

AIRPORT STREAMLINING APPROVAL PROCESS ACT
OF 2002

JUNE 25, 2002.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. YOUNG of Alaska, from the Committee on Transportation and
Infrastructure, submitted the following

R E P O R T

[To accompany H.R. 4481]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom
was referred the bill (H.R. 4481) to amend title 49, United States
Code, relating to airport project streamlining, and for other pur-
poses, having considered the same, report favorably thereon with
an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Airport Streamlining Approval Process Act of 2002”.

SEC. 2. FINDINGS.

Congress finds that—

- (1) airports play a major role in interstate and foreign commerce;
- (2) congestion and delays at our Nation’s major airports have a significant negative impact on our Nation’s economy;
- (3) airport capacity enhancement projects at congested airports are a national priority and should be constructed on an expedited basis;
- (4) airport capacity enhancement projects must include an environmental review process that provides local citizenry an opportunity for consideration of and appropriate action to address environmental concerns; and
- (5) the Federal Aviation Administration, airport authorities, communities, and other Federal, State, and local government agencies must work together to develop a plan, set and honor milestones and deadlines, and work to protect the environment while sustaining the economic vitality that will result from the continued growth of aviation.

SEC. 3. PROMOTION OF NEW RUNWAYS.

Section 40104 of title 49, United States Code, is amended by adding at the end
the following:

“(c) AIRPORT CAPACITY ENHANCEMENT PROJECTS AT CONGESTED AIRPORTS.—In
carrying out subsection (a), the Administrator shall take action to encourage the

construction of airport capacity enhancement projects at congested airports as those terms are defined in section 47179.”.

SEC. 4. AIRPORT PROJECT STREAMLINING.

(a) IN GENERAL.—Chapter 471 of title 49, United States Code, is amended by inserting after section 47153 the following:

“SUBCHAPTER III—AIRPORT PROJECT STREAMLINING

“§ 47171. DOT as lead agency

“(a) AIRPORT PROJECT REVIEW PROCESS.—The Secretary of Transportation shall develop and implement a coordinated review process for airport capacity enhancement projects at congested airports.

“(b) COORDINATED REVIEWS.—The coordinated review process under this section shall provide that all environmental reviews, analyses, opinions, permits, licenses, and approvals that must be issued or made by a Federal agency or airport sponsor for an airport capacity enhancement project at a congested airport will be conducted concurrently, to the maximum extent practicable, and completed within a time period established by the Secretary, in cooperation with the agencies identified under subsection (c) with respect to the project.

“(c) IDENTIFICATION OF JURISDICTIONAL AGENCIES.—With respect to each airport capacity enhancement project at a congested airport, the Secretary shall identify, as soon as practicable, all Federal and State agencies that may have jurisdiction over environmental-related matters that may be affected by the project or may be required by law to conduct an environmental-related review or analysis of the project or determine whether to issue an environmental-related permit, license, or approval for the project.

“(d) STATE AUTHORITY.—If a coordinated review process is being implemented under this section by the Secretary with respect to a project at an airport within the boundaries of a State, the State, consistent with State law, may choose to participate in such process and provide that all State agencies that have jurisdiction over environmental-related matters that may be affected by the project or may be required by law to conduct an environmental-related review or analysis of the project or determine whether to issue an environmental-related permit, license, or approval for the project, be subject to the process.

“(e) MEMORANDUM OF UNDERSTANDING.—The coordinated review process developed under this section may be incorporated into a memorandum of understanding for a project between the Secretary and the heads of other Federal and State agencies identified under subsection (c) with respect to the project and the airport sponsor.

“(f) EFFECT OF FAILURE TO MEET DEADLINE.—

“(1) NOTIFICATION OF CONGRESS AND CEQ.—If the Secretary determines that a Federal agency, State agency, or airport sponsor that is participating in a coordinated review process under this section with respect to a project has not met a deadline established under subsection (b) for the project, the Secretary shall notify, within 30 days of the date of such determination, the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, the Council on Environmental Quality, and the agency or sponsor involved about the failure to meet the deadline.

“(2) AGENCY REPORT.—Not later than 30 days after date of receipt of a notice under paragraph (1), the agency or sponsor involved shall submit a report to the Secretary, the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Council on Environmental Quality explaining why the agency or sponsor did not meet the deadline and what actions it intends to take to complete or issue the required review, analysis, opinion, license, or approval.

“(g) PURPOSE AND NEED.—For any environmental review, analysis, opinion, permit, license, or approval that must be issued or made by a Federal or State agency that is participating in a coordinated review process under this section with respect to an airport capacity enhancement project at a congested airport and that requires an analysis of purpose and need for the project, the agency, notwithstanding any other provision of law, shall be bound by the project purpose and need as defined by the Secretary.

“(h) ALTERNATIVES ANALYSIS.—The Secretary shall determine the reasonable alternatives to an airport capacity enhancement project at a congested airport. Any other Federal or State agency that is participating in a coordinated review process under this section with respect to the project shall consider only those alternatives to the project that the Secretary has determined are reasonable.

“(i) SOLICITATION AND CONSIDERATION OF COMMENTS.—In applying subsections (g) and (h), the Secretary shall solicit and consider comments from interested persons and governmental entities.

“§ 47172. Categorical exclusions

“Not later than 120 days after the date of enactment of this section, the Secretary of Transportation shall develop and publish a list of categorical exclusions from the requirement that an environmental assessment or an environmental impact statement be prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for projects at airports.

