

SMALL AIRPORT MOTHERS' ROOMS ACT OF 2019

OCTOBER 4, 2019.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. DEFAZIO, from the Committee on Transportation and Infrastructure, submitted the following

R E P O R T

[To accompany H.R. 3362]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 3362) to amend title 49, United States Code, to require small hub airports to construct areas for nursing mothers, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE OF LEGISLATION

The purpose of H.R. 3362 is to provide nursing mothers and parents with clean, private, accessible, and equipped spaces, not lo-

cated in a restroom, to express breast milk and nurse children in U.S. airports as they travel. H.R. 3362 helps achieve this by (1) requiring small hub airports to maintain a lactation area in the sterile area of each passenger terminal building of the airport as well as a baby changing table in at least one men's and one women's restroom in each passenger terminal building of the airport, and (2) clarifies that medium and large hub airports need to maintain a baby changing table in at least one men's and one women's restroom in each passenger terminal building of the airport.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 3362 is necessary because nursing parents continue to face challenges, and potentially public stigma, when attempting to breastfeed, nurse, or change their child while traveling. A 2014 study of 100 airports found that while 62 percent reported being "breastfeeding friendly," only 8 percent met the minimum requirements for a breastfeeding mother: an electrical outlet, table, and chair.¹ For mothers who breastfeed, missing just one needed pumping session can have several consequences, including: discomfort, leaking, inflammation, infection, and decreased milk supply. Requiring small hub airports to provide private, clean, accessible, and equipped areas for parents to nurse their children will help remove some of the barriers these parents face while traveling and help them provide the care their infant children require.

The FAA Reauthorization Act of 2018 (Pub. L. 115–254) already requires medium and large hub airports to meet the requirement to maintain a lactation area and a baby changing table in one men's and one women's restroom in each passenger terminal building by fiscal year 2021.

HEARINGS

For the purposes of section 103(i) of H. Res. 6 of the 116th Congress, the following hearing was used to develop or consider H.R. 3362:

On March 26, 2019, the Subcommittee on Aviation held a hearing entitled, "The Cost of Doing Nothing: Why Investing in Our Nation's Airports Matters." The purpose of the hearing was to explore the state of U.S. airport infrastructure and opportunities for Congress to increase funding for projects that will rehabilitate and modernize this aging infrastructure and prepare for anticipated passenger demand in the coming years. Witnesses included Tori Barnes, Executive Vice President of Public Affairs, U.S. Travel Association; Ted Christie, Chief Executive Office, and President, Spirit Airlines; Lawrence Krauter, Chief Executive Officer, Spokane International Airport; Joe Lopano, Chief Executive Officer, Tampa International Airport; Candace McGraw, Chief Executive Officer, Cincinnati/Northern Kentucky International Airport; and Marc Scribner, Senior Fellow, Competitive Enterprise Institute.

¹ Michael Haight and Joan Ortiz, *Airports in the United States: Are They Really Breastfeeding Friendly?*, *Breastfeeding Medicine*, Dec. 1, 2014, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4267407/>.

LEGISLATIVE HISTORY AND CONSIDERATION

H.R. 3362 was introduced in the House on June 19, 2019, by Mrs. Miller, and referred to the Committee on Transportation and Infrastructure. Within the Committee, H.R. 3362 was referred to the Subcommittee on Aviation.

The Subcommittee on Aviation was discharged from further consideration of H.R. 3362 on June 26, 2019.

The Full Committee met in open session to consider H.R. 3362 on June 26, 2019, and ordered the measure to be reported to the House with a favorable recommendation, without amendment, by voice vote with a quorum present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires each committee report to include the total number of votes cast for and against on each record vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against.

There were no recorded votes taken in connection with consideration of H.R. 3362.

COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in this report.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the enclosed cost estimate for H.R. 3362 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 2, 2019.

Hon. PETER A. DEFAZIO,
*Chairman, Committee on Transportation and Infrastructure,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3362, the Small Airport Mothers' Rooms Act of 2019.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Madeleine Fox.

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

H.R. 3362, Small Airport Mothers' Rooms Act of 2019			
As ordered reported by the House Committee on Transportation and Infrastructure on June 26, 2019			
By Fiscal Year, Millions of Dollars	2019	2019-2024	2019-2029
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	0	0	0
Statutory pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

Under current law, Airport Improvement Grants may be made to large and medium hub airports only if they have a lactation room and baby-changing tables in the men's and women's restrooms. The bill would increase the number of changing tables required and extend this grant requirement to small airport hubs. Large and medium hubs would have until 2021 to meet the proposed requirements while small hubs would have until 2023.

CBO estimates that enacting H.R. 3362 would not affect the federal budget because the bill would not change the level of funds authorized to be appropriated for airport development grants.

The CBO staff contact for this estimate is Madeleine Fox. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goal and objective of this legislation is to provide traveling parents with clean, private, accessible, and equipped spaces, not located in a restroom, to nurse their children as they travel by requiring small hub airports to maintain a lactation area in the sterile area of each passenger terminal building of an airport and a baby changing table in at least one men's and one women's restroom in each passenger terminal building of an airport.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee finds that no provision of H.R. 3362 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program, a pro-

gram that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with clause 9 of rule XXI of the Rules of the House of Representatives, this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of the rule XXI.

