

PROVIDING A TEMPORARY WAIVER FROM CERTAIN TRANSPORTATION CONFORMITY REQUIREMENTS AND METROPOLITAN TRANSPORTATION PLANNING REQUIREMENTS UNDER THE CLEAN AIR ACT AND UNDER OTHER LAWS FOR CERTAIN AREAS IN NEW YORK WHERE THE PLANNING OFFICES AND RESOURCES HAVE BEEN DESTROYED BY ACTS OF TERRORISM, AND FOR OTHER PURPOSES

SEPTEMBER 9, 2002.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. TAUZIN, from the Committee on Energy and Commerce, submitted the following

R E P O R T

[To accompany H.R. 3880]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 3880) to provide a temporary waiver from certain transportation conformity requirements and metropolitan transportation planning requirements under the Clean Air Act and under other laws for certain areas in New York where the planning offices and resources have been destroyed by acts of terrorism, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. CLEAN AIR TRANSPORTATION CONFORMITY; TEMPORARY WAIVER FOR NEW YORK AREAS.

(a) TEMPORARY WAIVER.—Notwithstanding any other provision of law, until September 30, 2005, the provisions of section 176(c) of the Clean Air Act, and the regulations promulgated thereunder, shall not apply to transportation projects, programs, and plans (as defined in 40 C.F.R. Part 93, Subpart A) for the counties of New York, Queens, Kings, Bronx, Richmond, Nassau, Suffolk, Westchester, Rockland, Putnam, or the towns of Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick, and Woodbury in Orange County, New York. The preceding sentence shall not apply to the regulations under section 176(c)(4)(B)(i) of such Act relating to Federal and State interagency consultation procedures.

(b) INTERIM PROGRESS REPORT.—Not later than January 1, 2004, the Governor of New York shall submit to the Committees on Energy and Commerce and Transportation and Infrastructure of the House of Representatives, the Committee on Environment and Public Works of the Senate, the Administrator of the Environmental Protection Agency, and the Secretary of Transportation a report regarding the status of the State's progress towards achieving compliance with the provisions of law and regulation subject to the temporary waiver provided by subsection (a). Such report shall explain in detail the steps that the State has taken towards achieving such compliance and identify the necessary steps that remain to be taken by September 30, 2005, in order for the transportation projects, programs, and plans for the counties referred to in subsection (a) to be in compliance with the provisions of section 176(c) of the Clean Air Act, and the regulations promulgated thereunder, by September 30, 2005. The report shall also include a regional emissions analysis generally consistent with the requirements of 40 CFR 93.122, together with the relevant air quality data.

SEC. 2. METROPOLITAN PLANNING REQUIREMENTS; TEMPORARY WAIVER FOR NEW YORK AREAS.

Notwithstanding any other provision of law, until September 30, 2005, the provisions of sections 134(h)(1)(D), 134(i)(3), 134(i)(5), and 134(l)(1) of title 23 of the United States Code and sections 5304(a)(1), 5305(c), and 5305(e)(1) of title 49 of the United States Code and the regulations promulgated thereunder, shall not apply to the New York Metropolitan Transportation Council or to the Metropolitan Planning Organization designated under section 134(b) of title 23 of the United States Code.

SEC. 3. ADDITIONAL REQUIREMENTS.

(a) PROHIBITION ON CAPACITY EXPANSION.—During the period of the temporary transportation conformity waiver for transportation plans, programs, and projects under section 1, no regionally significant capacity expanding highway project shall be added to the Regional Transportation Plan for the counties referred to in section 1 and no such project may be advanced from the out years of the Plan into the TIP, except as provided in subsection (b).

(b) EXCEPTION.—Any regionally significant capacity expanding highway project south of Canal Street and West of Broadway in Manhattan may be added to the Plan referred to in subsection (a) if—

(1) the project is part of a redevelopment plan for lower Manhattan subject to NEPA and the New York State Environmental Quality Act, as applicable; and

(2) any projected increases in transportation related emissions resulting from the project are offset by corresponding reductions within the affected county, with best efforts made to secure reductions from within the immediate area affected by the project's emissions.

