

Response to Alex Stone's email of December 17, 2020 re: Rep. Smith's proposed House Bill

These are my responses to your questions/considerations that you included in your email:

Mitigation structures outside of the 65 dB DNL: One criteria to add to Rep. Smith's bill is to **(1)** "Limit" participation by confirmation by the Port authority that the structure in question was eligible to receive sound insulation treatment when it was first offered, and was in fact located in the 65 dB DNL noise contour contained in the Port authority's Part 150 Study **for that time period**. Rep. Orwall's HB 2415 acknowledged that fact as a condition for participation. This could be a second consideration for homeowners to participate: **(2)** The State in which the airport authority exists has acknowledged this action/necessity as an environmental justice priority for the health and well-being of its citizens as promulgated by its state law being enacted.

(NOTE: At the time POS homes were first insulated during the 1980s, 1990s, and early 2000, a structure/home was eligible because it was located in the 65 dB or greater noise contour **BOUNDARY** as reported in an airport's Part 150 Study. The FAA changed that requirement in the late 2000s to each structure/home had to be noise tested **FIRST** and the interior noise level had to exceed 45 dB DNL to be qualified to receive sound insulation improvements. No structure/home eligible for second chance insulation treatment should be subjected to different rules today than applied when their property was first eligible! The individual homeowners should not be held responsible for the fact that window manufacturers and their windows failed without proper warranties! Also, some windows were not properly installed and effectiveness of the windows and their performance should not be a responsibility of the homeowner either. After all, the homeowners signed air rights away when they agreed to Avigation Easements in exchange for sound insulation products; and have suffered the loss of health and quiet home spaces during the interim. Poor quality windows and/or workmanship should be a responsibility of the POS, not the homeowner.)

FUNDING: The cap on AIP grant funding is a red herring excuse because the FAA itself via Congress has added more purposes for the use of AIP funding and the numbers of entities **eligible to apply** for AIP funds has increased in recent years. The FAA has promoted the notion that aircraft is quieter now and the airports dutifully parroted that notion and there is diminished need for sound insulation programs and funding. **IN FACT**, this excuse does not account for the enormous increases in operations at some airports across the country, which leads to another criteria that could be added to Rep. Smith's legislation:

(3) Percentage of increase in aircraft operations since sound insulation products were initially installed: During the past four years—**AND NOT ACKNOWLEDGED IN POS' CURRENT 2013-2018 PART 150 STUDY IS THAT PROJECTED AIRCRAFT OPERATIONS ARE GROSSLY UNDERSTATED**—Sea-Tac's operations grew from being 14th busiest airport in the country to 8th busiest airport! Since the POS is also YEARS behind in its mitigation of the third runway, local cities have been told by POS not to expect an updated, more accurate accounting of aircraft operations for several more years!! Not only did POS grossly underestimate operations despite FAA's approval

of same to save money for noise mitigation, but they have deliberately postponed an update of aircraft operations (an operation is a take-off or an arrival) until after the SAMP is completed. Consequently, it is possible and should be a goal of the stakeholder's group to arrive at a proportional percentage increase of ops year-over-year that could be added as criteria for an airport's eligibility for second-chance funding. The POS should be asked to provide actual annual aircraft operations since 2015 and the percentage increases each year and then a determination made by your stakeholder's group about what is realistic and reasonable to set as a threshold for funding. Why would POS policymakers believe or promote the idea that more aircraft noise is quieter than less aircraft noise? It is illogical and homeowners/schools should not be penalized for sound insulation problems made by POS administrators.

Changing Noise Mitigation to a Perpetual/Ongoing Benefit as Opposed to a One-Time Benefit.

The proposition of second-chance sound insulation legislation—either at the state or federal level—is not to create a life-long benefit for homeowners: Nor should it be an obstacle if the initial implementation of a sound insulation program was done poorly or improperly by today's standards. The POS used what has been referenced in FAA literature as a single-package form of administration of the program—one of their own creation—which has never been duplicated by another airport because it was fraught with many inconsistencies and poor performance.

BACKGROUND: For example, homeowners were provided with a list of contractors from which to choose their own contractor to complete their home installation of windows, doors and attic insulation. Homeowners were directed to interview at least three contractors and then advise the POS which one they selected. This approach led to many dissatisfied homeowners when they learned their neighbors/friends—who chose a different contractor—experienced superior work in their estimation. Also, there were claims that “anyone with a hammer and a pick-up” would qualify to be listed as a contractor. The results were predictably uneven and performance inconsistent between selected contractors. Add to that confusion, the window manufacturer the POS identified for use by contractors went bankrupt and closed business without providing meaningful quality installation or warranties. This was a formula for disaster that should not be laid at the feet of the homeowners. Because nearly every large, commercial hub airport in the country has undertaken sound insulation programs, better methods, products, and streamlined construction processes have been developed and implemented. Again, why should unsuspecting homeowners be held responsible for poor implementation of the program, shoddy workmanship, and mal-functioning equipment (i.e. windows, etc.)?

Another Excuse: Encouraging airports to pick lower quality contractors or materials is another red herring issue: Airports are publicly operated entities that are subject to immense public scrutiny of the highest order! Elected officials are ultimately held accountable (even if it is decades later) for the mistakes of their decision-making. My experience of 14 years at King County International Airport at Boeing Field was that it's imperative for airport staff to PROTECT their reputations and that of their elected officials by going to sometimes extreme lengths to resolve any homeowner disputes before they become public. Consequently, it's hard for me to imagine that airports would purposely choose incompetent and unworthy contractors or

materials. They risk losing their jobs and reputations if they employed this attitude just to save money!

