

107TH CONGRESS  
2D SESSION

# H. R. 4481

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IN THE SENATE OF THE UNITED STATES

JULY 11 (legislative day, JULY 10), 2002

Received; read twice and referred to the Committee on Commerce, Science,  
and Transportation

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## AN ACT

To amend title 49, United States Code, relating to airport  
project streamlining, 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,*

1 **SECTION 1. SHORT TITLE.**

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

4 **SEC. 2. FINDINGS.**

5       Congress finds that—

6           (1) airports play a major role in interstate and  
7 foreign commerce;

8           (2) congestion and delays at our Nation’s major  
9 airports have a significant negative impact on our  
10 Nation’s economy;

11           (3) airport capacity enhancement projects at  
12 congested airports are a national priority and should  
13 be constructed on an expedited basis;

14           (4) airport capacity enhancement projects must  
15 include an environmental review process that pro-  
16 vides local citizenry an opportunity for consideration  
17 of and appropriate action to address environmental  
18 concerns; and

19           (5) the Federal Aviation Administration, airport  
20 authorities, communities, and other Federal, State,  
21 and local government agencies must work together  
22 to develop a plan, set and honor milestones and  
23 deadlines, and work to protect the environment while  
24 sustaining the economic vitality that will result from  
25 the continued growth of aviation.

1 **SEC. 3. PROMOTION OF NEW RUNWAYS.**

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

4 “(c) AIRPORT CAPACITY ENHANCEMENT PROJECTS  
5 AT CONGESTED AIRPORTS.—In carrying out subsection  
6 (a), the Administrator shall take action to encourage the  
7 construction of airport capacity enhancement projects at  
8 congested airports as those terms are defined in section  
9 47179.”.

10 **SEC. 4. AIRPORT PROJECT STREAMLINING.**

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

14 “SUBCHAPTER III—AIRPORT PROJECT  
15 STREAMLINING

16 “§ 47171. DOT as lead agency

17 “(a) AIRPORT PROJECT REVIEW PROCESS.—The  
18 Secretary of Transportation shall develop and implement  
19 a coordinated review process for airport capacity enhance-  
20 ment projects at congested airports.

21 “(b) COORDINATED REVIEWS.—The coordinated re-  
22 view process under this section shall provide that all envi-  
23 ronmental reviews, analyses, opinions, permits, licenses,  
24 and approvals that must be issued or made by a Federal  
25 agency or airport sponsor for an airport capacity enhance-  
26 ment project at a congested airport will be conducted con-

1 currently, to the maximum extent practicable, and com-  
2 pleted within a time period established by the Secretary,  
3 in cooperation with the agencies identified under sub-  
4 section (c) with respect to the project.

5       “(c) IDENTIFICATION OF JURISDICTIONAL AGEN-  
6 CIES.—With respect to each airport capacity enhancement  
7 project at a congested airport, the Secretary shall identify,  
8 as soon as practicable, all Federal and State agencies that  
9 may have jurisdiction over environmental-related matters  
10 that may be affected by the project or may be required  
11 by law to conduct an environmental-related review or anal-  
12 ysis of the project or determine whether to issue an envi-  
13 ronmental-related permit, license, or approval for the  
14 project.

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

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

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

8               “(1) NOTIFICATION OF CONGRESS AND CEQ.—

9       If the Secretary determines that a Federal agency,  
10      State agency, or airport sponsor that is participating  
11      in a coordinated review process under this section  
12      with respect to a project has not met a deadline es-  
13      tablished under subsection (b) for the project, the  
14      Secretary shall notify, within 30 days of the date of  
15      such determination, the Committee on Transpor-  
16      tation and Infrastructure of the House of Represent-  
17      atives, the Committee on Commerce, Science, and  
18      Transportation of the Senate, the Council on Envi-  
19      ronmental Quality, and the agency or sponsor in-  
20      volved about the failure to meet the deadline.

21              “(2) AGENCY REPORT.—Not later than 30 days  
22      after date of receipt of a notice under paragraph (1),  
23      the agency or sponsor involved shall submit a report  
24      to the Secretary, the Committee on Transportation  
25      and Infrastructure of the House of Representatives,

1 the Committee on Commerce, Science, and Trans-  
2 portation of the Senate, and the Council on Environ-  
3 mental Quality explaining why the agency or sponsor  
4 did not meet the deadline and what actions it in-  
5 tends to take to complete or issue the required re-  
6 view, analysis, opinion, license, or approval.

