

108TH CONGRESS
1ST SESSION

S. 83

To expand aviation capacity in the Chicago area, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 7, 2003

Mr. DURBIN (for himself, Mr. GRASSLEY, Mr. HARKIN, Mr. DASCHLE, Mr. BAYH, Mr. KOHL, and Mr. INHOFE) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To expand aviation capacity in the Chicago area, 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 “National Aviation Ca-
5 pacity Expansion Act of 2003”.

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-

1 turns to its pre-September 11 levels, interstate com-
2 merce will be substantially constrained without air-
3 port expansion.

4 (2) Meeting the future demand of air travelers,
5 expected to top 1,000,000,000 by 2013, is a chal-
6 lenge facing the United States today. Knowing that
7 airport development, runway construction, and run-
8 way reconfiguration is a multiyear process, action is
9 needed now.

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

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

17 (5) Airport expansion, nationwide and at
18 O'Hare International Airport (in this Act referred to
19 as "O'Hare") and in the Chicago area, is essential
20 to interstate commerce. Given the agreement of De-
21 cember 5, 2001, between the Mayor of Chicago and
22 the Governor of Illinois concerning Chicago area air-
23 ports, Congress wants to ensure that interstate com-
24 merce is not inhibited by future action or inaction
25 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 Senate Committee
18 on Commerce, Science, and Transportation held a
19 field hearing in Chicago and directed the parties to
20 settle their differences because of the importance of
21 O'Hare and expansion to the national air transpor-
22 tation system.

23 (9) The Governor of Illinois and the Mayor of
24 Chicago have determined that redesign of O'Hare
25 and the development of an additional air carrier air-

1 port located near Peotone, Illinois, as described in
2 this Act, are each necessary and desirable to provide
3 reliable and efficient air commerce.

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

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

11 (12) The importance of utilizing existing infra-
12 structure, such as the Gary/Chicago Airport in Gary,
13 Indiana, and the Greater Rockford Airport, to allevi-
14 ate air traffic congestion and provide additional ca-
15 pacity in the greater Chicago metropolitan region is
16 also recognized. Current or future operations at the
17 Gary/Chicago Airport or the Greater Rockford Air-
18 port may become a more important component of air
19 service in the region and the Federal Aviation Ad-
20 ministration, in reviewing various expansion plans,
21 should take into account the role of these airports.

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

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

1 (1) It is the policy of Congress that, given the
2 agreement between the Governor of Illinois and the
3 Mayor of the City of Chicago, redesign and recon-
4 struction of Chicago O'Hare International Airport in
5 Cook and DuPage Counties, Illinois, in accordance
6 with the runway redesign plan, and the development
7 of a south suburban airport in the Chicago metro-
8 politan region, are each necessary to improve the ef-
9 ficiency of, and relieve congestion in, the national air
10 transportation system.

11 (2)(A) The Administrator, consistent with Fed-
12 eral environmental and aviation laws and proce-
13 dures, shall implement the Federal policy described
14 in paragraph (1) by facilitating all agency reviews,
15 and facilitating funding, construction, and imple-
16 mentation of—

17 (i) the runway redesign plan upon receipt
18 of an application from Chicago for approval of
19 an airport layout plan that includes the runway
20 redesign plan; and

21 (ii) the south suburban airport upon re-
22 ceipt of an application from the State of Illinois
23 or a political subdivision thereof for approval of
24 an airport layout plan for a south suburban air-
25 port.

1 (B) The Administrator's actions under this sub-
2 section and implementation of each plan described in
3 subparagraph (A) shall be subject to application of
4 Federal laws with respect to environmental protec-
5 tion and environmental analysis, including the Na-
6 tional Environmental Policy Act. Nothing in this
7 section shall be deemed to amend or otherwise be in-
8 consistent with such laws.

9 (C) Implementation of each plan described in
10 subparagraph (A) shall be subject to determination
11 by the Administrator that the plan meets Federal
12 aviation criteria regarding practicability, safety, and
13 efficiency, and is consistent with Federal Aviation
14 Administration design criteria.

15 (D) The Administrator may not approve the
16 runway redesign plan unless the Administrator de-
17 termines that the plan should achieve improved ca-
18 pacity under both Instrument Flight Rule and Vis-
19 ual Flight Rule conditions.

