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[Report No. 107-162]

To provide for the review and management of airport congestion, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 27, 2001

Mrs. HUTCHISON (for herself, Mr. ROCKEFELLER, and Mr. McCAIN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

JUNE 13, 2002

Reported by Mr. HOLLINGS, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To provide for the review and management of airport congestion, and for other purposes.

1 *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Aviation Delay Prevention Act”.*

1 SEC. 2. DEFINITIONS.

2 In this Act:

3 (1) AIR CARRIER.—The term “air carrier” has
4 the meaning given that term in section 40102(a)(2)
5 of title 49, United States Code.6 (2) ENPLANEMENT.—The term “enplanement”
7 means the annual number of passenger
8 enplanements, as determined by the Secretary of
9 Transportation, based on the most recent data avail-
10 able.11 (3) LARGE HUB AIRPORT.—The term “large
12 hub airport” has the meaning given that term in
13 section 47134(d)(2) of title 49, United States Code.14 (4) ON-TIME DEPARTURE.—The term “on-time
15 departure” means with respect to a scheduled pas-
16 senger flight that the flight is airborne within 20
17 minutes of the time it is scheduled to depart.18 (5) OVERSCHEDULING.—The term “over-
19 scheduling” means the practice by an air carrier or
20 air carriers of scheduling the time for the departure
21 of flights at an airport in excess of the number of
22 flights that the airport can accommodate for depar-
23 ture at that time.24 (6) SECRETARY.—The term “Secretary” means
25 the Secretary of Transportation.

1 **SEC. 3. FAA STUDY AND REPORT.**

2 (a) IN GENERAL.—Not later than the date that is
3 1 year after the date of enactment of this Act, and each
4 year thereafter for 5 years, the Secretary shall complete
5 a review and report to the Committee on Commerce,
6 Science, and Transportation of the Senate and the Com-
7 mittee on Transportation and Infrastructure of the House
8 of Representatives regarding air carrier overscheduling at
9 large hub airports.

10 (b) SCOPE OF REVIEW AND REPORT.—The review
11 and report described in subsection (a) shall include the
12 following:

13 (1) The hourly departure and arrival capacity
14 at each large hub airport, including variation of ca-
15 pacity based on air traffic control and other factors.

16 (2) The hours when departures and arrivals at
17 each large hub airport are overscheduled and the
18 airport operates above capacity.

19 (3) An analysis of the congestion mitigation au-
20 thority of the Secretary and recommendations for
21 providing the Secretary with additional authority to
22 alleviate airport congestion and overscheduling and
23 to expedite construction related to the expansion of
24 airport capacity.

1 **SEC. 4. LIMITED EXEMPTION FROM ANTITRUST LAWS.**

2 (a) **IN GENERAL.**—Subchapter I of chapter 417 of
3 title 49, United States Code, is amended by adding at the
4 end the following new section:

5 **“§ 41722. Limited exemption from the antitrust laws**

6 “(a) **DEFINITION.**—In this section, the term ‘anti-
7 trust laws’ has the meaning given that term in the first
8 section of the Clayton Act (15 U.S.C. 12).

9 “(b) **COOPERATIVE SCHEDULING AGREEMENTS.**—

10 “(1) **AUTHORITY.**—An air carrier may file with
11 the Secretary of Transportation a request for au-
12 thority for a group of 2 or more air carriers to dis-
13 cuss cooperative scheduling arrangements, if the sole
14 purpose of the discussions is to reach an agreement
15 between the air carriers to reduce overscheduling
16 and flight delays during hours of peak operation and
17 during periods of inclement weather at any large
18 hub airport. The Secretary shall grant or deny the
19 request within 30 days after it is received.

20 “(2) **AGREEMENT.**—An air carrier shall file
21 with the Secretary of Transportation, for the ap-
22 proval by the Secretary, a true copy of an agreement
23 reached under paragraph (1).

24 “(e) **APPROVAL BY THE SECRETARY.**—

25 “(1) **IN GENERAL.**—Within 60 days after re-
26 ceiving a copy of an agreement under subsection (b),

1 the Secretary of Transportation shall approve the
2 agreement and issue an order containing that ap-
3 proval, if the Secretary finds that the agreement—

4 “(A) will reduce congestion at the affected
5 airport;

6 “(B) will not reduce service to small com-
7 munities; and

8 “(C) is not adverse to the public interest.

9 “(2) GROUNDS FOR DISAPPROVAL.—

10 “(A) The Secretary shall disapprove or re-
11 voke approval of an agreement filed under sub-
12 section (b), if after review, the Secretary finds
13 that any discussion or agreement entered into
14 as a result of that filing substantially reduces
15 or eliminates competition.

16 “(B) Notwithstanding subparagraph (A),
17 the Secretary may approve a request or an
18 agreement filed under subsection (b) if the Sec-
19 retary finds that—

20 “(i) the request or agreement is nee-
21 cessary to meet a serious transportation
22 need or to achieve important public bene-
23 fits; and

24 “(ii) the transportation need cannot
25 be met or the benefits cannot be achieved

1 by reasonably available alternatives that
2 are materially less anticompetitive.