“§ 47173. Access restrictions to ease construction

“At the request of an airport sponsor for a congested airport, the Secretary of Transportation may approve a restriction on use of a runway to be constructed at the airport to minimize potentially significant adverse noise impacts from the runway only if the Secretary determines that imposition of the restriction—

“(1) is necessary to mitigate significant noise impacts and expedite construction of the runway;

“(2) is the most appropriate and a cost-effective measure to mitigate the environmental impact of the runway, taking into consideration any environmental tradeoffs associated with the restriction; and

“(3) would not adversely affect service to small communities, adversely affect safety or efficiency of the national airspace system, unjustly discriminate against any class of user of the airport, or impose an undue burden on interstate or foreign commerce.

“§ 47174. Airport revenue to pay for mitigation

“(a) IN GENERAL.—Notwithstanding section 47107(b), section 47133, or any other provision of this title, the Secretary of Transportation may allow an airport sponsor carrying out an airport capacity enhancement project at a congested airport to make payments, out of revenues generated at the airport (including local taxes on aviation fuel), for measures to mitigate the environmental impacts of the project if the Secretary finds that—

“(1) the mitigation measures are included as part of, or are consistent with, the preferred alternative for the project in the documentation prepared pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

“(2) the use of such revenues will provide a significant incentive for, or remove an impediment to, approval of the project by a State or local government; and

“(3) the cost of the mitigation measures is reasonable in relation to the mitigation that will be achieved.

“(b) MITIGATION OF AIRCRAFT NOISE.—Mitigation measures described in subsection (a) may include the insulation of residential buildings and buildings used primarily for educational or medical purposes to mitigate the effects of aircraft noise and the improvement of such buildings as required for the insulation of the buildings under local building codes.

“§ 47175. Airport funding of FAA staff

“(a) ACCEPTANCE OF SPONSOR-PROVIDED FUNDS.—Notwithstanding any other provision of law, the Administrator of the Federal Aviation Administration may accept funds from an airport sponsor, including funds provided to the sponsor under section 47114(c), to hire additional staff or obtain the services of consultants in order to facilitate the timely processing, review, and completion of environmental activities associated with an airport development project.

“(b) ADMINISTRATIVE PROVISION.—Instead of payment from an airport sponsor from funds apportioned to the sponsor under section 47114, the Administrator, with agreement of the sponsor, may transfer funds that would otherwise be apportioned to the sponsor under section 47114 to the account used by the Administrator for activities described in subsection (a).

“(c) RECEIPTS CREDITED AS OFFSETTING COLLECTIONS.—Notwithstanding section 3302 of title 31, any funds accepted under this section, except funds transferred pursuant to subsection (b)—

“(1) shall be credited as offsetting collections to the account that finances the activities and services for which the funds are accepted;

“(2) shall be available for expenditure only to pay the costs of activities and services for which the funds are accepted; and

“(3) shall remain available until expended.

“(d) MAINTENANCE OF EFFORT.—No funds may be accepted pursuant to subsection (a), or transferred pursuant to subsection (b), in any fiscal year in which the Federal Aviation Administration does not allocate at least the amount it expended in fiscal

year 2002, excluding amounts accepted pursuant to section 337 of the Department of Transportation and Related Agencies Appropriations Act, 2002 (115 Stat. 862), for the activities described in subsection (a).

“§ 47176. Authorization of appropriations

“In addition to the amounts authorized to be appropriated under section 106(k), there is authorized to be appropriated to the Secretary of Transportation, out of the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502), \$2,100,000 for fiscal year 2003 and \$4,200,000 for each fiscal year thereafter to facilitate the timely processing, review, and completion of environmental activities associated with airport capacity enhancement projects at congested airports.

“§ 47177. Judicial review

“(a) FILING AND VENUE.—A person disclosing a substantial interest in an order issued by the Secretary of Transportation or the head of any other Federal agency under this part or a person or agency relying on any determination made under this part may apply for review of the order by filing a petition for review 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 person resides or has its principal place of business. The petition must be filed not later than 60 days after the order is issued. The court may allow the petition to be filed after the 60th day only if there are reasonable grounds for not filing by the 60th day.

“(b) JUDICIAL PROCEDURES.—When a petition is filed under subsection (a) of this section, the clerk of the court immediately shall send a copy of the petition to the Secretary or the head of any other Federal agency involved. The Secretary or the head of such other agency shall file with the court a record of any proceeding in which the order was issued.

“(c) AUTHORITY OF COURT.—When the petition is sent to the Secretary or the head of any other Federal agency involved, the court has exclusive jurisdiction to affirm, amend, modify, or set aside any part of the order and may order the Secretary or the head of such other agency to conduct further proceedings. After reasonable notice to the Secretary or the head of such other agency, the court may grant interim relief by staying the order or taking other appropriate action when good cause for its action exists. Findings of fact by the Secretary or the head of such other agency are conclusive if supported by substantial evidence.

“(d) REQUIREMENT FOR PRIOR OBJECTION.—In reviewing an order of the Secretary or the head of any other Federal agency under this section, the court may consider an objection to the action of the Secretary or the head of such other agency only if the objection was made in the proceeding conducted by the Secretary or the head of such other agency if there was a reasonable ground for not making the objection in the proceeding.

“(e) SUPREME COURT REVIEW.—A decision by a court under this section may be reviewed only by the Supreme Court under section 1254 of title 28.