PURPOSE AND SUMMARY

The purpose of H.R. 3880 is to provide the State of New York a temporary waiver from certain Clean Air Act (CAA) transportation conformity requirements and related metropolitan planning requirements of the Transportation Equity Act for the 21st Century (TEA-21) until September 30, 2005, so that New York can implement adjustments necessary after the September 11, 2001, terrorist attack on the World Trade Center. In addition, the bill requires that New York file an Interim Progress Report no later than January 1, 2004, detailing the manner in which the State will achieve compliance with the transportation conformity requirements no later than the expiration of the temporary waiver.

BACKGROUND AND NEED FOR LEGISLATION

Section 176(c) of the CAA requires that transportation activities “conform” to State air quality plans before the federal government funds these activities. This conformity determination is made when the state adopts a transportation plan or transportation improvement program (TIP) and is based on a complex computer model of emissions from regional transportation activity known as a “regional emissions analysis.” The CAA requires that the regional emission analysis used for a conformity determination must be less than three years old. New York’s current regional emissions analysis will reach its three year expiration date on October 1, 2002. Accordingly, unless the State submits a conformity determination using an updated regional emissions analysis, New York’s conformity determination will “lapse” on October 1, 2002. After a conformity lapse, only certain exempt transportation projects are eligible to receive federal funding.

New York State officials have concluded that the aftermath of the September 11, 2001 World Trade Center tragedy makes it impossible for New York to meet the October 2002 conformity determination deadline. The Environmental Protection Agency (EPA) and the Department of Transportation (DOT) agree with that assessment. As explained below, New York’s transportation planning offices have suffered a tremendous loss of personnel and resources. Moreover, the regional transportation landscape has been so significantly altered after September 11 that the State cannot simply update its old regional emission analysis to reflect new trends, but must instead build an entirely new computer model, a task that New York officials, EPA, and DOT agree cannot be completed by the current October 2002 deadline.

The headquarters of New York Metropolitan Transportation Council (NYMTC) were located on the 82nd floor of One World Trade Center. NYMTC offices, equipment, and files were destroyed when the tower collapsed. Three staff members are still missing and presumed dead. NYMTC has set up temporary offices in Long Island City, but it will take over a year for NYMTC to be able to function effectively again.

In addition to the destruction of the office and the loss of staff, the terrorist attack changed the economic geography of the New York City region. For example, New York State officials estimate that up to 50 million square feet of office space was destroyed or damaged as a result of the World Trade Center attack, more than

all of the office space in Columbus, Ohio. Consequently, tens of thousands of workers are now commuting to other parts of the region. This movement has significant short-term and long-term impacts on the distribution of jobs in the region. NYMTC estimates that it will take two to three years to understand how these shifts in employment concentrations will affect local and regional travel patterns. Additionally, new federal security procedures are likely to alter the movement of goods via air, water, and land in the region. Until this extraordinary period of uncertainty passes, NYMTC believes that it will be impossible to collect the data and identify the inputs needed to develop an accurate computer model for the regional emissions analysis.

Without temporary relief from the requirement for an updated regional emissions analysis, New York will be in a conformity lapse on October 1, 2002, and, after that date, could receive federal transportation funding only for certain exempt projects. This would have a significant effect on the region, as NYMTC estimates the total value of highway and transit projects that would not proceed during a conformity lapse at \$4.6 billion.

HEARINGS

The Committee on Energy and Commerce has not held hearings on the legislation.

COMMITTEE CONSIDERATION

On July 24, 2002, the Subcommittee on Energy and Air Quality met in open markup session and approved H.R. 3880 for Full Committee consideration, without amendment, by a voice vote, a quorum being present. On Thursday, September 5, 2002, the Committee on Energy and Commerce met in open markup session and favorably ordered reported H.R. 3880, as amended, by a voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken in connection with ordering H.R. 3880 reported. A motion by Mr. Tauzin to order H.R. 3880 reported to the House, as amended, was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

The Committee has not held oversight or legislative hearings on this legislation.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goal of H.R. 3880 is to provide the State of New York with a temporary waiver from certain CAA transportation conformity requirements and related metropolitan planning requirements of TEA-21 so that the State can implement adjustments necessary in response to these unique circumstances.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX
EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 3880 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 6, 2002.

