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NATIONAL AVIATION CAPACITY EXPANSION ACT OF 2002

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

on

S. 2039



JUNE 11, 2002.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

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NATIONAL AVIATION CAPACITY EXPANSION ACT OF 2002

JUNE 11, 2002.—Ordered to be printed

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 2039]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2039), to expand aviation capacity in the Chicago area, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of the bill is to end an impass over airport expansion efforts in the Chicago area. The bill legislates a process to provide that O'Hare International Airport expansion plans and the efforts to move forward with the planning of a new airport south of the City of Chicago proceed. The bill ensures that all environmental processes, safety and efficiency reviews, and all other relevant Federal analyses are conducted. The bill further leaves untouched the Federal Aviation Administration's (FAA) ability to exercise its authority in determining the future of the projects. Finally, the bill seeks to ensure that once Federal funds are expended to begin the O'Hare redesign project, the State will not exercise its authority to stop the project. The plan has the support of the Governor of Illinois and the Mayor of Chicago.

BACKGROUND AND NEEDS

The dispute over airport expansion in Illinois has been stalled for many years as various governors and mayors could not come to a consensus regarding the prospects for a new airport in the Chicago area. Many proposals were put forward over the past 30 years, but no progress was made. Under Illinois law, no airport construction

in the State can proceed without the approval of the governor. Recent efforts by Chicago Mayor Richard Daley to expand O'Hare International Airport (O'Hare) and efforts by Illinois Governor George Ryan to move forward with plans for a new airport south of Chicago were continually at an impasse.

The bill seeks to end that stalemate by ensuring that the O'Hare reconfiguration plans and the plans to build a new south suburban airport are fully reviewed by the FAA. In addition, the bill provides that once Federal funds are provided, the State will not exercise its rights to block the proposed O'Hare expansion plan. It also requires that all environmental processes be complied with, but does not guarantee or provide any funding to either Chicago-area project or to a project for the airport in Gary, Indiana.

With airport expansion in the Chicago region seemingly deadlocked, Senators Harkin and Grassley, as well as Senator Durbin, began to push for a Federal solution. Flight delays and the lack of capacity at O'Hare were beginning to limit access to Chicago for many small towns, and were affecting interstate commerce in many parts of the country. This led the Commerce Committee to hold a field hearing in Chicago on June 15, 2001, to urge local factions to develop a solution that would expand airport capacity in the Chicago region. At the time, nationwide delays, including at O'Hare, were inhibiting interstate air transportation. Witnesses at the June hearing included representatives from the City of Chicago, the State of Illinois, the Suburban O'Hare Commission, Chicago business leaders, and the Chair of the Illinois House of Representatives Aviation Subcommittee.

On December 5, 2001, Mayor Daley and Governor Ryan reached a compromise to reconfigure O'Hare while proceeding with planning for a new airport (termed "South Suburban" or "Peotone"), south of Chicago. The agreement to modernize and expand O'Hare International Airport and to allow construction of a third airport provides for:

(1) Expanding and reconfiguring O'Hare to eight runways, with six parallel runways (see Appendix A);

(2) Planning a south suburban airport near Peotone;

(3) Improving ground infrastructure to address traffic congestion, including western access to O'Hare; and

(4) Continuing the operation of Chicago's Meigs Field (a general aviation airport in Chicago).

The legislation will recognize the agreement between the City and the State, facilitate interstate commerce, and provide some certainty to the people of Illinois, the traveling public, the passenger and cargo airlines using O'Hare, and general aviation pilots that use Meigs Field. Testimony by Mayor Daley at the Commerce Committee's second hearing on this matter held March 21, 2002, noted that the City did not want to commit funds to the project only to have a subsequent governor overturn the agreement. The Committee does not want to see Federal dollars similarly misused. By supporting Federal legislation, Governor Ryan, Mayor Daley and the Committee are seeking to avert wasting local and Federal dollars.

O'Hare expansion will provide a significant boost for business interests across the country, and the agreement has earned the strong endorsement of many national organizations such as the

AFL–CIO and the U.S. Chamber of Commerce. The aviation industry is also in agreement. Air traffic controllers, the airlines represented by the Air Transport Association, airports represented by Airports Council International-North America and the American Association of Airport Executives, the Aircraft Owners and Pilots Association, and business leaders throughout the State of Illinois, all have expressed their support for legislation to expedite modernizing O'Hare. Congressmen Hyde and Jackson, both from Illinois, testified against the plan and the legislation.

O'Hare is one the world's largest airports. As noted elsewhere, it also, prior to September 11, was one of the most delayed airports. These delays, costing consumers millions of dollars in terms of time, also limited the ability to add additional flights sought by small communities throughout the country. With the advent of regional jets, access to O'Hare has become possible for many more communities. Without a reconfiguration of the facility, in the long term, such access would be effectively cut off. O'Hare is one of the few major hubs in the U.S. with two air carriers each operating in excess of 35 percent of the flights. These hubs provide gateways to hundreds of other communities and international cities.

