficiency benefits. The Committee is proposing statutory language and funding authorization permitting the use of AIP entitlement funds for future contract tower construction and related equipment that will be consistent with FAA standards utilized for recently completed contract tower projects at airports eligible for the FAA contract tower program. By doing so, airport sponsors that have already acted to build their own towers using non-FAA funds should in no way expect to be repaid for those actions as the decisions to build were done knowing the legal limitations at the time of that decision. The provisions under this Act should in no way create any expectation that the Committee would ever consider “backdating” the program.

The Committee has supported the contract tower program from its inception, first providing a pilot program under a cost sharing arrangement to build new towers at small airports, using the FAA’s cost benefit criteria as a benchmark. The provisions included in this bill extend the ability to construct towers in the future for

other airports. The program, initially objected to by the FAA and air traffic controllers, has to date converted its critics. However, future actions or overreaching could jeopardize that effort and support.

*Section 108. Air Quality Standards Report*

Section 108 requires the National Academy of Sciences to work with the Center for Disease Control and Prevention when developing an air quality standard report mandated by AIR-21, and orders the Secretary to report the results of this study to the Committee no later than January 31, 2002.

*Section 109. Special Rule for Airport in Illinois*

Section 109 retains the power of the Governor of Illinois to approve or disapprove airport projects in the State, but ensures that the provisions of the Act may be applied to projects in Illinois, and that airports in the state would be eligible to utilize the expedited process. In Illinois, a debate over expansion of O'Hare and the construction of a new airport, at Peotone, has been on-going for a number of years. During consideration of this Act, no final agreement between the Mayor of Chicago and Governor of Illinois existed, and thus this provision was added to ensure that nothing in this Act affected that debate.

*Section 110. Categorical Exclusions*

Section 110 requires the Secretary to provide a report on recognized and proposed categorical exclusions from an environmental assessment or EIS on airport projects to the Committee within 30 days of enactment of the Act.

*Section 111. Alternative Analysis*

Section 111 requires the Secretary to request public comments within 30 days of identifying airport enhancement projects to examine potential alternatives. Sixty days will be provided for public comment, and within 90 days after that point the Secretary will make the determination whether reasonable alternatives exist to the proposed project.

*Section 112. Elimination of Duplicative Requests*

Section 112 eliminates redundant requirements within the law regarding project grant applications that emphasize airport development.

*Section 201. Findings*

Section 201 sets forth six congressional findings establishing the general basis for enactment of the legislation.

*Section 202. National Capacity Projects*

Section 202 requires the Secretary to identify any large hub airports with delays that markedly affect the national air transportation system. Any airport that is identified and is not currently participating in the runway expansion process or has not begun a capacity enhancement study (CES) must perform a CES or establish a delay reduction task force to report to the Secretary. Any airport that is the subject of a report or study recommending con-

struction in response to delays must have the planning and environmental review process to address this matter completed within 5 years. Any airport that does not take recommended expansion action will be ineligible for federal planning and expansion funds or approval of passenger facility fees during that 5-year period for any projects that are not environment, safety, or security-related.

Section 202 allows the Secretary to designate projects, which are determined to have a significant impact on enhancing the national air transportation system, as a national capacity project. The Secretary is also empowered to make grants to state and local government for land use compatibility plans directly related to national capacity projects.

Section 202 requires DOT to develop and implement an expedited, coordinated environmental review process that encompasses all Federal, state, regional, and local agencies' reviews for airport projects. This process would provide for concurrent reviews and conclude by a date certain. The Secretary will also be required to start a pilot program to be funded by airport sponsors to improve environmental review of national capacity projects. The pilot program will provide for the hiring of full-time staff from outside the U.S. Government with an expertise in environmental policy.

Section 202 provides the Secretary the option of prescribing air traffic procedures at facilities that are working on national capacity projects in an effort to minimize any adverse impacts of construction. Section 202 sets out definitions for "national capacity project," and other terms based on existing statutory meanings.

*Section 203. Increase in Apportionment For, and Flexibility of, Noise Compatibility Planning Programs*

Section 203 amends title 49 of the United States Code to ensure that at least 35 percent of special apportionment grants are used to address airport noise compatibility planning issues.

*Section 204. Secretary of Transportation to Identify Airport Congestion-Relief Projects and Forecast Airport Operations Annually*

Section 204 requires the Secretary to provide to the Committee within 90 days of enactment of this legislation a list of planned projects and a list of options for expanding capacity at the 8 airports with the most severe delays.

*Section 205. Quarterly Status Reports*

Section 205 requires the Secretary to provide quarterly status reports to the Committee on the status of major runway construction projects at the nation's 40 largest airports.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

## TITLE 49. TRANSPORTATION

## SUBTITLE I. DEPARTMENT OF TRANSPORTATION

## CHAPTER 1. ORGANIZATION

**§ 106. Federal Aviation Administration**

(a) The Federal Aviation Administration is an administration in the Department of Transportation.

(b) The head of the Administration is the Administrator. The Administration has a Deputy Administrator. They are appointed by the President, by and with the advice and consent of the Senate. When making an appointment, the President shall consider the fitness of the individual to carry out efficiently the duties and powers of the office. Except as provided in subsection (f) or in other provisions of law, the Administrator reports directly to the Secretary of Transportation. The term of office for any individual appointed as Administrator after August 23, 1994, shall be 5 years.

(c) The Administrator must—

(1) be a citizen of the United States;

(2) be a civilian; and (3) have experience in a field directly related to aviation.

(d)(1) The Deputy Administrator must be a citizen of the United States and have experience in a field directly related to aviation. An officer on active duty in an armed force may be appointed as Deputy Administrator. However, if the Administrator is a former regular officer of an armed force, the Deputy Administrator may not be an officer on active duty in an armed force, a retired regular officer of an armed force, or a former regular officer of an armed force.

(2) An officer on active duty or a retired officer serving as Deputy Administrator is entitled to hold a rank and grade not lower than that held when appointed as Deputy Administrator. The Deputy Administrator may elect to receive

(A) the pay provided by law for the Deputy Administrator, or

(B) the pay and allowances or the retired pay of the military grade held. If the Deputy Administrator elects to receive the military pay and allowances or retired pay, the Administration shall reimburse the appropriate military department from funds available for the expenses of the Administration.

(3) The appointment and service of a member of the armed forces as a Deputy Administrator does not affect the status, office, rank, or grade held by that member, or a right or benefit arising from the status, office, rank, or grade. The Secretary of a military department does not control the member when the member is carrying out duties and powers of the Deputy Administrator.

(e) The Administrator and the Deputy Administrator may not have a pecuniary interest in, or own stock in or bonds of, an aeronautical enterprise, or engage in another business, vocation, or employment.

(f) AUTHORITY OF THE SECRETARY AND THE ADMINISTRATOR.—

(1) AUTHORITY OF THE SECRETARY.—Except as provided in paragraph (2), the Secretary of Transportation shall carry out the duties and powers, and controls the personnel and activi-

ties, of the Administration. Neither the Secretary nor the Administrator may submit decisions for the approval of, or be bound by the decisions or recommendations of, a committee, board, or organization established by executive order.

(2) **AUTHORITY OF THE ADMINISTRATOR.**—The Administrator—

(A) is the final authority for carrying out all functions, powers, and duties of the Administration relating to—

(i) the appointment and employment of all officers and employees of the Administration (other than Presidential and political appointees);

(ii) the acquisition and maintenance of property and equipment of the Administration;

(iii) except as otherwise provided in paragraph (3), the promulgation of regulations, rules, orders, circulars, bulletins, and other official publications of the Administration; and

(iv) any obligation imposed on the Administrator, or power conferred on the Administrator, by the Air Traffic Management System Performance Improvement Act of 1996 (or any amendment made by that Act);

(B) shall offer advice and counsel to the President with respect to the appointment and qualifications of any officer or employee of the Administration to be appointed by the President or as a political appointee;

(C) may delegate, and authorize successive redelegations of, to an officer or employee of the Administration any function, power, or duty conferred upon the Administrator, unless such delegation is prohibited by law; and

(D) except as otherwise provided for in this title, and notwithstanding any other provision of law, shall not be required to coordinate, submit for approval or concurrence, or seek the advice or views of the Secretary or any other officer or employee of the Department of Transportation on any matter with respect to which the Administrator is the final authority.

(3) **REGULATIONS.**—

(A) **IN GENERAL.**—In the performance of the functions of the Administrator and the Administration, the Administrator is authorized to issue, rescind, and revise such regulations as are necessary to carry out those functions. The issuance of such regulations shall be governed by the provisions of chapter 5 of title 5. The Administrator shall act upon all petitions for rulemaking no later than 6 months after the date such petitions are filed by dismissing such petitions, by informing the petitioner of an intention to dismiss, or by issuing a notice of proposed rulemaking or advanced notice of proposed rulemaking. The Administrator shall issue a final regulation, or take other final action, not later than 16 months after the last day of the public comment period for the regulations or, in the case of an advanced notice of proposed rulemaking, if issued, not later than 24 months after the date of publication in the Federal Register of notice of the proposed rulemaking. On February 1 and August 1 of each year the Administrator



shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a letter listing each deadline the Administrator missed under this subparagraph during the 6-month period ending on such date, including an explanation for missing the deadline and a projected date on which the action that was subject to the deadline will be taken.

(B) APPROVAL OF SECRETARY OF TRANSPORTATION.—

(i) The Administrator may not issue a proposed regulation or final regulation that is likely to result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of \$250,000,000 or more (adjusted annually for inflation beginning with the year following the date of the enactment of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century in any year, or any regulation which is significant, unless the Secretary of Transportation approves the issuance of the regulation in advance). For purposes of this paragraph, a regulation is significant if the Administrator, in consultation with the Secretary (as appropriate), determines that the regulation is likely to—

(I) have an annual effect on the economy of \$250,000,000 or more or adversely affect in a substantial material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; or

(II) raise novel or significant legal or policy issues arising out of legal mandates that may substantially and materially affect other transportation modes.

(ii) In an emergency, the Administrator may issue a regulation described in clause (i) without prior approval by the Secretary, but any such emergency regulation is subject to ratification by the Secretary after it is issued and shall be rescinded by the Administrator within 5 days (excluding Saturdays, Sundays, and legal public holidays) after issuance if the Secretary fails to ratify its issuance.

(iii) Any regulation that does not meet the criteria of clause (i), and any regulation or other action that is a routine or frequent action or a procedural action, may be issued by the Administrator without review or approval by the Secretary.