3 “(3) NOTICE AND OPPORTUNITY TO RESPOND;
4 HEARINGS.—

5 “(A) NOTICE AND OPPORTUNITY TO RE-
6 SPOND.—When a request or an agreement is
7 filed with the Secretary under subsection (b),
8 the Secretary shall give the Attorney General
9 written notice of, and an opportunity to submit
10 written comments about, the filing.

11 “(B) HEARING.—On the initiative of the
12 Secretary, or at the request of the Attorney
13 General, the Secretary may conduct a hearing
14 to decide if a request or agreement filed under
15 subsection (b) should receive or retain approval.

16 “(d) EXEMPTION AUTHORIZED.—When the Sec-
17 retary finds that it is required by the public interest, the
18 Secretary, as part of an order issued under subsection
19 (e)(1), shall exempt a person affected by the order from
20 the antitrust laws to the extent necessary to allow the per-
21 son to proceed with the activities approved in the order.

22 “(e) DOT PARTICIPATION.—The Secretary shall en-
23 sure that the Department is represented at any such meet-
24 ings authorized under this section.”

1 (b) CONFORMING AMENDMENT.—The chapter anal-
2 ysis for chapter 417, of title 49, United States Code, is
3 amended by inserting after the item relating to section
4 41721 the following new item:

“41722. Limited exemption from the antitrust laws.”.

5 **SEC. 5. EXPEDITED COORDINATED ENVIRONMENTAL RE-**
6 **VIEW PROCESS.**

7 The Secretary of Transportation shall develop and
8 implement an expedited coordinated environmental review
9 process for airport capacity-enhancement projects that—

10 (1) provides for coordination among the Fed-
11 eral, regional, State, and local agencies concerned
12 with the preparation of environmental impact state-
13 ments or environmental assessments under the Na-
14 tional Environmental Policy Act of 1969 (42 U.S.C.
15 4321 et seq.);

16 (2) provides for an expedited and coordinated
17 process in the conduct of environmental and judicial
18 reviews that ensures that the reviews are done con-
19 currently and not consecutively; and

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

22 **SEC. 6. CHIEF OPERATING OFFICER.**

23 Section 106(r)(2) of title 49, United States Code, is
24 amended to read as follows:

1 “(2) COMPENSATION.—The Chief Operating
 2 Officer shall be paid at an annual rate of basic pay
 3 determined by the Secretary of Transportation be-
 4 fore the appointment and without regard to any
 5 other provision of law. The Chief Operating Officer
 6 shall be subject to the post-employment provisions of
 7 section 207 of title 18 as if the position of Chief Op-
 8 erating Officer were described in section
 9 207(e)(2)(A)(i) of that title.”.

10 **SECTION 1. SHORT TITLE.**

11 *This Act may be cited as the “Aviation Delay Preven-
 12 tion Act”.*

13 **SEC. 2. TABLE OF SECTIONS.**

14 *The table of sections for this Act is as follows:*

Sec. 1. *Short title.*

Sec. 2. *Table of sections.*

Title I—Aviation Delay Prevention

Sec. 101. *Definitions.*

Sec. 102. *DOT study and report.*

Sec. 103. *Delay reduction meetings.*

Sec. 104. *Chief operating officer.*

Sec. 105. *Passenger facility fee definitional changes.*

Sec. 106. *DOT rulemaking to define on-time departure.*

Sec. 107. *Construction of air traffic control towers.*

Sec. 108. *Air quality standards report.*

Sec. 109. *Special rule for airport in Illinois.*

Sec. 110. *Categorical exclusions.*

Sec. 111. *Alternatives analysis.*

Sec. 112. *Elimination of duplicative requirements.*

Title II—National Capacity Projects

Sec. 201. *Findings.*

Sec. 202. *National capacity projects.*

Sec. 203. *Increase in apportionment for, and flexibility of, noise compatibility planning programs.*

Sec. 204. *Secretary of Transportation to identify airport congestion-relief projects and forecast airport operations annually.*

Sec. 205. *Quarterly status reports.*

1 **TITLE I—AVIATION DELAY**
2 **PREVENTION**

3 **SEC. 101. DEFINITIONS.**

4 *In this title:*

5 (1) *AIR CARRIER.*—The term “air carrier” has
6 *the meaning given that term in section 40102(a)(2)*
7 *of title 49, United States Code.*

8 (2) *ENPLANEMENT.*—The term “enplanement”
9 *means the annual number of passenger enplanements,*
10 *as determined by the Secretary of Transportation,*
11 *based on the most recent data available.*

12 (3) *LARGE HUB AIRPORT.*—The term “large hub
13 *airport*” has the meaning given that term in section
14 *47134(d)(2) of title 49, United States Code.*

15 (4) *OVERSCHEDULING.*—The term “overschedul-
16 *ing*” means the practice by an air carrier or
17 *air carriers* of scheduling the time for the departure
18 *of flights at an airport in excess of the number of*
19 *flights that the airport can accommodate for depa-
20 *ture at that time.**

21 (5) *SECRETARY.*—The term “Secretary” means
22 *the Secretary of Transportation.*

23 **SEC. 102. DOT STUDY AND REPORT.**

24 (a) *IN GENERAL.*—Not later than the date that is 1
25 *year after the date of enactment of this Act, and each year*