“(f) ORDER DEFINED.—In this section, the term ‘order’ includes a record of decision or a finding of no significant impact.

“§ 47178. Definitions

“In this subchapter, the following definitions apply:

“(1) AIRPORT SPONSOR.—The term ‘airport sponsor’ has the meaning given the term ‘sponsor’ under section 47102.

“(2) CONGESTED AIRPORT.—The term ‘congested airport’ means an airport that accounted for at least 1 percent of all delayed aircraft operations in the United States in the most recent year for which such data is available and an airport listed in table 1 of the Federal Aviation Administration’s Airport Capacity Benchmark Report 2001.

“(3) AIRPORT CAPACITY ENHANCEMENT PROJECT.—The term ‘airport capacity enhancement project’ means—

“(A) a project for construction or extension of a runway, including any land acquisition, taxiway, or safety area associated with the runway or runway extension; and

“(B) such other airport development projects as the Secretary may designate as facilitating a reduction in air traffic congestion and delays.”.

(b) CONFORMING AMENDMENT.—The analysis for chapter 471 of such title is amended by adding at the end the following:

“SUBCHAPTER III—AIRPORT PROJECT STREAMLINING

^{“47171.} DOT as lead agency.

^{“47172.} Categorical exclusions.

^{“47173.} Access restrictions to ease construction.

^{“47174.} Airport revenue to pay for mitigation.

"47175. Airport funding of FAA staff.
 "47176. Authorization of appropriations.
 "47177. Judicial review.
 "47178. Definitions.".

SEC. 5. GOVERNOR'S CERTIFICATE.

Section 47106(c) of title 49, United States Code, is amended—

- (1) in paragraph (1)—
 - (A) by inserting "and" after the semicolon at the end of subparagraph (A)(ii);
 - (B) by striking subparagraph (B); and
 - (C) by redesignating subparagraph (C) as subparagraph (B);
- (2) in paragraph (2)(A) by striking "stage 2" and inserting "stage 3";
- (3) by striking paragraph (4); and
- (4) by redesignating paragraph (5) as paragraph (4).

SEC. 6. CONSTRUCTION OF CERTAIN AIRPORT CAPACITY PROJECTS.

Section 47504(c)(2) of title 49, United States Code, is amended—

- (1) by aligning the margins of subparagraphs (C) and (D) with the margins of subparagraphs (A) and (B);
- (2) by striking "and" at the end of subparagraph (C);
- (3) by striking the period at the end of subparagraph (D) and inserting ";" and"; and
- (4) by adding at the end the following:
 - "(E) to an airport operator of a congested airport (as defined in section 47178) and a unit of local government referred to in paragraph (1)(A) or (1)(B) of this subsection to carry out a project to mitigate noise in the area surrounding the airport if the project is included as a commitment in a record of decision of the Federal Aviation Administration for an airport capacity enhancement project (as defined in section 47178) even if that airport has not met the requirements of part 150 of title 14, Code of Federal Regulations.".

SEC. 7. LIMITATIONS.

Nothing in this Act, including any amendment made by this Act, shall preempt or interfere with—

- (1) any practice of seeking public comment; and
- (2) any power, jurisdiction, or authority of a State agency or an airport sponsor has with respect to carrying out an airport capacity enhancement project.

PURPOSE

The purpose of this legislation is to reform the approval process for airport runway capacity projects at our Nation's most congested airports.

BACKGROUND AND NEED

Over the last 20 years, air travel in the United States has grown faster than any other mode of transportation. Unfortunately, airport runway capacity has not kept pace with the growth. Last year, FAA released the Airport Capacity Benchmarks Report 2001, which indicates that many of our Nation's busiest airports are at or above capacity for at least some portion of the day.

Insufficient airport runway capacity has led to chronic and worsening congestion. In the summer of 2001, one out of every four commercial flights experienced a significant delay or a cancellation. In recent weeks, the demand for airline travel has begun to rise again. Passenger traffic is returning and will soon reach pre-September 11th levels. It is not a question of if, but rather when, gridlock will return to our busiest airports.

Even with the apparent national need for additional runway capacity, airports have had difficulty building new runways. In the last decade, only six of our Nation's largest airports managed to complete new runway projects.

The current runway planning and approval process routinely takes ten years and can take much longer. To build a runway, an airport must coordinate with dozens of Federal, state and local agencies, including the Federal Aviation Administration, the Environmental Protection Agency, the Fish and Wildlife Service, the Park Service, the Army Corps of Engineers, the Advisory Council on Historic Preservation, state historical preservation offices and state air and water pollution agencies. Airports must also comply with over 40 Federal laws, often with conflicting and confusing mandates.

According to FAA data, the average environmental impact statement (EIS) takes three and one half years to complete. There are several additional Federal environmental planning and permitting requirements outside of the EIS process that can add significant delays. For example, FAA completed the EIS for Seattle's third runway in 1997 in less than three years, yet construction has been delayed for the last five years due to the Clean Water Act permitting requirements. Legal challenges to environmental documents can also add significant delays to the process.

H.R. 4481, the Airport Streamlining Approval Process Act of 2002, is intended to cut through red tape and eliminate duplication without diminishing existing environmental laws or limiting local input or control over these critical projects. It will ensure that once a community reaches consensus on a critical capacity project, the review process will not unnecessarily delay construction. It designates the Department of Transportation as the lead agency for the project review process, and it directs the Secretary of Transportation to develop a coordinated review process for major airport capacity projects that will ensure that all environmental reviews by government agencies will be conducted at the same time, whenever possible.