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 (Public Law 104–4).

PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt state, local, or tribal law. The Committee finds that H.R. 3362 does not preempt any state, local, or tribal law.

ADVISORY COMMITTEE STATEMENT

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

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 (Public Law 104–1).

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section provides that this bill may be cited as the “Small Airport Mothers’ Rooms Act of 2019”.

Sec. 2. Mothers’ rooms

H.R. 3362 requires small hub airports to maintain a lactation area for members of the public to express breast milk, and a baby changing table in at least one men’s and one women’s restroom in each passenger terminal building beginning fiscal year 2023 in order to receive grant funding under the Federal Aviation Administration’s (FAA) Airport Improvement Program. The bill also clarifies that medium and large hub airports need to maintain a baby changing table in at least one men’s and one women’s restroom in each passenger terminal building of the airport.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

TITLE 49, UNITED STATES CODE

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SUBTITLE VII—AVIATION PROGRAMS

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PART B—AIRPORT DEVELOPMENT AND NOISE

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CHAPTER 471—AIRPORT DEVELOPMENT

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SUBCHAPTER I—AIRPORT IMPROVEMENT

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§ 47107. Project grant application approval conditioned on assurances about airport operations

(a) GENERAL WRITTEN ASSURANCES.—The Secretary of Transportation may approve a project grant application under this subchapter for an airport development project only if the Secretary receives written assurances, satisfactory to the Secretary, that—

(1) the airport will be available for public use on reasonable conditions and without unjust discrimination;

(2) air carriers making similar use of the airport will be subject to substantially comparable charges—

(A) for facilities directly and substantially related to providing air transportation; and

(B) regulations and conditions, except for differences based on reasonable classifications, such as between—

(i) tenants and nontenants; and

(ii) signatory and nonsignatory carriers;

(3) the airport operator will not withhold unreasonably the classification or status of tenant or signatory from an air carrier that assumes obligations substantially similar to those already imposed on air carriers of that classification or status;

(4) a person providing, or intending to provide, aeronautical services to the public will not be given an exclusive right to use the airport, with a right given to only one fixed-base operator to provide services at an airport deemed not to be an exclusive right if—

(A) the right would be unreasonably costly, burdensome, or impractical for more than one fixed-base operator to provide the services; and

- (B) allowing more than one fixed-base operator to provide the services would require reducing the space leased under an existing agreement between the one fixed-base operator and the airport owner or operator;
- (5) fixed-base operators similarly using the airport will be subject to the same charges;
- (6) an air carrier using the airport may service itself or use any fixed-base operator allowed by the airport operator to service any carrier at the airport;
- (7) the airport and facilities on or connected with the airport will be operated and maintained suitably, with consideration given to climatic and flood conditions;
- (8) a proposal to close the airport temporarily for a nonaeronautical purpose must first be approved by the Secretary;
- (9) appropriate action will be taken to ensure that terminal airspace required to protect instrument and visual operations to the airport (including operations at established minimum flight altitudes) will be cleared and protected by mitigating existing, and preventing future, airport hazards;
- (10) appropriate action, including the adoption of zoning laws, has been or will be taken to the extent reasonable to restrict the use of land next to or near the airport to uses that are compatible with normal airport operations;
- (11) each of the airport's facilities developed with financial assistance from the United States Government and each of the airport's facilities usable for the landing and taking off of aircraft always will be available without charge for use by Government aircraft in common with other aircraft, except that if the use is substantial, the Government may be charged a reasonable share, proportionate to the use, of the cost of operating and maintaining the facility used;
- (12) the airport owner or operator will provide, without charge to the Government, property interests of the sponsor in land or water areas or buildings that the Secretary decides are desirable for, and that will be used for, constructing at Government expense, facilities for carrying out activities related to air traffic control or navigation;
- (13) the airport owner or operator will maintain a schedule of charges for use of facilities and services at the airport—
- (A) that will make the airport as self-sustaining as possible under the circumstances existing at the airport, including volume of traffic and economy of collection; and
- (B) without including in the rate base used for the charges the Government's share of costs for any project for which a grant is made under this subchapter or was made under the Federal Airport Act or the Airport and Airway Development Act of 1970;
- (14) the project accounts and records will be kept using a standard system of accounting that the Secretary, after consulting with appropriate public agencies, prescribes;
- (15) the airport owner or operator will submit any annual or special airport financial and operations reports to the Secretary that the Secretary reasonably requests and make such reports available to the public;

(16) the airport owner or operator will maintain a current layout plan of the airport that meets the following requirements:

(A) the plan will be in a form the Secretary prescribes;

(B) the Secretary will review and approve or disapprove only those portions of the plan (or any subsequent revision to the plan) that materially impact the safe and efficient operation of aircraft at, to, or from the airport or that would adversely affect the safety of people or property on the ground adjacent to the airport as a result of aircraft operations, or that adversely affect the value of prior Federal investments to a significant extent;

(C) the owner or operator will not make or allow any alteration in the airport or any of its facilities unless the alteration—

(i) is outside the scope of the Secretary's review and approval authority as set forth in subparagraph (B); or