In providing a degree of certainty that the agreement reached by the Governor and Mayor will proceed, albeit with all applicable legal, environmental and safety reviews, the Committee is seeking to ensure that once Federal dollars are committed, a future decision will not result in a waste of those resources. Thus, to facilitate interstate commerce, and to avoid wasteful spending, the bill effectively enables the agreement to be thoroughly reviewed, and if approved, move forward in the normal course of FAA practices.

O'HARE INTERNATIONAL AIRPORT—ITS ROLE IN THE NATIONAL AVIATION SYSTEM

During World War II, Douglas Aircraft manufactured C–54 transport planes for the United States Air Corps on the site that is now O'Hare. The City purchased the Douglas facility in 1945, and built the Orchard Place Airport on the site the following year. In 1949, the airport was renamed for Edward "Butch" O'Hare, a Navy fighter ace and Congressional Medal of Honor recipient. By 1959, the City began a massive expansion of O'Hare, and the airport was redesigned to accommodate 20 million passengers annually. However, rapid and dramatic changes in aviation have again stressed capacity, rendering the once-modern enhancements obsolete.

O'Hare International Airport is a major transportation hub, and is a crucial by-way for much of the nation's business and travel demands. Despite the shut down of the air traffic control system in response to the September 11 attacks, and subsequent flight reductions by the air carriers, O'Hare handled more flights in 2001 than at any other time in its history and is currently the world's busiest airport. Last year, more than 67 million passengers passed through O'Hare on 911,917 flights. O'Hare averages more than 2,500 commercial flights each day to 174 non-stop markets, provided by 45 passenger airlines, as well as cargo flights provided by 19 cargo carriers. With non-stop flights to 47 of the 50 states O'Hare serves more destinations than any other airport in the nation, and more

than half of those passengers depend on O'Hare to connect between flights.

With so many travelers depending on O'Hare, a steady flow of air traffic at the facility is important to locations across the country. In a report issued last year, however, the FAA determined that scheduled traffic at O'Hare met or exceeded the airport's good weather capacity for 3½ hours per day and its bad weather capacity for 8 hours per day. This stress on capacity at O'Hare is a major factor leading to flight delays at the airport.

Delays at O'Hare can have a crippling effect on the entire U.S. aviation system, and the number of users in the system is rapidly growing while O'Hare's current configuration has remained unchanged. The FAA's recently announced aerospace forecast projections indicate commercial air carrier enplanements are expected to increase from 649.9 million in 2001 to 954.1 million in 2013, which represents a system-wide growth rate of 4 percent annually over the next 12 years. Demand at O'Hare alone is anticipated to grow by 18 percent over the coming decade according to the recent airport capacity report, and the imbalance between capacity and demand growth is expected to significantly increase delays at O'Hare over this time period.

These delays cost travelers time and money. Moreover, the carriers also suffer financial losses due to the costs attributed to such delays, including fuel burn and other expenses. Delays cost $166.5 million per year to the airlines at O'Hare alone, and billions to airlines and travelers across the nation (based on an average operation cost of $25.17 per minute of delay for the nationwide fleet). Last year, prior to September 11, the FAA identified O'Hare as one of the major choke points in the national aviation system in its Aviation Capacity Benchmark Report when it identified O'Hare as the third most delayed airport in the country (after LaGuardia and Newark) in 2000.

Unlike New York's LaGuardia Airport and some of the nation's other delay-plagued airports, O'Hare has an opportunity to expand primarily using the existing airport area and provide needed aviation apacity for many years. According to testimony by proponents, O'Hare's antiquated runway layout is the primary cause of these delays. Although it is at the center of the national aviation system, O'Hare struggles with an old-fashioned, inefficient airfield design.

Modern runway design employs parallel approaches in instrument flight rule conditions. Proponents of the redesign plan assert that by modernizing O'Hare's airfield by constructing one new runway and relocating three existing runways, delays and congestion are projected to be reduced dramatically. An up-to-date configuration, according to testimony by the City of Chicago, will reduce bad weather delays by 95 percent, and overall delays by 79 percent. With a broader layout, O'Hare could be far more efficient, and the whole national air transportation system would benefit. Under the legislation, the FAA will review the benefits of the redesign pursuant to existing guidelines.

While the need to increase aviation capacity in the Chicago region is clear, taking the necessary action to address this need has been difficult. In the early 1970s, the City took action to plan for regional aviation development, and began to prepare a Master Plan Study for O'Hare which represented the first attempt to formulate

a systematic plan of growth in the area. While the Master Plan Study was in the preparation stage, opponents of continued growth at O'Hare filed suit against the FAA in 1974. Since this time, no expansion has occurred and no consensus has been achieved on how to increase capacity for the Chicago region until the agreement between Governor Ryan and Mayor Daley was reached.