1 *thereafter for 5 years, the Secretary shall complete a review*
2 *and report to the Committee on Commerce, Science, and*
3 *Transportation of the Senate and the Committee on Trans-*
4 *portation and Infrastructure of the House of Representa-*
5 *tives regarding air carrier overscheduling and air carrier*
6 *scheduling practices, including flight cancellations for eco-*
7 *nomic reasons at large hub airports.*

8 (b) *SCOPE OF REVIEW AND REPORT.*—*The review and*
9 *report described in subsection (a) shall—*

10 (1) *take into account the findings and conclu-*
11 *sions contained in the Federal Aviation Administra-*
12 *tion's Airport Capacity Benchmark Report 2001; and*
13 (2) *include an analysis of the congestion mitiga-*
14 *tion authority of the Secretary and recommendations*
15 *for providing the Secretary with additional authority*
16 *to alleviate airport congestion and overscheduling and*
17 *to expedite construction related to the expansion of*
18 *airport capacity.*

19 **SEC. 103. DELAY REDUCTION MEETINGS.**

20 (a) *IN GENERAL.*—*Subchapter I of chapter 417 of title*
21 *49, United States Code, is amended by adding at the end*
22 *the following new section:*

23 **“§ 41723. Delay reduction actions**

24 “(a) *DELAY REDUCTION MEETINGS.*—

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

7 “(A) *the Administrator of the Federal Avia-*
8 *tion Administration determines that it is nec-*
9 *essary to convene such a meeting; and*

10 “(B) *the Secretary determines that the*
11 *meeting is necessary to meet a serious transpor-*
12 *tation need or achieve an important public ben-*
13 *efit.*

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

16 “(A) *shall be chaired by the Administrator;*
17 “(B) *shall be open to all scheduled air car-*
18 *riers; and*

19 “(C) *shall be limited to discussions involv-*
20 *ing the airports and time periods described in*
21 *the Administrator’s determination.*

22 “(3) *FLIGHT REDUCTION TARGETS.*—Before any
23 *such meeting is held, the Administrator shall establish*
24 *flight reduction targets for the meeting and notify the*

1 *attending air carriers of those targets not less than 48*
2 *hours before the meeting.*

3 “(4) *DELAY REDUCTION OFFERS.*—*An air car-*
4 *rier attending the meeting shall make any delay re-*
5 *duction offer to the Administrator rather than to an-*
6 *other carrier.*

7 “(5) *TRANSCRIPT.*—*The Administrator shall en-*
8 *sure that a transcript of the meeting is kept and*
9 *made available to the public not later than 3 business*
10 *days after the conclusion of the meeting.*

11 “(b) *STORMY WEATHER AGREEMENTS LIMITED EX-*
12 *EMPTION.*—

13 “(1) *IN GENERAL.*—*The Secretary may establish*
14 *a program to authorize by order discussions and*
15 *agreements between 2 or more air carriers for the*
16 *purpose of reducing flight delays during periods of in-*
17 *clement weather.*

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

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

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

4 “(C) shall remain in effect for a period of
5 24 hours.

6 “(3) *PROCEDURE*.—The Secretary shall establish
7 procedures within 30 days after such date of enact-
8 ment for—

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

11 “(B) participation under paragraph (5) by
12 representatives of the Department of Transpor-
13 tation in any meetings or discussions held pur-
14 suant to such an order; and

15 “(C) the determination by the Federal Avia-
16 tion Administration about the impact of inclem-
17 ent weather.

18 “(4) *COPY OF PARTICIPATION REQUEST FILED*
19 *WITH SECRETARY*.—Before an air carrier may request
20 an order under paragraph (1), it shall file a request
21 with the Secretary, in such form and manner as the
22 Secretary may prescribe, to participate in the pro-
23 gram established under paragraph (1).

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

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

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

13 “(e) *SUNSET*.—The authority of the Secretary to issue
14 an order under subsection (b)(1) of this section expires at
15 the end of the 2-year period that begins 45 days after the
16 date of enactment of the Aviation Delay Prevention Act.
17 The Secretary may extend the 2-year period for an addi-
18 tional 2 years if the Secretary determines that such an ex-
19 tension is necessary and in the public interest. The Sec-
20 retary shall notify the Senate Committee on Commerce,
21 Science, and Transportation, and to the House of Rep-
22 resentatives Committee on Transportation and Infrastruc-
23 ture of any such extension.”.

24 (b) *CONFORMING AMENDMENT*.—The chapter analysis
25 for chapter 417, of title 49, United States Code, is amended

1 by inserting after the item relating to section 41722 the fol-
2 lowing new item:

“41723. *Delay reduction actions.*”.

3 SEC. 104. CHIEF OPERATING OFFICER.

4 Section 106(r)(2) of title 49, United States Code, is
5 amended to read as follows:

6 “(2) COMPENSATION.—The Chief Operating Offi-
7 cer shall be paid at an annual rate of basic pay de-
8 termined by the Secretary of Transportation before
9 the appointment and without regard to any other
10 provision of law. The Chief Operating Officer shall be
11 subject to the post-employment provisions of section
12 207 of title 18 as if the position of Chief Operating
13 Officer were described in section 207(c)(2)(A)(i) of
14 that title.”.

15 SEC. 105. PASSENGER FACILITY FEE DEFINITIONAL
16 CHANGES.

17 Section 40117(a) of title 49, United States Code, is
18 amended—

19 (1) by striking paragraph (3)(F) and inserting
20 the following:

21 “(F) A project for constructing gates and
22 related areas at which passengers board or exit
23 aircraft.