SUMMARY

Section 1.—Short title

Provides that the Act may be cited as the "Airport Streamlining Approval Process Act of 2002".

Section 2.—Findings

Makes a number of findings regarding our Nation's major airports and the environmental review process for airport capacity projects at congested airports.

Section 3.—Promotion of new runways

Amends section 40104 of Title 49, United States Code, by adding a new subsection, which provides that the Administrator shall take action to encourage the construction of airport capacity enhancement projects at congested airports. This is designed to encourage the FAA to take a more proactive approach in encouraging the construction of new runways when it determines that it would be in the national interest.

Section 4.—Airport project streamlining

Amends Chapter 471 of Title 49, United States Code, by adding after section 47153 a new “Subchapter III—Airport Project Streamlining” with the following new sections:

Section 47171, “DOT as lead agency,” subsection (a) requires the Secretary to develop and implement an airport project review process for airport capacity enhancement projects at congested airports.

Subsection (b) provides for a coordinated review process for all environmental reviews, analyses, opinions, permits, licenses, and approvals to be conducted concurrently and completed within a time period established by the Secretary in cooperation with the agencies involved.

Subsection (c) requires that for each airport capacity enhancement project at a congested airport, the Secretary shall identify all Federal and state agencies that may have jurisdiction over environment-related matters, may be required by law to conduct an environment review, or may have jurisdiction to determine whether to issue an environment-related permit, license, or approval for the project. The Committee recommends that this section be implemented in a manner consistent with Council on Environmental Quality regulations and policy guidance.

Subsection (d) allows a State and its associated agencies, consistent with State law, to choose to participate in the coordinated review process for a project at an airport within that State.

Subsection (e) allows the coordinated review process for a project to be incorporated into a Memorandum of Understanding between the Secretary and the heads of other Federal and State agencies identified in Subsection (c), and the airport involved.

Subsection (f) sets forth the notification and reporting requirements should the Secretary determine that a Federal agency, state agency, or airport sponsor participating in the coordinated review process has not met a deadline established under subsection (b).

Subsection (g) provides that for any environmental review process or approval issued or made by a Federal or state agency participating in a coordinated review process requiring an analysis of the purpose and need for a project, the agency is bound by the project’s purpose and need as defined by the Secretary.

Subsection (h) provides that the Secretary shall determine the reasonable alternatives to an airport capacity enhancement project at a congested airport and any other Federal or state agency participating in a coordinated review process shall consider only those alternatives to the project that the Secretary has determined are reasonable.

The Committee recognizes that the Department of Transportation and the Federal Aviation Administration have significant expertise and experience on transportation-related matters. Therefore, the Committee believes that in conducting environmental reviews within the jurisdiction of the DOT, the Secretary should play a lead role in determining which analytical methods are reasonable for use in determining the transportation impacts and benefits of project alternatives, particularly in the area of noise impacts. Other agencies have expertise in determining the environmental impacts of transportation projects, and the Secretary should rely on the expertise of these agencies in analyzing these impacts. The Committee believes that, to the maximum extent possible, all Federal

and state agencies participating in the coordinated review process should use a common set of data for their analyses in carrying out their responsibilities to conduct environmental reviews under Federal law.

Subsection (i) states that in applying subsections (g) and (h), the Secretary shall solicit and consider comments from interested persons and governmental entities.

Section 47172, “Categorical exclusions,” states that not later than 120 days after the date of enactment of this section, the Secretary shall develop and publish a list of categorical exclusions from the requirement that an environmental assessment or an environment impact statement be prepared for projects at airports. The Committee notes that the FAA has a process, consistent with the National Environmental Policy Act, whereby it excludes certain types of projects from the environmental review process.

The Committee has been made aware of an issue regarding the environmental review of air carrier operations specifications. Operations specifications govern the class and size of aircraft to be operated by an air carrier at specific airports to ensure that those specific aircraft can be operated safely at those airports, but do not control the frequency or timing of operations. FAA environmental procedures allow for operations specifications to be categorically excluded from NEPA review, unless the FAA determines that approval may significantly change the character of the operational environment of an airport. In that case, FAA will conduct the necessary environmental review of the proposed operations specifications. However, the Committee has been informed that the data and analysis required to determine whether the approval or amendment of an operations specification should be categorically excluded has not been consistently applied throughout the FAA offices responsible for conducting such reviews, which has added to the cost and time of processing operations specifications. The Committee strongly urges the FAA to issue guidance to ensure consistent and timely review of all applications for operations specifications approvals/amendments.

In addition, the Committee is concerned that the environmental review requirements place an unfair burden on new entrants to a market. The Committee will revisit this issue in the reauthorization process and assess whether further legislative action is needed to address the problems identified.

Section 47173, “Access restrictions to ease construction,” provides that at the request of an airport sponsor for a congested airport, the Secretary may approve a restriction on use of a runway to be constructed at the airport to minimize potentially significant adverse noise impacts from the runway only if the Secretary determines that the imposition of the restriction is (1) necessary to mitigate significant noise impacts and expedite construction of the runway; (2) the most appropriate and cost-effective measure to mitigate those impacts, taking into consideration any environmental tradeoffs; and (3) would not adversely affect service to small communities, adversely affect safety or efficiency of the national airspace system, unjustly discriminate against any class of user of the airport, or impose an undue burden on interstate or foreign commerce.

