

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

# S. 2039

To expand aviation capacity in the Chicago area.

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## IN THE SENATE OF THE UNITED STATES

MARCH 20, 2002

Mr. DURBIN (for himself, Mr. GRASSLEY, Mr. HARKIN, Mr. DASCHLE, Mr. LEAHY, Mr. SCHUMER, Mr. NELSON of Nebraska, and Mr. BIDEN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To expand aviation capacity in the Chicago area.

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 “National Aviation Ca-  
5       pacity Expansion Act of 2002”.

6       **SEC. 2. FINDINGS.**

7       Congress makes the following findings:

8               (1) Prior to September 11, 2001, the United  
9       States air transportation system faced severe limita-  
10      tions in airport capacity. As the aviation system re-  
11      turns to its pre-September 11 levels, interstate com-

1 merce will be substantially constrained without air-  
2 port expansion.

3 (2) Meeting the future demand of air travelers,  
4 expected to top 1,000,000,000 by 2010, is a chal-  
5 lenge facing the United States today. Knowing that  
6 airport development, runway construction, and run-  
7 way reconfiguration is a multiyear process, action is  
8 needed now.

9 (3) Communities, small and large, throughout  
10 the United States recognize, particularly after Sep-  
11 tember 11, how critical air transportation is to local  
12 economies.

13 (4) Airport delays, because of lack of runway  
14 capacity, are a serious impediment to interstate  
15 commerce.

16 (5) Airport expansion, nationwide and at  
17 O'Hare International Airport (in this Act referred to  
18 as "O'Hare") and in the Chicago area, is essential  
19 to interstate commerce. Given the agreement of De-  
20 cember 5, 2001, between the Mayor of Chicago and  
21 the Governor of Illinois concerning Chicago area air-  
22 ports, Congress wants to ensure that interstate com-  
23 merce is not inhibited by future action or inaction  
24 on such expansion.

1           (6) New runway construction projects are local  
2 decisions that are supported by the Federal Govern-  
3 ment through the Airport Improvement Program  
4 and other programs, subject to Federal regulation of  
5 aviation safety. For years, a debate over airport ex-  
6 pansion in Illinois has stifled redesign of O'Hare  
7 and inhibited action on a new south suburban air-  
8 port.

9           (7) Because of O'Hare's central location, and  
10 the magnitude of the demand for air transportation  
11 services in northeast Illinois and northwest Indiana,  
12 O'Hare has an essential role in the national air  
13 transportation system. The reliability and efficiency  
14 of interstate air transportation for residents and  
15 businesses in many States depend on efficient proc-  
16 essing of air traffic operations at O'Hare.

17           (8) On June 15, 2001, the Committee on Com-  
18 merce of the Senate held a field hearing in Chicago  
19 and directed the parties to settle their differences  
20 because of the importance of O'Hare and expansion  
21 to the national air transportation system.

22           (9) The Governor of Illinois and the Mayor of  
23 Chicago have determined that redesign of O'Hare  
24 and the development of an additional air carrier air-  
25 port located near Peotone, Illinois, as described in

1 this Act, are each necessary and desirable to provide  
2 reliable and efficient air commerce.

3 (10) On December 5, 2001, the Governor of Il-  
4 linois and the Mayor of Chicago entered into a his-  
5 toric agreement concerning regional airport improve-  
6 ments and the regional air transportation system.

7 (11) This decision will benefit travelers  
8 throughout the country and should make the air  
9 transportation system more efficient.

10 (12) The importance of increasing commercial  
11 air service at the Gary-Chicago and Greater Rock-  
12 ford Airports is also recognized. By fully utilizing  
13 and enhancing these existing and immediately avail-  
14 able facilities, Gary-Chicago and Greater Rockford  
15 Airports can help provide relief to congestion that  
16 may occur during the modernization and reconfig-  
17 uration of O'Hare.

18 **SEC. 3. AIRPORT CONSTRUCTION AND REDESIGN.**

19 (a) O'HARE RUNWAY REDESIGN AND DEVELOPMENT  
20 OF SOUTH SUBURBAN AIRPORT.—

21 (1) It is the policy of Congress that, given the  
22 agreement between the Governor of Illinois and the  
23 Mayor of the City of Chicago, redesign and recon-  
24 struction of Chicago O'Hare International Airport in  
25 Cook and DuPage Counties, Illinois, in accordance

1 with the runway redesign plan, and the development  
2 of a south suburban airport in the Chicago metro-  
3 politan region, are each necessary to improve the ef-  
4 ficiency of, and relieve congestion in, the national air  
5 transportation system.