(iv) The Administrator shall submit a copy of any regulation requiring approval by the Secretary under clause (i) to the Secretary, who shall either approve it or return it to the Administrator with comments within 45 days after receiving it.

(C) PERIODIC REVIEW.—

(i) Beginning on the date which is 3 years after the date of the enactment of the Air Traffic Management System Performance Improvement Act of 1996, the

Administrator shall review any unusually burdensome regulation issued by the Administrator after such date of enactment beginning not later than 3 years after the effective date of the regulation to determine if the cost assumptions were accurate, the benefit of the regulations, and the need to continue such regulations in force in their present form.

(ii) The Administrator may identify for review under the criteria set forth in clause (i) unusually burdensome regulations that were issued before the date of the enactment of the Air Traffic Management System Performance Improvement Act of 1996 and that have been in force for more than 3 years.

(iii) For purposes of this subparagraph, the term “unusually burdensome regulation” means any regulation that results in the annual expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of \$25,000,000 or more (adjusted annually for inflation beginning with the year following the date of the enactment of the Air Traffic Management System Performance Act of 1996) in any year.

(iv) The periodic review of regulations may be performed by advisory committees and the Management Advisory Council established under subsection (p).

(4) DEFINITION OF POLITICAL APPOINTEE.—For purposes of this subsection, the term “political appointee” means any individual who—

(A) is employed in a position listed in sections 5312 through 5316 of title 5 (relating to the Executive Schedule);

(B) is a limited term appointee, limited emergency appointee, or noncareer appointee in the Senior Executive Service, as defined under paragraphs (5), (6), and (7), respectively, of section 3132(a) of title 5; or

(C) is employed in a position in the executive branch of the Government of a confidential or policy-determining character under schedule C of subpart C of part 213 of title 5 of the Code of Federal Regulations.

(g) DUTIES AND POWERS OF ADMINISTRATOR.—

(1) Except as provided in paragraph (2) of this subsection, the Administrator shall carry out—

(A) duties and powers of the Secretary of Transportation under subsection (f) of this section related to aviation safety (except those related to transportation, packaging, marking, or description of hazardous material) and stated in sections 308(b), 1132(c) and (d), 40101(c), 40103(b), 40106(a), 40108, 40109(b), 40113(a), 40113(c), 40113(d), 40113(e), 40114(a), and 40119, chapter 445 (except sections 44501(b), 44502(a)(2), 44502(a)(3), 44502(a)(4), 44503, 44506, 44509, 44510, 44514, and 44515), chapter 447 (except sections 44717, 44718(a), 44718(b), 44719, 44720, 44721(b), 44722, and 44723), chapter 449 (except sections 44903(d), 44904, 44905, 44907–44911, 44913, 44915, and 44931–44934), chapter 451, chapter 453, sections 46104,

46301(d) and (h)(2), 46303(c), 46304–46308, 46310, 46311, and 46313–46316, chapter 465, and sections 47504(b) (related to flight procedures), 47508(a), and 48107 of this title; and

(B) additional duties and powers prescribed by the Secretary of Transportation.

(2) In carrying out sections 40119, 44901, 44903(a)–(c) and (e), 44906, 44912, 44935–44937, 44938(a) and (b), and 48107 of this title, paragraph (1)(A) of this subsection does not apply to duties and powers vested in the Director of Intelligence and Security by section 44931 of this title.

(h) Section 40101(d) of this title applies to duties and powers specified in subsection (g)(1) of this section. Any of those duties and powers may be transferred to another part of the Department only when specifically provided by law or a reorganization plan submitted under chapter 9 of title 5. A decision of the Administrator in carrying out those duties or powers is administratively final.

(i) The Deputy Administrator shall carry out duties and powers prescribed by the Administrator. The Deputy Administrator acts for the Administrator when the Administrator is absent or unable to serve, or when the office of the Administrator is vacant.

(j) There is established within the Federal Aviation Administration an institute to conduct civil aeromedical research under section 44507 of this title. Such institute shall be known as the “Civil Aeromedical Institute”. Research conducted by the institute should take appropriate advantage of capabilities of other government agencies, universities, or the private sector.

(k) AUTHORIZATION OF APPROPRIATIONS FOR OPERATIONS.—

(1) IN GENERAL.—There is authorized to be appropriated to the Secretary of Transportation for operations of the Administration—

(A) such sums as may be necessary for fiscal year 2000;

(B) \$6,592,235,000 for fiscal year 2001;

(C) \$6,886,000,000 for fiscal year 2002; and

(D) \$7,357,000,000 for fiscal year 2003. Such sums shall remain available until expended.

(2) AUTHORIZED EXPENDITURES.—Out of amounts appropriated under paragraph (1), the following expenditures are authorized:

(A) \$450,000 for each of fiscal years 2000 through 2003 for wildlife hazard mitigation measures and management of the wildlife strike database of the Federal Aviation Administration.

(B) \$9,100,000 for the 3-fiscal-year period beginning with fiscal year 2001 to support a university consortium established to provide an air safety and security management certificate program, working cooperatively with the Federal Aviation Administration and United States air carriers, except that funds under this subparagraph—

(i) may not be used for the construction of a building or other facility; and

(ii) may only be awarded on the basis of open competition.

(C) Such sums as may be necessary for fiscal years 2000 through 2003 to support infrastructure systems develop-

ment for both general aviation and the vertical flight industry.

(D) Such sums as may be necessary for fiscal years 2000 through 2003 to establish helicopter approach procedures using current technologies (such as the Global Positioning System) to support all-weather, emergency medical service for trauma patients.

(E) Such sums as may be necessary for fiscal years 2000 through 2003 to revise existing terminal and en route procedures and instrument flight rules to facilitate the takeoff, flight, and landing of tiltrotor aircraft and to improve the national airspace system by separating such aircraft from congested flight paths of fixed-wing aircraft.

(F) \$3,300,000 for fiscal year 2000 and \$3,000,000 for each of fiscal years 2001 through 2003 to implement the 1998 airport surface operations safety action plan of the Federal Aviation Administration.

(G) \$9,100,000 for fiscal year 2001 to support air safety efforts through payment of United States membership obligations in the International Civil Aviation Organization, to be paid as soon as practicable.

(H) Such sums as may be necessary for fiscal years 2000 through 2003 for the Secretary to hire additional inspectors in order to enhance air cargo security programs.

(I) Such sums as may be necessary for fiscal years 2000 through 2003 to develop and improve training programs (including model training programs and curriculum) for security screening personnel at airports that will be used by airlines to meet regulatory requirements relating to the training and testing of such personnel.

(1) PERSONNEL AND SERVICES.—

(1) OFFICERS AND EMPLOYEES.—Except as provided in subsections (a) and (g) of section 40122, the Administrator is authorized, in the performance of the functions of the Administrator, to appoint, transfer, and fix the compensation of such officers and employees, including attorneys, as may be necessary to carry out the functions of the Administrator and the Administration. In fixing compensation and benefits of officers and employees, the Administrator shall not engage in any type of bargaining, except to the extent provided for in section 40122(a), nor shall the Administrator be bound by any requirement to establish such compensation or benefits at particular levels.

(2) EXPERTS AND CONSULTANTS.—The Administrator is authorized to obtain the services of experts and consultants in accordance with section 3109 of title 5.

(3) TRANSPORTATION AND PER DIEM EXPENSES.—The Administrator is authorized to pay transportation expenses, and per diem in lieu of subsistence expenses, in accordance with chapter 57 of title 5.

(4) USE OF PERSONNEL FROM OTHER AGENCIES.—The Administrator is authorized to utilize the services of personnel of any other Federal agency (as such term is defined under section 551(1) of title 5).

(5) VOLUNTARY SERVICES.—

(A) GENERAL RULE.—In exercising the authority to accept gifts and voluntary services under section 326 of this title, and without regard to section 1342 of title 31, the Administrator may not accept voluntary and uncompensated services if such services are used to displace Federal employees employed on a full-time, part-time, or seasonal basis.

(B) INCIDENTAL EXPENSES.—The Administrator is authorized to provide for incidental expenses, including transportation, lodging, and subsistence, for volunteers who provide voluntary services under this subsection.

(C) LIMITED TREATMENT AS FEDERAL EMPLOYEES.—An individual who provides voluntary services under this subsection shall not be considered a Federal employee for any purpose other than for purposes of chapter 81 of title 5, relating to compensation for work injuries, and chapter 171 of title 28, relating to tort claims.

(6) CONTRACTS.—The Administrator is authorized to enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary to carry out the functions of the Administrator and the Administration. The Administrator may enter into such contracts, leases, cooperative agreements, and other transactions with any Federal agency (as such term is defined in section 551(1) of title 5) or any instrumentality of the United States, any State, territory, or possession, or political subdivision thereof, any other governmental entity, or any person, firm, association, corporation, or educational institution, on such terms and conditions as the Administrator may consider appropriate.

(m) COOPERATION BY ADMINISTRATOR.—With the consent of appropriate officials, the Administrator may, with or without reimbursement, use or accept the services, equipment, personnel, and facilities of any other Federal agency (as such term is defined in section 551(1) of title 5) and any other public or private entity. The Administrator may also cooperate with appropriate officials of other public and private agencies and instrumentalities concerning the use of services, equipment, personnel, and facilities. The head of each Federal agency shall cooperate with the Administrator in making the services, equipment, personnel, and facilities of the Federal agency available to the Administrator. The head of a Federal agency is authorized, notwithstanding any other provision of law, to transfer to or to receive from the Administration, without reimbursement, supplies, personnel, services, and equipment other than administrative supplies or equipment.

(n) ACQUISITION.—

(1) IN GENERAL.—The Administrator is authorized—

(A) to acquire (by purchase, lease, condemnation, or otherwise), construct, improve, repair, operate, and maintain—

- (i) air traffic control facilities and equipment;
- (ii) research and testing sites and facilities; and
- (iii) such other real and personal property (including office space and patents), or any interest therein, within and outside the continental United States as the Administrator considers necessary;

(B) to lease to others such real and personal property; and

(C) to provide by contract or otherwise for eating facilities and other necessary facilities for the welfare of employees of the Administration at the installations of the Administration, and to acquire, operate, and maintain equipment for these facilities.

(2) TITLE.—Title to any property or interest therein acquired pursuant to this subsection shall be held by the Government of the United States.

(o) TRANSFERS OF FUNDS.—The Administrator is authorized to accept transfers of unobligated balances and unexpended balances of funds appropriated to other Federal agencies (as such term is defined in section 551(1) of title 5) to carry out functions transferred by law to the Administrator or functions transferred pursuant to law to the Administrator on or after the date of the enactment of the Air Traffic Management System Performance Improvement Act of 1996.