(ii) complies with the portions of the plan approved by the Secretary; and

(D) when an alteration in the airport or its facility is made that is within the scope of the Secretary's review and approval authority as set forth in subparagraph (B), and does not conform with the portions of the plan approved by the Secretary, and the Secretary decides that the alteration adversely affects the safety, utility, or efficiency of aircraft operations, or of any property on or off the airport that is owned, leased, or financed by the Government, then the owner or operator will, if requested by the Secretary—

(i) eliminate the adverse effect in a way the Secretary approves; or

(ii) bear all cost of relocating the property or its replacement to a site acceptable to the Secretary and of restoring the property or its replacement to the level of safety, utility, efficiency, and cost of operation that existed before the alteration was made, except in the case of a relocation or replacement of an existing airport facility that meets the conditions of section 47110(d);

(17) if any phase of such project has received funds under this subchapter, each contract and subcontract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping, and related services will be awarded in the same way that a contract for architectural and engineering services is negotiated under chapter 11 of title 40 or an equivalent qualifications-based requirement prescribed for or by the sponsor;

(18) the airport and each airport record will be available for inspection by the Secretary on reasonable request, and a report of the airport budget will be available to the public at reasonable times and places;

(19) the airport owner or operator will submit to the Secretary and make available to the public an annual report listing in detail—

(A) all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and

(B) all services and property provided to other units of government and the amount of compensation received for provision of each such service and property;

(20) the airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport, but the sponsor does not have any obligation under this paragraph, or because of it, to fund special facilities for intercity bus service or for other modes of transportation; and

(21) if the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a long-term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.

(b) WRITTEN ASSURANCES ON USE OF REVENUE.—(1) The Secretary of Transportation may approve a project grant application under this subchapter for an airport development project only if the Secretary receives written assurances, satisfactory to the Secretary, that local taxes on aviation fuel (except taxes in effect on December 30, 1987) and the revenues generated by a public airport will be expended for the capital or operating costs of—

(A) the airport;

(B) the local airport system; or

(C) other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property.

(2) Paragraph (1) of this subsection does not apply if a provision enacted not later than September 2, 1982, in a law controlling financing by the airport owner or operator, or a covenant or assurance in a debt obligation issued not later than September 2, 1982, by the owner or operator, provides that the revenues, including local taxes on aviation fuel at public airports, from any of the facilities of the owner or operator, including the airport, be used to support not only the airport but also the general debt obligations or other facilities of the owner or operator.

(3) This subsection does not prevent the use of a State tax on aviation fuel to support a State aviation program or the use of airport revenue on or off the airport for a noise mitigation purpose.

(c) WRITTEN ASSURANCES ON ACQUIRING LAND.—(1) In this subsection, land is needed for an airport purpose (except a noise compatibility purpose) if—

(A)(i) the land may be needed for an aeronautical purpose (including runway protection zone) or serves as noise buffer land; and

(ii) revenue from interim uses of the land contributes to the financial self-sufficiency of the airport; and

(B) for land purchased with a grant the owner or operator received not later than December 30, 1987, the Secretary of Transportation or the department, agency, or instrumentality of the Government that made the grant was notified by the

owner or operator of the use of the land and did not object to the use and the land is still being used for that purpose.

(2) The Secretary of Transportation may approve an application under this subchapter for an airport development project grant only if the Secretary receives written assurances, satisfactory to the Secretary, that if an airport owner or operator has received or will receive a grant for acquiring land and—

(A) if the land was or will be acquired for a noise compatibility purpose (including land serving as a noise buffer either by being undeveloped or developed in a way that is compatible with using the land for noise buffering purposes)—

(i) the owner or operator will dispose of the land at fair market value at the earliest practicable time after the land no longer is needed for a noise compatibility purpose;

(ii) the disposition will be subject to retaining or reserving an interest in the land necessary to ensure that the land will be used in a way that is compatible with noise levels associated with operating the airport; and

(iii) the part of the proceeds from disposing of the land that is proportional to the Government's share of the cost of acquiring the land will be reinvested in another project at the airport or transferred to another airport as the Secretary prescribes under paragraph (4); or

(B) if the land was or will be acquired for an airport purpose (except a noise compatibility purpose)—

(i) the owner or operator, when the land no longer is needed for an airport purpose, will dispose of the land at fair market value or make available to the Secretary an amount equal to the Government's proportional share of the fair market value;

(ii) the disposition will be subject to retaining or reserving an interest in the land necessary to ensure that the land will be used in a way that is compatible with noise levels associated with operating the airport; and

(iii) the part of the proceeds from disposing of the land that is proportional to the Government's share of the cost of acquiring the land will be reinvested in another project at the airport or transferred to another airport as the Secretary prescribes under paragraph (4).

(3) Proceeds referred to in paragraph (2)(A)(iii) and (B)(iii) of this subsection and deposited in the Airport and Airway Trust Fund are available as provided in subsection (f) of this section.

(4) In approving the reinvestment or transfer of proceeds under paragraph (2)(A)(iii) or (2)(B)(iii), the Secretary shall give preference, in descending order, to the following actions:

(A) Reinvestment in an approved noise compatibility project.

(B) Reinvestment in an approved project that is eligible for funding under section 47117(e).

(C) Reinvestment in an approved airport development project that is eligible for funding under section 47114, 47115, or 47117.

(D) Transfer to a sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport.

(E) Payment to the Secretary for deposit in the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986.