SUMMARY OF MAJOR PROVISIONS

The bill does the following:

Lays out in precise detail the Chicago-area aviation agreement reached by Governor Ryan and Mayor Daley on December 5, 2001, providing for the reconstruction and expansion of O'Hare and allowing for the construction of a third Chicago-area airport at Peotone, Illinois. Nothing in the bill guarantees any funding for the O'Hare or Peotone project, or mandates that a specific set of runway configurations be approved, as the FAA retains all its existing discretion to analyze, review, and, if all relevant tests are met, approve the O'Hare project. For example, the bill requires that any new runway redesign increase capacity in both instrument and visual flight conditions and that the percentage of runway incursions not increase.

Seeks to ensure that the deal to expand O'Hare made by the Governor and the Mayor is not broken, but is thoroughly reviewed and is consistent with the safety and efficiency of the air traffic control system. Under Illinois law, the City of Chicago cannot build new runways or reconfigure existing runways without the approval of the governor. The bill seeks to prohibit a future governor from disapproving the decision to move forward once Federal funds are expended.

Directs the FAA, while retaining FAA's existing authority, to implement the agreement reached between the Governor and the Mayor by facilitating the runway redesign plan submitted by O'Hare. This action would be contingent upon the FAA's determination that the plan meets all existing requirements for the project. The FAA has discretion to modify the plan, if necessary, for efficiency, safety, or other concerns. The bill also gives priority consideration for an application for a letter of intent (LOI) for a new south suburban airport and also for an LOI for Gary, Indiana.

Requires any redesign plan to conform with the Clean Air Act and to conform to all other environmental mandates to the maximum extent possible,while requiring that the State use its customary practices to analyze any Clean Air Act requirements.

Requires that before a plan is approved for O'Hare, soundproofing of residential property and schools is included in the plan.

Requires the continued operation of Meigs Field under the control of the City of Chicago.

Provides no priority for federal funding of any O'Hare projects, including the runway redesign plan.

Recognizes the importance of utilizing Gary/Chicago Airport, Rockford, IL Airport, and other existing infrastructure to promote capacity and reduce congestion in the region.

Does not make a determination whether if the proposal is safe, as that is a matter for the FAA to review. The legislation specifically notes that the FAA's safety authority and ability to disapprove the plan is not affected. For example, under the plan, the distance between runway centerlines, whether configured as independent or dependent parallel runways, and how each is used, will be carefully reviewed by the FAA. If the layout of the runways is deemed unsafe, inefficient, or needs adjustments, that decision under the bill, and under existing law, is left to the FAA.

Ensures, with respect to access to O'Hare, that all carriers benefit from the expansion plans, not just the two major carriers, United and American. Access is facilitated by requiring, as part of any grant provided, that the FAA receive appropriate assurances that "have-not" or new entrant carriers be provided reasonable access to gates and facilities. Also, the bill does not adversely affect the property rights of those incumbent carriers.

LEGISLATIVE HISTORY

On March 20, 2002, Senator Durbin introduced S. 2039, the National Aviation Capacity Act of 2002.

On March 21, 2002, the Committee held a hearing to consider the agreement reached between Governor Ryan and Mayor Daley to expand airport capacity in the Chicago area. The hearing focused on the agreement and also on the legislation that was introduced by Senator Durbin to help implement the agreement. The Mayor and Governor both testified in support of the bill.

On April 18, 2002, the Commerce Committee ordered S. 2039 to be reported with an amendment in the nature of a substitute. The Committee adopted: a manager's amendment; an amendment by Senator Dorgan to protect existing property holders at O'Hare; compromise language offered by Senator McCain on behalf of Senator Fitzgerald that notes that the FAA Administrator is not required to approve the O'Hare runway redesign plan; an amendment offered by Senator Fitzgerald on runway incursions; and an amendment offered by Senator Fitzgerald clarifying noise mitigation requirements. The Committee rejected amendments offered by Senator Fitzgerald that sought to limit the area of O'Hare expansion and to have the Federal government regulate contracting at O'Hare, which would have required all contract services to be reviewed.

The agreement reached by Governor Ryan and Mayor Daley was spurred by the June 15, 2001, Commerce Committee field hearing in Chicago which looked at proposals to improve air service to the region. At the field hearing, the State and Mayor's representatives were told to try to work out a plan by September 1, 2001. While this deadline was not met, a plan was offered on December 5, 2001, when the Mayor and Governor agreed to reconfigure O'Hare and proceed with planning for a new airport (Peotone), south of Chicago.