Section 47174, “Airport revenue to pay for mitigation,” subsection (a) states, that the Secretary may allow an airport sponsor carrying out an airport capacity enhancement project at a congested airport to make payments out of revenues generated at the airport for measures to mitigate the environmental impacts of the project if the Secretary finds that (1) the mitigation measures are included as part of, or are consistent with, the preferred alternative for the project in the documentation prepared for NEPA; (2) the use of such revenues will provide a significant incentive for, or remove an impediment to, approval of the project by a State or local government; and (3) the cost of the mitigation measures is reasonable in relation to the mitigation that will be achieved.

Subsection (b) describes what the mitigation measures described in Subsection (a) may include.

Section 47175, “Airport funding of FAA staff,” subsection (a) provides that the Administrator of the FAA may accept funds from an airport sponsor to hire additional staff or obtain the services of consultants to facilitate the timely processing, review, and completion of environmental documents associated with an airport development project.

Subsection (b) allows the Administrator, with agreement of the airport sponsor, to transfer funds that would otherwise be apportioned to the sponsor under section 47114 to the account used by the Administrator for activities described in subsection (a).

Section 47176, “Authorization of appropriations,” authorizes funds to be appropriated to the Secretary out of the Airport and Airway Trust Fund appropriations for fiscal year 2003 and each fiscal year thereafter.

Section 47177, “Judicial review,” subsection (a) provides that a person disclosing a substantial interest in an order issued by the Secretary or the head of any other Federal agency under this part or a person or agency relying on any determination made under this part may apply for review of the order by filing a petition for review 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 person resides or has its principal place of business. Requires that the petition must be filed not later than 60 days after the order is issued and that the court may allow a late filing if there are reasonable grounds.

Subsection (b) sets forth the requirements for the court to immediately send a copy of the petition to the Secretary or the head of any other Federal agency involved, and for the Secretary or the head of such other Federal agency to file a record of any proceeding in which the order was issued with the court.

Subsection (c) provides for the exclusive jurisdiction of the court and permits the court to require further proceedings and to grant interim relief when good cause exists. The findings of fact by the Secretary or the head of such other agency are conclusive if supported by substantial evidence.

Subsection (d) states that in reviewing an order the court may consider an objection to the action only if the objection was made in the proceeding conducted by the Secretary or the head of such other agency or if there was a reasonable ground for not making the objection in the proceeding.

Subsection (e) states that only the Supreme Court may review a decision by a court under this section.

Subsection (f) provides that the term “order” includes a record of decision or a finding of no significant impact.

Section 47178, “Definitions,” provides a list of definitions of terms used in the subchapter.

Section 5.—Governor’s certificate

Repeals the requirement in section 47106(c)(B) that the Governor of the state in which the project is located certifies in writing to the Secretary that there is reasonable assurance that the project will be in compliance with applicable air and water quality standards.

Section 6.—Construction of certain airport capacity projects

Authorizes the issuance of a grant to an airport operator of a congested airport and a unit of local government to carry out a project to mitigate noise in the area surrounding the airport if the project is included as a commitment in a record of decision of the FAA for an airport capacity enhancement project.

Section 7.—Limitations

States that nothing in the Act shall preempt or interfere with any practice of seeking public comment and any power, jurisdiction, or authority that a state agency or an airport sponsor has with respect to carrying out an airport capacity enhancement project. Of course, this does not overrule any specific directive in the reported bill.

LEGISLATIVE HISTORY AND COMMITTEE CONSIDERATION

On May 24, 2001 the Aviation Subcommittee held a hearing on Airport Runway Construction Challenges.

On April 24, 2002, the Full Committee met in open session and ordered H.R. 4481 reported with amendments, by voice vote with a quorum present. There were no recorded votes taken during Committee consideration of H.R. 4481.

ROLLCALL VOTES

Clause 3(b) of rule XIII of the House of Representatives requires each committee report to include the total number of votes cast for and against on each rollcall 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 ordering H.R. 4481 reported. A motion by Mr. Mica to order H.R. 4481 favorably reported to the House with an amendment in the nature of a substitute was agreed to by voice vote, a quorum being present.

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.

COST OF LEGISLATION

Clause 3(d)(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.

COMPLIANCE WITH HOUSE RULE XIII

1. With respect to the requirement of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, and 308(a) of the Congressional Budget Act of 1974, the Committee references the report of the Congressional Budget Office included below.

2. With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.R. 4481.

3. 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 following cost estimate for H.R. 4481 from the Director of the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 17, 2002.

Hon. DON YOUNG,
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. 4481, the Airport Streamlining Approval Process Act of 2002.

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

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

H.R. 4481—Airport Streamlining Approval Process Act of 2002

Summary: H.R. 4481 would authorize the appropriation of \$2.1 million 2003 and \$4.2 million in each subsequent year to facilitate environmental reviews for projects that would enhance the capacity to handle more flights at congested airports. In addition, the bill would require the Secretary of Transportation to coordinate federal agencies' and airport sponsors' efforts to review the environmental impact of such projects. H.R. 4481 would authorize the Secretary to allow airport sponsors to use local revenues generated at the airports to support such projects. Finally, the bill would authorize the Federal Aviation Administrative (FAA) to accept funds from airport

sponsors to hire additional staff to facilitate the timely review or environmental reviews for capacity-enhancing projects.