6 (2)(A) The Administrator, consistent with Fed-  
7 eral environmental laws and procedures, shall imple-  
8 ment the Federal policy described in paragraph (1)  
9 by facilitating approval, funding, construction, and  
10 implementation of—

11 (i) the runway redesign plan upon receipt  
12 of an application from Chicago for approval of  
13 an airport layout plan that includes the runway  
14 redesign plan; and

15 (ii) the south suburban airport upon re-  
16 ceipt of an application from the State of Illinois  
17 or a political subdivision thereof for approval of  
18 an airport layout plan for a south suburban air-  
19 port.

20 (B) The Administrator's actions under this sub-  
21 section and implementation of each plan described in  
22 subparagraph (A) shall be subject to application of  
23 Federal laws with respect to environmental protec-  
24 tion and environmental analysis, including the Na-  
25 tional Environmental Policy Act. Nothing in this

1 section shall be deemed to amend or otherwise be  
2 inconsistent with such laws.

3 (C) Implementation of each plan described in  
4 subparagraph (A) shall be subject to determination  
5 by the Administrator that the plan meets Federal  
6 aviation criteria regarding practicability, safety, and  
7 efficiency, and is consistent with Federal Aviation  
8 Administration design criteria.

9 (3) The State of Illinois, including an instru-  
10 mentality of the State, shall not enforce sections  
11 38.01 and 47 of the Illinois Aeronautics Act with re-  
12 spect to the runway redesign plan.

13 (4)(A) The State of Illinois, a political subdivi-  
14 sion of the State, or authority of the State, or polit-  
15 ical subdivision that is not the owner or operator of  
16 O'Hare, may not regulate or otherwise attempt to  
17 control in any manner—

18 (i) aviation safety with respect to the de-  
19 sign, operation, or use of the runway redesign  
20 plan, if construction of the runway redesign  
21 plan does not occur unless the Administrator  
22 finds that the plan satisfies the requirements of  
23 Federal law with respect to aviation safety;

24 (ii) application by the owner or operator of  
25 O'Hare for a grant under chapter 471 of title

1           49, United States Code, to pay a portion of the  
2           costs of planning or construction of the runway  
3           redesign plan, or the receipt, collection, or use  
4           of the proceeds thereof; or

5                   (iii) design, operation, or use of the run-  
6           way redesign plan to the extent such regulation  
7           or other control by the State is otherwise pro-  
8           hibited.

9           (5)(A) An implementation plan shall be pre-  
10          pared by the State of Illinois under the Clean Air  
11          Act in accordance with the State's customary prac-  
12          tices for accounting for and regulating emissions as-  
13          sociated with activity at commercial service airports.  
14          No action of the State with respect to an implemen-  
15          tation plan, or determination of conformity there-  
16          with, shall be made for the purpose of interfering di-  
17          rectly or indirectly with timely construction of the  
18          runway redesign plan or the south suburban airport.  
19          At the request of the Administrator, the Adminis-  
20          trator of the Environmental Protection Agency shall,  
21          in consultation with the Administrator, determine  
22          that the foregoing condition has been satisfied before  
23          approving an implementation plan. Nothing in this  
24          section shall be construed to affect the obligations of  
25          the State under section 176(c) of the Clean Air Act.

1           (B) The Administrator shall not approve the  
2           runway redesign plan unless the Administrator de-  
3           termines that the construction and operation will in-  
4           clude, to the maximum extent feasible, the best man-  
5           agement practices then reasonably available to and  
6           used by operators of commercial service airports to  
7           mitigate emissions regulated under the implementa-  
8           tion plan.

9           (b) PHASING OF CONSTRUCTION.—Approval by the  
10          Administrator of an airport layout plan that includes the  
11          runway redesign plan shall provide that construction shall  
12          not begin before January 1, 2011, on any runway oriented  
13          substantially in the east-west direction and located more  
14          than 2,500 feet south of existing runway 9R–27L.