The agreement between Mayor Daley and Governor Ryan is a compromise that has taken years to reach. In an effort to make certain that the State of Illinois moves forward on expanding air service in the Chicago region, the agreement by the State and City was

encompassed in legislation that was introduced in both the House and Senate. In the Senate, Senator Durbin first introduced S. 1786, and later introduced S. 2039, to ensure that O'Hare expansion plans continue. In the House, H.R. 3479 was introduced by Rep. Lipinski, and has more than 100 cosponsors.

On December 7, 2001, Senator Durbin attempted to add S. 1786 to the Department of Defense Appropriations Act of 2002. Senator Fitzgerald objected and debated the issue for several hours. He argued that only Peotone should be built and that O'Hare expansion will not add any new capacity, will create unsafe conditions, and will contribute to noise and other environmental degradations. Senator Durbin subsequently withdrew the amendment.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 7, 2002.

Hon. ERNEST F. HOLLINGS,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2039, the National Aviation Capacity Expansion Act of 2002.

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

Sincerely,

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

Enclosure.

S. 2039—National Aviation Capacity Expansion Act of 2002

S. 2039 would direct the Administrator of the Federal Aviation Administration (FAA) to assist in redesigning and reconstructing Chicago O'Hare International Airport in Cook and Dupage Counties, Illinois, in accordance with a specified runway design plan. FAA also would be directed to assist in developing a south suburban airport in the Chicago metropolitan region. The bill would require an implementation plan to be prepared by the state of Illinois under the Clean Air Act for regulating emissions associated with activities at commercial service airports.

CBO estimates that S. 2039 would have no significant impact on federal spending. The bill could affect which projects the FAA chooses to support, but based on information from the agency, CBO estimates that S. 2039 would have no net effect on total spending for such projects. Because S. 2039 would not affect direct spending or receipts, pay-as-you-go-procedures would not apply.

The bill would preempt the state of Illinois' authority to regulate certain activities of the owners of O'Hare airport. Specifically, the

bill would preempt the state's authority to control or regulate the owner of O'Hare airport as it applies for federal grant funds to pay for the airport expansion. In addition, the bill would limit the state's authority to impose regulations on aviation safety with respect to the development of a runway redesign plan for O'Hare. These preemptions would be intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA).

In implementing the runway redesign plan at O'Hare, the city of Chicago would have to take steps to mitigate noise in residential units and schools around the airport. The city also would be prohibited from using the Clean Air Act to interfere with runway construction at O'Hare or development of another airport south of Chicago. These requirements also would be intergovernmental mandates as defined in UMRA.

Based on information from FAA and the city of Chicago, CBO estimates that the preemptions of state authority and the requirements placed on the city would not impose significant costs. Thus, the costs of the bill's mandates would not exceed the threshold established by UMRA ($58 million in 2002, adjusted annually for inflation). The bill contains no new private-sector mandates as defined in UMRA.

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

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

Because S. 2039 does not create any new programs, the legislation will have no additional regulatory impact, and will result in no additional reporting requirements. The legislation will have no further effect on the number or types of individuals and businesses regulated, the economic impact of such regulation, the personal privacy of affected individuals, or the paperwork required from such individuals and businesses. A number of provisions in the bill require the FAA and other agencies to participate in reviewing the redesign plan, which includes a western access road system, to ensure that an existing airport remain open, and to consider expeditiously applications for letters of intent for airport infrastructure projects. All of these types of requirements are actions that the Federal government routinely participates in and the burden on the government is not increased by the legislation. In addition, while the bill effectively directs the City of Chicago and State of Illinois to submit their plans and proposals, each has agreed voluntarily to do so, and there are no additional requirements imposed upon them.

NUMBER OF PERSONS COVERED

The bill affects entities already subject to FAA rules and regulations, and the number of persons covered is unchanged by the legislation. The process to review the application by the City of Chicago to expand O'Hare will be subject to all regulatory and environ-

mental reviews in the normal course of business, and persons affected by any such expansion, should it ultimately be approved, under existing regulatory procedures will have ample opportunity to raise issues and concerns with the FAA. The same is true if, and when, plans to expand the airport at Gary, Indiana, are put forward and if plans to build the new south suburban airport proceed.

ECONOMIC IMPACT

As noted above, O'Hare International Airport is one of the nation's largest airports, channeling more than 67 million passengers per year to destinations around the globe. O'Hare generated employment creates jobs for more than 365,000 individuals, and according to reports, the airport is the impetus for more than $30 billion in economic activity annually. The proposed plan to expand capacity from some 900,000 operations to approximately 1.6 million operations a year is expected to generate 195,000 more jobs and is projected to reduce delays at the airport by 79 percent overall, cutting costs in terms of travel time, fuel burn and other factors by a significant amount.

The priority designation for letters of intent, an instrument delineating the FAA's long term funding commitment to an airport construction project, if ultimately granted, will provide benefits to Gary and the new South Suburban Airport, as each of those projects move forward. At this point, those benefits—delay reductions, jobs, and other factors—have not been clearly identified, but it is anticipated that each will have positive economic impacts for their respective areas and the region.

