

**TESTIMONY OF THE
SUBURBAN O'HARE COMMISSION
BEFORE THE
Senate Commerce, Science and
Transportation Committee**

**Hearing on
CHICAGO AREA AIRPORT CAPACITY
MARCH 21, 2002**

Testimony of the Suburban O'Hare Commission

Mr. Chairman, and members of the Senate Commerce, Science and Transportation Committee, the Suburban O'Hare Commission (SOC) is a consortium of 14 local governments adjacent to O'Hare International Airport that represents the interests of over 1.5 million citizens. SOC is grateful for the opportunity to present its views concerning Chicago area airport capacity.

Legislation is being proposed that would fast-track a massive new six-runway redevelopment plan for the Chicago O'Hare International Airport. This would significantly interfere with the established requirements for review of airport development projects by the Federal Aviation Administration (FAA) and the environmental agencies. Through its findings, Congress would have effectively prejudged all of the most significant issues -- thus curtailing the neutral and expert role of the FAA in evaluating and approving airport development projects. The bill would silence further meaningful public debate concerning the future and direction of Chicago's airport needs. The legislation would also substantially erode the protections of the National Environmental Policy Act ("NEPA") that safeguard the environment and the public health and welfare.

At the outset, it is important to understand what SOC stands for, and what it does not. SOC is *not* opposed to airport development, nor the need to improve the capacity and efficiency of Chicago's airport system. To the contrary, there is broad

regional consensus – including among the members of SOC -- that the Chicago metropolitan area needs significant new airport capacity.

What SOC does oppose, however, is a narrow-minded focus on the expansion of O'Hare -- when there is a better, faster, safer, less expensive, and more environmentally-sound alternative: the construction of a third new Chicago-area airport at Peotone. Although legislation has been introduced that purports to support the construction of both airports, the economic and practical reality is that a massive six-runway redevelopment at O'Hare and a new airport at Peotone are mutually exclusive.

There is no need for extraordinary legislation. These types of regional airport development issues are matters that are best left to the expert judgment of the Federal Aviation Administration. If the O'Hare airport development project has sufficient merit, the appropriate mechanisms already exists for approval and construction. Congress should not interfere with that process by injecting a political decision concerning what does -- or does not -- make sense for the citizens of Illinois that are most directly affected by the Chicago region's airport development needs. Congress has neither the specialized aviation and airport environmental expertise of the FAA, nor the local knowledge necessary to make these determinations.

The runway capacity needs of Chicago's multi-airport system must be considered *interdependently*, and not *independently* of one another. The proposed legislation specifies a six-runway O'Hare layout plan, creating artificial constraints

on the FAA's regional airport planning judgment. The FAA would be required to think "in the box" in terms of a massive O'Hare expansion. Consequently, consideration of important alternatives that could produce a more optimal distribution of runway (and airspace) capacity for the Chicago region would be blocked.

The decision of which and how many runways to build within Chicago's multi-airport system is one that should be made by the FAA through the exercise of its substantial expertise -- not by Congress. Without a legislative imperative to expand O'Hare, the FAA might well determine to give Peotone a higher priority than O'Hare, based on very real safety, efficiency, cost-benefit, public interest and environmental considerations.

Furthermore, by prejudging the issue and specifying the construction of an ill-conceived six-runway O'Hare design plan, Congress would doom the Chicago region and the national air transportation system to a future of interminable delays. Cramming too many flights into a six-runway O'Hare super-hub would create the biggest and most delay-prone airport in the country. Worse yet, the proposed runway plan will produce a system that is guaranteed to fail miserably whenever the weather turns bad. The closely-spaced parallel runways cannot be used for simultaneous operations when the weather requires pilots to use instrument procedures. This means that half of the expensive new concrete poured at O'Hare would need to be taken out of service exactly when it is needed most -- under poor weather conditions when O'Hare experiences most of its delays.