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

3 “(i) A project for constructing gates
4 and related areas may include structural
5 foundations and floor systems, exterior
6 building walls and load-bearing interior
7 columns or walls, windows, door and roof
8 systems, building utilities (including heating,
9 air conditioning, ventilation, plumbing,
10 and electrical service) above, below, and
11 within the footprint of the gates and related
12 areas.

13 “(ii) Revenue-producing areas in the
14 remainder of the terminal building allocable
15 to the competing air carrier, and aircraft
16 fueling facilities adjacent to the gate, may
17 be included in an eligible airport-related
18 project to the extent the facilities to be con-
19 structed in such areas are for the basic ac-
20 commodation of air passengers and not for
21 general commercial retail sales, rental car
22 facilities, or passenger lodging. For pur-
23 poses of this clause, the determination of
24 what revenue-producing areas in the ter-
25

1 *minal building are allocable to the com-*
2 *peting air carrier shall be based on the rela-*
3 *tionship that the square footage of the com-*
4 *peting air carrier's gates and related areas*
5 *bears to the square footage of all gates and*
6 *related areas in the terminal building.”;*
7 *and*

8 *(2) by adding at the end the following:*

9 *“(6) COMPETING AIR CARRIER.—The term ‘com-*
10 *peting air carrier’ means an air carrier that—*
11 *“(A) is initiating new air service or ex-*
12 *panding existing air service at a large hub air-*
13 *port (as defined in section 41731); and*
14 *“(B) is not an air carrier described in sec-*
15 *tion 47106(f)(3)(B) at that airport.”.*

16 **SEC. 106. DOT RULEMAKING TO DEFINE ON-TIME DEPAR-**
17 **TURE.**

18 *The Secretary of Transportation shall, by means of the*
19 *rulemaking required by section 227 of the Wendell H. Ford*
20 *Aviation Investment and Reform Act for the 21st Century,*
21 *define the term “on-time departure”, as it relates to sched-*
22 *uled airline passenger flights. The rulemaking shall provide*
23 *expedited procedures to ensure that it is concluded no later*
24 *than 120 days after the date of enactment of this Act. The*
25 *definition shall not include a flight that first becomes air-*

1 borne more than 45 minutes after its scheduled departure
2 time. The rule making shall set forth requirements for mak-
3 ing accurate and timely information available to airline
4 customers about the on-time status of flights.

5 **SEC. 107. CONSTRUCTION OF AIR TRAFFIC CONTROL TOW-**
6 **ERS.**

7 (a) *IN GENERAL.*—Section 47124(b) of title 49, United
8 States Code, is amended by striking paragraph (4) and in-
9 serting the following:

10 “(4) CONSTRUCTION OF AIR TRAFFIC CONTROL
11 TOWERS.—

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

23 “(B) ELIGIBILITY.—A sponsor shall be eli-
24 gible for a grant under this paragraph if—

1 “(i)(I) the sponsor is a participant in
2 the Federal Aviation Administration Con-
3 tract Tower Program (as described in para-
4 graph (3)(A)) or the pilot program estab-
5 lished under paragraph (3); or

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

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

14 “(C) PROJECT COSTS.—Grants under this
15 paragraph shall be paid only from amounts
16 made available to the sponsor under sections
17 47114(c)(1) and (d)(3)(A).

18 “(D) FEDERAL SHARE.—The Federal share
19 of the cost of construction of a nonapproach con-
20 trol tower under this paragraph may not exceed
21 \$1,100,000.

22 “(5) NON-APPROACH CONTROL TOWER DE-
23 FINED.—In this subsection, the term ‘nonapproach
24 control tower’ has the meaning given such term in
25 Federal Aviation Administration Order 7110.65 (as

1 *in effect on the date of enactment of the Aviation*
2 *Delay Prevention Act) and the Aeronautical Informa-*
3 *tion Manual (as in effect on such date of enact-*
4 *ment).”.*

5 *(b) CONFORMING AMENDMENT.—Section*
6 *47124(b)(3)(A) of such title is amended by striking “Level*
7 *I air traffic control towers, as defined by the Secretary,”*
8 *and inserting “nonapproach control towers”.*

9 **SEC. 108. AIR QUALITY STANDARDS REPORT.**

10 *(a) NATIONAL ACADEMY OF SCIENCES.—In conducting*
11 *the study required by section 725 of the Wendell H. Ford*
12 *Aviation Investment and Reform Act for the 21st Century,*
13 *the National Academy of Sciences shall work with the Di-*
14 *rector of the Centers for Disease Control and Prevention in*
15 *considering the actual measurements of contaminants of*
16 *concern (as defined by the National Academy of Sciences*
17 *in conjunction with the Centers).*

18 *(b) REPORT.—The Administrator of the Federal Avia-*
19 *tion Administration shall report the results of the study car-*
20 *ried out under section 725 of that Act to the Senate Com-*
21 *mittee on Commerce, Science, and Transportation and the*
22 *House of Representatives Committee on Transportation and*
23 *Infrastructure no later than January 31, 2002.*

1 **SEC. 109. SPECIAL RULE FOR AIRPORT IN ILLINOIS.**

2 (a) *IN GENERAL.*—Nothing in this Act shall be construed
3 to preclude the application of any provision of this Act to
4 the State of Illinois or any other sponsor of a new airport
5 proposed to be constructed in the State of Illinois.