PRIVACY

Nothing in the bill affects the privacy rights of any individuals.

PAPERWORK

Nothing in the bill increases the paperwork burden on the private sector or the Federal government as the existing means for processing grant applications for airport expansion projects, and conducting the environmental review process are unchanged. In one respect, paperwork requirements may be reduced as the State of Illinois, having already agreed to the O'Hare project and the Peotone concept, will not have to go through the review in the out years of the need for the project and the analysis of the funding requests from the airport, both of which exist under current law. The bill requires that the FAA submit a report to Congress if necessary criteria to begin construction on the O'Hare redesign plan have not been met December 31, 2004.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 designates the short title of the bill as the "National Aviation Capacity Expansion Act of 2002."

Section 2. Findings

Section 2 presents a dozen findings of Congress to explain the purpose of the bill.

It also explains the background for the legislation, which includes noting how important airport expansion nationwide is to addressing longer term capacity needs. The Committee last year favorably reported legislation S. 633, the Aviation Delay Prevention Act, designed to streamline the entire airport construction review process for all airports. This bill focuses on the particular details of the Chicago metropolitan area and the need to expand capacity.

Section 3. Airport construction and redesign

Section 3 reiterates the importance of the Chicago region to the national air transportation system, and directs the FAA Administrator to pursue both an expansion of O'Hare International Airport and a review of plans for a south suburban airport. Any action taken by the FAA regarding these efforts are required to be consistent with existing environmental and safety requirements. The approved runway redesign plan must be able to demonstrate improved capacity regardless of weather conditions, and the existing property rights of airport users must not be affected by these provisions. Approval of the runway redesign plan is conditioned on meeting the requirements of the Clean Air Act, the use of best management practices, and maintaining existing levels of airport safety.

Section 3 also prohibits the State of Illinois from interfering with the O'Hare runway redesign plan. Furthermore, the State is required to develop an implementation plan according to the normal process to account for emissions at the State's commercial service airports without intentionally interfering with airport capacity efforts.

The legislation before the Committee presented a unique set of circumstances because of an unusual set of provisions under Illinois State law to which airports in other States, are not subject. Under Illinois law, the Governor, through his Transportation Department, must issue a certificate approving authorization for runway construction (Section 47), and no local government can apply for Federal airport grants without State approval (Section 38.01—Also referred to as a "Channeling Act"). Thus, without Federal legislation, it is possible that a future governor may put a halt to O'Hare's expansion after it has already begun, which would waste federal dollars and adversely affect interstate commerce.

As noted above, Illinois is one of only a few states that provides airport approval power to State Executive authority. Even if O'Hare does not receive any State money, the Governor maintains the power to deny new or relocated runways at O'Hare. Of those states that have executive approval, according to testimony by Mayor Daley, only O'Hare has been prevented from implementing a runway plan because of State opposition.

O'Hare serves as a gateway to hundreds of domestic and international markets for small- and medium-sized communities. Increased capacity at O'Hare would allow communities throughout the U.S. additional access to many cities, both here and abroad. Given local agreement, and unique Illinois laws, the bill seeks to ensure that, consistent with all applicable laws, the review process moves forward, funding for planning and analysis is made available through the normal FAA grant process, without any priority for O'Hare, and that once begun and once approved, the Federal,

State, and local resources are not wasted, merely due to a future change in political position.

Section 3 also requires that any approved airport plan is phased to ensure that the construction of an east-west runway which conforms to certain stated conditions does not begin prior to January 1, 2011. Any plan must include public roadway access through the existing western boundary of O'Hare, and is required to provide noise mitigation for local communities. The FAA Administrator is prohibited from moving forward with O'Hare redesign until a satisfactory noise mitigation plan is offered by the City of Chicago which provides a continual lessening of noise impact for surrounding communities in each successive calendar year. With respect to environmental concerns, the bill specifically requires that as part of any plan approval for the runway redesign, the City must include acoustical treatment of residences and schools within the 65 DNL noise contour. The Committee understands that the agreement between the Mayor and Governor includes about $450 million for soundproofing. The Committee notes that as the U.S. commercial fleet has phased out noisier, older aircraft, the number of people nationwide inside of the 65 DNL area has been substantially reduced, and that for the Chicago area, the reduction represents more than 20,000 homes since 1997. The Federal government will have no financial responsibility for the O'Hare project if these conditions are not met.

