

# Calendar No. 421

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 633

[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 Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “~~Aviation Delay Preven-~~  
5       ~~tion 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 depart-  
23 ure 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 “(c) 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 nec-  
21 essary 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          ~~(c)(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 “over-*  
16       *scheduling” 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 depart-*  
20       *ure 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 en-*  
2 *able air service by a competing air carrier at a*  
3 *large hub airport (as defined in section 41731):*

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

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



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—

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

18 “(ii) the acquisition and installation of  
 19 air traffic control equipment to be used in  
 20 a nonapproach control tower that will assist  
 21 in sustaining or improving the safe and ef-  
 22 ficient movement of air traffic.

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) of  
10 *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**  
17 **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.);*

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

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—*

22                                   (1) *by striking the first sentence and inserting:*  
 23                                   *“At least 35 percent for grants for airport noise com-*  
 24                                   *patibility planning under section 47505(a)(2) for a*  
 25                                   *national capacity project, for carrying out noise com-*

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 *capacity 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**

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**S. 633**

**[Report No. 107-162]**

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**A BILL**

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

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JUNE 13, 2002

Reported with an amendment