Hon. W.J. "BILLY" TAUZIN,
*Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3880, a bill to provide a temporary waiver from certain transportation conformity requirements and metropolitan transportation planning requirements under the Clean Air Act and under other laws for certain areas in New York where the planning offices and resources have been destroyed by acts of terrorism, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Susanne S. Mehlman (for federal costs), and Susan Tompkins (for the state and local impact).

Sincerely,

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

Enclosure.

H.R. 3880—A bill to provide a temporary waiver from certain transportation conformity requirements and metropolitan transportation planning requirements under the Clean Air Act and under the laws for certain areas in New York where the planning offices and resources have been destroyed by acts of terrorism, and for other purposes

H.R. 3880 would waive certain Clean Air Act provisions that require transportation programs to conform with approved state air quality plans in order to receive federal funding until September 30, 2005, for certain areas in the state of New York. This legislation also would exempt certain areas of New York (until September 30, 2005) from several reporting requirements under the Transportation Equity Act for the 21st Century.

Based on information from the Environmental Protection Agency and the Department of Transportation, CBO estimates that enacting H.R. 3880 would not have a significant effect on the federal budget. Without the waiver from current law that is contained in this legislation, it is possible that New York City would become ineligible to receive certain federal transportation funds. In that event, such funds would be spent on transportation projects in other areas of the state. Because the bill would not affect direct spending or receipts, pay-as-you-go procedures would not apply.

H.R. 3880 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state or local governments. Overall, the bill would benefit both the state of New York and New York City by preserving the flow of federal highway funding. If the reporting requirements under current law were not met, the New York metropolitan region could lose as much as \$1 billion funding for certain highway and transit projects during fiscal years 2003 and 2004.

The CBO staff contacts for this estimate are Susanne S. Mehlman (for federal costs), and Susan Tompkins (for the state and local impact). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

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.

ADVISORY COMMITTEE STATEMENT

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

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

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

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Clean air transportation conformity; temporary waiver for New York areas

Section 1 provides a waiver from CAA section 176(c) transportation conformity requirements until September 30, 2005 for the relevant New York City area. It is the intent of the Committee that the operation of H.R. 3880 and current law will require that New York complete the development and adoption of a revised regional transportation plan and TIP no later than September 30, 2005, that will achieve the budgets for motor vehicle emissions contained

in the applicable implementation plan for the New York metropolitan nonattainment area for 2005 and 2007. The Committee intends that the waiver provided in this section applies only to transportation conformity requirements; the waiver does not apply to the general conformity requirements established by regulation promulgated pursuant to CAA section 176(c). This intent is expressed by the use of the phrase “transportation projects, programs, and plans” that contains terms used and defined in transportation conformity regulation issued by EPA and promulgated at 40 CFR Part 93 Subpart A.

Section 1 also requires that New York continue certain Federal and State interagency consultation procedures and that, not later than January 1, 2004, the Governor of New York submit an interim progress report to the Committees on Energy and Commerce and Transportation and Infrastructure of the House of Representatives, the Committee on Environment and Public Works of the Senate, EPA, and DOT. The report shall explain in detail the steps that the State has taken towards achieving compliance and identify the necessary steps that remain to be taken by September 30, 2005. It is the intent of the Committee that the Interim Progress Report contain information demonstrating the manner in which New York will meet the following milestones:

(a) Not later than April 1, 2003, the collection and analysis of new travel surveys, along with new job, labor force, and household data to describe the revised travel and activity patterns in the New York metropolitan area and support refined validation of the Best Practices transportation model for the region;

(b) Not later than February 1, 2004, the development of revisions to the Best Practices transportation model needed to reliably replicate observed travel patterns in the New York metropolitan area;

(c) Not later than September 1, 2004, preliminary modeling analyses of motor vehicle emissions using the latest travel survey data, the revisions to the Best Practices model, and the latest iteration of EPA’s MOBILE model to demonstrate expected emissions of pollutants subject to the requirements of 40 CFR § 93.118 in 2005, 2007, 2015 and 2025, with applicable models and data available for independent public oversight;

(d) Not later than April 1, 2005, the submission of the proposed regional transportation plan, TIP and emissions analyses to the public for review and comment pursuant to 40 CFR § 93.105; and

(e) Not later than October 1, 2005, the adoption of such additional measures as may be necessary to achieve the levels of motor vehicle emissions required by the emissions budgets contained in the applicable implementation plan no later than the year by which such budget is to be attained, and such additional measures as may be necessary to maintain the latest budget during the years following the last budget year.