20 (E) Nothing in this subsection shall be deemed
21 to affect the property rights of any airport user at
22 O'Hare.

23 (3) If the Administrator at any time after De-
24 cember 5, 2001, provides (or has provided) funds for
25 planning of the runway redesign plan or construc-

1 tion of a runway pursuant to that plan, neither the
2 State nor any instrumentality or political subdivision
3 of the State, may enforce section 38.01 or section 47
4 of the Illinois Aeronautics Act with respect to the
5 runway redesign plan. This paragraph shall not
6 apply after the Administrator certifies that no addi-
7 tional funds will be provided under chapter 471 of
8 title 49, United States Code, for planning of the
9 runway redesign plan or construction of a runway
10 pursuant to that plan.

11 (4) The State of Illinois, a political subdivision
12 of the State, or authority of the State, or political
13 subdivision that is not the owner or operator of
14 O'Hare, may not regulate or otherwise attempt to
15 control in any manner—

16 (A) aviation safety with respect to the de-
17 sign and construction of the runway redesign
18 plan, except that construction of the runway
19 may not begin unless the Administrator finds
20 that the plan satisfies the requirements of Fed-
21 eral law with respect to aviation safety;

22 (B) application by the owner or operator of
23 O'Hare for a grant under chapter 471 of title
24 49, United States Code, to pay a portion of the
25 costs of planning or construction of the runway

1 redesign plan, or the receipt, collection, or use
2 of the proceeds thereof; or

3 (C) design, operation, or use of the runway
4 redesign plan to the extent such regulation or
5 other control by the State is otherwise prohib-
6 ited.

7 (5)(A) An implementation plan shall be pre-
8 pared by the State of Illinois under the Clean Air
9 Act in accordance with the State's customary prac-
10 tices for accounting for and regulating emissions as-
11 sociated with activity at commercial service airports.
12 The State shall not deviate from its customary prac-
13 tices under the Clean Air Act for the purpose of
14 interfering with the construction of a runway pursu-
15 ant to the redesign plan or the south suburban air-
16 port. At the request of the Administrator, the Ad-
17 ministrator of the Environmental Protection Agency
18 shall, in consultation with the Administrator, deter-
19 mine that the foregoing condition has been satisfied
20 before approving an implementation plan. Nothing
21 in this section shall be construed to affect the obliga-
22 tions of the State under section 176(c) of the Clean
23 Air Act.

24 (B) The Administrator shall not approve the
25 runway redesign plan unless the Administrator de-

1 termines that the construction and operation will in-
2 clude, to the maximum extent feasible, the best man-
3 agement practices then reasonably available to and
4 used by operators of commercial service airports to
5 mitigate emissions regulated under the implementa-
6 tion plan.

7 (6) Notwithstanding any other provision of this
8 Act, the Administrator is not required to approve
9 the proposed runway redesign plan.

10 (b) AIRPORT SAFETY.—The Administrator shall fol-
11 low the law and established practice relating to the ap-
12 proval of the proposed runway redesign plan at O’Hare,
13 and shall explain in writing, the impact of the runway re-
14 design plan on runway incursions, and on the safety of
15 aircraft departures and arrivals, including the terminal
16 approach control or the vectoring of aircraft from the con-
17 tiguous en route air traffic airspace.

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

24 (d) WESTERN PUBLIC ROADWAY ACCESS.—The Ad-
25 ministrator shall not consider an airport layout plan sub-

1 mitted by Chicago that includes the runway redesign plan,
2 unless it includes public roadway access through the exist-
3 ing western boundary of O'Hare to passenger terminal
4 and parking facilities located inside the boundary of
5 O'Hare and reasonably accessible to such western access.
6 Approval of western public roadway access shall be subject
7 to the condition that the costs of construction will be paid
8 from airport revenues only to the extent that such costs
9 are consistent with Federal Aviation Administration rev-
10 enue use requirements.

11 (e) NOISE MITIGATION.—

12 (1) Approval by the Administrator of an airport
13 layout plan that includes the runway redesign plan
14 shall require Chicago to offer acoustical treatment of
15 all single-family houses, other residences designated
16 by the O'Hare Noise Compatibility Commission, and
17 schools, located within the 65 DNL noise contour
18 for each construction phase of the runway redesign
19 plan, subject to Federal Aviation Administration
20 guidelines and specifications of general applicability.
21 The Administrator may not approve the runway re-
22 design plan unless Chicago provides the Adminis-
23 trator with information sufficient to demonstrate
24 that the acoustical treatment required by this para-
25 graph is feasible.