(5)(A) A lease at fair market value by an airport owner or operator of land acquired for a noise compatibility purpose using a grant provided under this subchapter shall not be considered a disposal for purposes of paragraph (2).

(B) The airport owner or operator may use revenues from a lease described in subparagraph (A) for an approved airport development project that is eligible for funding under section 47114, 47115, or 47117.

(C) The Secretary shall coordinate with each airport owner or operator to ensure that leases described in subparagraph (A) are consistent with noise buffering purposes.

(D) The provisions of this paragraph apply to all land acquired before, on, or after the date of enactment of this paragraph.

(d) ASSURANCES OF CONTINUATION AS PUBLIC-USE AIRPORT.—The Secretary of Transportation may approve an application under this subchapter for an airport development project grant for a privately owned public-use airport only if the Secretary receives appropriate assurances that the airport will continue to function as a public-use airport during the economic life (that must be at least 10 years) of any facility at the airport that was developed with Government financial assistance under this subchapter.

(e) WRITTEN ASSURANCES OF OPPORTUNITIES FOR SMALL BUSINESS CONCERNS.—(1) The Secretary of Transportation may approve a project grant application under this subchapter for an airport development project only if the Secretary receives written assurances, satisfactory to the Secretary, that the airport owner or operator will take necessary action to ensure, to the maximum extent practicable, that at least 10 percent of all businesses at the airport selling consumer products or providing consumer services to the public are small business concerns (as defined by regulations of the Secretary) owned and controlled by a socially and economically disadvantaged individual (as defined in section 47113(a) of this title) or qualified HUBZone small business concerns (as defined in section 3(p) of the Small Business Act).

(2) An airport owner or operator may meet the percentage goal of paragraph (1) of this subsection by including any business operated through a management contract or subcontract. The dollar amount of a management contract or subcontract with a disadvantaged business enterprise shall be added to the total participation by disadvantaged business enterprises in airport concessions and to the base from which the airport's percentage goal is calculated. The dollar amount of a management contract or subcontract with a non-disadvantaged business enterprise and the gross revenue of business activities to which the management contract or subcontract pertains may not be added to this base.

(3) Except as provided in paragraph (4) of this subsection, an airport owner or operator may meet the percentage goal of paragraph (1) of this subsection by including the purchase from disadvantaged business enterprises of goods and services used in businesses conducted at the airport, but the owner or operator and the businesses conducted at the airport shall make good faith efforts to explore all available options to achieve, to the maximum extent practicable,

compliance with the goal through direct ownership arrangements, including joint ventures and franchises.

(4)(A) In complying with paragraph (1) of this subsection, an airport owner or operator shall include the revenues of car rental firms at the airport in the base from which the percentage goal in paragraph (1) is calculated.

(B) An airport owner or operator may require a car rental firm to meet a requirement under paragraph (1) of this subsection by purchasing or leasing goods or services from a disadvantaged business enterprise. If an owner or operator requires such a purchase or lease, a car rental firm shall be permitted to meet the requirement by including purchases or leases of vehicles from any vendor that qualifies as a small business concern owned and controlled by a socially and economically disadvantaged individual or as a qualified HUBZone small business concern (as defined in section 3(p) of the Small Business Act).

(C) This subsection does not require a car rental firm to change its corporate structure to provide for direct ownership arrangements to meet the requirements of this subsection.

(5) This subsection does not preempt—

(A) a State or local law, regulation, or policy enacted by the governing body of an airport owner or operator; or

(B) the authority of a State or local government or airport owner or operator to adopt or enforce a law, regulation, or policy related to disadvantaged business enterprises.

(6) An airport owner or operator may provide opportunities for a small business concern owned and controlled by a socially and economically disadvantaged individual or a qualified HUBZone small business concern (as defined in section 3(p) of the Small Business Act) to participate through direct contractual agreement with that concern.

(7) An air carrier that provides passenger or property-carrying services or another business that conducts aeronautical activities at an airport may not be included in the percentage goal of paragraph (1) of this subsection for participation of small business concerns at the airport.

(8) Not later than April 29, 1993, the Secretary of Transportation shall prescribe regulations to carry out this subsection.

(f) AVAILABILITY OF AMOUNTS.—An amount deposited in the Airport and Airway Trust Fund under—

(1) subsection (c)(2)(A)(iii) of this section is available to the Secretary of Transportation to make a grant for airport development or airport planning under section 47104 of this title;

(2) subsection (c)(2)(B)(iii) of this section is available to the Secretary—

(A) to make a grant for a purpose described in section 47115(b) of this title; and

(B) for use under section 47114(d)(2) of this title at another airport in the State in which the land was disposed of under subsection (c)(2)(B)(ii) of this section; and

(3) subsection (c)(2)(B)(iii) of this section is in addition to an amount made available to the Secretary under section 48103 of this title and not subject to apportionment under section 47114 of this title.

(g) ENSURING COMPLIANCE.—(1) To ensure compliance with this section, the Secretary of Transportation—

(A) shall prescribe requirements for sponsors that the Secretary considers necessary; and

(B) may make a contract with a public agency.

(2) The Secretary of Transportation may approve an application for a project grant only if the Secretary is satisfied that the requirements prescribed under paragraph (1)(A) of this subsection have been or will be met.