Based on historical spending patterns of the FAA, CBO estimates that implementing H.R. 4481 would cost \$18 million over the 2003–2007 period, assuming appropriation of the authorized funds. By allowing the FAA to accept funds from airport sponsors, H.R. 4481 would affect direct spending. Therefore, pay-as-you-go procedures would apply, but CBO estimates that any net effect on direct spending would be negligible.

H.R. 4481 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 4481 is shown in the following table. The costs of this legislation fall within budget function 400 (transportation).

	By fiscal year, in millions of dollars—					
	2002	2003	2004	2005	2006	2007
SPENDING SUBJECT TO APPROPRIATION						
Spending for Environmental Reviews of Airport						
Projects Under Current Law:						
Estimated Authorization Level ¹	22	23	24	25	26	27
Estimated Outlays	22	23	24	25	26	27
Proposed Changes:						
Authorization Level	0	2	4	4	4	4
Estimated Outlays	0	2	4	4	4	4
Spending Under H.R. 4481:						
Estimated Authorization Level	22	25	28	29	30	31
Estimated Outlays	22	25	28	29	30	31

¹ The 2002 level is the amount appropriated for that year for environmental reviews. The estimated authorization levels for the 2003–2007 period reflect the 2002 level adjusted for anticipated inflation in the CBO baseline for this activity.

Basis of estimate: H.R. 4481 would authorize the appropriation of \$19 million to the FAA to facilitate environmental reviews for projects that would enhance the capacity of congested airports. Based on information from the FAA, CBO expects that nearly all of this amount would be used to hire additional staff to perform environmental reviews of such projects. Based on historical spending patterns for FAA expenses, CBO estimates that implementing H.R. 4481 would result in outlays of about \$18 million over the 2003–2007 period, subject to appropriation of the authorized amounts.

H.R. 4481 would also allow the FAA to accept funds from airport sponsors to hire additional staff. Because such funds could be collected and spent without appropriation, H.R. 4481 would affect direct spending. Based on information from the FAA, CBO expects that only the largest airports would be willing to pay the FAA to facilitate the environmental review of their projects, and that any additional net direct spending would be insignificant each year.

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. By allowing the FAA to accept funds from airport sponsors in order to hire additional staff, H.R. 4481 would affect direct spending, but CBO estimates that any such effect would be negligible each year.

Intergovernmental and private-sector impact: H.R. 4481 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal costs: Mark Hadley; impact on state, local, and tribal governments: Susan Sieg Tompkins; impact on the private sector: Cecil McPherson.

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

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause (3)(d)(1) of rule XIII of the Rules of the House of Representatives, committee reports on a bill or joint resolution of a public character shall include a statement citing the specific powers granted to the Congress in the Constitution to enact the measure. The Committee on Transportation and Infrastructure finds that Congress has the authority to enact this measure pursuant to its powers granted under article I, section 8 of the Constitution.

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 1994 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 states that H.R. 4481 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 this legislation.

APPLICABILITY TO THE 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).

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 italic, existing law in which no change is proposed is shown in roman):

TITLE 49, UNITED STATES CODE

* * * * *

SUBTITLE VII—AVIATION PROGRAMS

* * * * *

PART A—AIR COMMERCE AND SAFETY

SUBPART I—GENERAL

CHAPTER 401—GENERAL PROVISIONS

* * * * *

§ 40104. Promotion of civil aeronautics and safety of air commerce

(a) * * *

* * * * *

(c) *AIRPORT CAPACITY ENHANCEMENT PROJECTS AT CONGESTED AIRPORTS.*—In carrying out subsection (a), the Administrator shall take action to encourage the construction of airport capacity enhancement projects at congested airports as those terms are defined in section 47179.

* * * * *

PART B—AIRPORT DEVELOPMENT AND NOISE

CHAPTER 471—AIRPORT DEVELOPMENT

SUBCHAPTER I—AIRPORT IMPROVEMENT

Sec.

47101. Policies.

* * * * *

SUBCHAPTER III—AIRPORT PROJECT STREAMLINING

- 47171. *DOT as lead agency.*
- 47172. *Categorical exclusions.*
- 47173. *Access restrictions to ease construction.*
- 47174. *Airport revenue to pay for mitigation.*
- 47175. *Airport funding of FAA staff.*
- 47176. *Authorization of appropriations.*
- 47177. *Judicial review.*
- 47178. *Definitions.*

* * * * *

SUBCHAPTER I—AIRPORT IMPROVEMENT

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

(a) * * *

* * * * *

(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) * * *

(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] stage 3” 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

* * * * *

[(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) of this subsection only after completely reviewing the matter. The review and finding must be a matter of public record.

* * * * *

SUBCHAPTER III—AIRPORT PROJECT STREAMLINING

§ 47171. DOT as lead agency

(a) *AIRPORT PROJECT REVIEW PROCESS.*—The Secretary of Transportation shall develop and implement a coordinated review process for airport capacity enhancement projects at congested airports.

(b) *COORDINATED REVIEWS.*—The coordinated review process under this section shall provide that all environmental reviews, analyses, opinions, permits, licenses, and approvals that must be issued or made by a Federal agency or airport sponsor for an airport capacity enhancement project at a congested airport will be conducted concurrently, to the maximum extent practicable, and completed within a time period established by the Secretary, in co-

operation with the agencies identified under subsection (c) with respect to the project.

