

EXPEDITED DELIVERY OF AIRPORT INFRASTRUCTURE
 ACT OF 2021

MAY 28, 2021.—Committed to the Committee of the Whole House on the State of
 the Union and ordered to be printed

Mr. DEFAZIO, from the Committee on Transportation and
 Infrastructure, submitted the following

R E P O R T

[To accompany H.R. 468]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom
 was referred the bill (H.R. 468) to amend title 49, United States
 Code, to permit the use of incentive payments to expedite certain
 federally financed airport development projects, having considered
 the same, reports favorably thereon without amendment and rec-
 ommends that the bill do pass.

CONTENTS

	Page
Purpose of Legislation	2
Background and Need for Legislation	2
Hearings	2
Legislative History and Consideration	3
Committee Votes	3
Committee Oversight Findings	3
New Budget Authority and Tax Expenditures	3
Congressional Budget Office Cost Estimate	3
Performance Goals and Objectives	5
Duplication of Federal Programs	5
Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits ...	5
Federal Mandates Statement	5
Preemption Clarification	5
Advisory Committee Statement	5
Applicability to Legislative Branch	5
Section-by-Section Analysis of the Legislation	6
Changes in Existing Law Made by the Bill, as Reported	6

PURPOSE OF LEGISLATION

The purpose of H.R. 468 is to permit airports to use Airport Improvement Program (AIP) funds to make incentive payments to contractors for early completion of airport development and planning projects.

BACKGROUND AND NEED FOR LEGISLATION

As the global pandemic begins to subside and the pace of vaccinations accelerate, the number of passengers traveling by air is expected to dramatically increase. In fact, in May 2021, the Transportation Security Administration (TSA) recorded the highest number of passengers screened at U.S. airports since the start of the COVID-19 pandemic.¹ Furthermore, according to the International Air Transport Association, global air travel is expected to double by 2035, creating an urgent need for our nation's airports to accommodate the growing number of passengers as quickly as possible.² However, under current law, airports are not permitted to use AIP funds to incentivize faster completion of airport infrastructure projects. H.R. 468 would permit airports to use AIP funds to make incentive payments to contractors for early completion of an airport planning or development project. This authority is conditioned on the following:

- the payment does not exceed the lesser of five percent of the initial project or \$1 million;
- the contractor's actions to shorten the duration of the project do not negatively affect the operation of the airport;
- the contract details the application of the incentive structure in the event of unforeseeable, non-weather delays beyond control of the contractor;
- the airport is not prevented, under a contract with the contractor, from retaining responsibility for the safety, efficiency, and capacity of the airport during execution of the grant agreement; and
- the Secretary of Transportation determines that the use of an incentive payment is likely to increase airport capacity, efficiency, or result in cost savings as a result of the project's early completion.

HEARINGS

For the purposes of rule XIII, clause 3(c)6(A) of the 117th Congress—

No hearing was held on H.R. 468 in the 117th Congress. However, in the 116th Congress, the following hearing was used to develop prior legislation:

A Full Committee hearing entitled “The Cost of Doing Nothing: Why Investing in Our Nation's Airports Matters” was held on March 26, 2019. The purpose of the hearing was to explore the state of U.S. airport infrastructure and opportunities for Congress to increase funding for projects that will rehabilitate and modernize this aging infrastructure and prepare for anticipated pas-

¹TSA *checkpoint travel numbers (current year(s) versus prior year/same weekday)*, Transp. Sec. Admin. (May 25, 2021), available at <https://www.tsa.gov/coronavirus/passenger-throughput>.

²*IATA Forecasts Passenger Demand to Double Over 20 Years*, International Air Transport Association (Oct. 18, 2016), available at <https://www.iata.org/en/pressroom/pr/2016-10-18-02/>.

senger demand in the coming years. The Committee received testimony from Mr. Lawrence J. Krauter, Chief Executive Officer, Spokane International Airport; Ms. Tori Barnes, Executive Vice President, Public Affairs and Policy, U.S. Travel Association; Ms. Candace S. McGraw, Chief Executive Officer, Cincinnati/Northern Kentucky International Airport; Mr. Joseph W. Lopano, Chief Executive Officer, Tampa International Airport; Mr. Ted Christie, Chief Executive Officer and President, Spirit Airlines, Inc.; and Mr. Marc Scribner, Senior Fellow, Competitive Enterprise Institute.