(h) MODIFYING ASSURANCES AND REQUIRING COMPLIANCE WITH ADDITIONAL ASSURANCES.—

(1) IN GENERAL.—Subject to paragraph (2), before modifying an assurance required of a person receiving a grant under this subchapter and in effect after December 29, 1987, or to require compliance with an additional assurance from the person, the Secretary of Transportation must—

(A) publish notice of the proposed modification in the Federal Register; and

(B) provide an opportunity for comment on the proposal.

(2) PUBLIC NOTICE BEFORE WAIVER OF AERONAUTICAL LAND-USE ASSURANCE.—Before modifying an assurance under subsection (c)(2)(B) that requires any property to be used for an aeronautical purpose, the Secretary must provide notice to the public not less than 30 days before making such modification.

(i) RELIEF FROM OBLIGATION TO PROVIDE FREE SPACE.—When a sponsor provides a property interest in a land or water area or a building that the Secretary of Transportation uses to construct a facility at Government expense, the Secretary may relieve the sponsor from an obligation in a contract made under this chapter, the Airport and Airway Development Act of 1970, or the Federal Airport Act to provide free space to the Government in an airport building, to the extent the Secretary finds that the free space no longer is needed to carry out activities related to air traffic control or navigation.

(j) USE OF REVENUE IN HAWAII.—(1) In this subsection—

(A) “duty-free merchandise” and “duty-free sales enterprise” have the same meanings given those terms in section 555(b)(8) of the Tariff Act of 1930 (19 U.S.C. 1555(b)(8)).

(B) “highway” and “Federal-aid system” have the same meanings given those terms in section 101(a) of title 23.

(2) Notwithstanding subsection (b)(1) of this section, Hawaii may use, for a project for construction or reconstruction of a highway on a Federal-aid system that is not more than 10 miles by road from an airport and that will facilitate access to the airport, revenue from the sales at off-airport locations in Hawaii of duty-free merchandise under a contract between Hawaii and a duty-free sales enterprise. However, the revenue resulting during a Hawaiian fiscal year may be used only if the amount of the revenue, plus amounts Hawaii receives in the fiscal year from all other sources for costs Hawaii incurs for operating all airports it operates and for debt service related to capital projects for the airports (including interest and amortization of principal costs), is more than 150 percent of the projected costs for the fiscal year.

(3)(A) Revenue from sales referred to in paragraph (2) of this subsection in a Hawaiian fiscal year that Hawaii may use may not

be more than the amount that is greater than 150 percent as determined under paragraph (2).

(B) The maximum amount of revenue Hawaii may use under paragraph (2) of this subsection is \$250,000,000.

(4) If a fee imposed or collected for rent, landing, or service from an aircraft operator by an airport operated by Hawaii is increased during the period from May 4, 1990, through December 31, 1994, by more than the percentage change in the Consumer Price Index of All Urban Consumers for Honolulu, Hawaii, that the Secretary of Labor publishes during that period and if revenue derived from the fee increases because the fee increased, the amount under paragraph (3)(B) of this subsection shall be reduced by the amount of the projected revenue increase in the period less the part of the increase attributable to changes in the Index in the period.

(5) Hawaii shall determine costs, revenue, and projected revenue increases referred to in this subsection and shall submit the determinations to the Secretary of Transportation. A determination is approved unless the Secretary disapproves it not later than 30 days after it is submitted.

(6) Hawaii is not eligible for a grant under section 47115 of this title in a fiscal year in which Hawaii uses under paragraph (2) of this subsection revenue from sales referred to in paragraph (2). Hawaii shall repay amounts it receives in a fiscal year under a grant it is not eligible to receive because of this paragraph to the Secretary of Transportation for deposit in the discretionary fund established under section 47115.

(7)(A) This subsection applies only to revenue from sales referred to in paragraph (2) of this subsection from May 5, 1990, through December 30, 1994, and to amounts in the Airport Revenue Fund of Hawaii that are attributable to revenue before May 4, 1990, on sales referred to in paragraph (2).

(B) Revenue from sales referred to in paragraph (2) of this subsection from May 5, 1990, through December 30, 1994, may be used under paragraph (2) in any Hawaiian fiscal year, including a Hawaiian fiscal year beginning after December 31, 1994.

(k) POLICIES AND PROCEDURES TO ENSURE ENFORCEMENT AGAINST ILLEGAL DIVERSION OF AIRPORT REVENUE.—

(1) IN GENERAL.—Not later than 90 days after August 23, 1994, the Secretary of Transportation shall establish policies and procedures that will assure the prompt and effective enforcement of subsections (a)(13) and (b) of this section and grant assurances made under such subsections. Such policies and procedures shall recognize the exemption provision in subsection (b)(2) of this section and shall respond to the information contained in the reports of the Inspector General of the Department of Transportation on airport revenue diversion and such other relevant information as the Secretary may by law consider.

(2) REVENUE DIVERSION.—Policies and procedures to be established pursuant to paragraph (1) of this subsection shall prohibit, at a minimum, the diversion of airport revenues (except as authorized under subsection (b) of this section) through—

(A) direct payments or indirect payments, other than payments reflecting the value of services and facilities provided to the airport;

(B) use of airport revenues for general economic development, marketing, and promotional activities unrelated to airports or airport systems;

(C) payments in lieu of taxes or other assessments that exceed the value of services provided; or

(D) payments to compensate nonsponsoring governmental bodies for lost tax revenues exceeding stated tax rates.