Congress should not be involved in the business of engineering Illinois' airports. Indeed, for Congress to impose its will in this manner would strip away the fundamental authority of the State of Illinois with respect to the exercise and delegation of state power to build airports. This would directly violate the 10th amendment. Chicago's power to build airports stems not from some inherent authority of Chicago independent of state law. Rather, Chicago is a creation of state law and is exercising state power to build airports that has been delegated by the Illinois Legislature. As a creature of state -- not federal -- law, Chicago can only exercise those powers relating to airport construction that have been delegated to Chicago by the State of Illinois, and Chicago's delegated powers are necessarily limited by the conditions imposed on the delegation of power by the Illinois Legislature. Any legislation that attempts to interfere with the delegation of state power to a state political subdivision would be fraught with constitutional problems and would have national implications affecting every state.

SOC opposes this bill because it seeks to avoid the careful framework established for review of airport development by the FAA in cooperation with state airport sponsors. The O'Hare redevelopment plan is one of the largest proposed airport expansions in aviation history. A project of this size, scope, and cost deserves more than a *post hoc* rationalization by the FAA. Before turning to a more thorough evaluation of the legislation, I would like to highlight a few of our key concerns.

S.1786 is unprecedented. It would:

- **Declare it to be “federal policy” to construct the O’Hare expansion project (expected to cost *15 billion dollars* or more). The FAA would be required to take extraordinary steps to usher the project along if the City has not commenced construction by 2004;**
- **Accord the O’Hare runway project special statutory priority over other airport projects in the nation;**
- **Violate the 10th amendment by preempting the State of Illinois from controlling and limiting the delegation of the state law power to build airports to one of its political subdivisions;**
- **Prejudge and interfere with the FAA’s statutory responsibility to evaluate the air safety, efficiency and public benefits/costs of airport development projects.**
- **Prejudge and interfere with the environmental review process under NEPA and the Clean Air Act State Implementation Plan (SIP).**

For these reasons, SOC strongly urges the Commerce Committee to reject any legislation to establish a unique set of rules to fast-track construction at O’Hare, and preclude the consideration of more sound alternatives for Chicago’s future airport capacity needs.

I. The O’Hare Redevelopment Plan Would Be a National Air Transportation Blunder of Epic Proportions.

The O’Hare “runway design plan” expressly specified in the legislation calls for a massive expansion of O’Hare by tearing up the existing runway complex and laying down six new parallel runways. However, in terms of well-established FAA safety and efficiency standards, several of the runways are too closely spaced (separated by only 1,400 feet) to allow for independent simultaneous arrivals or

departures. The runways can only be used for simultaneous operations if one runway is used for arrivals and the other is used for departures -- and even then only if the weather is good. Whenever cloud cover and visibility conditions require the use of instrument landing procedures (a chronic situation at O'Hare), these closely spaced parallel runways could not be used simultaneously at all.¹ By prejudging both the need and design of the proposed runway construction project, Congress would relegate FAA's role in evaluating this massive airport project to a mere rubber stamp. The FAA would not be able meaningfully to exercise its discretion to determine whether the proposed runway system is safe and whether it would in fact add capacity to the region.

The proposed legislation would have Congress make findings that the national air transportation is "dependent" on O'Hare and that "the reliability and efficiency of interstate air transportation for the residents and businesses in many States depend on the efficient processing of air traffic operations at O'Hare." (Sec.2). While the bill's promoters, most notably the City of Chicago, would no doubt prefer that interstate air traffic have no alternative but to flow through O'Hare, in reality, this is far from the truth.²

Passengers traveling via O'Hare have their option of any number of viable connecting hubs. Rather than trying to cram more flights through O'Hare, SOC

¹ See, November 30, 2001 letter of National Air Traffic Controllers Association to Senator Peter Fitzgerald. Attached.

² There is general consensus that O'Hare can accommodate the needs of local Chicago traffic until at least 2020; thus, the purpose of any current expansion at O'Hare is to carry more connecting traffic, which constitutes over half the passengers using the airport.

believes that the best way to enhance the Chicago region's role as a pivotal hub in the national air transportation system is through the development of a modern alternate third airport at Peotone. Chicago's large population and economic base makes it an attractive hub, and a new South Suburban airport will attract more air carrier service and more connecting passengers.