6 (b) *AUTHORITY OF THE GOVERNOR.*—Nothing in this
7 Act shall be construed to preempt the authority of the Gov-
8 ernor of the State of Illinois as of August 1, 2001, to ap-
9 prove or disapprove airport development projects.

10 **SEC. 110. CATEGORICAL EXCLUSIONS.**

11 Not later than 30 days after the date of enactment of
12 this Act, the Secretary of Transportation shall report to the
13 Senate Committee on Commerce, Science, and Transpor-
14 tation on the categorical exclusions currently recognized
15 and provide a list of proposed additional categorical exclu-
16 sions from the requirement that an environmental assess-
17 ment or an environmental impact statement be prepared
18 under the National Environmental Policy Act of 1969 (42
19 U.S.C. 4321 et seq.) for projects at airports. In determining
20 the list of additional proposed categorical exclusions, the
21 Secretary shall include such other projects as the Secretary
22 determines should be categorically excluded in order to en-
23 sure that Department of Transportation environmental
24 staff resources are not diverted to lower priority tasks and
25 are available to expedite the environmental reviews of air-
26 port capacity enhancement projects at congested airports.

1 **SEC. 111. ALTERNATIVES ANALYSIS.**

2 (a) *NOTICE REQUIREMENT.*—Not later than 30 days
3 after the date on which the Secretary of Transportation
4 identifies an airport capacity enhancement project at a
5 congested airport under section 47171(c) of title 49, United
6 States Code, the Secretary shall publish a notice in the Fed-
7 eral Register requesting comments on whether reasonable al-
8 ternatives exist to the project.

9 (b) *CERTAIN REASONABLE ALTERNATIVES DE-
10 FINED.*—For purposes of this section, an alternative shall
11 be considered reasonable if—

12 (1) the alternative does not create an unreason-
13 able burden on interstate commerce, the national
14 aviation system, or the navigable airspace;

15 (2) the alternative is not inconsistent with main-
16 taining the safe and efficient use of the navigable air-
17 space;

18 (3) the alternative does not conflict with a law
19 or regulation of the United States;

20 (4) the alternative would result in at least the
21 same reduction in congestion at the airport or in the
22 national aviation system as the proposed project; and

23 (5) in any case in which the alternative is a pro-
24 posed construction project at an airport other than a
25 congested airport, firm commitments to provide such
26 alternate airport capacity exists, and the Secretary

1 *determines that such alternate airport capacity will*
2 *be available no later than 4 years after the date of the*
3 *Secretary's determination under this section.*

4 (c) *COMMENT PERIOD.—The Secretary shall provide*
5 *a period of 60 days for comments on a project identified*
6 *by the Secretary under this section after the date of publica-*
7 *tion of notice with respect to the project.*

8 (d) *DETERMINATION OF EXISTENCE OF REASONABLE*
9 *ALTERNATIVES.—Not later than 90 days after the last day*
10 *of a comment period established under subsection (c) for*
11 *a project, the Secretary shall determine whether reasonable*
12 *alternatives exist to the project. The determination shall be*
13 *binding on all persons, including Federal and State agen-*
14 *cies, acting under or applying Federal laws when consid-*
15 *ering the availability of alternatives to the project.*

16 (e) *LIMITATION ON APPLICABILITY.—This section does*
17 *not apply to—*

18 (1) *any alternatives analysis required under the*
19 *National Environmental Policy Act of 1969 (42*
20 *U.S.C. 4321 et. seq.); or*

21 (2) *a project at an airport if the airport sponsor*
22 *requests, in writing, to the Secretary that this section*
23 *not apply to the project.*

1 **SEC. 112. ELIMINATION OF DUPLICATIVE REQUIREMENTS.**2 (a) *IN GENERAL.*—Section 47106(c)(1) of title 49,3 *United States Code, is amended—*4 (1) *by inserting “and” after “project;” in sub-*5 *paragraph (A)(ii);*6 (2) *by striking subparagraph (B); and*7 (3) *by redesignating subparagraph (C) as sub-*
8 *paragraph (B).*9 (b) *CONFORMING AMENDMENTS.*—Section 47106(c) of10 *such title is amended—*11 (1) *by striking paragraph (4);*12 (2) *by redesignating paragraph (5) as para-*
13 *graph (4); and*14 (3) *by striking “(1)(C)” in paragraph (4), as re-*
15 *designated, and inserting “(1)(B)”.*16 **TITLE II—NATIONAL CAPACITY
PROJECTS**18 **SEC. 201. FINDINGS.**19 *The Congress finds the following:*20 (1) *The National Airspace System safely handles*
21 *over 200,000 take-offs and landings each day.*22 (2) *Last year, over 670 million passengers travel*
23 *by commercial air carriers. Within the next 10 years,*
24 *it is forecast that 1 billion passengers will be served*
25 *within the national airspace system.*

1 (3) While there has been a dramatic growth in
2 commercial air traffic, the infrastructure has not
3 grown in the same manner. There is no easy solution
4 to expand our aviation system. Runway construction
5 underway today at many airports will be beneficial.
6 At a number of the most severely congested airports,
7 such as LaGuardia and Newark, no plans for capac-
8 ity expansion are currently underway. Other capacity
9 measures will be needed. As a result, we are experi-
10 encing severe congestion in our Nation's skyways.