(3) EFFORTS TO BE SELF-SUSTAINING.—With respect to subsection (a)(13) of this section, policies and procedures to be established pursuant to paragraph (1) of this subsection shall take into account, at a minimum, whether owners and operators of airports, when entering into new or revised agreements or otherwise establishing rates, charges, and fees, have undertaken reasonable efforts to make their particular airports as self-sustaining as possible under the circumstances existing at such airports.

(4) ADMINISTRATIVE SAFEGUARDS.—Policies and procedures to be established pursuant to paragraph (1) shall mandate internal controls, auditing requirements, and increased levels of Department of Transportation personnel sufficient to respond fully and promptly to complaints received regarding possible violations of subsections (a)(13) and (b) of this section and grant assurances made under such subsections and to alert the Secretary to such possible violations.

(5) STATUTE OF LIMITATIONS.—In addition to the statute of limitations specified in subsection (m)(7), with respect to project grants made under this chapter—

(A) any request by a sponsor or any other governmental entity to any airport for additional payments for services conducted off of the airport or for reimbursement for capital contributions or operating expenses shall be filed not later than 6 years after the date on which the expense is incurred; and

(B) any amount of airport funds that are used to make a payment or reimbursement as described in subparagraph (A) after the date specified in that subparagraph shall be considered to be an illegal diversion of airport revenues that is subject to subsection (m).

(1) AUDIT CERTIFICATION.—

(1) IN GENERAL.—The Secretary of Transportation, acting through the Administrator of the Federal Aviation Administration, shall include a provision in the compliance supplement provisions to require a recipient of a project grant (or any other recipient of Federal financial assistance that is provided for an airport) to include as part of an annual audit conducted under sections 7501 through 7505 of title 31, a review concerning the funding activities with respect to an airport that is the subject of the project grant (or other Federal financial assistance) and the sponsors, owners, or operators (or other recipients) involved.

(2) CONTENT OF REVIEW.—A review conducted under paragraph (1) shall provide reasonable assurances that funds paid or transferred to sponsors are paid or transferred in a manner consistent with the applicable requirements of this chapter and any other applicable provision of law (including regulations promulgated by the Secretary or the Administrator).

(m) RECOVERY OF ILLEGALLY DIVERTED FUNDS.—

(1) IN GENERAL.—Not later than 180 days after the issuance of an audit or any other report that identifies an illegal diversion of airport revenues (as determined under subsections (b) and (k) and section 47133), the Secretary, acting through the Administrator, shall—

- (A) review the audit or report;
- (B) perform appropriate factfinding; and
- (C) conduct a hearing and render a final determination concerning whether the illegal diversion of airport revenues asserted in the audit or report occurred.

(2) NOTIFICATION.—Upon making such a finding, the Secretary, acting through the Administrator, shall provide written notification to the sponsor and the airport of—

- (A) the finding; and
- (B) the obligations of the sponsor to reimburse the airport involved under this paragraph.

(3) ADMINISTRATIVE ACTION.—The Secretary may withhold any amount from funds that would otherwise be made available to the sponsor, including funds that would otherwise be made available to a State, municipality, or political subdivision thereof (including any multimodal transportation agency or transit authority of which the sponsor is a member entity) as part of an apportionment or grant made available pursuant to this title, if the sponsor—

- (A) receives notification that the sponsor is required to reimburse an airport; and
- (B) has had an opportunity to reimburse the airport, but has failed to do so.

(4) CIVIL ACTION.—If a sponsor fails to pay an amount specified under paragraph (3) during the 180-day period beginning on the date of notification and the Secretary is unable to withhold a sufficient amount under paragraph (3), the Secretary, acting through the Administrator, may initiate a civil action under which the sponsor shall be liable for civil penalty in an amount equal to the illegal diversion in question plus interest (as determined under subsection (n)).

(5) DISPOSITION OF PENALTIES.—

(A) AMOUNTS WITHHELD.—The Secretary or the Administrator shall transfer any amounts withheld under paragraph (3) to the Airport and Airway Trust Fund.

(B) CIVIL PENALTIES.—With respect to any amount collected by a court in a civil action under paragraph (4), the court shall cause to be transferred to the Airport and Airway Trust Fund any amount collected as a civil penalty under paragraph (4).

(6) REIMBURSEMENT.—The Secretary, acting through the Administrator, shall, as soon as practicable after any amount is collected from a sponsor under paragraph (4), cause to be

transferred from the Airport and Airway Trust Fund to an airport affected by a diversion that is the subject of a civil action under paragraph (4), reimbursement in an amount equal to the amount that has been collected from the sponsor under paragraph (4) (including any amount of interest calculated under subsection (n)).

(7) STATUTE OF LIMITATIONS.—No person may bring an action for the recovery of funds illegally diverted in violation of this section (as determined under subsections (b) and (k)) or section 47133 after the date that is 6 years after the date on which the diversion occurred.