(p) MANAGEMENT ADVISORY COUNCIL.—

(1) ESTABLISHMENT.—Within 3 months after the date of the enactment of the Air Traffic Management System Performance Improvement Act of 1996, the Administrator shall establish an advisory council which shall be known as the Federal Aviation Management Advisory Council (in this subsection referred to as the “Council”). With respect to Administration management, policy, spending, funding, and regulatory matters affecting the aviation industry, the Council may submit comments, recommended modifications, and dissenting views to the Administrator. The Administrator shall include in any submission to Congress, the Secretary, or the general public, and in any submission for publication in the Federal Register, a description of the comments, recommended modifications, and dissenting views received from the Council, together with the reasons for any differences between the views of the Council and the views or actions of the Administrator.

(2) MEMBERSHIP.—The Council shall consist of 18 members, who shall consist of—

(A) a designee of the Secretary of Transportation;

(B) a designee of the Secretary of Defense;

(C) 10 members representing aviation interests, appointed by—

(i) in the case of initial appointments to the Council, the President by and with the advice and consent of the Senate; and

(ii) in the case of subsequent appointments to the Council, the Secretary of Transportation;

(D) 1 member appointed, from among individuals who are the leaders of their respective unions of air traffic control system employees, by—

(i) in the case of initial appointments to the Council, the President by and with the advice and consent of the Senate; and

(ii) in the case of subsequent appointments to the Council, the Secretary of Transportation; and

- (E) 5 members appointed by the Secretary after consultation with the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.
- (3) QUALIFICATIONS.—
- (A) NO FEDERAL OFFICER OR EMPLOYEE.—No member appointed under paragraph (2)(C) or 2(E) may serve as an officer or employee of the United States Government while serving as a member of the Council.
- (B) AIR TRAFFIC SERVICES SUBCOMMITTEE.—Members appointed under paragraph (2)(E) shall—
- (i) have a fiduciary responsibility to represent the public interest;
  - (ii) be citizens of the United States; and
  - (iii) be appointed without regard to political affiliation and solely on the basis of their professional experience and expertise in one or more of the following areas:
    - (I) Management of large service organizations.
    - (II) Customer service.
    - (III) Management of large procurements.
    - (IV) Information and communications technology.
    - (V) Organizational development.
    - (VI) Labor relations. At least one of such members should have a background in managing large organizations successfully. In the aggregate, such members should collectively bring to bear expertise in all of the areas described in subclauses (I) through (VI).
- (C) PROHIBITIONS ON MEMBERS OF SUBCOMMITTEE.—No member appointed under paragraph (2)(E) may—
- (i) have a pecuniary interest in, or own stock in or bonds of, an aviation or aeronautical enterprise, except an interest in a diversified mutual fund or an interest that is exempt from the application of section 208 of title 18;
  - (ii) engage in another business related to aviation or aeronautics; or
  - (iii) be a member of any organization that engages, as a substantial part of its activities, in activities to influence aviation-related legislation.
- (4) FUNCTIONS.—
- (A) IN GENERAL.—
- (i) The Council shall provide advice and counsel to the Administrator on issues which affect or are affected by the operations of the Administrator. The Council shall function as an oversight resource for management, policy, spending, and regulatory matters under the jurisdiction of the Administration.
  - (ii) The Council shall review the rulemaking cost-benefit analysis process and develop recommendations to improve the analysis and ensure that the public interest is fully protected.

(iii) The Council shall review the process through which the Administration determines to use advisory circulars and service bulletins.

(B) MEETINGS.—The Council shall meet on a regular and periodic basis or at the call of the chairman or of the Administrator.

(C) ACCESS TO DOCUMENTS AND STAFF.—The Administration may give the Council appropriate access to relevant documents and personnel of the Administration, and the Administrator shall make available, consistent with the authority to withhold commercial and other proprietary information under section 552 of title 5 (commonly known as the “Freedom of Information Act”), cost data associated with the acquisition and operation of air traffic service systems. Any member of the Council who receives commercial or other proprietary data from the Administrator shall be subject to the provisions of section 1905 of title 18, pertaining to unauthorized disclosure of such information.

(5) Federal Advisory Committee Act not to apply. The Federal Advisory Committee Act (5 U.S.C. App.) does not apply to the Council or such aviation rulemaking committees as the Administrator shall designate.

(6) ADMINISTRATIVE MATTERS.—

(A) TERMS OF MEMBERS APPOINTED UNDER PARAGRAPH (2)(C).—Members of the Council appointed under paragraph (2)(C) shall be appointed for a term of 3 years. Of the members first appointed by the President under paragraph (2)(C)—

- (i) 3 shall be appointed for terms of 1 year;
- (ii) 4 shall be appointed for terms of 2 years; and
- (iii) 3 shall be appointed for terms of 3 years.

(B) TERM FOR AIR TRAFFIC CONTROL REPRESENTATIVE.—The member appointed under paragraph (2)(D) shall be appointed for a term of 3 years, except that the term of such individual shall end whenever the individual no longer meets the requirements of paragraph (2)(D).

(C) TERMS FOR AIR TRAFFIC SERVICES SUBCOMMITTEE MEMBERS.—The member appointed under paragraph (2)(E) shall be appointed for a term of 5 years, except that of the members first appointed under paragraph (2)(E)—

- (i) 2 members shall be appointed for a term of 3 years;
- (ii) 2 members shall be appointed for a term of 4 years; and
- (iii) 1 member shall be appointed for a term of 5 years.

(D) REAPPOINTMENT.—An individual may not be appointed under paragraph (2)(E) to more than two 5-year terms.

(E) VACANCY.—Any vacancy on the Council shall be filled in the same manner as the original appointment, except that any vacancy caused by a member appointed by the President under paragraph (2)(C)(i) shall be filled by the Secretary in accordance with paragraph (2)(C)(ii). Any member appointed to fill a vacancy occurring before the ex-



piration of the term for which the member's predecessor was appointed shall be appointed for the remainder of that term.

(F) CONTINUATION IN OFFICE.—A member whose term expires shall continue to serve until the date on which the member's successor takes office.

(G) REMOVAL.—Any member of the Council appointed under paragraph (2)(D) may be removed for cause by the President or Secretary whoever makes the appointment. Any member of the Council appointed under paragraph (2)(E) may be removed for cause by the Secretary.

(H) CLAIMS AGAINST MEMBERS OF SUBCOMMITTEE.—

(i) IN GENERAL.—A member appointed under paragraph (2)(E) shall have no personal liability under Federal law with respect to any claim arising out of or resulting from an act or omission by such member within the scope of service as a member of the Air Traffic Services Subcommittee.

(ii) EFFECT ON OTHER LAW.—This subparagraph shall not be construed—

(I) to affect any other immunity or protection that may be available to a member of the Subcommittee under applicable law with respect to such transactions;

(II) to affect any other right or remedy against the United States under applicable law; or

(III) to limit or alter in any way the immunities that are available under applicable law for Federal officers and employees.

(I) ETHICAL CONSIDERATIONS.—

(i) FINANCIAL DISCLOSURE.—During the entire period that an individual appointed under paragraph (2)(E) is a member of the Subcommittee, such individual shall be treated as serving as an officer or employee referred to in section 101(f) of the Ethics in Government Act of 1978 for purposes of title I of such Act; except that section 101(d) of such Act shall apply without regard to the number of days of service in the position.

(ii) RESTRICTIONS ON POST-EMPLOYMENT.—For purposes of section 207(c) of title 18, an individual appointed under paragraph (2)(E) shall be treated as an employee referred to in section 207(c)(2)(A)(i) of such title during the entire period the individual is a member of the Subcommittee; except that subsections (c)(2)(B) and (f) of section 207 of such title shall not apply.

(J) CHAIRMAN; VICE CHAIRMAN.—The Council shall elect a chair and a vice chair from among the members appointed under paragraph (2)(C), each of whom shall serve for a term of 1 year. The vice chair shall perform the duties of the chairman in the absence of the chairman.

(K) TRAVEL AND PER DIEM.—Each member of the Council shall be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from his or her usual

place of residence, in accordance with section 5703 of title 5.

(L) DETAIL OF PERSONNEL FROM THE ADMINISTRATION.—The Administrator shall make available to the Council such staff, information, and administrative services and assistance as may reasonably be required to enable the Council to carry out its responsibilities under this subsection.

(7) AIR TRAFFIC SERVICES SUBCOMMITTEE.—

(A) IN GENERAL.—The Management Advisory Council shall have an air traffic services subcommittee (in this paragraph referred to as the “Subcommittee”) composed of the five members appointed under paragraph (2)(E).

(B) GENERAL RESPONSIBILITIES.—

(i) OVERSIGHT.—The Subcommittee shall oversee the administration, management, conduct, direction, and supervision of the air traffic control system.

(ii) CONFIDENTIALITY.—The Subcommittee shall ensure that appropriate confidentiality is maintained in the exercise of its duties.

(C) SPECIFIC RESPONSIBILITIES.—The Subcommittee shall have the following specific responsibilities:

(i) STRATEGIC PLANS.—To review, approve, and monitor the strategic plan for the air traffic control system, including the establishment of—

(I) a mission and objectives;

(II) standards of performance relative to such mission and objectives, including safety, efficiency, and productivity; and

(III) annual and long-range strategic plans.

(ii) MODERNIZATION AND IMPROVEMENT.—To review and approve—

(I) methods to accelerate air traffic control modernization and improvements in aviation safety related to air traffic control; and

(II) procurements of air traffic control equipment in excess of \$100,000,000.

(iii) OPERATIONAL PLANS.—To review the operational functions of the air traffic control system, including—

(I) plans for modernization of the air traffic control system;

(II) plans for increasing productivity or implementing cost-saving measures; and

(III) plans for training and education.

(iv) MANAGEMENT.—To—

(I) review and approve the Administrator’s appointment of a Chief Operating Officer under section 106(r);

(II) review the Administrator’s selection, evaluation, and compensation of senior executives of the Administration who have program management responsibility over significant functions of the air traffic control system;

(III) review and approve the Administrator’s plans for any major reorganization of the Admin-

istration that would impact on the management of the air traffic control system;

(IV) review and approve the Administrator's cost accounting and financial management structure and technologies to help ensure efficient and cost-effective air traffic control operation; and

(V) review the performance and compensation of managers responsible for major acquisition projects, including the ability of the managers to meet schedule and budget targets.