7 “(g) PURPOSE AND NEED.—For any environmental  
8 review, analysis, opinion, permit, license, or approval that  
9 must be issued or made by a Federal or State agency that  
10 is participating in a coordinated review process under this  
11 section with respect to an airport capacity enhancement  
12 project at a congested airport and that requires an anal-  
13 ysis of purpose and need for the project, the agency, not-  
14 withstanding any other provision of law, shall be bound  
15 by the project purpose and need as defined by the Sec-  
16 retary.

17 “(h) ALTERNATIVES ANALYSIS.—The Secretary shall  
18 determine the reasonable alternatives to an airport capac-  
19 ity enhancement project at a congested airport. Any other  
20 Federal or State agency that is participating in a coordi-  
21 nated review process under this section with respect to the  
22 project shall consider only those alternatives to the project  
23 that the Secretary has determined are reasonable.

24 “(i) SOLICITATION AND CONSIDERATION OF COM-  
25 MENTS.—In applying subsections (g) and (h), the Sec-

1 retary shall solicit and consider comments from interested  
2 persons and governmental entities.

3 **“§ 47172. Categorical exclusions**

4 “Not later than 120 days after the date of enactment  
5 of this section, the Secretary of Transportation shall de-  
6 velop and publish a list of categorical exclusions from the  
7 requirement that an environmental assessment or an envi-  
8 ronmental impact statement be prepared under the Na-  
9 tional Environmental Policy Act of 1969 (42 U.S.C. 4321  
10 et seq.) for projects at airports.

11 **“§ 47173. Access restrictions to ease construction**

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

18 “(1) is necessary to mitigate those impacts and  
19 expedite construction of the runway;

20 “(2) is the most appropriate and a cost-effective  
21 measure to mitigate those impacts, taking into con-  
22 sideration any environmental tradeoffs associated  
23 with the restriction; and

24 “(3) would not adversely affect service to small  
25 communities, adversely affect safety or efficiency of

1 the national airspace system, unjustly discriminate  
2 against any class of user of the airport, or impose  
3 an undue burden on interstate or foreign commerce.

4 **“§ 47174. Airport revenue to pay for mitigation**

5 “(a) IN GENERAL.—Notwithstanding section  
6 47107(b), section 47133, or any other provision of this  
7 title, the Secretary of Transportation may allow an airport  
8 sponsor carrying out an airport capacity enhancement  
9 project at a congested airport to make payments, out of  
10 revenues generated at the airport (including local taxes on  
11 aviation fuel), for measures to mitigate the environmental  
12 impacts of the project if the Secretary finds that—

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

18 “(2) the use of such revenues will provide a sig-  
19 nificant incentive for, or remove an impediment to,  
20 approval of the project by a State or local govern-  
21 ment; and

22 “(3) the cost of the mitigation measures is rea-  
23 sonable in relation to the mitigation that will be  
24 achieved.



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

8       **“§ 47175. Airport funding of FAA staff**

9       “(a) ACCEPTANCE OF SPONSOR-PROVIDED  
10 FUNDS.—Notwithstanding any other provision of law, the  
11 Administrator of the Federal Aviation Administration may  
12 accept funds from an airport sponsor, including funds pro-  
13 vided to the sponsor under section 47114(c), to hire addi-  
14 tional staff or obtain the services of consultants in order  
15 to facilitate the timely processing, review, and completion  
16 of environmental activities associated with an airport de-  
17 velopment project.

18       “(b) ADMINISTRATIVE PROVISION.—Instead of pay-  
19 ment from an airport sponsor from funds apportioned to  
20 the sponsor under section 47114, the Administrator, with  
21 agreement of the sponsor, may transfer funds that would  
22 otherwise be apportioned to the sponsor under section  
23 47114 to the account used by the Administrator for activi-  
24 ties described in subsection (a).

1       “(c) RECEIPTS CREDITED AS OFFSETTING COLLEC-  
2 TIONS.—Notwithstanding section 3302 of title 31, any  
3 funds accepted under this section, except funds trans-  
4 ferred pursuant to subsection (b)—

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

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

11              “(3) shall remain available until expended.

12       “(d) MAINTENANCE OF EFFORT.—No funds may be  
13 accepted pursuant to subsection (a), or transferred pursu-  
14 ant to subsection (b), in any fiscal year in which the Fed-  
15 eral Aviation Administration does not allocate at least the  
16 amount it expended in fiscal year 2002, excluding  
17 amounts accepted pursuant to section 337 of the Depart-  
18 ment of Transportation and Related Agencies Appropria-  
19 tions Act, 2002 (115 Stat. 862), for the activities de-  
20 scribed in subsection (a).