(n) INTEREST.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary, acting through the Administrator, shall charge a minimum annual rate of interest on the amount of any illegal diversion of revenues referred to in subsection (m) in an amount equal to the average investment interest rate for tax and loan accounts of the Department of the Treasury (as determined by the Secretary of the Treasury) for the applicable calendar year, rounded to the nearest whole percentage point.

(2) ADJUSTMENT OF INTEREST RATES.—If, with respect to a calendar quarter, the average investment interest rate for tax and loan accounts of the Department of the Treasury exceeds the average investment interest rate for the immediately preceding calendar quarter, rounded to the nearest whole percentage point, the Secretary of the Treasury may adjust the interest rate charged under this subsection in a manner that reflects that change.

(3) ACCRUAL.—Interest assessed under subsection (m) shall accrue from the date of the actual illegal diversion of revenues referred to in subsection (m).

(4) DETERMINATION OF APPLICABLE RATE.—The applicable rate of interest charged under paragraph (1) shall—

(A) be the rate in effect on the date on which interest begins to accrue under paragraph (3); and

(B) remain at a rate fixed under subparagraph (A) during the duration of the indebtedness.

(o) PAYMENT BY AIRPORT TO SPONSOR.—If, in the course of an audit or other review conducted under this section, the Secretary or the Administrator determines that an airport owes a sponsor funds as a result of activities conducted by the sponsor or expenditures by the sponsor for the benefit of the airport, interest on that amount shall be determined in the same manner as provided in paragraphs (1) through (4) of subsection (n), except that the amount of any interest assessed under this subsection shall be determined from the date on which the Secretary or the Administrator makes that determination.

(p) Notwithstanding any written assurances prescribed in subsections (a) through (o), a general aviation airport with more than 300,000 annual operations may be exempt from having to accept scheduled passenger air carrier service, provided that the following conditions are met:

(1) No scheduled passenger air carrier has provided service at the airport within 5 years prior to January 1, 2002.

(2) The airport is located within or underneath the Class B airspace of an airport that maintains an airport operating certificate pursuant to section 44706 of title 49.

(3) The certificated airport operating under section 44706 of title 49 does not contribute to significant passenger delays as defined by DOT/FAA in the “Airport Capacity Benchmark Report 2001”.

(q) An airport that meets the conditions of paragraphs (1) through (3) of subsection (p) is not subject to section 47524 of title 49 with respect to a prohibition on all scheduled passenger service.

(r) COMPETITION DISCLOSURE REQUIREMENT.—

(1) IN GENERAL.—The Secretary of Transportation may approve an application under this subchapter for an airport development project grant for a large hub airport or a medium hub airport only if the Secretary receives assurances that the airport sponsor will provide the information required by paragraph (2) at such time and in such form as the Secretary may require.

(2) COMPETITIVE ACCESS.—On February 1 and August 1 of each year, an airport that during the previous 6-month period has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to provide service to the airport or to expand service at the airport shall transmit a report to the Secretary that—

(A) describes the requests;

(B) provides an explanation as to why the requests could not be accommodated; and

(C) provides a time frame within which, if any, the airport will be able to accommodate the requests.

(3) SUNSET PROVISION.—This subsection shall cease to be effective beginning October 1, 2023.

(s) AGREEMENTS GRANTING THROUGH-THE-FENCE ACCESS TO GENERAL AVIATION AIRPORTS.—

(1) IN GENERAL.—Subject to paragraph (2), a sponsor of a general aviation airport shall not be considered to be in violation of this subtitle, or to be in violation of a grant assurance made under this section or under any other provision of law as a condition for the receipt of Federal financial assistance for airport development, solely because the sponsor enters into an agreement that grants to a person that owns residential real property adjacent to or near the airport access to the airfield of the airport for the following:

(A) Aircraft of the person.

(B) Aircraft authorized by the person.

(2) THROUGH-THE-FENCE AGREEMENTS.—

(A) IN GENERAL.—An agreement described in paragraph (1) between an airport sponsor and a property owner (or an association representing such property owner) shall be a written agreement that prescribes the rights, responsibilities, charges, duration, and other terms the airport sponsor determines are necessary to establish and manage the airport sponsor’s relationship with the property owner.

(B) TERMS AND CONDITIONS.—An agreement described in paragraph (1) between an airport sponsor and a property

owner (or an association representing such property owner) shall require the property owner, at minimum—

(i) to pay airport access charges that, as determined by the airport sponsor, are comparable to those charged to tenants and operators on-airport making similar use of the airport;

(ii) to bear the cost of building and maintaining the infrastructure that, as determined by the airport sponsor, is necessary to provide aircraft located on the property adjacent to or near the airport access to the airfield of the airport;

(iii) to maintain the property for residential, non-commercial use for the duration of the agreement;

(iv) to prohibit access to the airport from other properties through the property of the property owner; and

(v) to prohibit any aircraft refueling from occurring on the property.

(3) EXEMPTION.—The terms and conditions of paragraph (2) shall not apply to an agreement described in paragraph (1) made before the enactment of the FAA Modernization and Reform Act of 2012 (Public Law 112–95) that the Secretary determines does not comply with such terms and conditions but involves property that is subject to deed or lease restrictions that are considered perpetual and that cannot readily be brought into compliance. However, if the Secretary determines that the airport sponsor and residential property owners are able to make any modification to such an agreement on or after the date of enactment of this paragraph, the exemption provided by this paragraph shall no longer apply.