(v) BUDGET.—To—

(I) review and approve the budget request of the Administration related to the air traffic control system prepared by the Administrator;

(II) submit such budget request to the Secretary; and

(III) ensure that the budget request supports the annual and long-range strategic plans. The Secretary shall submit the budget request referred to in clause (v)(II) for any fiscal year to the President who shall transmit such request, without revision, to the Committees on Transportation and Infrastructure and Appropriations of the House of Representatives and the Committees on Commerce, Science, and Transportation and Appropriations of the Senate, together with the President's annual budget request for the Federal Aviation Administration for such fiscal year.

(D) SUBCOMMITTEE PERSONNEL MATTERS.—

(i) COMPENSATION OF MEMBERS.—Each member of the Subcommittee shall be compensated at a rate of \$25,000 per year.

(ii) COMPENSATION OF CHAIRPERSON.—Notwithstanding clause (i), the chairperson of the Subcommittee shall be compensated at a rate of \$40,000 per year.

(iii) STAFF.—The chairperson of the Subcommittee may appoint and terminate any personnel that may be necessary to enable the Subcommittee to perform its duties.

(iv) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The chairperson of the Subcommittee may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

(E) ADMINISTRATIVE MATTERS.—

(i) TERM OF CHAIR.—The members of the Subcommittee shall elect for a 2-year term a chairperson from among the members of the Subcommittee.

(ii) POWERS OF CHAIR.—Except as otherwise provided by a majority vote of the Subcommittee, the powers of the chairperson shall include—

- (I) establishing committees;
- (II) setting meeting places and times;
- (III) establishing meeting agendas; and

(IV) developing rules for the conduct of business.

(iii) MEETINGS.—The Subcommittee shall meet at least quarterly and at such other times as the chairperson determines appropriate.

(iv) QUORUM.—Three members of the Subcommittee shall constitute a quorum. A majority of members present and voting shall be required for the Subcommittee to take action.

(F) REPORTS.—

(i) ANNUAL.—The Subcommittee shall each year report with respect to the conduct of its responsibilities under this title to the Administrator, the Council, the Committee on Transportation and Infrastructure of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate.

(ii) ADDITIONAL REPORT.—If a determination by the Subcommittee under subparagraph (B)(i) that the organization and operation of the air traffic control system are not allowing the Administration to carry out its mission, the Subcommittee shall report such determination to the Administrator, the Council, the Committee on Transportation and Infrastructure of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate.

(iii) ACTION OF ADMINISTRATOR ON REPORT.—Not later than 60 days after the date of a report of the Subcommittee under this subparagraph, the Administrator shall take action with respect to such report. If the Administrator overturns a recommendation of the Subcommittee, the Administrator shall report such action to the President, the Committee on Transportation and Infrastructure of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate.

(iv) COMPTROLLER GENERAL'S REPORT.—Not later than April 30, 2003, the Comptroller General of the United States shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the success of the Subcommittee in improving the performance of the air traffic control system.

(8) AIR TRAFFIC CONTROL SYSTEM DEFINED.—In this section, the term “air traffic control system” has the meaning such term has under section 40102(a).

(q) AIRCRAFT NOISE OMBUDSMAN.—

(1) ESTABLISHMENT.—There shall be in the Administration an Aircraft Noise Ombudsman.

(2) GENERAL DUTIES AND RESPONSIBILITIES.—The Ombudsman shall—

(A) be appointed by the Administrator;

(B) serve as a liaison with the public on issues regarding aircraft noise; and

(C) be consulted when the Administration proposes changes in aircraft routes so as to minimize any increases in aircraft noise over populated areas.

(3) NUMBER OF FULL-TIME EQUIVALENT EMPLOYEES.—The appointment of an Ombudsman under this subsection shall not result in an increase in the number of full-time equivalent employees in the Administration.

(r) CHIEF OPERATING OFFICER.—

(1) IN GENERAL.—

(A) APPOINTMENT.—There shall be a Chief Operating Officer for the air traffic control system to be appointed by the Administrator, with the approval of the Air Traffic Services Subcommittee of the Aviation Management Advisory Council. The Chief Operating Officer shall report directly to the Administrator and shall be subject to the authority of the Administrator.

(B) QUALIFICATIONS.—The Chief Operating Officer shall have a demonstrated ability in management and knowledge of or experience in aviation.

(C) TERM.—The Chief Operating Officer shall be appointed for a term of 5 years.

(D) REMOVAL.—The Chief Operating Officer shall serve at the pleasure of the Administrator, except that the Administrator shall make every effort to ensure stability and continuity in the leadership of the air traffic control system.

(E) VACANCY.—Any individual appointed to fill a vacancy in the position of Chief Operating Officer occurring before the expiration of the term for which the individual's predecessor was appointed shall be appointed for the remainder of that term.

[(2) COMPENSATION.—

[(A) IN GENERAL.—The Chief Operating Officer shall be paid at an annual rate of basic pay to be determined by the Administrator, with the approval of the Air Traffic Services Subcommittee of the Aviation Management Advisory Council. The annual rate may not exceed the annual compensation paid under section 102 of title 3. The Chief Operating Officer shall be subject to the post-employment provisions of section 207 of title 18 as if the position of Chief Operating Officer were described in section 207(c)(2)(A)(i) of that title.

[(B) BONUS.—In addition to the annual rate of basic pay authorized by subparagraph (A), the Chief Operating Officer may receive a bonus for any calendar year not to exceed 30 percent of the annual rate of basic pay, based upon the Administrator's evaluation of the Chief Operating Officer's performance in relation to the performance goals set forth in the performance agreement described paragraph (3).]

(2) COMPENSATION.—*The Chief Operating Officer shall be paid at an annual rate of basic pay determined by the Secretary of Transportation before the appointment and without regard to any other provision of law. The Chief Operating Officer shall be subject to the post-employment provisions of section 207 of title*

*18 as if the position of Chief Operating Officer were described in section 207(c)(2)(A)(i) of that title.*

(3) ANNUAL PERFORMANCE AGREEMENT.—The Administrator and the Chief Operating Officer, in consultation with the Air Traffic Control Subcommittee of the Aviation Management Advisory Committee, shall enter into an annual performance agreement that sets forth measurable organization and individual goals for the Chief Operating Officer in key operational areas. The agreement shall be subject to review and renegotiation on an annual basis.

(4) ANNUAL PERFORMANCE REPORT.—The Chief Operating Officer shall prepare and transmit to the Secretary of Transportation and Congress an annual management report containing such information as may be prescribed by the Secretary.

(5) RESPONSIBILITIES.—The Administrator may delegate to the Chief Operating Officer, or any other authority within the Administration responsibilities, including the following:

(A) STRATEGIC PLANS.—To develop a strategic plan of the Administration for the air traffic control system, including the establishment of—

- (i) a mission and objectives;
- (ii) standards of performance relative to such mission and objectives, including safety, efficiency, and productivity;
- (iii) annual and long-range strategic plans; and
- (iv) methods of the Administration to accelerate air traffic control modernization and improvements in aviation safety related to air traffic control.

(B) OPERATIONS.—To review the operational functions of the Administration, including—

- (i) modernization of the air traffic control system;
- (ii) increasing productivity or implementing cost-saving measures; and
- (iii) training and education.

(C) BUDGET.—To—

- (i) develop a budget request of the Administration related to the air traffic control system prepared by the Administrator;
- (ii) submit such budget request to the Administrator and the Secretary of Transportation; and
- (iii) ensure that the budget request supports the annual and long-range strategic plans developed under subparagraph (A) of this subsection.

#### TITLE 49. TRANSPORTATION

##### SUBTITLE VII. AVIATION PROGRAMS

##### PART A. AIR COMMERCE AND SAFETY

##### SUBPART I. GENERAL

##### CHAPTER 401. GENERAL PROVISIONS

#### **§ 40117. Passenger facility fees**

(a) DEFINITIONS.—In this section, the following definitions apply:

(1) AIRPORT, COMMERCIAL SERVICE AIRPORT, AND PUBLIC AGENCY.—The terms “airport”, “commercial service airport”, and “public agency” have the meaning those terms have under section 47102.

(2) ELIGIBLE AGENCY.—The term “eligible agency” means a public agency that controls a commercial service airport.

(3) ELIGIBLE AIRPORT-RELATED PROJECT.—The term “eligible airport-related project” means any of the following projects:

(A) A project for airport development or airport planning under subchapter I of chapter 471.

(B) A project for terminal development described in section 47110(d).

(C) for costs of terminal development referred to in subparagraph (B) incurred after August 1, 1986, at an airport that did not have more than .25 percent of the total annual passenger boardings in the United States in the most recent calendar year for which data is available and at which total passenger boardings declined by at least 16 percent between calendar year 1989 and calendar year 1997.

(D) A project for airport noise capability planning under section 47505.

(E) A project to carry out noise compatibility measures eligible for assistance under section 47504, whether or not a program for those measures has been approved under section 47504.

[(F) A project for constructing gates and related areas at which passengers board or exit aircraft. In the case of a project required to enable additional air service by an air carrier with less than 50 percent of the annual passenger boardings at an airport, the project for constructing gates and related areas may include structural foundations and floor systems, exterior building walls and load-bearing interior columns or walls, windows, door and roof systems, building utilities (including heating, air conditioning, ventilation, plumbing, and electrical service), and aircraft fueling facilities adjacent to the gate.]

*(F) A project for constructing gates and related areas at which passengers board or exit aircraft.*

*(G) In the case of a project required to enable air service by a competing air carrier at a large hub airport (as defined in section 41731):*

*(i) A project for constructing gates and related areas may include structural foundations and floor systems, exterior building walls and load-bearing interior columns or walls, windows, door and roof systems, building utilities (including heating, air conditioning, ventilation, plumbing, and electrical service) above, below, and within the footprint of the gates and related areas.*

*(ii) Revenue-producing areas in the remainder of the terminal building allocable to the competing air carrier, and aircraft fueling facilities adjacent to the gate, may be included in an eligible airport-related project to the extent the facilities to be constructed in such areas are for the basic accommodation of air passengers and*

*not for general commercial retail sales, rental car facilities, or passenger lodging. For purposes of this clause, the determination of what revenue-producing areas in the terminal building are allocable to the competing air carrier shall be based on the relationship that the square footage of the competing air carrier's gates and related areas bears to the square footage of all gates and related areas in the terminal building.*

(4) **PASSENGER FACILITY FEE.**—The term “passenger facility fee” means a fee imposed under this section.

(5) **PASSENGER FACILITY REVENUE.**—The term “passenger facility revenue” means revenue derived from a passenger facility fee.