11 (4) At 15 of the Nation's top 31 airports, run-
12 way construction or other major capacity programs
13 are already underway. These projects are critical
14 steps, but by themselves are not sufficient to expand
15 capacity adequately to meet current and projected
16 needs.

17 (5) New airport construction and new runway
18 construction projects are local decisions that are sup-
19 ported by the Federal government through the Airport
20 Improvement Program and other programs. Given the
21 importance of air travel to our economy, however, it
22 is critical that the Federal government do all it can
23 to facilitate expansion.

24 (6) To facilitate the construction of projects at
25 our Nation's airports or for the construction of new

1 airports which will substantially relieve congestion in
 2 the air, the Federal government must direct airport
 3 sponsors and work with surrounding local commu-
 4 nities to better use Federal grants to provide not only
 5 for construction but to provide a more effective means
 6 of mitigation of the increased capacity and traffic at
 7 the airports.

8 **SEC. 202. NATIONAL CAPACITY PROJECTS.**

9 (a) *IN GENERAL.*—Part B of subtitle VII of title 49,
 10 United States Code, is amended by adding at the end the
 11 following:

“CHAPTER 477. NATIONAL CAPACITY PROJECTS

- “47701. Capacity enhancement
- “47702. Designation of national capacity projects
- “47703. Expedited coordinated environmental review process; project coordinators and environment impact teams.
- “47704. Compatible land use initiative for national capacity projects
- “47705. Air traffic procedures at national capacity projects
- “47706. Pilot program for environmental review at national capacity projects
- “47707. Definitions

12 **“§ 47701. Capacity enhancement**

13 “(a) *IN GENERAL.*—Within 30 days after the date of
 14 enactment of the Aviation Delay Prevention Act, the Sec-
 15 retary of Transportation shall identify those airports
 16 among the 31 airports covered by the Federal Aviation Ad-
 17 ministration’s Airport Capacity Benchmark Report 2001
 18 with delays that significantly affect the national air trans-
 19 portation system.

1 “(b) *TASK FORCE; CAPACITY ENHANCEMENT*

2 *STUDY.—*

3 “(1) *IN GENERAL.—The Secretary shall direct*
4 *any airport identified by the Secretary under sub-*
5 *section (a) that is not engaged in a runway expan-*
6 *sion process and has not initiated a capacity en-*
7 *hancement study (or similar capacity assessment)*
8 *since 1996—*

9 “(A) *to establish a delay reduction task*
10 *force to study means of increasing capacity at*
11 *the airport, including air traffic, airline sched-*
12 *uling, and airfield expansion alternatives; or*

13 “(B) *to conduct a capacity enhancement*
14 *study.*

15 “(2) *SCOPE.—The scope of the study shall be de-*
16 *termined by the airport and the Federal Aviation Ad-*
17 *ministration, and where appropriate shall consider*
18 *regional capacity solutions.*

19 “(3) *RECOMMENDATIONS SUBMITTED TO SEC-*
20 *RETARY.—*

21 “(A) *TASK FORCE.—A task force established*
22 *under this subsection shall submit a report con-*
23 *taining its findings and conclusions, together*
24 *with any recommendations for capacity enhance-*

1 ment at the airport, to the Secretary within 9
2 months after the task force is established.

3 “(B) CES.—A capacity enhancement study
4 conducted under this subsection shall be sub-
5 mitted, together with its findings and conclu-
6 sions, to the Secretary as soon as the study is
7 completed.

8 “(c) RUNWAY EXPANSION AND RECONFIGURATION.—
9 If the report or study submitted under subsection (b)(3) in-
10 cludes a recommendation for the construction or reconfig-
11 uration of runways at the airport, then the Secretary and
12 the airport shall complete the planning and environmental
13 review process within 5 years after report or study is sub-
14 mitted to the Secretary. The Secretary may extend the 5-
15 year deadline under this subsection for up to 1 year if the
16 Secretary determines that such an extension is necessary
17 and in the public interest. The Secretary shall notify the
18 Senate Committee on Commerce, Science, and Transpor-
19 tation, and to the House of Representatives Committee on
20 Transportation and Infrastructure of any such extension.

21 “(d) AIRPORTS THAT DECLINE TO UNDERTAKE EX-
22 PANSION PROJECTS.—

23 “(1) IN GENERAL.—If an airport at which the
24 construction or reconfiguration of runways is rec-
25 ommended does not take action to initiate a planning

1 and environmental assessment process for the con-
2 struction or reconfiguration of those runways within
3 30 days after the date on which the report or study
4 is submitted to the Secretary, then—

5 “(A) the airport shall be ineligible for plan-
6 ning and other expansion funds under sub-
7 chapter I of chapter 471, notwithstanding any
8 provision of that subchapter to the contrary;

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

14 “(i) projects that, but for subparagraph
15 (A), could have been funded under chapter
16 471; or

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

20 “(2) SAFETY-RELATED AND ENVIRONMENTAL
21 PROJECTS EXCEPTED.—Paragraph (1) does not apply
22 to the use of funds for safety-related, security, or envi-
23 ronment projects.