The proposed legislation pays lip service to the development of a new airport at Peotone, but in practical effect would thwart the development of a South Suburban Airport. If O'Hare is massively expanded with the six parallel runway plan called for in the proposed legislation, the viability of a new airport would be undermined. Such a massive (and misguided) expansion of O'Hare would make it difficult or impossible to justify the construction of the new, more modern, more economical, more environmentally sound, and more efficient airport at Peotone.

The runway capacity needs of Chicago's multi-airport system must be considered *interdependently*, and not *independently* of one another. The legislation's findings expressly calling for a six-runway O'Hare layout create artificial constraints on the FAA's judgment, forcing the FAA to plan "in the box" of a massive O'Hare expansion --- and not to consider critical alternatives that would produce a more optimal distribution of runway (and airspace) capacity for the Chicago region at a new South Suburban Airport. As a result, the legislation guarantees the expansion of O'Hare but leaves Peotone to wither as a secondary afterthought.

The allocation of new runway capacity within Chicago's multi-airport system is a determination that should not be made by Congress, but rather by the FAA

through the exercise of its expertise. Absent the legislative directive, the FAA might well determine to give Peotone a higher priority than O'Hare, based on very real safety, efficiency, cost-benefit, public interest and environmental considerations.

Worse yet, by prejudging the issue and specifying the construction of an ill-conceived six-runway O'Hare design plan, Congress would be condemning the Chicago region and the national air transportation system to a future of interminable delays. Attempting to cram too many flights into a six-runway O'Hare super-hub would create the biggest and most delay-prone airport in the country. Moreover, the Achilles heel of the O'Hare redevelopment runway plan is that the system is guaranteed to collapse in bad weather. Since safety standards require that the closely-spaced parallel runways could not be used for simultaneous operations when the weather requires pilots to use instrument procedures, half of the expensive new concrete poured at O'Hare would effectively be taken out of service exactly when it is needed most -- to alleviate bad weather backups, which are a leading cause of delays.

Far from enhancing capacity and efficiency, if Congress were to adopt this legislation it would saddle the national air transportation system with an enormously expensive and delay-prone airport. That is why SOC believes this is a matter best left to the FAA's expert judgment, instead of the legislative process.

II. Laying new concrete on top of functional existing runways flunks the cost-benefit test.

There is compelling evidence demonstrating that the development of a third

Chicago airport at Peotone would provide more effective capacity expansion for the region, and could be brought on line more quickly, at less cost, with less disruption to existing operations, and with less environmental impacts, than the proposed mandatory development project at O'Hare.

Cost estimates released by the State of Illinois indicate that a new six runway airport at Peotone would cost in the vicinity of 5 billion dollars. Cost estimates for new runways at O'Hare are between 1 to 2 billion dollars per runway. Chicago itself estimates that terminal expansion at O'Hare would cost another 6 billion dollars, bringing the total tab for the O'Hare expansion project to a whopping 15 billion dollars. Even this massive figure does not include the additional cost of access roads, parking facilities, and mitigation measures for the immediately impacted communities.

Given that Peotone would provide substantially more *new* incremental capacity at substantially *less* cost, the O'Hare construction plan is a spendthrift nightmare. Under existing law, the FAA is responsible for weighing the "project benefit and cost." 49 U.S.C. § 47115(d)(2). Congress added this responsibility to avoid situations in which taxpayer dollars are expended on projects that do not represent the best use of limited airport development funds. Under the required cost-benefit analysis, the FAA must consider various alternatives and evaluate issues such as whether the addition of new runways at an existing airport is a better or worse investment than building a new airport. SOC submits that the O'Hare construction plan flunks this test.

The legislation also contravenes the established federal policy to “give special emphasis to developing reliever airports.” 49 U.S.C. § 47101(a)(3). By concentrating an ever-increasing number of airplanes in the finite volume of airspace over O’Hare, Congress would be frustrating the very reliever program it mandated the FAA to promote.

Another important consideration for airport development funding requires the Secretary to be satisfied that “the project will be completed without unreasonable delay.” 49 U.S.C. § 47106(a)(4). Attempting a massive redevelopment project at one of the busiest airports in the country is a recipe for project delays and massive disruption to the existing air carrier activities at O’Hare.