15          (c) WESTERN PUBLIC ROADWAY ACCESS.—The Ad-  
16          ministrator shall not consider an airport layout plan sub-  
17          mitted by Chicago that includes the runway redesign plan,  
18          unless it includes public roadway access through the exist-  
19          ing western boundary of O’Hare to passenger terminal  
20          and parking facilities located inside the boundary of  
21          O’Hare and reasonably accessible to such western access.  
22          Approval of western public roadway access shall be subject  
23          to the condition that the cost of construction be paid for  
24          from airport revenues consistent with Federal Aviation  
25          Administration revenue use requirements.



1 (d) NOISE MITIGATION.—

2 (1) Approval by the Administrator of an airport  
3 layout plan that includes the runway redesign plan  
4 shall require Chicago to offer acoustical treatment of  
5 all single-family houses and schools located within  
6 the 65 DNL noise contour for each construction  
7 phase of the runway redesign plan, subject to Fed-  
8 eral Aviation Administration guidelines and speci-  
9 fications of general applicability. The Administrator  
10 may not approve the runway redesign plan unless  
11 Chicago provides the Administrator with information  
12 sufficient to demonstrate that the acoustical treat-  
13 ment required by this paragraph is feasible.

14 (2)(A) Approval by the Administrator of an air-  
15 port layout plan that includes the runway redesign  
16 plan shall be subject to the condition that noise im-  
17 pact of aircraft operations at O'Hare in the calendar  
18 year immediately following the year in which the  
19 first new runway is first used, and in each calendar  
20 year thereafter, will be less than the noise impact in  
21 calendar year 2000.

22 (B) The Administrator shall make the deter-  
23 mination described in subparagraph (A)—

1 (i) using, to the extent practicable, the pro-  
2 cedures specified in part 150 of title 14, Code  
3 of Federal Regulations;

4 (ii) using the same method for calendar  
5 year 2000 and for each forecast year; and

6 (iii) by determining noise impact solely in  
7 terms of the aggregate number of square miles  
8 and the aggregate number of single-family  
9 houses and schools exposed to 65 or greater  
10 decibels using the DNL metric, including only  
11 single-family houses and schools in existence on  
12 the last day of calendar year 2000.

13 (C) The Administrator shall make the de-  
14 termination described in subparagraph (B)  
15 based on information provided by the city of  
16 Chicago, which shall be independently verified  
17 by the Administrator.

18 (D) The noise mitigation condition de-  
19 scribed in this paragraph shall be enforceable  
20 exclusively through the submission and approval  
21 of a noise compatibility plan under part 150 of  
22 title 14, Code of Federal Regulations. The noise  
23 compatibility plan submitted by the city of Chi-  
24 cago shall provide for compliance with this  
25 paragraph. The Administrator shall approve

1 measures sufficient for compliance with this  
2 paragraph in accordance with procedures under  
3 such part 150.

4 (E) The United States shall have no finan-  
5 cial responsibility or liability if operations at  
6 O'Hare in any year do not satisfy the noise  
7 mitigation condition of this paragraph.

8 (e) SOUTH SUBURBAN AIRPORT FUNDING.—The Ad-  
9 ministrator shall give priority consideration to a letter of  
10 intent application submitted by the State of Illinois or a  
11 political subdivision thereof for the construction of the  
12 south suburban airport. The Administrator shall consider  
13 the letter not later than 90 days after the Administrator  
14 issues final approval of the airport layout plan for the  
15 south suburban airport.

16 (f) REPORT TO CONGRESS.—If the runway redesign  
17 plan described in this section has not received all Federal,  
18 State, and local permits and approvals necessary to begin  
19 construction by December 31, 2004, the Administrator  
20 shall submit a report to Congress within 120 days of such  
21 date—

22 (1) identifying each permit and approval that  
23 has not yet been issued;

24 (2) identifying the officer or agency responsible  
25 for each such permit or approval;

1           (3) stating the Administrator’s estimate of the  
2           date on which each such permit or approval will be  
3           issued;

4           (4) identifying any permits or approvals that, in  
5           the Administrator’s judgment, will not be issued;

6           (5) stating, after investigation, the reason that  
7           each such permit or approval has been delayed or  
8           will not be issued and the Administrator’s judgment  
9           with respect to the reasonableness of such delays or  
10          refusals to issue; and

11          (6) setting forth a feasible plan for obtaining  
12          the remaining permits and approvals and for con-  
13          structing the runway redesign plan.