The debate over the costs of the O'Hare expansion project is not settled by the legislation and the plan includes a number of items that are not eligible for FAA airport grant monies or Passenger Facility Charges (PFC) funding. According to the Illinois Department of Transportation, the cost of the proposed O'Hare expansion is estimated at between $5.65 billion and $6.75 billion for the airfield changes, terminal development, road improvements, land acquisition and noise mitigation. However, as with all airport projects, the figures are only estimates. As the project is vetted, firmer estimates will be developed. Under existing FAA procedures, the costs of the project will be reviewed to confirm that, for example, construction estimates are reasonable. In addition, if substantial Airport Improvement Program (AIP) dollars are provided, the FAA will conduct a benefit cost analysis of the project. With respect to sources of funding, airport projects are funded from a multitude of sources—one source is the FAA's AIP program, under which the City of Chicago receives approximately $6.5 million in entitlement funds for O'Hare each year. Another source is passenger facility charges—a $4.50 per segment fee imposed on passengers to expand capacity. Other sources include bonds (e.g., general aviation revenue bonds) that may be backed by airport rates and charges imposed on incumbent carriers or that are backed by other sources of revenue. Generally, such bond financing is provided through the private sector based upon the viability of the project and the ability to repay. Thus, the issue of costs is not one that is addressed in the bill and the matter will be considered by the FAA, the City, the State, the affected carriers, and the financial community. The Committee, knowing that this issue was not a matter for the Committee to determine, specifically included language that nothing in the bill provided any monies or a priority for such Federal funds. As a gen-

eral matter, the FAA where it does provide funds for a major project, only pays for a small portion of a project's total costs.

Section 3 requires the FAA Administrator to give priority consideration to applications for letters of intent (LOI) submitted by the State of Illinois, the State of Indiana, or political subdivisions thereof for a south suburban airport or an extension of the main runway at Gary/Chicago Airport. The only priorities accorded to airports are those for Gary, Indiana, and the new south suburban airport, both of which will be provided a priority consideration for their LOI, the FAA's long-term funding commitment letters. The Committee understands, in adding Gary to receive such consideration, that the airport has plans to expand its airport and that the plans include a de minimus amount of funds for environmental cleanup. Nothing in the Act mandates any specific set of criteria for approval under the LOI requests, but only that each will be considered expeditiously. A report to Congress is mandated if necessary criteria to begin construction on O'Hare runway redesign plan have not been met by December 31, 2004.

Section 3 requires Merrill C. Meigs Field to remain open, owned and operated by the City of Chicago until January 1, 2026. The provision enables the City to use revenues from the two largest carriers at O'Hare, American and United, to pay for the operating and maintenance costs of Meigs. The Committee understands that these two carriers have agreed to the arrangement and that other carriers are not party to the agreement. If circumstances at O'Hare change, the Committee anticipates that agreements would need to be reached with other carriers. Additionally, Section 3 sets the definition for the terms "runway redesign plan," "south suburban airport," "Administrator," "State," and "implementation plan."

Section 4. Application with existing law

Section 4 requires that no priority is given to Federal funding of O'Hare noise mitigation projects or the O'Hare runway redesign plan.

Section 5. Competitive access requirements

Section 5 requires that, in providing funds to expand O'Hare, the FAA is required to receive adequate assurances (generally referred to as grant assurances) that gates and facilities are available, or will be made available on fair and reasonable terms to all carriers serving or seeking to serve O'Hare. As expansion of runways and redesign occurs, and as new terminals are built, the provision ensures that access by carriers other than the two dominant carriers, United and American, is provided.

Section 5 seeks grant assurances that existing exclusive use gate arrangements are phased out as contracts expire and as, and if, new facilities are provided. The City is urged to do so as soon as practicable so that other carriers can obtain access to the airport. The phase out of exclusive use contracts for gates and associated facilities extends to such assets that are either relinquished by existing tenants or those assets added to the airport. Finally, the section requires the airport to conduct a comprehensive study of the existing facilities and types of contracts in existence.

Under Section 5, in providing relief under the bill, the Committee is cognizant that access to O'Hare must be provided to the

"have not" carriers as mentioned earlier. O'Hare today is dominated by two major U.S. carriers-Chicago-based United Airlines and Dallas-Ft. Worth-based American Airlines. Other carriers are concerned that as construction ensues, and new terminals are constructed, that they be provided reasonable access to gates and facilities. Senator Dorgan offered an amendment that was accepted that protects existing property rights. Senator Dorgan was concerned that the "have not" carriers might have their terminal space condemned by the City.