(6) **COMPETING AIR CARRIER.**—The term “competing air carrier” means an air carrier that—

(A) *is initiating new air service or expanding existing air service at a large hub airport (as defined in section 41731); and*

(B) *is not an air carrier described in section 47106(f)(3)(B) at that airport.*

(b) **GENERAL AUTHORITY.**—

(1) The Secretary of Transportation may authorize under this section an eligible agency to impose a passenger facility fee of \$1, \$2, or \$3 on each paying passenger of an air carrier or foreign air carrier boarding an aircraft at an airport the agency controls to finance an eligible airport-related project, including making payments for debt service on indebtedness incurred to carry out the project, to be carried out in connection with the airport or any other airport the agency controls.

(2) A State, political subdivision of a State, or authority of a State or political subdivision that is not the eligible agency may not regulate or prohibit the imposition or collection of a passenger facility fee or the use of the passenger facility revenue.

(3) A passenger facility fee may be imposed on a passenger of an air carrier or foreign air carrier originating or connecting at the commercial service airport that the agency controls.

(4) In lieu of authorizing a fee under paragraph (1), the Secretary may authorize under this section an eligible agency to impose a passenger facility fee of \$4.00 or \$4.50 on each paying passenger of an air carrier or foreign air carrier boarding an aircraft at an airport the agency controls to finance an eligible airport-related project, including making payments for debt service on indebtedness incurred to carry out the project, if the Secretary finds—

(A) *in the case of an airport that has more than .25 percent of the total number of annual boardings in the United States, that the project will make a significant contribution to improving air safety and security, increasing competition among air carriers, reducing current or anticipated congestion, or reducing the impact of aviation noise on people living near the airport; and*

(B) *that the project cannot be paid for from funds reasonably expected to be available for the programs referred to in section 48103.*



## (c) APPLICATIONS.—

(1) An eligible agency must submit to the Secretary an application for authority to impose a passenger facility fee. The application shall contain information and be in the form that the Secretary may require by regulation.

(2) Before submitting an application, the eligible agency must provide reasonable notice to, and an opportunity for consultation with, air carriers and foreign air carriers operating at the airport. The Secretary shall prescribe regulations that define reasonable notice and contain at least the following requirements:

(A) The agency must provide written notice of individual projects being considered for financing by a passenger facility fee and the date and location of a meeting to present the projects to air carriers and foreign air carriers operating at the airport.

(B) Not later than 30 days after written notice is provided under subparagraph (A) of this paragraph, each air carrier and foreign air carrier operating at the airport must provide to the agency written notice of receipt of the notice. Failure of a carrier to provide the notice may be deemed certification of agreement with the project by the carrier under subparagraph (D) of this paragraph.

(C) Not later than 45 days after written notice is provided under subparagraph (A) of this paragraph, the agency must conduct a meeting to provide air carriers and foreign air carriers with descriptions of projects and justifications and a detailed financial plan for projects.

(D) Not later than 30 days after the meeting, each air carrier and foreign air carrier must provide to the agency certification of agreement or disagreement with projects (or total plan for the projects). Failure to provide the certification is deemed certification of agreement with the project by the carrier. A certification of disagreement is void if it does not contain the reasons for the disagreement.

(3) After receiving an application, the Secretary shall provide notice and an opportunity to air carriers, foreign air carriers, and other interested persons to comment on the application. The Secretary shall make a final decision on the application not later than 120 days after receiving it.

(d) LIMITATIONS ON APPROVING APPLICATIONS.—The Secretary may approve an application that an eligible agency has submitted under subsection (c) of this section to finance a specific project only if the Secretary finds, based on the application, that—

(1) the amount and duration of the proposed passenger facility fee will result in revenue (including interest and other returns on the revenue) that is not more than the amount necessary to finance the specific project;

(2) each project is an eligible airport-related project that will—

(A) preserve or enhance capacity, safety, or security of the national air transportation system;

(B) reduce noise resulting from an airport that is part of the system; or

- (C) provide an opportunity for enhanced competition between or among air carriers and foreign air carriers;
  - (3) the application includes adequate justification for each of the specific projects; and
  - (4) in the case of an application to impose a fee of more than \$3.00 for an eligible surface transportation or terminal project, the agency has made adequate provision for financing the airside needs of the airport, including runways, taxiways, aprons, and aircraft gates.
- (e) LIMITATIONS ON IMPOSING FEES.—
- (1) An eligible agency may impose a passenger facility fee only—
    - (A) if the Secretary approves an application that the agency has submitted under subsection (c) of this section; and
    - (B) subject to terms the Secretary may prescribe to carry out the objectives of this section.
  - (2) A passenger facility fee may not be collected from a passenger—
    - (A) for more than 2 boardings on a one-way trip or a trip in each direction of a round trip;
    - (B) for the boarding to an eligible place under subchapter II of chapter 417 of this title for which essential air service compensation is paid under subchapter II;
    - (C) enplaning at an airport if the passenger did not pay for the air transportation which resulted in such enplanement, including any case in which the passenger obtained the ticket for the air transportation with a frequent flier award coupon without monetary payment;
    - (D) on flights, including flight segments, between 2 or more points in Hawaii; and
    - (E) in Alaska aboard an aircraft having a seating capacity of less than 60 passengers.
- (f) LIMITATIONS ON CONTRACTS, LEASES, AND USE AGREEMENTS.—
- (1) A contract between an air carrier or foreign air carrier and an eligible agency made at any time may not impair the authority of the agency to impose a passenger facility fee or to use the passenger facility revenue as provided in this section.
  - (2) A project financed with a passenger facility fee may not be subject to an exclusive long-term lease or use agreement of an air carrier or foreign air carrier, as defined by regulations of the Secretary.
  - (3) A lease or use agreement of an air carrier or foreign air carrier related to a project whose construction or expansion was financed with a passenger facility fee may not restrict the eligible agency from financing, developing, or assigning new capacity at the airport with passenger facility revenue.
- (g) TREATMENT OF REVENUE.—
- (1) Passenger facility revenue is not airport revenue for purposes of establishing a price under a contract between an eligible agency and an air carrier or foreign air carrier.
  - (2) An eligible agency may not include in its price base the part of the capital costs of a project paid for by using passenger facility revenue to establish a price under a contract between the agency and an air carrier or foreign air carrier.

(3) For a project for terminal development, gates and related areas, or a facility occupied or used by at least one air carrier or foreign air carrier on an exclusive or preferential basis, a price payable by an air carrier or foreign air carrier using the facilities must at least equal the price paid by an air carrier or foreign air carrier using a similar facility at the airport that was not financed with passenger facility revenue.

(4) Passenger facility revenues that are held by an air carrier or an agent of the carrier after collection of a passenger facility fee constitute a trust fund that is held by the air carrier or agent for the beneficial interest of the eligible agency imposing the fee. Such carrier or agent holds neither legal nor equitable interest in the passenger facility revenues except for any handling fee or retention of interest collected on unremitted proceeds as may be allowed by the Secretary.

(h) COMPLIANCE.—

(1) As necessary to ensure compliance with this section, the Secretary shall prescribe regulations requiring recordkeeping and auditing of accounts maintained by an air carrier or foreign air carrier and its agent collecting a passenger facility fee and by the eligible agency imposing the fee.

(2) The Secretary periodically shall audit and review the use by an eligible agency of passenger facility revenue. After review and a public hearing, the Secretary may end any part of the authority of the agency to impose a passenger facility fee to the extent the Secretary decides that the revenue is not being used as provided in this section.

(3) The Secretary may set off amounts necessary to ensure compliance with this section against amounts otherwise payable to an eligible agency under subchapter I of chapter 471 of this title if the Secretary decides a passenger facility fee is excessive or that passenger facility revenue is not being used as provided in this section.

(i) REGULATIONS.—The Secretary shall prescribe regulations necessary to carry out this section. The regulations—

(1) may prescribe the time and form by which a passenger facility fee takes effect;

(2) shall—

(A) require an air carrier or foreign air carrier and its agent to collect a passenger facility fee that an eligible agency imposes under this section;

(B) establish procedures for handling and remitting money collected;

(C) ensure that the money, less a uniform amount the Secretary determines reflects the average necessary and reasonable expenses (net of interest accruing to the carrier and agent after collection and before remittance) incurred in collecting and handling the fee, is paid promptly to the eligible agency for which they are collected; and

(D) require that the amount collected for any air transportation be noted on the ticket for that air transportation; and

(3) may permit an eligible agency to request that collection of a passenger facility fee be waived for—

(A) passengers enplaned by any class of air carrier or foreign air carrier if the number of passengers enplaned by the carriers in the class constitutes not more than one percent of the total number of passengers enplaned annually at the airport at which the fee is imposed; or

(B) passengers enplaned on a flight to an airport—

(i) that has fewer than 2,500 passenger boardings each year and receives scheduled passenger service; or

(ii) in a community which has a population of less than 10,000 and is not connected by a land highway or vehicular way to the land-connected National Highway System within a State.

(j) LIMITATION ON CERTAIN ACTIONS.—A State, political subdivision of a State, or authority of a State or political subdivision that is not the eligible agency may not tax, regulate, or prohibit or otherwise attempt to control in any manner, the imposition or collection of a passenger facility fee or the use of the revenue from the passenger facility fee.

(k) COMPETITION PLANS.—

(1) IN GENERAL.—Beginning in fiscal year 2001, no eligible agency may impose a passenger facility fee under this section with respect to a covered airport (as such term is defined in section 47106(f)) unless the agency has submitted to the Secretary a written competition plan in accordance with such section. This subsection does not apply to passenger facility fees in effect before the date of the enactment of this subsection.

(2) SECRETARY SHALL ENSURE IMPLEMENTATION AND COMPLIANCE.—The Secretary shall review any plan submitted under paragraph (1) to ensure that it meets the requirements of this section, and shall review its implementation from time-to-time to ensure that each covered airport successfully implements its plan.

#### TITLE 49. TRANSPORTATION

##### SUBTITLE VII. AVIATION PROGRAMS

##### PART B. AIRPORT DEVELOPMENT AND NOISE

##### CHAPTER 471. AIRPORT DEVELOPMENT

##### SUBCHAPTER I. AIRPORT IMPROVEMENT

#### **§ 47106. Project grant application approval conditioned on satisfaction of project requirements**

(a) PROJECT GRANT APPLICATION APPROVAL.—The Secretary of Transportation may approve an application under this subchapter for a project grant only if the Secretary is satisfied that—

(1) the project is consistent with plans (existing at the time the project is approved) of public agencies authorized by the State in which the airport is located to plan for the development of the area surrounding the airport;

(2) the project will contribute to carrying out this subchapter;

(3) enough money is available to pay the project costs that will not be paid by the United States Government under this subchapter;

(4) the project will be completed without unreasonable delay;  
and

(5) the sponsor has authority to carry out the project as proposed.