III. The O’Hare Expansion Plan would result in the needless destruction of jobs by its immediate adverse impacts on the Elk Grove Village and Bensenville communities.

The legislation under consideration also fails to take into account the “job destruction” that would be inflicted on the regional economy by the demise of valuable and important industrial areas necessary to accommodate a massive expansion of O’Hare. Under the O’Hare redesign plan, the Western Ring access road would be pushed west – immediately into the developed industrial (and residential) areas of the neighboring communities of Elk Grove and Bensenville. This would precipitate huge losses in jobs and tax revenues, and would adversely impact economic development, schools, and residential quality of life.

By contrast, a new airport at Peotone -- to be built on currently undeveloped

land -- would not displace any jobs or businesses. Such a proposal is win-win, as compared to expanding O'Hare. No jobs or residences are destroyed, and a thriving new industrial area is likely to sprout in the South Suburban area, fueled by the large-scale economic development that a new third Chicago Airport would provide.

IV. S.1786 constitutes an Unprecedented Interference with FAA's airport development Responsibilities.

SOC is extremely concerned about the shift in decision-making responsibilities over airport development that would be brought about by S.1786. The bill would drastically interfere with the FAA Administrator's and the Secretary of Transportation's authority to review and approve airport development projects. The exercise by the FAA of independent, objective and expert judgment with respect to airport projects is essential to ensuring that public resources are well-spent to optimize the safety and efficiency of the air transportation system and to protect against harmful environmental consequences -- particularly on a highly controverted and extremely costly project such as the O'Hare proposal. For the reasons discussed above, SOC believes that the critical future planning decisions about what Chicago-area airports and which particular runways should be built are best made on the technical merits, rather than through the federal political process.

Under current law, the FAA and DOT have the responsibility to determine whether any proposed airport development project is consistent with promoting the public interest and the safe and efficient management of the national air

transportation system. The proposed legislation would substitute a political judgment by Congress for the expert judgment of the agencies that are charged with that responsibility under the Transportation Code (Title 49 U.S.C. Subtitle VII).

The legislation would erode the FAA's independent and deliberative role in reviewing the O'Hare project. It would have Congress make the decisions now vested in the FAA, even though details of the development plan have yet to be disclosed, the need for the plan has yet to be documented, the environmental impacts have yet to be determined, and the alternatives and cost-benefits have yet to be evaluated.

The legislation is unprecedented. It accords unique and special priority for O'Hare not applicable to any other airport in the country. *This is not streamlining; it is redlining for the benefit of a single airport!*

By directing the FAA to give the O'Hare project special statutory priority for approvals and expenditure of Federal government resources, other vitally important airport development projects around the country would be adversely impacted. If this legislation is enacted, airport projects at San Francisco, Dallas/Ft. Worth, Los Angeles, Atlanta, San Jose and Seattle may experience FAA review delays or reduced funding in order to accommodate the preference accorded to O'Hare by Congress.

DOT and FAA currently have discretion to approve airport development funding for those projects that will "preserve and enhance capacity, safety and

security” at airports throughout the country. 49 U.S.C. § 47115(c)(1). The Secretary is required to take into account “the effect the proposed project will have on the overall national air transportation system and capacity.” 49 U.S.C. § 47115(d)(1). In addition, the DOT and the FAA now have the authority to approve changes in an airport’s configuration (the airport layout plan) and to review the safety, airspace efficiency and environmental impacts of such changes.

The important issues the FAA is required to consider, but which the proposed legislation prejudices include the following:

- Will the air traffic control airspace resources around O’Hare allow the substantial increase in operations (projected to increase from 900,000 per year to 1.6 million per year)?
- Is the O’Hare expansion plan the best choice to meet the future needs of the Chicago region?
- How much will the O’Hare expansion project cost?
- Will six, closely-aligned parallel runways (several of which are only 1400 feet apart) be cost effective to maximize the region’s capacity?
- What will be the impact of the proposed project on surrounding neighborhoods?
- Is it possible to tear up two major runways and build four additional runways at the same time O’Hare is attempting to operate at full capacity? What specific, detailed operational plan has been prepared and how does it propose to make these massive alterations while O’Hare continues to function as a key U.S. hub?
- Will the preferences accorded to O’Hare in the legislation effectively preclude the development of Peotone? Will such preference impact future developments at Midway or Milwaukee or other airports in the Great Lakes region?
- What impact would the expenditure of billions of dollars for, and according special Congressional preference to the O’Hare project have on critically needed airport development and aviation security projects for other major airports throughout the nation?