Through Section 5, the Committee recognizes that while expansion is critical for all carriers and travelers, access for "have not" carriers must be provided on fair and reasonable terms. The Committee maintains a strong interest in promoting a competitive environment among air carriers and does not favor arrangements that can have the counter-effect. In building its new facilities and new terminals, the Committee expects that the City will use funds to build new gates that are available for "have not" and new entrant carriers. The assurances the FAA can seek as part of the funding could include the construction of additional gates. The Committee believes that the Federal government's oversight should be focused and sufficient to help foster the pertinent policy objective. Any alterations of existing arrangements between air carriers and an airport operator, pursuant to this section, should be handled in a balanced manner that recognizes the rights that accrue to each party in such previously-negotiated business arrangements. The Committee anticipates that, if such arrangements are renegotiated, they be conducted in good faith between the parties. However, as contracts expire and new leases are entered into, the Committee expects that lease arrangements, particularly for the dominant carriers, will use non-exclusive types of arrangements. The Committee in reviewing this issue understands and expects that existing preferential use gates and facilities contracts for United and American will all become either preferential or common-use, and that as other contracts expire or are renegotiated, the City, to the extent practicable, will utilize non-exclusive arrangements for the "have not" carriers as well. However, flexibility is provided in the bill so that the non-dominant carriers are not disadvantaged by such actions, and it is not intended by any of the provisions of Section 5 that any existing contract with "have not" carriers be impaired.

ROLLCALL VOTES IN COMMITTEE

In accordance with paragraph 7(c) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following description of the record votes during its consideration of S. 2039:

Senator Fitzgerald offered an amendment, to the amendment (in the nature of a substitute) offered by Senator Hollings, to encourage the FAA to consider alternative proposals for the modernization of O'Hare. By rollcall vote of 4 yeas and 19 nays as follows, the amendment was defeated:

YEAS—4	NAYS—19
Mr. Lott	Mr. Hollings
Mr. Fitzgerald	Mr. Inouye[1]
Mr. Ensign[1]	Mr. Rockefeller[1]
Mr. Allen	Mr. Kerry[1]

Mr. Breaux
Mr. Dorgan
Mr. Wyden
Mr. Cleland[1]
Mrs. Boxer[1]
Mr. Edwards[1]
Mrs. Carnahan[1]
Mr. Nelson
Mr. McCain
Mr. Stevens[1]
Mr. Burns
Mrs. Hutchison
Ms. Snowe
Mr. Brownback
Mr. Smith

[1]By proxy

Senator Fitzgerald offered an amendment, to the amendment (in the nature of a substitute) offered by Senator Hollings, to require competition in contracting for services and sale of goods at O'Hare. By rollcall vote of 8 yeas and 15 nays as follows, the amendment was defeated:

YEAS—8	NAYS—15
Mr. McCain	Mr. Hollings
Mr. Lott	Mr. Inouye[1]
Ms. Snowe	Mr. Rockefeller[1]
Mr. Brownback	Mr. Kerry[1]
Mr. Smith	Mr. Breaux
Mr. Fitzgerald	Mr. Dorgan
Mr. Ensign[1]	Mr. Wyden
Mr. Allen[1]	Mr. Cleland[1]
	Mrs. Boxer[1]
	Mr. Edwards[1]
	Mrs. Carnahan[1]
	Mr. Nelson
	Mr. Stevens[1]
	Mr. Burns
	Mrs. Hutchison

[1]By proxy

By rollcall vote of 19 yeas and 4 nays as follows, the bill was ordered reported with an amendment in the nature of a substitute:

YEAS—19	NAYS—4
Mr. Hollings	Mr. Lott
Mr. Inouye[1]	Mr. Fitzgerald
Mr. Rockefeller[1]	Mr. Ensign[1]
Mr. Kerry[1]	Mr. Allen[1]
Mr. Breaux	
Mr. Dorgan	
Mr. Wyden	
Mr. Cleland[1]	
Mrs. Boxer[1]	
Mr. Edwards[1]	
Mrs. Carnahan[1]	
Mr. Nelson	

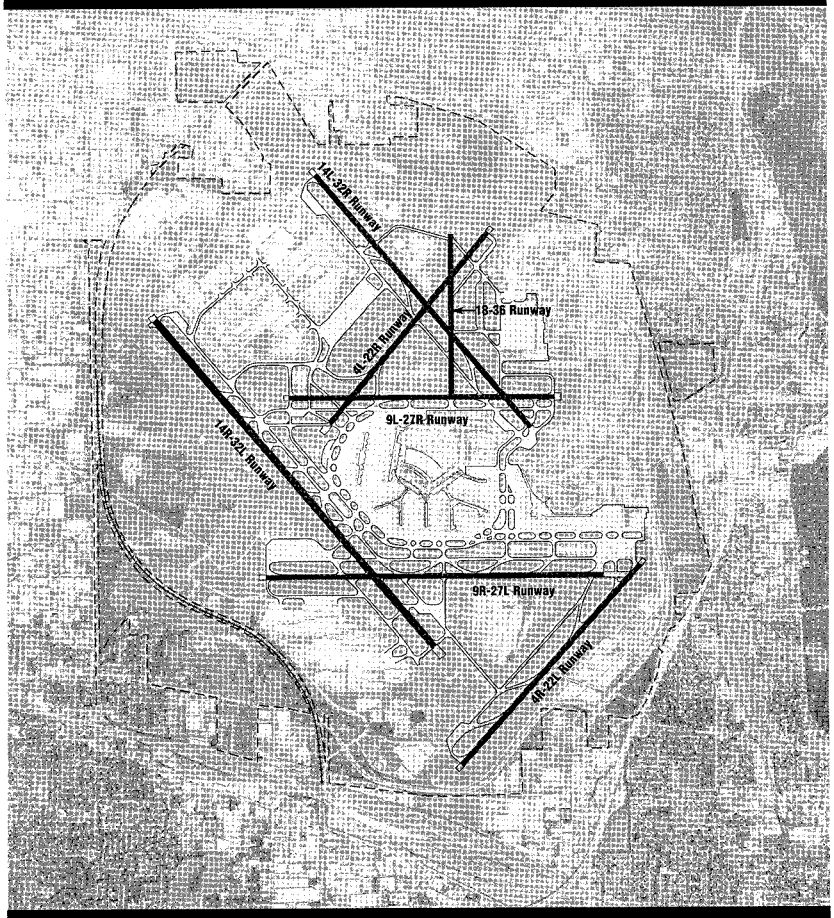
Mr. McCain
Mr. Stevens[1]
Mr. Burns
Mrs. Hutchison
Ms. Snowe
Mr. Brownback
Mr. Smith