(t) RENEWAL OF CERTAIN LEASES.—

(1) IN GENERAL.—Notwithstanding subsection (a)(13), an airport owner or operator who renews a covered lease shall not be treated as violating a written assurance requirement under this section as a result of such renewal.

(2) COVERED LEASE DEFINED.—In this subsection, the term “covered lease” means a lease—

(A) originally entered into before the date of enactment of this subsection;

(B) under which a nominal lease rate is provided;

(C) under which the lessee is a Federal or State government entity; and

(D) that supports the operation of military aircraft by the Air Force or Air National Guard—

(i) at the airport; or

(ii) remotely from the airport.

(u) CONSTRUCTION OF RECREATIONAL AIRCRAFT.—

(1) IN GENERAL.—The construction of a covered aircraft shall be treated as an aeronautical activity for purposes of—

(A) determining an airport’s compliance with a grant assurance made under this section or any other provision of law; and

(B) the receipt of Federal financial assistance for airport development.

(2) COVERED AIRCRAFT DEFINED.—In this subsection, the term “covered aircraft” means an aircraft—

- (A) used or intended to be used exclusively for recreational purposes; and
 - (B) constructed or under construction by a private individual at a general aviation airport.
- (v) COMMUNITY USE OF AIRPORT LAND.—
- (1) IN GENERAL.—Notwithstanding subsection (a)(13), and subject to paragraph (2), the sponsor of a public-use airport shall not be considered to be in violation of this subtitle, or to be found in violation of a grant assurance made under this section, or under any other provision of law, as a condition for the receipt of Federal financial assistance for airport development, solely because the sponsor has entered into an agreement, including a revised agreement, with a local government providing for the use of airport property for an interim compatible recreational purpose at below fair market value.
 - (2) RESTRICTIONS.—This subsection shall apply only—
 - (A) to an agreement regarding airport property that was initially entered into before the publication of the Federal Aviation Administration’s Policy and Procedures Concerning the Use of Airport Revenue, dated February 16, 1999;
 - (B) if the agreement between the sponsor and the local government is subordinate to any existing or future agreements between the sponsor and the Secretary, including agreements related to a grant assurance under this section;
 - (C) to airport property that was acquired under a Federal airport development grant program;
 - (D) if the airport sponsor has provided a written statement to the Administrator that the property made available for a recreational purpose will not be needed for any aeronautical purpose during the next 10 years;
 - (E) if the agreement includes a term of not more than 2 years to prepare the airport property for the interim compatible recreational purpose and not more than 10 years of use for that purpose;
 - (F) if the recreational purpose will not impact the aeronautical use of the airport;
 - (G) if the airport sponsor provides a certification that the sponsor is not responsible for preparation, start-up, operations, maintenance, or any other costs associated with the recreational purpose; and
 - (H) if the recreational purpose is consistent with Federal land use compatibility criteria under section 47502.
 - (3) STATUTORY CONSTRUCTION.—Nothing in this subsection may be construed as permitting a diversion of airport revenue for the capital or operating costs associated with the community use of airport land.
- (w) MOTHERS’ ROOMS.—
- (1) IN GENERAL.—**[In fiscal year 2021 and each fiscal year thereafter, the Secretary of Transportation]** *The Secretary of Transportation* may approve an application under this subchapter for an airport development project grant only if the Secretary receives written assurances that the airport owner or operator will maintain—

(A) a lactation area in the sterile area of each passenger terminal building of the airport; and

(B) a baby changing table in **one men’s and one women’s** *at least one men’s and at least one women’s* restroom in each passenger terminal building of the airport.

(2) APPLICABILITY.—

[(A) AIRPORT SIZE.—The requirement in paragraph (1) shall only apply to applications submitted by the airport sponsor of a medium or large hub airport.]

(A) AIRPORT SIZE.—The requirements in paragraph (1) shall only apply to applications submitted by the airport sponsor of—

(i) a medium or large hub airport in fiscal year 2021 and each fiscal year thereafter; and

(ii) a small hub airport in fiscal year 2023 and each fiscal year thereafter.

(B) PREEXISTING FACILITIES.—On application by an airport sponsor, the Secretary may determine that a lactation area in existence on **the date of enactment of this Act** *complies with the requirement in paragraph (1) October 5, 2018, complies with the requirement in paragraph (1)(A),* notwithstanding the absence of one of the facilities or characteristics referred to in the definition of the term “lactation area” in this subsection.

(C) SPECIAL RULE.—The requirement in **paragraph (1) paragraph (1)(A)** shall not apply with respect to a project grant application for a period of time, determined by the Secretary, if the Secretary determines that construction or maintenance activities make it impracticable or unsafe for the lactation area to be located in the sterile area of the building.

(3) DEFINITION.—In this section, the term—

(A) “lactation area” means a room or similar accommodation that—

(i) provides a location for members of the public to express breast milk that is shielded from view and free from intrusion from the public;

(ii) has a door that can be locked;

(iii) includes a place to sit, a table or other flat surface, a sink or sanitizing equipment, and an electrical outlet;

(iv) is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs; and

(v) is not located in a restroom; and

(B) “sterile area” has the same meaning given that term in section 1540.5 of title 49, Code of Federal Regulations.

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