The legislation would erode the FAA's independent and objective role in reviewing major airport expansion projects, since, under the legislation, Congress will substitute its determination for that of the FAA on all of these important policy questions.

It is critical for the expert federal agencies entrusted with responsibility in this area to evaluate and make a determination on whether the crowded skies over O'Hare -- with the closely abutting busy airspace used by Midway, Meigs and other very active general aviation airports in the area -- are the safest, and most efficient conduit for additional air traffic moving to and from Chicago and through the national air transportation system, as opposed to the development of a new airport in the South Suburban area.

V. S.1786 Shortcuts NEPA and a Host of Other Statutes that are Essential to the Protection of the Environment and the Public Health and Welfare.

This is result-driven legislation that would curtail meaningful evaluation of the environmental consequences in order to lay runways and pavement at O'Hare. The legislation would shunt aside vital considerations that, under current law, would otherwise require careful scrutiny by the FAA and other agencies, including such issues as: the tremendous noise impacts over surrounding communities, the massive amounts of ozone and other airborne pollutants that would be emitted into the Chicago-area airmass, the millions of additional gallons in toxic deicing fluid

and other chemical runoff that would flow into water-ways, and the impact of the project on wetlands, endangered species and other natural resources.

Even in its current pre-expansion condition, O'Hare is the largest source of toxic emissions and hazardous air pollutants in the State of Illinois. Moreover, monitoring data shows that O'Hare impacts large numbers of Chicago area residents with significant and undesirable noise exposure. Adding hundreds of thousands of new flights will make matters much worse. SOC is extremely concerned that the proposed legislation will effectively preclude further consideration of these important issues, cut off public comment, and curtail thorough evaluation of the public health and environmental considerations NEPA was enacted to protect.

While the legislation pays lip service to compliance with NEPA, there is simply no way that a project of this scope and scale could be subject to meaningful NEPA review in the scant period of time the legislation allows before the FAA is compelled to begin runway construction "as a federal project." Airport development projects of this magnitude ordinarily take several years to complete the NEPA process under current law and procedures.

Thus, while the bill states that implementation of the O'Hare construction plan "shall be subject to application of Federal laws with respect to environmental protection and environmental analysis including [NEPA]," as a practical matter the artificial urgency of a 2004 construction deadline would make it impossible for FAA to conduct the necessary NEPA review. Courts have held that when Congress

imposes a mandatory action under an impossible deadline, NEPA has, in effect, been legislatively overruled. See, *Flint Ridge Development Co. v. Scenic Rivers*, 426 U.S. 776 (1976). That is exactly what Congress would be doing here, despite token language to the contrary.

The FAA is the lead agency responsible for coordinating NEPA review of airport construction projects, along with the involvement of other federal agencies and the public. In discharging these obligations, the Transportation Code and NEPA charge the FAA with the duty to objectively and independently analyze the proposed airport expansion, and its impact on the environment, without prejudging the outcome.

Section 3(f) of the bill -- which compels the Administrator to begin building the runway development plan at O'Hare by 2004 if the City has not begun construction -- effectively eliminates that independence. FAA would do all it could to avoid having to assume construction of O'Hare as a federal project. A statutorily-imposed construction ultimatum by Congress would have the effect of forcing the environmental review process to be so truncated as to effectively preclude meaningful evaluation by the FAA of the environmental consequences.

The massive six-runway redevelopment and expansion plan at O'Hare raises serious and significant adverse environmental questions bearing on air quality, other pollutants, and noise. If an application has significant adverse environmental effects, under the Transportation Code, the FAA Administrator may grant approval "only after a finding that no possible prudent alternative to the project exists and that

every reasonable step has been taken to minimize the adverse effect.” 49 U.S.C. § 47106(c).