24 “(e) AIRPORTS THAT TAKE ACTION.—The Secretary
25 shall take all actions possible to expedite funding and pro-

1 *vide options for funding to any airport undertaking run-*
2 *way construction or reconfiguration projects in response to*
3 *recommendations by its task force.*

4 **“§ 47702. Designation of national capacity projects**

5 “(a) *IN GENERAL.*—*In response to a petition from an*
6 *airport sponsor, or in the case of an airport on the list*
7 *of airports covered by the Federal Aviation Administra-*
8 *tion’s Airport Capacity Benchmarks study, the Secretary*
9 *of Transportation may designate an airport development*
10 *project as a national capacity project if the Secretary deter-*
11 *mines that the project to be designated will significantly*
12 *enhance the capacity of the national air transportation sys-*
13 *tem.*

14 “(b) *DESIGNATION TO REMAIN IN EFFECT FOR 5*
15 *YEARS.*—*The designation of a project as a national capac-*
16 *ity project under paragraph (1) shall remain in effect for*
17 *5 years. The Secretary may extend the 5-year period for*
18 *up to 2 additional years upon request if the Secretary finds*
19 *that substantial progress is being made toward completion*
20 *of the project.*

1 “§ 47703. Expedited coordinated environmental re-
2 view process; project coordinators and en-
3 vironment impact teams.

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

7 “(1) provides for better coordination among the
8 Federal, regional, State, and local agencies concerned
9 with the preparation of environmental impact state-
10 ments or environmental assessments under the Na-
11 tional Environmental Policy Act of 1969 (42 U.S.C.
12 4321 et seq.);

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

19 “(b) HIGH PRIORITY FOR AIRPORT ENVIRONMENTAL
20 REVIEWS.—Each department and agency of the United
21 States Government with jurisdiction over environmental re-
22 views shall accord any such review involving a national
23 capacity project the highest possible priority and conduct
24 the review expeditiously. If the Secretary finds that any
25 such department or agency is not complying with the re-
26 quirements of this subsection, the Secretary shall notify the

1 Senate Committee on Commerce, Science, and Transpor-
2 tation, and to the House of Representatives Committee on
3 Transportation and Infrastructure immediately.

4 “(c) PROJECT COORDINATORS; EIS TEAMS.—

5 “(1) DESIGNATION.—For each project designated
6 by the Secretary as a national capacity project under
7 subsection (a) for which an environmental impact
8 statement or environmental assessment must be filed,
9 the Secretary shall—

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

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

14 “(2) FUNCTION.—The project coordinator and
15 the environmental impact team shall—

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

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

22 “(C) to the extent possible, eliminate dupli-
23 cate Federal, State, and local environmental re-
24 view procedures; and

1 “(D) provide direction for compliance with
2 all applicable Federal, State, and local environ-
3 mental requirements for the project.

4 **“§ 47704. Compatible land use initiative for national**
5 **capacity projects**

6 “(a) *IN GENERAL.*—The Secretary of Transportation
7 may make grants under chapter 471 to States and units
8 of local government for land use compatibility plans di-
9 rectly related to national capacity projects for the purposes
10 of making the use of land areas around the airport compat-
11 ible with aircraft operations if the land use plan or project
12 meets the requirements of this section.

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

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

22 “(2) does not duplicate, and is not inconsistent
23 with, an airport noise compatibility program pre-
24 pared by an airport owner or operator under chapter

1 475 or with other planning carried out by the air-
2 port.

3 “(3) is subject to an agreement between the pub-
4 lic agency sponsor and the airport owner or operator
5 that the development of the land use compatibility
6 plan will be done cooperatively;

7 “(4) is consistent with the airport operation and
8 planning, including the use of any noise exposure
9 contours on which the land use compatibility plan-
10 ning or project is based; and

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

13 “(c) *ASSURANCES FROM SPONSORS.*— The Secretary
14 may require the airport sponsor, public agency, or other
15 entity to which a grant may be awarded under this section
16 to provide such additional assurances, progress reports, and
17 other information as the Secretary determines to be nec-
18 essary to carry out this section.

19 **“§47705. *Air traffic procedures at national capacity***
20 ***projects***

21 “(a) *IN GENERAL.*—The Secretary of Transportation
22 may consider prescribing flight procedures to avoid or min-
23 imize potentially significant adverse noise impacts of the
24 project during the environmental planning process for a na-
25 tional capacity project that involves the construction of new

1 runways or the reconfiguration of existing runways. If the
2 Secretary determines that noise mitigation flight procedures
3 are consistent with safe and efficient use of the navigable
4 airspace, then, at the request of the airport sponsor, the Ad-
5 ministrator may, in a manner consistent with applicable
6 Federal law, commit to prescribing such procedures in any
7 record of decision approving the project.

8 “(b) *MODIFICATION*.—Notwithstanding any commit-
9 ment by the Secretary under subsection (a), the Secretary
10 may initiate changes to such procedures if necessary to
11 maintain safety and efficiency in light of new information
12 or changed circumstances.