LEGISLATIVE HISTORY AND CONSIDERATION

H.R. 468 was introduced in the House on January 25, 2021, by Mr. Graves of Missouri, and Mr. Graves of Louisiana and referred to the Committee on Transportation and Infrastructure. Within the Committee, H.R. 468 was referred to the Subcommittee on Aviation.

The Subcommittee on Aviation was discharged from further consideration of H.R. 468 on March 24, 2021.

The Full Committee considered H.R. 468 on March 24, 2021 and ordered the measure to be reported to the House with a favorable recommendation, by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires each committee report to include the total number of votes cast for and against on each record vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against.

There were no recorded votes taken in connection with consideration of H.R. 468.

COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in this report.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the enclosed cost estimate for H.R. 468 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 6, 2021.

Hon. PETER A. DEFAZIO,
*Chairman, Committee on Transportation and Infrastructure,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 468, the Expedited Delivery of Airport Infrastructure Act of 2021.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Aaron Krupkin.

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

H.R. 468, Expedited Delivery of Airport Infrastructure Act of 2021			
As ordered reported by the House Committee on Transportation and Infrastructure on March 24, 2021			
By Fiscal Year, Millions of Dollars	2021	2021-2026	2021-2031
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	*	*	*
Statutory pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2032?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between zero and \$500,000.			

The Airport Improvement Program (AIP) provides grants to airport sponsors for capital improvement projects related to airport safety, capacity, and security. H.R. 468 would expand the definition of eligible AIP project costs for future grants to include contractor incentive payments, under certain conditions. The payments would be capped at the lesser of \$1 million or 5 percent of the project's contract value. H.R. 468 would not provide additional contract authority (a mandatory form of budget authority) for the AIP or increase the program's existing obligation limitations.

Using information from the Federal Aviation Administration (FAA), CBO expects that the FAA would need to develop guidelines and amend grant language in order to implement the bill's provisions. CBO estimates that the cost to do so would not be significant and would be subject to the availability of appropriated funds.

The CBO staff contact for this estimate is Aaron Krupkin. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goal and objective of this legislation is to permit airports to use AIP funds to make incentive payments to contractors to expedite certain airport development and planning projects in the United States.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee finds that no provision of H.R. 468 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 468, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of the rule XXI.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act (Public Law 104–4).

PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt state, local, or tribal law. The Committee finds that H.R. 468 does not preempt any state, local, or tribal law.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by H.R. 468.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (Public Law 104–1).

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section provides that this bill may be cited as the “Expedited Delivery of Airport Infrastructure Act of 2021”.

Sec. 2. Allowable cost standards for airport development projects

This section would permit airports to use AIP funds to make incentive payments to contractors for early completion of an airport planning or development project. This authority is conditioned on the following:

- the payment does not exceed the lesser of five percent of the initial project or \$1 million;
- the contractor’s actions to shorten the duration of the project do not negatively affect the operation of the airport;
- the contract details the application of the incentive structure in the event of unforeseeable, non-weather delays beyond control of the contractor;
- nothing in any agreement with the contractor prevents the airport from maintaining responsibility for the safety, efficiency, and capacity of the airport; and
- the Secretary of Transportation determines that the use of an incentive payment is likely to increase airport capacity, efficiency, or result in cost savings as a result of the project’s early completion.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, 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 matter is printed in italics, and existing law in which no change is proposed is shown in roman):

TITLE 49, UNITED STATES CODE

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SUBTITLE VII—AVIATION PROGRAMS

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PART B—AIRPORT DEVELOPMENT AND NOISE

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CHAPTER 471—AIRPORT DEVELOPMENT

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SUBCHAPTER I—AIRPORT IMPROVEMENT

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§ 47110. Allowable project costs

(a) GENERAL AUTHORITY.—Except as provided in section 47111 of this title, the United States Government may pay or be obligated to pay, from amounts appropriated to carry out this subchapter, a cost incurred in carrying out a project under this subchapter only if the Secretary of Transportation decides the cost is allowable.