The proposed legislation would foreclose consideration of the otherwise legally-required alternatives.

Indeed, the alternative endorsed by SOC – that of a new South Suburban Airport – can readily be shown to produce far fewer negative environmental impacts. A new airport at Peotone would have an extensive non-residential environmental land buffer to mitigate the noise and air pollution created by the facility. In contrast, the environmental “buffer” for O’Hare currently consists of Bensenville, Wood Dale, Elk Grove and a host of other DuPage County communities – a residential “buffer” that would be severely negatively impacted if hundreds of thousands of more flights are added at O’Hare.

It is highly significant that Congressman Hyde and Congressman Jackson, two Chicago area Congressmen from different districts, different political parties, and with different political philosophies, are united against the O’Hare expansion project, based, in large part, on the disastrous environmental impacts to the region.

Allow me to quote here from their open letter to State and Regional Leaders—

Rather than build an environmentally sound new airport, Chicago wants to add new runways at O’Hare.

Adding runways at O’Hare would compound what is already an environmental disaster. Even Chicago in its Master Plan acknowledged that adding runways would allow a level of air traffic that would be environmentally unacceptable. Despite this environmental unacceptability, Chicago is aggressively fighting a new airport and is actively pushing the option of new

runways at O'Hare.

(Hyde/Jackson Open Letter, October, 1997 at 9.)

These are precisely the types of critical environmental issues that NEPA requires to be thoroughly examined prior to a major federal action like the O'Hare redevelopment project. However, NEPA and its companion environmental statutes would be effectively gutted by the proposed legislation. Viable, prudent, and indeed more desirable environmental alternatives exist than re-developing an inherently delay-prone airport in close proximity to the City. This legislation eliminates the FAA's independence and forces the FAA, as the lead agency on this project, to short-circuit its environmental review.

A. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) AND ITS COMPANION ENVIRONMENTAL STATUTES WOULD BE RENDERED INEFFECTIVE BY THE PROPOSED LEGISLATION.

NEPA (42 U.S.C. § 4321 et seq.) would either be eliminated or so truncated by S.1786 as to preclude meaningful review by the FAA Administrator, coordinating federal agencies and the public. NEPA is the nation's core environmental statute that requires Federal agencies to give careful consideration to the potential environmental impacts of the project, to consider practical alternatives to the project, and to give the public adequate opportunity to participate in the review process.

The Department of Transportation, in its May 21, 2001 Report To Congress on Environmental Review of Airport Projects, recognizes the important role of NEPA and public participation as critical to the airport development process:

- “[NEPA] requires federal agencies to prepare [Environmental Impact Studies] for projects significantly affecting the environment. Since most new commercial service runways and major runway expansions produce significant environmental impacts, an EIS is usually required. (Page iii)
- **“Public involvement is an essential part of the environmental review process. . . . There is usually a high degree of public interest in airport projects, including a certain amount of public opposition.”** (Page v).
- “[P]ublic opposition to airport projects continues to rise. The NIMBY effect should not be dismissed as an environmental fringe element. **It is based on real environmental concerns and has an increasingly broad-based constituency.**” (Page iii).

S.1786 is diametrically opposed to the objectives of NEPA and the important public policies recognized by the Department of Transportation in its Report. For starters, the airport environmental review process for a runway expansion project of this magnitude requires the preparation of an EIS, as well as the opportunity for substantial public involvement. That cannot happen under the timetable contemplated by the proposed legislation, and the public’s right to participate in the NEPA process would be rendered meaningless.

In addition to the FAA’s express NEPA obligations, the Clean Air Act further authorizes the EPA Administrator to conduct a NEPA review on federal projects for construction and major federal actions that are subject to NEPA. If the EPA Administrator determines that the proposed action is unsatisfactory from the standpoint of public health and welfare, or environmental quality, she must make public that determination and refer the matter to the Council on Environmental

Quality for mediation. The mandatory 2004 Federal construction deadline under the legislation for the O'Hare project forecloses meaningful review.