[1]By proxy

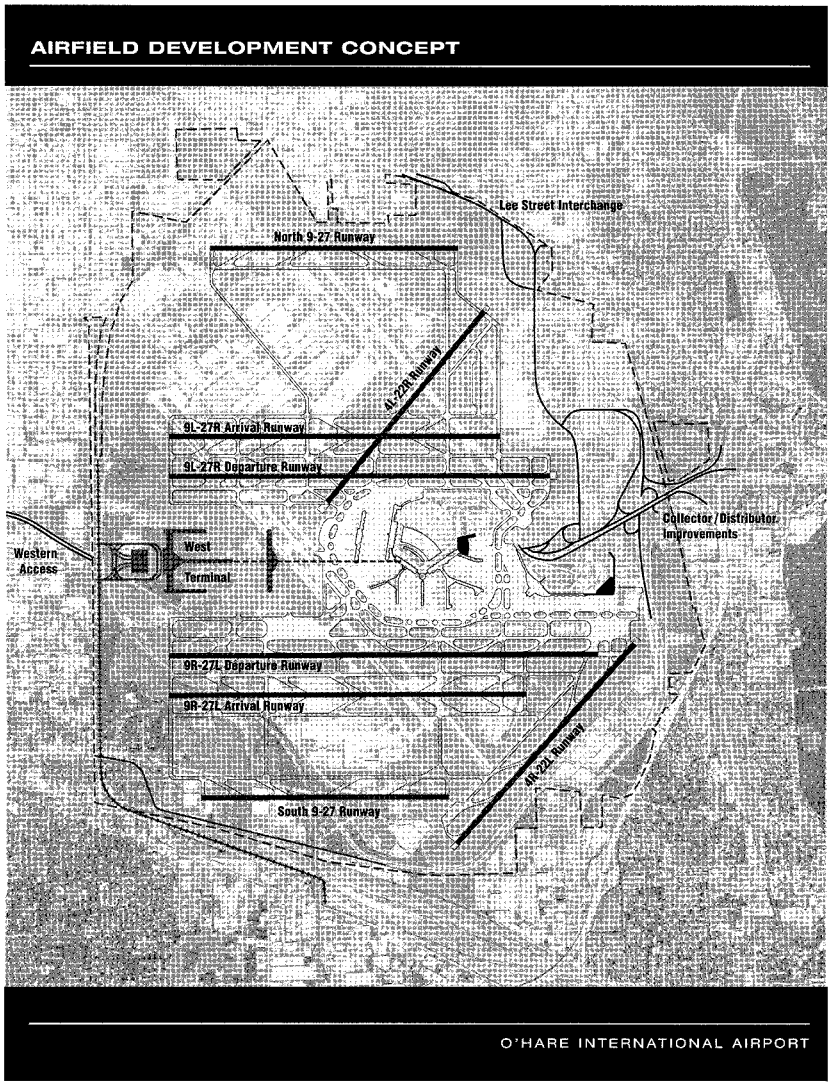
CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill as reported would make no change to existing law.

EXISTING AIRFIELD CONFIGURATION



O'HARE INTERNATIONAL AIRPORT


AIRFIELD DEVELOPMENT CONCEPT
Lee Street Interchange
North 9-27 Runway
Al-22R Runway
9L-27R Arrival Runway
9L-27R Departure Runway
Collector/Distributor Improvements
Western Access
West Terminal
9R-27L Departure Runway
9R-27L Arrival Runway
4R-22L Runway
South 9-27 Runway
O'HARE INTERNATIONAL AIRPORT