Section 2. Metropolitan planning requirements; temporary waiver for New York areas

Section 2 provides New York with a waiver until September 30, 2005 of certain transportation conformity-related metropolitan

planning requirements for the relevant New York City area. The Committee notes that these waivers do not affect environmental review requirements such as those established by the National Environmental Policy Act.

Section 3. Additional requirements

Section 3 provides that, generally, during the period of the transportation conformity waiver established by section 1, New York cannot add regionally significant capacity expanding highway projects to the Regional Transportation Plan for the New York City area, and that no such project may be advanced from the out years of the Plan into the TIP. However, section 3 does not affect regionally significant capacity expanding highway projects taking place in the immediate area of the World Trade Center reconstruction. These projects are subject to specific emissions offset requirements.

It is the understanding of the Committee that New York will undertake other, additional air quality related measures to reduce emissions in the region. For example, the Committee understands that New York will require ultra low sulfur diesel (15 ppm sulfur or less) and best available retrofit technology to reduce emissions of fine particulate matter and NO_x from construction machinery used instate agency and authority fleets and contracts in the reconstruction of lower Manhattan. The Committee also views favorably New York's commitment to work with the environmental community and other stakeholders to identify and implement transportation control measures and other control strategies to further reduce emission in the region.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

This legislation does not amend any existing Federal statute.

EXCHANGE OF COMMITTEE CORRESPONDENCE

HOUSE OF REPRESENTATIVES,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC, September 9, 2002.

Hon. W.J. "BILLY" TAUZIN,
Chairman, Committee on Energy and Commerce, House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN TAUZIN: I am writing with regard to H.R. 3880, which was ordered reported with an amendment in the nature of a substitute by the Committee on Energy and Commerce on September 5, 2002. As you know, the Committee on Transportation and Infrastructure was named as an additional Committee of jurisdiction upon the bill's introduction.

I recognize your desire to bring this bill before the House in an expeditious manner. Accordingly, I will not exercise my Committee's right to a sequential referral of the legislation. By agreeing to waive its consideration of the bill, however, the Committee on Transportation and Infrastructure does not waive its jurisdiction over H.R. 3880. In addition, the Transportation and Infrastructure Committee reserves its authority to seek conferees on provisions of the bill that are within its jurisdiction during any House-Senate conference that may be convened on this legislation. I ask for your

commitment to support any request by the Transportation and Infrastructure Committee for conferees on H.R. 3880.

I request that you include a copy of our exchange of letters in your Committee's report on H.R. 3880 and in the Congressional Record during consideration on the House Floor. Thank you.

Sincerely,

DON YOUNG,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC, September 5, 2002.

Hon. DON YOUNG,
Chairman, Committee on Transportation and Infrastructure, House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN YOUNG: Thank you for your letter regarding to H.R. 3880, a bill to provide a temporary waiver from certain transportation conformity requirements and metropolitan transportation planning requirements under the Clean Air Act and under other laws for certain areas in New York where the planning offices and resources have been destroyed by acts of terrorism.

As the Committee on Transportation and Infrastructure was named as an additional Committee of jurisdiction upon the bills introduction, I acknowledge and appreciate your willingness not to exercise your full referral on the bill. In doing so, I agree that your decision to waive consideration of the bill will not prejudice the Committee on Transportation and infrastructure with respect to its jurisdictional prerogatives on this legislation or similar legislation. Further, I recognize your right to request conferees on those provisions within the Committee on Transportation and Infrastructure's jurisdiction should they be the subject of a House-Senate conference.

I will include your letter and this response in the Committee's report on H.R. 3880.

Sincerely,

W.J. "BILLY" TAUZIN,
Chairman.