(b) ALLOWABLE COST STANDARDS.—A project cost is allowable—

(1)(A) if the cost necessarily is incurred in carrying out the project in compliance with the grant agreement made for the project under this subchapter, including any cost a sponsor incurs related to an audit the Secretary requires under section 47121(b) or (d) of this title and any cost of moving a Federal facility impeding the project if the rebuilt facility is of an equivalent size and type~~;~~; or

(B) if the cost is an incentive payment incurred in carrying out the project described in subparagraph (A) that is to be provided to a contractor upon early completion of a project, if—

(i) such payment does not exceed the lesser of 5 percent of the initial construction contract amount or \$1,000,000;

(ii) the level of contractor's control of, or access to, the worksite necessary to shorten the duration of the project does not negatively impact the operation of the airport;

(iii) the contract specifies application of the incentive structure in the event of unforeseeable, non-weather delays beyond the control of the contractor;

(iv) nothing in any agreement with the contractor prevents the airport operator from retaining responsibility for the safety, efficiency, and capacity of the airport during the execution of the grant agreement; and

(v) the Secretary determines that the use of an incentive payment is likely to increase airport capacity or efficiency or result in cost savings as a result of shortening the project's duration;

(2)(A) if the cost is incurred after the grant agreement is executed and is for airport development or airport planning carried out after the grant agreement is executed;

(B) if the cost is incurred after June 1, 1989, by the airport operator (regardless of when the grant agreement is executed) as part of a Government-approved noise compatibility program (including project formulation costs) and is consistent with all applicable statutory and administrative requirements;

(C) if the Government's share is paid only with amounts apportioned under paragraphs (1) and (2) of section 47114(c) or section 47114(d)(3)(A) and if the cost is incurred—

(i) after September 30, 1996;

(ii) before a grant agreement is executed for the project; and

(iii) in accordance with an airport layout plan approved by the Secretary and with all statutory and administrative requirements that would have been applicable to the project if the project had been carried out after the grant agreement had been executed; or

(D) if the cost is for airport development and is incurred before execution of the grant agreement, but in the same fiscal year as execution of the grant agreement, and if—

- (i) the cost was incurred before execution of the grant agreement because the airport has a shortened construction season due to climatic conditions in the vicinity of the airport;
 - (ii) the cost is in accordance with an airport layout plan approved by the Secretary and with all statutory and administrative requirements that would have been applicable to the project if the project had been carried out after execution of the grant agreement, including submission of a complete grant application to the appropriate regional or district office of the Federal Aviation Administration;
 - (iii) the sponsor notifies the Secretary before authorizing work to commence on the project;
 - (iv) the sponsor has an alternative funding source available to fund the project; and
 - (v) the sponsor's decision to proceed with the project in advance of execution of the grant agreement does not affect the priority assigned to the project by the Secretary for the allocation of discretionary funds;
- (3) to the extent the cost is reasonable in amount;
 - (4) if the cost is not incurred in a project for airport development or airport planning for which other Government assistance has been granted;
 - (5) if the total costs allowed for the project are not more than the amount stated in the grant agreement as the maximum the Government will pay (except as provided in section 47108(b) of this title);
 - (6) if the cost is for a project not described in section 47102(3) for acquiring for use at a commercial service airport vehicles and ground support equipment owned by an airport that include low-emission technology, but only to the extent of the incremental cost of equipping such vehicles or equipment with low-emission technology, as determined by the Secretary; and
 - (7) if the cost is incurred on a measure to improve the efficiency of an airport building (such as a measure designed to meet one or more of the criteria for being considered a high-performance green building as set forth under section 401(13) of the Energy Independence and Security Act of 2007 (42 U.S.C. 17061(13))) and—
 - (A) the measure is for a project for airport development;
 - (B) the measure is for an airport building that is otherwise eligible for construction assistance under this subchapter; and
 - (C) if the measure results in an increase in initial project costs, the increase is justified by expected savings over the life cycle of the project.
- (c) CERTAIN PRIOR COSTS AS ALLOWABLE COSTS.—The Secretary may decide that a project cost under subsection (b)(2)(A) of this section incurred after May 13, 1946, and before the date the grant agreement is executed is allowable if it is—
- (1) necessarily incurred in formulating an airport development project, including costs incurred for field surveys, plans and specifications, property interests in land or airspace, and

administration or other incidental items that would not have been incurred except for the project; or

(2) necessarily and directly incurred in developing the work scope of an airport planning project.