14          (g) MERRILL C. MEIGS FIELD.—

15           (1) Until January 1, 2026, the Administrator  
16           shall withhold all airport grant funds respecting  
17           O’Hare, other than grants involving national secu-  
18           rity and safety, unless the Administrator is reason-  
19           ably satisfied that the following conditions have been  
20           met:

21                   (A) Merrill C. Meigs Field in Chicago ei-  
22                   ther is being operated by Chicago as an airport  
23                   or has been closed by the Federal Aviation Ad-  
24                   ministration for reasons beyond Chicago’s con-  
25                   trol.

1 (B) Chicago is providing, at its own ex-  
2 pense, all off-airport roads and other access,  
3 services, equipment, and other personal prop-  
4 erty that Chicago provided in connection with  
5 the operation of Meigs Field on and before to  
6 December 1, 2001.

7 (C) Chicago is operating Meigs Field, at  
8 its own expense, at all times as a public airport  
9 in good condition and repair open to all users  
10 capable of utilizing the airport, and is maintain-  
11 ing the airport for such public operations at  
12 least from 6 a.m. to 10 p.m. 7 days a week  
13 whenever weather conditions permit.

14 (D) Chicago is providing or causing its  
15 agents or independent contractors to provide all  
16 services (including police and fire protection  
17 services) provided or offered at Meigs Field on  
18 or immediately prior to December 1, 2001, in-  
19 cluding tie-down, terminal, refueling, and repair  
20 services, at rates that reflect actual costs of  
21 providing such goods and services.

22 (2) After January 1, 2006, the Administrator  
23 shall not withhold grant funds under this Act to the  
24 extent the Administrator determines that with-

1 holding grant funds would create an unreasonable  
2 burden on interstate commerce.

3 (3) If Meigs Field is closed by the Federal  
4 Aviation Administration for reasons beyond Chi-  
5 cago's control, the conditions described in subpara-  
6 graphs (B) through (D) of paragraph (1) shall not  
7 apply.

8 (4) The Administrator shall not enforce the  
9 conditions listed in paragraph (1) if the State of Illi-  
10 nois enacts a law on or after January 1, 2006, au-  
11 thorizing the closure of Meigs Field.

12 (5) Net operating losses resulting from oper-  
13 ation of Meigs Field, to the extent consistent with  
14 law, are expected to be paid by the 2 air carriers at  
15 O'Hare that paid the highest amount of airport fees  
16 and charges at O'Hare for the preceding calendar  
17 year.

18 (6) Notwithstanding any other provision of law,  
19 the city of Chicago may use airport revenues gen-  
20 erated at O'Hare to fund the operation of Meigs  
21 Field.

22 (h) JUDICIAL REVIEW.—An order issued by the Ad-  
23 ministrator, in whole or in part, under this section shall  
24 be deemed to be an order issued under part A of subtitle  
25 VII of title 49, United States Code, and shall be reviewed

1 in accordance with the procedures in section 46110 of title  
2 49, United States Code.

3 (i) DEFINITIONS.—In this section:

4 (1) The term “runway redesign plan” means—

5 (A) 6 parallel runways at O’Hare oriented  
6 in the east-west direction with the capability for  
7 4 simultaneous independent visual aircraft ar-  
8 rivals in both directions, and all associated  
9 taxiways, navigational facilities, and other re-  
10 lated facilities; and

11 (B) the closure of existing runways 14L-  
12 32R, 14R-32L, and 18-36.

13 (2) The term “south suburban airport” means  
14 an additional air carrier airport in the vicinity of  
15 Peotone, Illinois.

16 (3) The term “Administrator” means the Ad-  
17 ministrator of the Federal Aviation Administration  
18 or the Administrator’s designee.

19 (4) The term “State” means the State of Illi-  
20 nois.

21 (5) The term “implementation plan” means an  
22 applicable State implementation plan, maintenance  
23 plan, or revision thereof under the Clean Air Act.

1 **SEC. 4. APPLICATION WITH EXISTING LAW.**

2       Nothing in this Act shall give any priority to or affect  
3 availability or amounts of funds under chapter 471 of title  
4 49, United States Code, to pay the costs of the O'Hare  
5 runway redesign plan or O'Hare noise mitigation de-  
6 scribed in section 3.

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