B. STATE IMPLEMENTATION PLAN (SIP) CONFORMITY DETERMINATION (CLEAN AIR ACT).

The Chicago O'Hare area is classified as a severe nonattainment area for ozone, and parts of the Chicago region are designated as moderate nonattainment for particulate matter. Without amendment of the Clean Air Act, the O'Hare expansion program would face difficult or insurmountable burdens under that statute.

O'Hare is a huge polluter, and will be far worse if expanded to nearly double the level of flight operations. Air pollution from O'Hare consists of burned and unburned jet fuel aerosols containing dozens of carcinogenic organic compounds – including Benzene and Formaldehyde. If flights are expanded from 900,000 to 1.6 million annually, O'Hare and its immediately surrounding communities will experience an inevitable and unacceptably high concentration of Ozone and a host of toxic pollutants hanging in toxic cloud over O'Hare. By contrast, a South Suburban Airport would have a significant land buffer to assist in the dispersal of these toxic pollutants and to keep them away from residential areas. No such buffer exists at O'Hare.

As required by Section 176 of the Clean Air Act, the State of Illinois has, after extensive public consultation and comment, developed a State Implementation Plan (SIP), which is the State's plan to come into compliance with the national air quality

standards under the Clean Air Act. The SIP reflects a careful balance between the protection of the public health and welfare from air pollution, on the one hand, and the need for commerce and other activities, on the other hand. Each Federal agency involved in an airport expansion project must make a determination that the proposed action conforms to the SIP.

Because of the huge increase in air pollution, there is a major inherent conflict between the existing SIP and O'Hare expansion. Under normal SIP processes, the City of Chicago, the airlines, the State of Illinois, the U.S. EPA, the FAA, other Federal agencies, and the public would work together to amend the SIP to accommodate O'Hare's needs while balancing competing interests. S.1786 completely avoids that consultative and deliberative process.

If this legislation is enacted, the City would be empowered to define O'Hare's SIP allocation, without the normal public participation process and without the participation of the State and Federal agencies and other interested parties. Moreover, the legislation directs the Administrator of the EPA to amend the SIP to accommodate O'Hare's expansion (Section 3 (a)(5): "...the Environmental Protection Agency shall forthwith use its powers under the Clean Air Act respecting approval and promulgation of implementation plans to cause or promulgate a revision of such implementation plan sufficient for the runway redesign plan to satisfy the requirements of section 176(c) of the Clean Air Act.") This is unprecedented legislation. There is no public process, no balancing, only O'Hare claiming for itself the level of emissions it wants.

Under the proposed statute, O'Hare's needs (as determined by the City) are accepted as given, and the EPA would force other institutions to reduce their emissions pursuant to the EPA's judgment on how to reach SIP goals. This fails to allow other businesses and the public the critical opportunity to contribute to and participate in the process. Power companies, railroads, truckers, buses, heavy industry, and the Peotone Airport will, in all likelihood, have their target emissions cut by the EPA to satisfy O'Hare's runway plan. And, because this is a legislative mandate, none of those other vitally interested parties would be allowed to challenge O'Hare's claims or the EPA Administrator's solutions.

The proposed legislation would radically alter the SIP and would drastically impact other industries. The statute before Congress would do tremendous damage to the existing processes and the other businesses impacted by this unique power granted the City.

C. OTHER IMPACTED "CROSS-CUTTING" ENVIRONMENTAL LAWS.

In addition to NEPA, Congress has passed a number of environmental laws addressing federal responsibility for recognizing and protecting special national resources. These laws, referred to as "cross-cutting" laws, require Federal agencies to consider the impact that their programs and some private actions might have on such national resources. They include the Endangered Species Act, 16 U.S.C. § 1531 et seq., the Clean Water Act, 33 U.S.C. § 1251 et seq., the Floodplains (Executive Order 11988). If enacted, this legislation would result in the

approval of the O'Hare project without adequate consideration of the potential impacts under these important environmental laws.

VI. S.1786 Would Violate the Tenth Amendment of the UNITED STATES Constitution.

SOC believes that it is inappropriate and unlawful for the Federal Congress to decide which airports and what runways should be constructed within the borders of the State of Illinois. Decisions involving airport and infrastructure development have historically been delegated to the states. S.1786 would strip the State of Illinois of its vested authority to delegate and authorize the City of Chicago to construct airports in the State. Doing so would be a clear-cut violation of the Tenth Amendment.