(d) RELOCATION OF AIRPORT-OWNED FACILITIES.—The Secretary may determine that the costs of relocating or replacing an airport-owned facility are allowable for an airport development project at an airport only if—

(1) the Government's share of such costs will be paid with funds apportioned to the airport sponsor under section 47114(c)(1) or 47114(d);

(2) the Secretary determines that the relocation or replacement is required due to a change in the Secretary's design standards; and

(3) the Secretary determines that the change is beyond the control of the airport sponsor.

(e) LETTERS OF INTENT.—(1) The Secretary may issue a letter of intent to the sponsor stating an intention to obligate from future budget authority an amount, not more than the Government's share of allowable project costs, for an airport development project (including costs of formulating the project) at a primary or reliever airport. The letter shall establish a schedule under which the Secretary will reimburse the sponsor for the Government's share of allowable project costs, as amounts become available, if the sponsor, after the Secretary issues the letter, carries out the project without receiving amounts under this subchapter.

(2) Paragraph (1) of this subsection applies to a project—

(A) about which the sponsor notifies the Secretary, before the project begins, of the sponsor's intent to carry out the project;

(B) that will comply with all statutory and administrative requirements that would apply to the project if it were carried out with amounts made available under this subchapter; and

(C) that meets the criteria of section 47115(d) and, if for a project at a commercial service airport having at least 0.25 percent of the boardings each year at all such airports, the Secretary decides will enhance system-wide airport capacity significantly.

(3) A letter of intent issued under paragraph (1) of this subsection is not an obligation of the Government under section 1501 of title 31, and the letter is not deemed to be an administrative commitment for financing. An obligation or administrative commitment may be made only as amounts are provided in authorization and appropriation laws.

(4) The total estimated amount of future Government obligations covered by all outstanding letters of intent under paragraph (1) of this subsection may not be more than the amount authorized to carry out section 48103 of this title, less an amount reasonably estimated by the Secretary to be needed for grants under section 48103 that are not covered by a letter.

(5) LETTERS OF INTENT.—The Secretary may not require an eligible agency to impose a passenger facility charge under section 40117 in order to obtain a letter of intent under this section.

(6) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to prohibit the obligation of amounts

pursuant to a letter of intent under this subsection in the same fiscal year as the letter of intent is issued.

(7) **[PARTNERSHIP PROGRAM AIRPORTS]** *PARTNERSHIP PROGRAM AIRPORTS*.—The Secretary may issue a letter of intent under this section to an airport sponsor with an approved application under section 47134(b) if—

- (A) the application was approved in fiscal year 2019; and
- (B) the project meets all other requirements set forth in this chapter.

(f) **NONALLOWABLE COSTS**.—Except as provided in subsection (d) of this section and section 47118(f) of this title, a cost is not an allowable airport development project cost if it is for—

- (1) constructing a public parking facility for passenger automobiles;
- (2) constructing, altering, or repairing part of an airport building, except to the extent the building will be used for facilities or activities directly related to the safety of individuals at the airport;
- (3) decorative landscaping; or
- (4) providing or installing sculpture or art works.

(g) **USE OF DISCRETIONARY FUNDS**.—A project for which cost reimbursement is provided under subsection (b)(2)(C) shall not receive priority consideration with respect to the use of discretionary funds made available under section 47115 of this title even if the amounts made available under paragraphs (1) and (2) of section 47114(c) or section 47114(d)(3)(A) are not sufficient to cover the Government’s share of the cost of the project.

(h) **NONPRIMARY AIRPORTS**.—The Secretary may decide that the construction costs of revenue producing aeronautical support facilities are allowable for an airport development project at a nonprimary airport if the Government’s share of such costs is paid only with funds apportioned to the airport sponsor under section 47114(d)(3)(A) and if the Secretary determines that the sponsor has made adequate provision for financing airside needs of the airport.

(i) **BIRD-DETECTING RADAR SYSTEMS**.—The Administrator of the Federal Aviation Administration, upon the conclusion of all planned research by the Administration regarding avian radar systems, shall—

- (1) update Advisory Circular No. 150/5220–25 to specify which systems have been studied; and
- (2) within 180 days after such research is concluded, issue a final report on the use of avian radar systems in the national airspace system.

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