(b) AIRPORT DEVELOPMENT PROJECT GRANT APPLICATION APPROVAL.—The Secretary may approve an application under this subchapter for an airport development project grant for an airport only if the Secretary is satisfied that—

(1) the sponsor, a public agency, or the Government holds good title to the areas of the airport used or intended to be used for the landing, taking off, or surface maneuvering of aircraft, or that good title will be acquired;

(2) the interests of the community in or near which the project may be located have been given fair consideration; and

(3) the application provides touchdown zone and centerline runway lighting, high intensity runway lighting, or land necessary for installing approach light systems that the Secretary, considering the category of the airport and the kind and volume of traffic using it, decides is necessary for safe and efficient use of the airport by aircraft.

(c) ENVIRONMENTAL REQUIREMENTS.—

(1) The Secretary may approve an application under this subchapter for an airport development project involving the location of an airport or runway or a major runway extension—

(A) only if the sponsor certifies to the Secretary that—

(i) an opportunity for a public hearing was given to consider the economic, social, and environmental effects of the location and the location's consistency with the objectives of any planning that the community has carried out; and

(ii) the airport management board has voting representation from the communities in which the project is located or has advised the communities that they have the right to petition the Secretary about a proposed project; *and*

[(B) only if the chief executive officer of the State in which the project will be located certifies in writing to the Secretary that there is reasonable assurance that the project will be located, designed, constructed, and operated in compliance with applicable air and water quality standards, except that the Administrator of the Environmental Protection Agency shall make the certification instead of the chief executive officer if—

[(i) the State has not approved any applicable State or local standards; and

[(ii) the Administrator has prescribed applicable standards; and]

[(C) (B) if the application is found to have a significant adverse effect on natural resources, including fish and wildlife, natural, scenic, and recreation assets, water and air quality, or another factor affecting the environment, only after finding that no possible and prudent alternative to the project exists and that every reasonable step has been taken to minimize the adverse effect.

(2) The Secretary may approve an application under this subchapter for an airport development project that does not involve the location of an airport or runway, or a major runway extension, at an existing airport without requiring an environmental impact statement related to noise for the project if—

(A) completing the project would allow operations at the airport involving aircraft complying with the noise standards prescribed for “stage 2” aircraft in section 36.1 of title 14, Code of Federal Regulations, to replace existing operations involving aircraft that do not comply with those standards; and

(B) the project meets the other requirements under this subchapter.

(3) At the Secretary’s request, the sponsor shall give the Secretary a copy of the transcript of any hearing held under paragraph (1)(A) of this subsection.

[(4)(A) Notice of certification or of refusal to certify under paragraph (1)(B) of this subsection shall be provided to the Secretary not later than 60 days after the Secretary receives the application.

[(B) The Secretary shall condition approval of the application on compliance with the applicable standards during construction and operation.]

[(5)] (4) The Secretary may make a finding under paragraph [(1)(C)] (1)(B) of this subsection only after completely reviewing the matter. The review and finding must be a matter of public record.

(d) WITHHOLDING APPROVAL.—

(1) The Secretary may withhold approval of an application under this subchapter for amounts apportioned under section 47114(c) and (e) of this title for violating an assurance or requirement of this subchapter only if—

(A) the Secretary provides the sponsor an opportunity for a hearing; and

(B) not later than 180 days after the later of the date of the application or the date the Secretary discovers the noncompliance, the Secretary finds that a violation has occurred.

(2) The 180-day period may be extended by—

(A) agreement between the Secretary and the sponsor; or

(B) the hearing officer if the officer decides an extension is necessary because the sponsor did not follow the schedule the officer established.

(3) A person adversely affected by an order of the Secretary withholding approval may obtain review of the order by filing a petition in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the project is located. The action must be brought not later than 60 days after the order is served on the petitioner.

(e) REPORTS RELATING TO CONSTRUCTION OF CERTAIN NEW HUB AIRPORTS.—At least 90 days prior to the approval under this subchapter of a project grant application for construction of a new hub airport that is expected to have 0.25 percent or more of the total annual enplanements in the United States, the Secretary shall sub-

mit to Congress a report analyzing the anticipated impact of such proposed new airport on—

(1) the fees charged to air carriers (including landing fees), and other costs that will be incurred by air carriers, for using the proposed airport;

(2) air transportation that will be provided in the geographic region of the proposed airport; and

(3) the availability and cost of providing air transportation to rural areas in such geographic region.

(f) COMPETITION PLANS.—

(1) PROHIBITION.—Beginning in fiscal year 2001, no passenger facility fee may be approved for a covered airport under section 40117 and no grant may be made under this subchapter for a covered airport unless the airport has submitted to the Secretary a written competition plan in accordance with this subsection.

(2) CONTENTS.—A competition plan under this subsection shall include information on the availability of airport gates and related facilities, leasing and sub-leasing arrangements, gate-use requirements, patterns of air service, gate-assignment policy, financial constraints, airport controls over air- and ground-side capacity, whether the airport intends to build or acquire gates that would be used as common facilities, and airfare levels (as compiled by the Department of Transportation) compared to other large airports.

(3) SPECIAL RULE FOR FISCAL YEAR 2002.—This subsection does not apply to any passenger facility fee approved, or grant made, in fiscal year 2002 if the fee or grant is to be used to improve security at a covered airport.

(4) COVERED AIRPORT DEFINED.—In this subsection, the term “covered airport” means a commercial service airport—

(A) that has more than .25 percent of the total number of passenger boardings each year at all such airports; and

(B) at which one or two air carriers control more than 50 percent of the passenger boardings.

\* \* \* \* \*

#### **§ 47117. Use of apportioned amounts**

(a) GRANT PURPOSE.—Except as provided in this section, an amount apportioned under section 47114(c)(1) or (d)(2) of this title is available for making grants for any purpose for which amounts are made available under section 48103 of this title.

(b) PERIOD OF AVAILABILITY.—An amount apportioned under section 47114 of this title is available to be obligated for grants under the apportionment only during the fiscal year for which the amount was apportioned and the 2 fiscal years immediately after that year or the 3 fiscal years immediately following that year in the case of a primary airport that had less than .05 percent of the total boardings in the United States in the preceding calendar year. If the amount is not obligated under the apportionment within that time, it shall be added to the discretionary fund.

(c) PRIMARY AIRPORTS.—

(1) An amount apportioned to a sponsor of a primary airport under section 47114(c)(1) of this title is available for grants for any public-use airport of the sponsor included in the national plan of integrated airport systems.

(2) A sponsor of a primary airport may make an agreement with the Secretary of Transportation waiving any part of the amount apportioned for the airport under section 47114(c)(1) of this title if the Secretary makes the waived amount available for a grant for another public-use airport in the same State or geographical area as the primary airport.

(d) STATE USE.—An amount apportioned to a State under—

(1) section 47114(d)(2)(A) of this title is available for grants for airports located in the State; and

(2) section 47114(d)(2)(B) or (C) of this title is available for grants for airports described in section 47114(d)(2)(B) or (C) and located in the State.

(e) SPECIAL APPORTIONMENT CATEGORIES.—

(1) The Secretary shall use amounts available to the discretionary fund under section 47115 of this title for each fiscal year as follows:

(A) **At least 34 percent for grants for airport noise compatibility planning under section 47505(a)(2) of this title and for carrying out noise compatibility programs under section 47504(c)(1) of this title.** *At least 35 percent for grants for airport noise compatibility planning under section 47505(a)(2) for a national capacity project, for carrying out noise compatibility programs under section 47504(c) of this title, and for noise mitigation projects approved in an environmental record of decision for an airport development project designated as a national capacity project under section 47702.* The Secretary may count the amount of grants made for such planning and programs with funds apportioned under section 47114 in that fiscal year in determining whether **or not such 34 percent requirement** *the funding level required by the preceding sentence* is being met in that fiscal year.

(B) At at least 4 percent to sponsors of current or former military airports designated by the Secretary under section 47118(a) of this title for grants for developing current and former military airports to improve the capacity of the national air transportation system and to sponsors of non-commercial service airports for grants for operational and maintenance expenses at any such airport if the amount of such grants to the sponsor of the airport does not exceed \$30,000 in that fiscal year, if the Secretary determines that the airport is adversely affected by the closure or realignment of a military base, and if the sponsor of the airport certifies that the airport would otherwise close if the airport does not receive the grant.

(C) In any fiscal year in which the total amount made available under section 48103 is \$3,200,000,000 or more, at least two-thirds of 1 percent for grants to sponsors of reliever airports which have—

(i) more than 75,000 annual operations;



- (ii) a runway with a minimum usable landing distance of 5,000 feet;
- (iii) a precision instrument landing procedure;
- (iv) a minimum number of aircraft, to be determined by the Secretary, based at the airport; and
- (v) been designated by the Secretary as a reliever airport to an airport with 20,000 hours of annual delays in commercial passenger aircraft takeoffs and landings.

(2) If the Secretary decides that an amount required to be used for grants under paragraph (1) of this subsection cannot be used for a fiscal year because there are insufficient qualified grant applications, the amount the Secretary determines cannot be used is available during the fiscal year for grants for other airports or for other purposes for which amounts are authorized for grants under section 48103 of this title.

(3) PRIORITY.—The Secretary shall give priority in making grants under paragraph (1)(A) to applications for airport noise compatibility planning and programs at and around—

- (A) Chicago O'Hare International Airport;
- (B) LaGuardia Airport;
- (C) John F. Kennedy International Airport; and
- (D) Ronald Reagan Washington National Airport.

(f) DISCRETIONARY USE OF APPORTIONMENTS.—

(1) IN GENERAL.—Subject to paragraph (2), if the Secretary finds that all or part of an amount of an apportionment under section 47114 is not required during a fiscal year to fund a grant for which the apportionment may be used, the Secretary may use during such fiscal year the amount not so required to make grants for any purpose for which grants may be made under section 48103. The finding may be based on the notifications that the Secretary receives under section 47105(f) or on other information received from airport sponsors.