21       **“§ 47176. Authorization of appropriations**

22              “In addition to the amounts authorized to be appro-  
23 priated under section 106(k), there is authorized to be ap-  
24 propriated to the Secretary of Transportation, out of the  
25 Airport and Airway Trust Fund established under section

1 9502 of the Internal Revenue Code of 1986 (26 U.S.C.  
2 9502), \$2,100,000 for fiscal year 2003 and \$4,200,000  
3 for each fiscal year thereafter to facilitate the timely proc-  
4 essing, review, and completion of environmental activities  
5 associated with airport capacity enhancement projects at  
6 congested airports.

7 **“§ 47177. Judicial review**

8 “(a) FILING AND VENUE.—A person disclosing a  
9 substantial interest in an order issued by the Secretary  
10 of Transportation or the head of any other Federal agency  
11 under this part or a person or agency relying on any deter-  
12 mination made under this part may apply for review of  
13 the order by filing a petition for review in the United  
14 States Court of Appeals for the District of Columbia Cir-  
15 cuit or in the court of appeals of the United States for  
16 the circuit in which the person resides or has its principal  
17 place of business. The petition must be filed not later than  
18 60 days after the order is issued. The court may allow  
19 the petition to be filed after the 60th day only if there  
20 are reasonable grounds for not filing by the 60th day.

21 “(b) JUDICIAL PROCEDURES.—When a petition is  
22 filed under subsection (a) of this section, the clerk of the  
23 court immediately shall send a copy of the petition to the  
24 Secretary or the head of any other Federal agency in-  
25 volved. The Secretary or the head of such other agency

1 shall file with the court a record of any proceeding in  
2 which the order was issued.

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

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

23       “(e) SUPREME COURT REVIEW.—A decision by a  
24 court under this section may be reviewed only by the Su-  
25 preme Court under section 1254 of title 28.

1 “(f) ORDER DEFINED.—In this section, the term  
2 ‘order’ includes a record of decision or a finding of no sig-  
3 nificant impact.

4 **“§ 47178. Definitions**

5 “In this subchapter, the following definitions apply:

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

9 “(2) CONGESTED AIRPORT.—The term ‘con-  
10 gested airport’ means an airport that accounted for  
11 at least 1 percent of all delayed aircraft operations  
12 in the United States in the most recent year for  
13 which such data is available and an airport listed in  
14 table 1 of the Federal Aviation Administration’s Air-  
15 port Capacity Benchmark Report 2001.

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

19 “(A) a project for construction or exten-  
20 sion of a runway, including any land acquisi-  
21 tion, taxiway, or safety area associated with the  
22 runway or runway extension; and

23 “(B) such other airport development  
24 projects as the Secretary may designate as fa-

1 cilitating a reduction in air traffic congestion  
 2 and delays.”.

3 (b) CONFORMING AMENDMENT.—The analysis for  
 4 chapter 471 of such title is amended by adding at the end  
 5 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.”.

6 **SEC. 5. GOVERNOR’S CERTIFICATE.**

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

9 (1) in paragraph (1)—

10 (A) by inserting “and” after the semicolon  
 11 at the end of subparagraph (A)(ii);

12 (B) by striking subparagraph (B); and

13 (C) by redesignating subparagraph (C) as  
 14 subparagraph (B);

15 (2) in paragraph (2)(A) by striking “stage 2”  
 16 and inserting “stage 3”;

17 (3) by striking paragraph (4); and

18 (4) by redesignating paragraph (5) as para-  
 19 graph (4).

1 **SEC. 6. CONSTRUCTION OF CERTAIN AIRPORT CAPACITY**  
2 **PROJECTS.**

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

5 (1) by striking “and” at the end of subpara-  
6 graph (C);

7 (2) by striking the period at the end of sub-  
8 paragraph (D) and inserting “; and”; and

9 (3) by adding at the end the following:

10 “(E) to an airport operator of a congested  
11 airport (as defined in section 47178) and a unit  
12 of local government referred to in paragraph  
13 (1)(A) or (1)(B) of this subsection to carry out  
14 a project to mitigate noise in the area sur-  
15 rounding the airport if the project is included  
16 as a commitment in a record of decision of the  
17 Federal Aviation Administration for an airport  
18 capacity enhancement project (as defined in  
19 section 47178) even if that airport has not met  
20 the requirements of part 150 of title 14, Code  
21 of Federal Regulations.”.

22 **SEC. 7. LIMITATIONS.**

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

25 (1) any practice of seeking public comment; and

Attest: **JEFF TRANDAH**,  
*Clerk.*

By MARTHA C. MORRISON,  
*Deputy Clerk.*