(c) *IDENTIFICATION OF JURISDICTIONAL AGENCIES.*—*With respect to each airport capacity enhancement project at a congested airport, the Secretary shall identify, as soon as practicable, all Federal and State agencies that may have jurisdiction over environmental-related matters that may be affected by the project or may be required by law to conduct an environmental-related review or analysis of the project or determine whether to issue an environmental-related permit, license, or approval for the project.*

(d) *STATE AUTHORITY.*—*If a coordinated review process is being implemented under this section by the Secretary with respect to a project at an airport within the boundaries of a State, the State, consistent with State law, may choose to participate in such process and provide that all State agencies that have jurisdiction over environmental-related matters that may be affected by the project or may be required by law to conduct an environmental-related review or analysis of the project or determine whether to issue an environmental-related permit, license, or approval for the project, be subject to the process.*

(e) *MEMORANDUM OF UNDERSTANDING.*—*The coordinated review process developed under this section may be incorporated into a memorandum of understanding for a project between the Secretary and the heads of other Federal and State agencies identified under subsection (c) with respect to the project and the airport sponsor.*

(f) *EFFECT OF FAILURE TO MEET DEADLINE.*—

(1) *NOTIFICATION OF CONGRESS AND CEQ.*—*If the Secretary determines that a Federal agency, State agency, or airport sponsor that is participating in a coordinated review process under this section with respect to a project has not met a deadline established under subsection (b) for the project, the Secretary shall notify, within 30 days of the date of such determination, the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, the Council on Environmental Quality, and the agency or sponsor involved about the failure to meet the deadline.*

(2) *AGENCY REPORT.*—*Not later than 30 days after date of receipt of a notice under paragraph (1), the agency or sponsor involved shall submit a report to the Secretary, the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Council on Environmental Quality explaining why the agency or sponsor did not meet the deadline and what actions it intends to take to complete or issue the required review, analysis, opinion, license, or approval.*

(g) *PURPOSE AND NEED.*—*For any environmental review, analysis, opinion, permit, license, or approval that must be issued or made by a Federal or State agency that is participating in a coordinated review process under this section with respect to an airport capacity enhancement project at a congested airport and that requires an analysis of purpose and need for the project, the agency, notwithstanding any other provision of law, shall be bound by the project purpose and need as defined by the Secretary.*

(h) ALTERNATIVES ANALYSIS.—The Secretary shall determine the reasonable alternatives to an airport capacity enhancement project at a congested airport. Any other Federal or State agency that is participating in a coordinated review process under this section with respect to the project shall consider only those alternatives to the project that the Secretary has determined are reasonable.

(i) SOLICITATION AND CONSIDERATION OF COMMENTS.—In applying subsections (g) and (h), the Secretary shall solicit and consider comments from interested persons and governmental entities.

§ 47172. Categorical exclusions

Not later than 120 days after the date of enactment of this section, the Secretary of Transportation shall develop and publish a list of categorical exclusions from the requirement that an environmental assessment or an environmental impact statement be prepared under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) for projects at airports.

§ 47173. Access restrictions to ease construction

At the request of an airport sponsor for a congested airport, the Secretary of Transportation may approve a restriction on use of a runway to be constructed at the airport to minimize potentially significant adverse noise impacts from the runway only if the Secretary determines that imposition of the restriction—

(1) is necessary to mitigate significant noise impacts and expedite construction of the runway;

(2) is the most appropriate and a cost-effective measure to mitigate the environmental impact of the runway, taking into consideration any environmental tradeoffs associated with the restriction; and

(3) would not adversely affect service to small communities, adversely affect safety or efficiency of the national airspace system, unjustly discriminate against any class of user of the airport, or impose an undue burden on interstate or foreign commerce.

§ 47174. Airport revenue to pay for mitigation

(a) IN GENERAL.—Notwithstanding section 47107(b), section 47133, or any other provision of this title, the Secretary of Transportation may allow an airport sponsor carrying out an airport capacity enhancement project at a congested airport to make payments, out of revenues generated at the airport (including local taxes on aviation fuel), for measures to mitigate the environmental impacts of the project if the Secretary finds that—

(1) the mitigation measures are included as part of, or are consistent with, the preferred alternative for the project in the documentation prepared pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(2) the use of such revenues will provide a significant incentive for, or remove an impediment to, approval of the project by a State or local government; and

(3) the cost of the mitigation measures is reasonable in relation to the mitigation that will be achieved.

(b) MITIGATION OF AIRCRAFT NOISE.—Mitigation measures described in subsection (a) may include the insulation of residential

buildings and buildings used primarily for educational or medical purposes to mitigate the effects of aircraft noise and the improvement of such buildings as required for the insulation of the buildings under local building codes.