Under the framework of federalism established by the Constitution, Congress is without power to dictate to the States how the States delegate power, or to limit the delegation of that power, to their political subdivisions. Unless and until Congress takes over complete responsibility to build airports, airports will continue to be developed by States, or their delegated agents, as an exercise of State power and law. The construction of airports by State political subdivisions such as Chicago is by definition an exercise of State power to build airports delegated to the political subdivision. Compliance by the political subdivision with the conditions imposed by the State as limitations on the delegation of the state power to build airports is an essential element of State

authority and power and an essential element of the power of the political subdivision to undertake the proposed action.

The proposed legislation would strip away such State authority over the delegation of State power, fundamentally intruding upon the State's sovereign authority to take action under its own laws. The legislation would prohibit the State from restricting or limiting the delegated exercise of State power by the State's political subdivision. It would nullify the decision of the State of Illinois legislature allocating the State's authority with respect to construction of airports located within the State, particularly the limitations and conditions imposed by the State on the delegation of that power to the City. The law is clear that Congress does not have the power to intrude or interfere with a State's decision as to how to allocate State power.

Under the U.S. Constitution, the State's authority to create, modify, condition, and impose limitations on the structure and powers of the State's political subdivisions is a matter left to the exclusive control of the States:

"Municipal corporations are political subdivisions of the State, and created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them. ... The number, nature and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the State. ... The State, therefore, at its pleasure may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. **In all these respect the State is supreme, and its legislative body, conforming its action to the state constitution, may do as it will, unrestrained by any provision of the Constitution of the United States.**" Commissioners of Highways v. United States, 653 F.2d 292,297 (7th Cir. 1981)(quoting Hunter v. City of Pittsburgh, 207 U.S. 161, 178 (1907) (emphasis added).

Under State of Illinois law, the delegation of State powers from the State to its political subdivisions to construct or alter airports and runways is subject to the requirements of the Illinois Aeronautics Act. This Act requires that the State issue a permit approving airport alterations. The proposed legislation would expunge this State oversight in violation of the Tenth Amendment. The law would commandeer the City of Chicago, which is an instrumentality of the State of Illinois, to do what the State has prohibited it from doing: *i.e.*, expanding the airport without receiving a permit from the State. Under State law, any airport construction without the required State permit would be unlawful.

Congress does not have the authority to interfere with the State of Illinois' determination as to how to allocate State power to the City of Chicago. By impairing the State's delegation, the legislation would have the effect of undermining the delegation of the authority from the State to the City and thereby extinguish that delegation. As a result, any effort by the City to build new runways would be without the required State delegation and *ultra vires* under State law.

The national implications of this legislation are profound and go well beyond Illinois, impacting States throughout the nation. Many States have laws providing for some level of oversight over airport expansions, including State environmental laws and permitting requirements. Indeed, some twenty-six states have laws requiring local airport authorities to submit applications for federal funds through the state, rather than directly to the FAA. This legislation would set a dangerous and unlawful

precedent nullifying State oversight laws.

VII. conclusion

SOC strongly urges the Committee to reject any legislation fast-tracking an ill-conceived runway construction project at O'Hare, that would be inconsistent with the careful federal framework established to govern the review and approval of airport development projects. Congress should not prejudge and interfere with the FAA's ability to exercise its expert independent and objective oversight functions with respect to airport development projects, to carry out its environmental review responsibilities under NEPA, and to make sure that whatever airport development is undertaken will be the best possible solution for the Chicago region and the national air transportation system.

The proposed legislation removes the FAA's neutrality and discretion. SOC believes that a rational and reasoned evaluation will establish that the development of a new South Suburban Airport is superior to O'Hare in every respect – that a new airport at Peotone would offer more capacity, and can be built at less cost, more quickly, and with fewer adverse environmental consequences. These are extremely important considerations which need to be resolved through the established federal review process. Congress should not attempt to resolve them here by political *fiat*.