13 **“§47706. Pilot program for environmental review at
14 national capacity projects**

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

18 “(1) to hire additional fulltime-equivalent envi-
19 ronmental specialists and attorneys, or

20 “(2) to obtain the services of such specialists and
21 attorneys from outside the United States Government,
22 to assist in the provision of an appropriate nation-
23 wide level of staffing for planning and environmental
24 review of runway development projects for national

1 *capacity projects at the Federal Aviation Administra-*
2 *tion.*

3 “*(b) ELIGIBLE PARTICIPANTS.*—*Participation in the*
4 *pilot program shall be available, on a voluntary basis, to*
5 *airports with an annual passenger enplanement of not less*
6 *than 3 million passengers. The Secretary shall specify the*
7 *minimum contribution necessary to qualify for participa-*
8 *tion in the pilot program, which shall be not less than the*
9 *amount necessary to compensate the Department of Trans-*
10 *portation for the expense of a fulltime equivalent environ-*
11 *mental specialist and attorney qualified at the GS-14*
12 *equivalent level.*

13 “*(c) RETENTION OF REVENUES.*—*The salaries and ex-*
14 *penses account of the Federal Aviation Administration shall*
15 *retain as an offsetting collection such sums as may be nec-*
16 *essary from such proceeds for the costs of developing and*
17 *implementing the program required by subsection (a). Such*
18 *offsetting collections shall be available for obligation subject*
19 *to the terms and conditions of the receiving appropriations*
20 *account, and shall be deposited in such accounts on a quar-*
21 *terly basis. Such offsetting collections are authorized to re-*
22 *main available until expended for such purpose.*

23 **“§ 47707. Definitions**

24 “*In this chapter:*

1 “(1) NATIONAL CAPACITY PROJECT.—The term
2 ‘national capacity project’ means a project designated
3 by the Secretary under section 44702.

4 “(2) OTHER TERMS.—The definitions in section
5 47102 apply to any terms used in this chapter that
6 are defined in that section.”.

7 (b) ADDITIONAL STAFF AUTHORIZED.—The Secretary
8 of Transportation is authorized to hire additional environ-
9 mental specialists and attorneys needed to process environ-
10 mental impact statements in connection with airport con-
11 struction projects and to serve as project coordinators and
12 environmental impact team members under section 47703
13 of title 49, United States Code.

14 (c) CLERICAL AMENDMENT.—The analysis for subtitle
15 VII of title 49, United States Code, is amended by inserting
16 after the item relating to section 475 the following:

“477. National capacity projects 47701”.

17 **SEC. 203. INCREASE IN APPORTIONMENT FOR, AND FLEXI-**
18 **BILITY OF, NOISE COMPATIBILITY PLANNING**
19 **PROGRAMS.**

20 *Section 47117(e)(1)(A) of title 49, United States Code,*
21 *is amended—*

1 *patibility programs under section 47504(c) of this*
2 *title, and for noise mitigation projects approved in an*
3 *environmental record of decision for an airport devel-*
4 *opment project designated as a national capacity*
5 *project under section 47702.”; and*

6 *(2) by striking “or not such 34 percent require-*
7 *ment” in the second sentence and inserting “the fund-*
8 *ing level required by the preceding sentence”.*

9 **SEC. 204. SECRETARY OF TRANSPORTATION TO IDENTIFY**

10 **AIRPORT CONGESTION-RELIEF PROJECTS**
11 **AND FORECAST AIRPORT OPERATIONS ANNU-**
12 **ALLY.**

13 *(a) IDENTIFICATION OF PROJECTS.—*

14 *(1) IN GENERAL.—Within 90 days after the date*
15 *of enactment of this Act, the Secretary of Transpor-*
16 *tation shall provide—*

17 *(A) a list of planned air traffic and air-*
18 *port-capacity projects at congested Airport Ca-*
19 *pacity Benchmark airports the completion of*
20 *which will substantially relieve congestion at*
21 *those airports; and*

22 *(B) a list of options for expanding capacity*
23 *at the 8 airports on the list at which the most*
24 *severe delays are occurring, to the Senate Com-*
25 *mittee on Commerce, Science, and Transpor-*

1 *tation, and to the House of Representatives Com-*
2 *mittee on Transportation and Infrastructure.*
3 *The Secretary shall provide updated lists to those*
4 *Committees 2 years after the date of enactment*
5 *of this Act.*

6 *(2) DELISTING OF PROJECTS.—The Secretary*
7 *shall remove a project from the list provided to the*
8 *Committees under paragraph (1) upon the request, in*
9 *writing, of an airport operator if the operator states*
10 *in the request that construction of the project will not*
11 *be completed within 10 years from the date of the re-*
12 *quest.*

13 **SEC. 205. QUARTERLY STATUS REPORTS.**

14 *Beginning with the second calendar quarter ending*
15 *after the date of enactment of this Act, the Secretary of*
16 *Transportation shall provide quarterly status reports to the*
17 *Senate Committee on Commerce, Science, and Transpor-*
18 *tation and the House of Representatives Committee on*
19 *Transportation and Infrastructure on the status of con-*
20 *struction of each major runway project undertaken at the*
21 *largest 40 commercial airports in terms of annual*
22 *enplanements (as defined in section 101(2) of this Act).*

Calendar No. 421

107TH CONGRESS
2D SESSION

S. 633

[Report No. 107-162]

A BILL

To provide for the review and management of
airport congestion, and for other purposes.

JUNE 13, 2002

Reported with an amendment