§ 47175. Airport funding of FAA staff

(a) *ACCEPTANCE OF SPONSOR-PROVIDED FUNDS.—Notwithstanding any other provision of law, the Administrator of the Federal Aviation Administration may accept funds from an airport sponsor, including funds provided to the sponsor under section 47114(c), to hire additional staff or obtain the services of consultants in order to facilitate the timely processing, review, and completion of environmental activities associated with an airport development project.*

(b) *ADMINISTRATIVE PROVISION.—Instead of payment from an airport sponsor from funds apportioned to the sponsor under section 47114, the Administrator, with agreement of the sponsor, may transfer funds that would otherwise be apportioned to the sponsor under section 47114 to the account used by the Administrator for activities described in subsection (a).*

(c) *RECEIPTS CREDITED AS OFFSETTING COLLECTIONS.—Notwithstanding section 3302 of title 31, any funds accepted under this section, except funds transferred pursuant to subsection (b)—*

- (1) *shall be credited as offsetting collections to the account that finances the activities and services for which the funds are accepted;*
- (2) *shall be available for expenditure only to pay the costs of activities and services for which the funds are accepted; and*
- (3) *shall remain available until expended.*

(d) *MAINTENANCE OF EFFORT.—No funds may be accepted pursuant to subsection (a), or transferred pursuant to subsection (b), in any fiscal year in which the Federal Aviation Administration does not allocate at least the amount it expended in fiscal year 2002, excluding amounts accepted pursuant to section 337 of the Department of Transportation and Related Agencies Appropriations Act, 2002 (115 Stat. 862), for the activities described in subsection (a).*

§ 47176. Authorization of appropriations

In addition to the amounts authorized to be appropriated under section 106(k), there is authorized to be appropriated to the Secretary of Transportation, out of the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502), \$2,100,000 for fiscal year 2003 and \$4,200,000 for each fiscal year thereafter to facilitate the timely processing, review, and completion of environmental activities associated with airport capacity enhancement projects at congested airports.

§ 47177. Judicial review

(a) *FILING AND VENUE.—A person disclosing a substantial interest in an order issued by the Secretary of Transportation or the head of any other Federal agency under this part or a person or agency relying on any determination made under this part may apply for review of the order by filing a petition for review 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*

person resides or has its principal place of business. The petition must be filed not later than 60 days after the order is issued. The court may allow the petition to be filed after the 60th day only if there are reasonable grounds for not filing by the 60th day.

(b) JUDICIAL PROCEDURES.—When a petition is filed under subsection (a) of this section, the clerk of the court immediately shall send a copy of the petition to the Secretary or the head of any other Federal agency involved. The Secretary or the head of such other agency shall file with the court a record of any proceeding in which the order was issued.

(c) AUTHORITY OF COURT.—When the petition is sent to the Secretary or the head of any other Federal agency involved, the court has exclusive jurisdiction to affirm, amend, modify, or set aside any part of the order and may order the Secretary or the head of such other agency to conduct further proceedings. After reasonable notice to the Secretary or the head of such other agency, the court may grant interim relief by staying the order or taking other appropriate action when good cause for its action exists. Findings of fact by the Secretary or the head of such other agency are conclusive if supported by substantial evidence.

(d) REQUIREMENT FOR PRIOR OBJECTION.—In reviewing an order of the Secretary or the head of any other Federal agency under this section, the court may consider an objection to the action of the Secretary or the head of such other agency only if the objection was made in the proceeding conducted by the Secretary or the head of such other agency if there was a reasonable ground for not making the objection in the proceeding.

(e) SUPREME COURT REVIEW.—A decision by a court under this section may be reviewed only by the Supreme Court under section 1254 of title 28.

(f) ORDER DEFINED.—In this section, the term “order” includes a record of decision or a finding of no significant impact.

§47178. Definitions

In this subchapter, the following definitions apply:

(1) AIRPORT SPONSOR.—The term “airport sponsor” has the meaning given the term “sponsor” under section 47102.

(2) CONGESTED AIRPORT.—The term “congested airport” means an airport that accounted for at least 1 percent of all delayed aircraft operations in the United States in the most recent year for which such data is available and an airport listed in table 1 of the Federal Aviation Administration’s Airport Capacity Benchmark Report 2001.

(3) AIRPORT CAPACITY ENHANCEMENT PROJECT.—The term “airport capacity enhancement project” means—

(A) a project for construction or extension of a runway, including any land acquisition, taxiway, or safety area associated with the runway or runway extension; and

(B) such other airport development projects as the Secretary may designate as facilitating a reduction in air traffic congestion and delays.

CHAPTER 475—NOISE

* * * * *

§ 47504. Noise compatibility programs

(a) * * *

* * * * *

(c) GRANTS.—(1) * * *

(2) SOUNDPROOFING AND ACQUISITION OF CERTAIN RESIDENTIAL BUILDINGS AND PROPERTIES.—The Secretary may incur obligations to make grants from amounts made available under section 48103 of this title—

(A) * * *

* * * * *

(C) to an airport operator and unit of local government referred to in paragraph (1)(A) or (1)(B) of this subsection to carry out any part of a program developed before February 18, 1980, or before implementing regulations were prescribed, if the Secretary decides the program is substantially consistent with reducing existing noncompatible uses and preventing the introduction of additional noncompatible uses and the purposes of this chapter will be furthered by promptly carrying out the program; [and]

(D) to an airport operator and unit of local government referred to in paragraph (1)(A) or (1)(B) of this subsection to soundproof a building in the noise impact area surrounding the airport that is used primarily for educational or medical purposes and that the Secretary decides is adversely affected by airport noise[.]; and

(E) to an airport operator of a congested airport (as defined in section 47178) and a unit of local government referred to in paragraph (1)(A) or (1)(B) of this subsection to carry out a project to mitigate noise in the area surrounding the airport if the project is included as a commitment in a record of decision of the Federal Aviation Administration for an airport capacity enhancement project (as defined in section 47178) even if that airport has not met the requirements of part 150 of title 14, Code of Federal Regulations.

* * * * *