(2) RESTORATION OF APPORTIONMENTS.—

(A) IN GENERAL.—Of the fiscal year for which a finding is made under paragraph (1) with respect to an apportionment is not the last fiscal year of availability of the apportionment under subsection (b), the Secretary shall restore to the apportionment an amount equal to the amount of the apportionment used under paragraph (1) for a discretionary grant whenever a sufficient amount is made available under section 48103.

(B) PERIOD OF AVAILABILITY.—If restoration under this paragraph is made in the fiscal year for which the finding is made or the succeeding fiscal year, the amount restored shall be subject to the original period of availability of the apportionment under subsection (b). If the restoration is made thereafter, the amount restored shall remain available in accordance with subsection (b) for the original period of availability of the apportionment plus the number of fiscal years during which a sufficient amount was not available for the restoration.

(3) NEWLY AVAILABLE AMOUNTS.—

(A) RESTORED AMOUNTS TO BE UNAVAILABLE FOR DISCRETIONARY GRANTS.—Of an amount newly available under

section 48103 of this title, an amount equal to the amounts restored under paragraph (2) shall not be available for discretionary grant obligations under section 47115.

(B) USE OF REMAINING AMOUNTS.—Subparagraph (A) does not impair the Secretary's authority under paragraph (1), after a restoration under paragraph (2), to apply all or part of a restored amount that is not required to fund a grant under an apportionment to fund discretionary grants.

(4) LIMITATIONS ON OBLIGATIONS APPLY.—Nothing in this subsection shall be construed to authorize the Secretary to incur grant obligations under section 47104 for a fiscal year in an amount greater than the amount made available under section 48103 for such obligations for such fiscal year.

(g) LIMITING AUTHORITY OF SECRETARY.—The authority of the Secretary to make grants during a fiscal year from amounts that were apportioned for a prior fiscal year and remain available for approved airport development project grants under subsection (b) of this section may be impaired only by a law enacted after September 3, 1982, that expressly limits that authority.

### **§ 41723. Delay reduction actions**

(a) DELAY REDUCTION MEETINGS.—

(1) SCHEDULING REDUCTION MEETINGS.—*The Secretary of Transportation may request that air carriers meet with the Administrator of the Federal Aviation Administration to discuss flight reductions at severely congested airports to reduce overscheduling and flight delays during hours of peak operation if—*

(A) *the Administrator of the Federal Aviation Administration determines that it is necessary to convene such a meeting; and*

(B) *the Secretary determines that the meeting is necessary to meet a serious transportation need or achieve an important public benefit.*

(2) MEETING CONDITIONS.—*Any meeting under paragraph (1)—*

(A) *shall be chaired by the Administrator;*

(B) *shall be open to all scheduled air carriers; and*

(C) *shall be limited to discussions involving the airports and time periods described in the Administrator's determination.*

(3) FLIGHT REDUCTION TARGETS.—*Before any such meeting is held, the Administrator shall establish flight reduction targets for the meeting and notify the attending air carriers of those targets not less than 48 hours before the meeting.*

(4) DELAY REDUCTION OFFERS.—*An air carrier attending the meeting shall make any delay reduction offer to the Administrator rather than to another carrier.*

(5) TRANSCRIPT.—*The Administrator shall ensure that a transcript of the meeting is kept and made available to the public not later than 3 business days after the conclusion of the meeting.*

(b) STORMY WEATHER AGREEMENTS LIMITED EXEMPTION.—

(1) *IN GENERAL.*—The Secretary may establish a program to authorize by order discussions and agreements between 2 or more air carriers for the purpose of reducing flight delays during periods of inclement weather.

(2) *REQUIREMENTS.*—An authorization issued under paragraph (1)—

(A) may only be issued by the Secretary after a determination by the Federal Aviation Administration that inclement weather is likely to adversely and directly affect capacity at an airport for a period of at least 3 hours;

(B) shall apply only to discussions and agreements concerning flights directly affected by the inclement weather; and

(C) shall remain in effect for a period of 24 hours.

(3) *PROCEDURE.*—The Secretary shall establish procedures within 30 days after such date of enactment for—

(A) filing requests for an authorization under paragraph (1);

(B) participation under paragraph (5) by representatives of the Department of Transportation in any meetings or discussions held pursuant to such an order; and

(C) the determination by the Federal Aviation Administration about the impact of inclement weather.

(4) *COPY OF PARTICIPATION REQUEST FILED WITH SECRETARY.*—Before an air carrier may request an order under paragraph (1), it shall file a request with the Secretary, in such form and manner as the Secretary may prescribe, to participate in the program established under paragraph (1).

(5) *DOT PARTICIPATION.*—The Secretary shall ensure that the Department is represented at any meetings authorized under this subsection.

(c) *EXEMPTION AUTHORIZED.*—When the Secretary finds that it is required by the public interest, the Secretary, as part of an order issued under subsection (b)(1), shall exempt a person affected by the order from the antitrust laws to the extent necessary to allow the person to proceed with the activities approved in the order.

(d) *ANTITRUST LAWS DEFINED.*—In this section, the term “antitrust laws” has the meaning given that term in the first section of the Clayton Act (15 U.S.C. 12).

(e) *SUNSET.*—The authority of the Secretary to issue an order under subsection (b)(1) of this section expires at the end of the 2-year period that begins 45 days after the date of enactment of the Aviation Delay Prevention Act. The Secretary may extend the 2-year for an additional 2 years if the Secretary determines that such an extension is necessary and in the public interest. The Secretary shall notify the Senate Committee on Commerce, Science, and Transportation, and to the House of Representatives Committee on Transportation and Infrastructure of any such extension.

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**§ 47124. Agreements for State and local operation of airport facilities**

(a) GOVERNMENT RELIEF FROM LIABILITY.—The Secretary of Transportation shall ensure that an agreement under this subchapter with a State or a political subdivision of a State to allow the State or subdivision to operate an airport facility in the State or subdivision relieves the United States Government from any liability arising out of, or related to, acts or omissions of employees of the State or subdivision in operating the airport facility.

(b) AIR TRAFFIC CONTROL CONTRACT PROGRAM.—

(1) The Secretary shall continue the low activity (Visual Flight Rules) level I air traffic control tower contract program established under subsection (a) of this section for towers existing on December 30, 1987, and extend the program to other towers as practicable.

(2) The Secretary may make a contract, on a sole source basis, with a State or a political subdivision of a State to allow the State or subdivision to operate an airport traffic control tower classified as a level I (Visual Flight Rules) tower if the Secretary decides that the State or subdivision has the capability to comply with the requirements of this paragraph. The contract shall require that the State or subdivision comply with applicable safety regulations in operating the facility and with applicable competition requirements in making a sub-contract to perform work to carry out the contract.

(3) CONTRACT AIR TRAFFIC CONTROL TOWER PILOT PROGRAM.—

(A) IN GENERAL.—The Secretary shall establish a pilot program to contract for air traffic control services at [Level I air traffic control towers, as defined by the Secretary,] *nonapproach control towers* that do not qualify for the contract tower program established under subsection (a) and continued under paragraph (1) (in this paragraph referred to as the “Contract Tower Program”).

(B) PROGRAM COMPONENTS.—In carrying out the pilot program, the Secretary shall—

(i) utilize for purposes of cost-benefit analyses, current, actual, site-specific data, forecast estimates, or airport master plan data provided by a facility owner or operator and verified by the Secretary; and

(ii) approve for participation only facilities willing to fund a pro rata share of the operating costs of the air traffic control tower to achieve a 1-to-1 benefit-to-cost ratio using actual site-specific contract tower operating costs in any case in which there is an operating air traffic control tower, as required for eligibility under the Contract Tower Program.

(C) PRIORITY.—In selecting facilities to participate in the pilot program, the Secretary shall give priority to the following facilities:

(i) Air traffic control towers that are participating in the Contract Tower Program but have been notified that they will be terminated from such program be-

cause the Secretary has determined that the benefit-to-cost ratio for their continuation in such program is less than 1.0.

(ii) Air traffic control towers that the Secretary determines have a benefit-to-cost ratio of at least .50.

(iii) Air traffic control towers of the Federal Aviation Administration that are closed as a result of the air traffic controllers strike in 1981.

(iv) Air traffic control towers located at airports or points at which an air carrier is receiving compensation under the essential air service program under this chapter.

(v) Air traffic control towers located at airports that are prepared to assume partial responsibility for maintenance costs.

(vi) Air traffic control towers located at airports with safety or operational problems related to topography, weather, runway configuration, or mix of aircraft.

(vii) Air traffic control towers located at an airport at which the community has been operating the tower at its own expense.

(D) Costs exceeding benefits. If the costs of operating an air traffic tower under the pilot program exceed the benefits, the airport sponsor or State or local government having jurisdiction over the airport shall pay the portion of the costs that exceed such benefit.

(E) FUNDING.—Subject to paragraph (4)(D), of the amounts appropriated pursuant to section 106(k), not more than \$6,000,000 per fiscal year may be used to carry out this paragraph.

**(4) CONSTRUCTION OF AIR TRAFFIC CONTROL TOWERS.—**

**[(A) IN GENERAL.—**Notwithstanding any other provision of this subchapter, the Secretary may provide grants under this subchapter to not more than two airport sponsors for the construction of a low-level activity visual flight rule (level 1) air traffic control tower, as defined by the Secretary.

**[(B) ELIGIBILITY.—**A sponsor shall be eligible for a grant under this paragraph if—

**[(i)** the sponsor would otherwise be eligible to participate in the pilot program established under paragraph (3) except for the lack of the air traffic control tower proposed to be constructed under this subsection; and

**[(ii)** the sponsor agrees to fund not less than 25 percent of the costs of construction of the air traffic control tower.

**[(C) PROJECT COSTS.—**Grants under this paragraph shall be paid only from amounts apportioned to the sponsor under section 47114(c)(1).

**[(D) FEDERAL SHARE.—**The Federal share of the cost of construction of an air traffic control tower under this paragraph may not exceed \$1,100,000.]

**(4) CONSTRUCTION OF AIR TRAFFIC CONTROL TOWERS.—**

(A) *IN GENERAL.*—Notwithstanding any other provision of this subchapter, the Secretary may provide grants under this subchapter to an airport sponsor for—

(i) the construction or improvement of a nonapproach control tower; or

(ii) the acquisition and installation of air traffic control equipment to be used in a nonapproach control tower that will assist in sustaining or improving the safe and efficient movement of air traffic.

(B) *ELIGIBILITY.*—A sponsor shall be eligible for a grant under this paragraph if—

(i)(I) the sponsor is a participant in the Federal Aviation Administration Contract Tower Program (as described in paragraph (3)(A)) or the pilot program established under paragraph (3); or

(II) construction of a nonapproach control tower would qualify the sponsor to be eligible to participate in the Federal Aviation Administration Contract Tower Program or pilot program; and

(ii) the sponsor agrees to fund not less than 10 percent of the cost of the activities receiving assistance under this paragraph.