1 (2)(A) Approval by the Administrator of an air-
2 port layout plan that includes the runway redesign
3 plan shall be subject to the condition that noise im-
4 pact of aircraft operations at O'Hare in the calendar
5 year immediately following the year in which the
6 first new runway is first used, and in each calendar
7 year thereafter, will be less than the noise impact in
8 calendar year 2000.

9 (B) The noise impact shall be calculated by the
10 City of Chicago—

11 (i) using, to the extent practicable, the pro-
12 cedures specified in part 150 of title 14, Code
13 of Federal Regulations;

14 (ii) using the same method for calendar
15 year 2000 and for each forecast year; and

16 (iii) by determining noise impact solely in
17 terms of the aggregate number of square miles
18 and the aggregate number of residential units
19 and schools exposed to 65 or greater decibels
20 using the DNL metric, including only residen-
21 tial units and schools in existence on the last
22 day of calendar year 2000.

23 (C) The Administrator shall independently
24 verify the calculation described in subparagraph (B)
25 based on information provided by the City of Chi-

1 cago, which shall be certified by the City as true and
2 complete, consistent with part 150 procedures.

3 (D) The noise mitigation condition described in
4 this paragraph shall be implemented and monitored
5 exclusively through the submission and approval of
6 a noise compatibility plan under part 150 of title 14,
7 Code of Federal Regulations. The noise compatibility
8 plan submitted by the city of Chicago shall provide
9 for compliance with this paragraph. The Adminis-
10 trator shall approve measures submitted for compli-
11 ance with this paragraph in accordance with proce-
12 dures and criteria under such part 150.

13 (E) The United States shall have no financial
14 responsibility or liability if operations at O'Hare in
15 any year do not satisfy the noise mitigation condi-
16 tion of this paragraph.

17 (f) SOUTH SUBURBAN AIRPORT FUNDING.—The Ad-
18 ministrator shall give priority consideration to a letter of
19 intent application submitted by the State of Illinois or a
20 political subdivision thereof for the construction of the
21 south suburban airport. The Administrator shall consider
22 the letter not later than 90 days after the Administrator
23 issues final approval of the airport layout plan for the
24 south suburban airport.

1 (g) GARY/CHICAGO AIRPORT FUNDING.—The Ad-
2 ministrator shall give priority consideration to a letter of
3 intent application for funding submitted by the City of
4 Gary, Indiana, or the State of Indiana, for the extension
5 of the main runway at the Gary/Chicago Airport. The let-
6 ter of intent application shall be considered upon comple-
7 tion of the environmental impact statement and benefit
8 cost analysis in accordance with Federal Aviation Admin-
9 istration requirements. The Administrator shall consider
10 the letter not later than 90 days after receiving it from
11 the applicant.

12 (h) REPORT TO CONGRESS.—If the runway redesign
13 plan described in this section has not received all Federal,
14 State, and local permits and approvals necessary to begin
15 construction by December 31, 2004, the Administrator
16 shall submit a status report to the Senate Committee on
17 Commerce, Science, and Transportation and the House of
18 Representatives Committee on Transportation and Infra-
19 structure within 120 days of such date identifying each
20 permit and approval necessary for the project and the sta-
21 tus of each such action.

22 (i) MERRILL C. MEIGS FIELD.—

23 (1) Until January 1, 2026, the Administrator
24 shall withhold all airport grant funds respecting
25 O'Hare, other than grants involving national secu-

1 rity and safety, unless the Administrator is reason-
2 ably satisfied that the following conditions have been
3 met:

4 (A) Merrill C. Meigs Field in Chicago ei-
5 ther is being operated by Chicago as an airport
6 or has been closed by the Federal Aviation Ad-
7 ministration for reasons beyond Chicago's con-
8 trol.

9 (B) Chicago is providing, at its own ex-
10 pense, all off-airport roads and other access,
11 services, equipment, and other personal prop-
12 erty that Chicago provided in connection with
13 the operation of Meigs Field on and before De-
14 cember 1, 2001.

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

22 (D) Chicago is providing or causing its
23 agents or independent contractors to provide all
24 services (including police and fire protection
25 services) provided or offered at Meigs Field on

1 or immediately prior to December 1, 2001, in-
2 cluding tie-down, terminal, refueling, and repair
3 services, at rates that reflect actual costs of
4 providing such goods and services.

5 (2) After January 1, 2006, the Administrator
6 shall not withhold grant funds under this Act to the
7 extent the Administrator determines that with-
8 holding grant funds would create an unreasonable
9 burden on interstate commerce.

10 (3) If Meigs Field is closed by the Federal
11 Aviation Administration for reasons beyond Chi-
12 cago's control, or is temporarily closed for a non-
13 aeronautical use with the prior approval of the Ad-
14 ministrator, the conditions described in subpara-
15 graphs (B) through (D) of paragraph (1) shall not
16 apply, provided that nothing in this paragraph shall
17 be construed to change Federal standards or proce-
18 dures applicable to temporary closure of airports.

19 (4) The Administrator shall not enforce the
20 conditions listed in paragraph (1) if the State of Illi-
21 nois enacts a law on or after January 1, 2006, au-
22 thORIZING the closure of Meigs Field.

23 (5) Net operating losses resulting from oper-
24 ation of Meigs Field, to the extent consistent with
25 law, are expected to be paid by the 2 air carriers at

1 O'Hare that paid the highest amount of airport fees
2 and charges at O'Hare for the preceding calendar
3 year.

4 (6) Notwithstanding any provision of title 49,
5 United States Code, the city of Chicago may use air-
6 port revenues generated at O'Hare to fund operating
7 and maintenance costs associated with Meigs Field.

8 (j) JUDICIAL REVIEW.—An order issued by the Ad-
9 ministrator, in whole or in part, under this section shall
10 be deemed to be an order issued under part A of subtitle
11 VII of title 49, United States Code, and shall be reviewed
12 in accordance with the procedures in section 46110 of title
13 49, United States Code.

14 (k) DEFINITIONS.—In this section:

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

16 (A) 6 parallel runways at O'Hare oriented
17 in the east-west direction with the capability for
18 4 simultaneous independent visual aircraft ar-
19 rivals in both directions, and all associated
20 taxiways, navigational facilities, and other re-
21 lated facilities; and

22 (B) the closure of existing runways 14L–
23 32R, 14R–32L, and 18–36.

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

4 (3) The term “Administrator” means the Ad-
5 ministrator of the Federal Aviation Administration
6 or the Administrator’s designee.

7 (4) The term “State” means the State of Illi-
8 nois.

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

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

13 Nothing in this Act shall give any priority to an appli-
14 cation for or affect availability or amounts of funds under
15 chapter 471 of title 49, United States Code, to pay the
16 costs of the O’Hare runway redesign plan or O’Hare noise
17 mitigation described in section 3.

18 **SEC. 5. COMPETITIVE ACCESS REQUIREMENTS.**

19 In providing funds to implement the runway redesign
20 plans under section 3, the Administrator of the Federal
21 Aviation Administration shall receive adequate assurances
22 from the City of Chicago that—

23 (1) gates and associated facilities are available,
24 or will be made available, at costs that are fair, rea-
25 sonable, and non-discriminatory to all air carriers

1 currently serving or seeking to serve Chicago O'Hare
2 International Airport with scheduled air service;

3 (2) gates and associated facilities subject to ex-
4 clusive use agreements as of the date of the enact-
5 ment of this Act are, or will be, converted to pref-
6 erential-use or common-use as soon as practicable;

7 (3) gates and associated facilities either relin-
8 quished by terminal signatories or added to the base
9 of facilities at that airport as the result of projects
10 to expand, redevelop, or redesign existing facilities
11 or to construct new facilities, are, or will be, des-
12 ignated for preferential-use or common-use agree-
13 ments; and

14 (4) it will conduct a comprehensive inventory of
15 gates and associated facilities as of the date of the
16 enactment of this Act to establish the base of facili-
17 ties at Chicago O'Hare International Airport that—

18 (A) identifies the type of use or lease
19 agreement in effect for every gate and associ-
20 ated facility at that airport; and

21 (B) will be made publicly available.

○