(C) *PROJECT COSTS.*—Grants under this paragraph shall be paid only from amounts made available to the sponsor under sections 47114(c)(1) and (d)(3)(A).

(D) *FEDERAL SHARE.*—The Federal share of the cost of construction of a nonapproach control tower under this paragraph may not exceed \$1,100,000.

(5) *NON-APPROACH CONTROL TOWER DEFINED.*—In this subsection, the term “nonapproach control tower” has the meaning given such term in Federal Aviation Administration Order 7110.65 (as in effect on the date of enactment of the Aviation Delay Prevention Act) and the Aeronautical Information Manual (as in effect on such date of enactment).

#### TITLE 49. TRANSPORTATION

##### SUBTITLE VII. AVIATION PROGRAMS

##### PART B. AIRPORT DEVELOPMENT AND NOISE

##### CHAPTER 477. NATIONAL CAPACITY PROJECTS

47701. Capacity enhancement

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47707. Definitions

#### **§47701. Capacity enhancement**

(a) *IN GENERAL.*—Within 30 days after the date of enactment of the Aviation Delay Prevention Act, the Secretary of Transportation shall identify those airports among the 31 airports covered by the Federal Aviation Administration’s Airport Capacity Benchmark Report 2001 with delays that significantly affect the national air transportation system.

(b) *TASK FORCE; CAPACITY ENHANCEMENT STUDY.*—

(1) *IN GENERAL.*—The Secretary shall direct any airport identified by the Secretary under subsection (a) that is not engaged in a runway expansion process and has not initiated a capacity enhancement study (or similar capacity assessment) since 1996—

(A) to establish a delay reduction task force to study means of increasing capacity at the airport, including air traffic, airline scheduling, and airfield expansion alternatives; or

(B) to conduct a capacity enhancement study.

(2) *SCOPE.*—The scope of the study shall be determined by the airport and the Federal Aviation Administration, and where appropriate shall consider regional capacity solutions.

(3) *RECOMMENDATIONS SUBMITTED TO SECRETARY.*—

(A) *TASK FORCE.*—A task force established under this subsection shall submit a report containing its findings and conclusions, together with any recommendations for capacity enhancement at the airport, to the Secretary within 9 months after the task force is established.

(B) *CES.*—A capacity enhancement study conducted under this subsection shall be submitted, together with its findings and conclusions, to the Secretary as soon as the study is completed.

(c) *RUNWAY EXPANSION AND RECONFIGURATION.*—If the report or study submitted under subsection (b)(3) includes a recommendation for the construction or reconfiguration of runways at the airport, then the Secretary and the airport shall complete the planning and environmental review process within 5 years after report or study is submitted to the Secretary. The Secretary may extend the 5-year deadline under this subsection for up to 1 year if the Secretary determines that such an extension is necessary and in the public interest. The Secretary shall notify the Senate Committee on Commerce, Science, and Transportation, and to the House of Representatives Committee on Transportation and Infrastructure of any such extension.

(d) *AIRPORTS THAT DECLINE TO UNDERTAKE EXPANSION PROJECTS.*—

(1) *IN GENERAL.*—If an airport at which the construction or reconfiguration of runways is recommended does not take action to initiate a planning and environmental assessment process for the construction or reconfiguration of those runways within 30 days after the date on which the report or study is submitted to the Secretary, then—

(A) the airport shall be ineligible for planning and other expansion funds under subchapter I of chapter 471, notwithstanding any provision of that subchapter to the contrary;

(B) no passenger facility fee may be approved at that airport operator during the 5-year period beginning 30 days after the date on which the report or study is submitted to the Secretary, for—

(i) projects that, but for subparagraph (A), could have been funded under chapter 471; or

(ii) any project other than on-airport airfield-side capacity or safety-related projects.

(2) SAFETY-RELATED AND ENVIRONMENTAL PROJECTS EXCEPTED.—Paragraph (1) does not apply to the use of funds for safety-related, security, or environment projects.

(e) AIRPORTS THAT TAKE ACTION.—The Secretary shall take all actions possible to expedite funding and provide options for funding to any airport undertaking runway construction or reconfiguration projects in response to recommendations by its task force.

**§47702. Designation of national capacity projects**

(a) IN GENERAL.—In response to a petition from an airport sponsor, or in the case of an airport on the list of airports covered by the Federal Aviation Administration’s Airport Capacity Benchmarks study, the Secretary of Transportation may designate an airport development project as a national capacity project if the Secretary determines that the project to be designated will significantly enhance the capacity of the national air transportation system.

(b) DESIGNATION TO REMAIN IN EFFECT FOR 5 YEARS.—The designation of a project as a national capacity project under paragraph (1) shall remain in effect for 5 years. The Secretary may extend the 5-year period for up to 2 additional years upon request if the Secretary finds that substantial progress is being made toward completion of the project.

**§47703. Expedited coordinated environmental review process; project coordinators and environment impact teams.**

“(a) IN GENERAL.—The Secretary of Transportation shall implement an expedited coordinated environmental review process for national capacity projects that—

“(1) provides for better coordination among the Federal, regional, State, and local agencies concerned with the preparation of environmental impact statements or environmental assessments under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

“(2) provides for an expedited and coordinated process in the conduct of environmental reviews that ensures that, where appropriate, the reviews are done concurrently and not consecutively; and

“(3) provides for a date certain for completing all environmental reviews.

(b) HIGH PRIORITY FOR AIRPORT ENVIRONMENTAL REVIEWS.—Each department and agency of the United States Government with jurisdiction over environmental reviews shall accord any such review involving a national capacity project the highest possible priority and conduct the review expeditiously. If the Secretary finds that any such department or agency is not complying with the requirements of this subsection, the Secretary shall notify the Senate Committee on Commerce, Science, and Transportation, and to the House of Representatives Committee on Transportation and Infrastructure immediately.

(c) PROJECT COORDINATORS; EIS TEAMS.—

(1) DESIGNATION.—For each project designated by the Secretary as a national capacity project under subsection (a) for



which an environmental impact statement or environmental assessment must be filed, the Secretary shall—

(A) designate a project coordinator within the Department of Transportation; and

(B) establish an environmental impact team within the Department.

(2) *FUNCTION.*—The project coordinator and the environmental impact team shall—

(A) coordinate the activities of all Federal, State, and local agencies involved in the project;

(B) to the extent possible, working with Federal, State and local officials, reduce and eliminate duplicative and overlapping Federal, State, and local permit requirements;

(C) to the extent possible, eliminate duplicate Federal, State, and local environmental review procedures; and

(D) provide direction for compliance with all applicable Federal, State, and local environmental requirements for the project.

**§47704. Compatible land use initiative for national capacity projects**

(a) *IN GENERAL.*—The Secretary of Transportation may make grants under chapter 471 to States and units of local government for land use compatibility plans directly related to national capacity projects for the purposes of making the use of land areas around the airport compatible with aircraft operations if the land use plan or project meets the requirements of this section.

(b) *CONDITIONS.*—A land use plan or project meets the requirements of this section if it—

(1) is sponsored by the public agency that has the authority to plan and adopt land use control measures, including zoning, in the planning area in and around the airport and that agency provides written assurances to the Secretary that it will work with the affected airport to identify and adopt such measures;

(2) does not duplicate, and is not inconsistent with, an airport noise compatibility program prepared by an airport owner or operator under chapter 475 or with other planning carried out by the airport.

(3) is subject to an agreement between the public agency sponsor and the airport owner or operator that the development of the land use compatibility plan will be done cooperatively;

(4) is consistent with the airport operation and planning, including the use of any noise exposure contours on which the land use compatibility planning or project is based; and

(5) has been approved jointly by the airport owner or operator and the public agency sponsor.

(c) *ASSURANCES FROM SPONSORS.*—The Secretary may require the airport sponsor, public agency, or other entity to which a grant may be awarded under this section to provide such additional assurances, progress reports, and other information as the Secretary determines to be necessary to carry out this section.

**§47705. Air traffic procedures at national capacity projects**

(a) *IN GENERAL.*—The Secretary of Transportation may consider prescribing flight procedures to avoid or minimize potentially sig-

nificant adverse noise impacts of the project during the environmental planning process for a national capacity project that involves the construction of new runways or the reconfiguration of existing runways. If the Secretary determines that noise mitigation flight procedures are consistent with safe and efficient use of the navigable airspace, then, at the request of the airport sponsor, the Administrator may, in a manner consistent with applicable Federal law, commit to prescribing such procedures in any record of decision approving the project.

(b) *MODIFICATION.*—Notwithstanding any commitment by the Secretary under subsection (a), the Secretary may initiate changes to such procedures if necessary to maintain safety and efficiency in light of new information or changed circumstances.

**§ 47706. Pilot program for environmental review at national capacity projects**

(a) *IN GENERAL.*—The Secretary of Transportation shall initiate a 5-year pilot program funded by airport sponsors—

(1) to hire additional fulltime-equivalent environmental specialists and attorneys, or

(2) to obtain the services of such specialists and attorneys from outside the United States Government, to assist in the provision of an appropriate nationwide level of staffing for planning and environmental review of runway development projects for national capacity projects at the Federal Aviation Administration.

(b) *ELIGIBLE PARTICIPANTS.*—Participation in the pilot program shall be available, on a voluntary basis, to airports with an annual passenger enplanement of not less than 3 million passengers. The Secretary shall specify the minimum contribution necessary to qualify for participation in the pilot program, which shall be not less than the amount necessary to compensate the Department of Transportation for the expense of a fulltime equivalent environmental specialist and attorney qualified at the GS-14 equivalent level.

(c) *RETENTION OF REVENUES.*—The salaries and expenses account of the Federal Aviation Administration shall retain as an offsetting collection such sums as may be necessary from such proceeds for the costs of developing and implementing the program required by subsection (a). Such offsetting collections shall be available for obligation subject to the terms and conditions of the receiving appropriations account, and shall be deposited in such accounts on a quarterly basis. Such offsetting collections are authorized to remain available until expended for such purpose.

**§ 47707. Definitions**

In this chapter:

(1) *NATIONAL CAPACITY PROJECT.*—The term “national capacity project” means a project designated by the Secretary under section 44702.

(2) *OTHER TERMS.*—The definitions in section 47102 apply to any terms used in this chapter that are defined in that section.