Determining Need for Repair or Replacement: Building inspectors—particularly state-certified mechanical or structural engineers—are trained to recognize the source of deteriorated wood, window, door, and attic insulation. Dry rot, mold and mildew are obvious signs, but trained professional engineers generally can detect when doors, windows or insulation was adequate to begin with; but they can't blame the homeowners for faulty installation, poor products, or no warranties when the window manufacturer goes bankrupt in the process or immediately afterward. After all, failed installations mean that homeowners did not receive adequate noise reduction, were exposed to health hazards because of asthma from mold, mildew, etc. There are two sides of injustice to this coin; and administrators should fairly analyze both sides. Why shouldn't airports be held liable for poor performance of its contactors and/or products?

Questions posed:

1. Estimated scope: The POS should take the lead to survey homeowners from the early stages of its program to determine the scope. Their raw numbers of how many homes were insulated would be the starting point.
2. Short-term need: POS would need to contract with the state certified building inspector/engineer to make on-site assessments of all those residences who responded in the affirmative in #1 above.
3. The long-term goal should be for the POS to determine the status of sound insulation products installed in a specific time period when they KNOW there were problems with windows and warranties (possibly 1990-2000). To avoid making this second-chance program a perpetual one is to survey, assess, and report their findings to correct the problems that their contractors and products caused. It should not be open-ended, but nor should it dismiss legitimate instances of construction or product failure. Perhaps they could do a "sampling" of homes done from their early period of sound insulating (ie, 1990-2000) and arrive at a percentage that could be applied for a period of time, say ten years. Insulation completed since 2000 in this example would not be eligible for repair or replacement for instance. The program could be limited to ten years per se and let each airport decide the time period, if any, that funds would be applied.
4. As explained earlier, the decibel level of a house/building now is irrelevant. If the house/building was originally eligible and insulated that is the limiting criteria because many homes and apartment houses have been built since that the POS did not have to insulate! The boundaries and FAA regulations concerning them have changed—by no fault from the homeowner! Also, the noise levels from dramatic increases in aircraft operations are substantial. It's a lot noisier now that 20 years ago! So, finally, was the job of sound insulating done properly in the beginning or not? Refer to the bullet point previously outlined regarding percentage increases of aircraft operations to come up with a formula. The stakeholders group can help with this.
5. Others probably have other criteria to add, but this is sufficient from me at this stage of development.

Alex Stone <alex.stone@mail.house.gov>

12/17/2020 10:21 AM

Following Up from Noise Mitigation Meeting

To Nancy Tosta <nancycyt@burienwa.gov> • JC Harris <jcharris@desmoineswa.gov> • Peter Kwon <peterseatac@gmail.com> • Mary Soderlind <mary.soderlind@leg.wa.gov> • Jennifer Minich <jennifer.minich@leg.wa.gov> • Orwall, Rep. Tina <tina.orwall@leg.wa.gov> • Keiser, Sen. Karen <karen.keiser@leg.wa.gov> • Sharyn Parker <sparkward@comcast.net> • Debi Wagner <debi.wagner@icloud.com> • Steve Edmiston <steve@bracepointlaw.com> • Sheila Brush <shebrush@gmail.com> • Eric Schinfeld <schinfeld.e@portseattle.org> • shepherd.s@portseattle.org <shepherd.s@portseattle.org> Copy Amanda Wyma-Bradley <amanda.wyma-bradley@mail.house.gov>

Hi everyone,

Thanks to all of you for joining us yesterday to discuss first steps on approaching the issue of a "second chance" noise mitigation program.

As promised, we've included the pieces of our bill that have received the biggest pushback over the last several months. We've also included some questions/considerations we'd like the group to consider and share feedback or thoughts on as we think about planning a strategy for next Congress. Feel free to send responses via e-mail or set up a time to chat with Amanda or I over the phone if that is easier.

Amanda and I will be back in touch once we've had a few more conversations with the Committee staff, and once we've heard back from some of you with your thoughts/takeaways.

Pushback:

- **Providing Mitigation to Structures Outside 65 DNL:** Providing repairs/replacement funds for homes/structures that currently lie outside of the 65 DNL. According to the FAA, this would be prioritizing homes/structures not subjected to as much noise as those who are inside the contour, and would set up a situation where folks outside of the 65 DNL could get resources for re-mitigation before some people inside the contour have even had a first bite at the apple. Especially considering that this is an issue in some districts and not others, and given that there is a cap on AIP dollars nationwide, there are concerns from Members without this issue of failed packages that an increase in requests for funding re-mitigation will mean their constituents have to wait a longer period of time to get first-round noise mitigation.
- **Not Noise Testing:** The FAA was opposed to the fact that we did not require interior noise testing before providing replacements. They argue that if you are going to spend federal dollars through the noise mitigation program, it must be demonstratable that these products will meaningfully reduce the noise experienced internally, otherwise the funding would be better spent on structures inside of the 65 DNL where the noise mitigation would have a bigger impact.
- **Changing Noise Mitigation to a Perpetual/Ongoing Benefit as Opposed to One-Time Benefit:** The Committee staff had serious concerns about changing the scope of the FAA's noise mitigation program from a one-time benefit to a program could use to get replacement noise mitigation after the expected lifetime of the product is passed. While they seemed open to allowing funds to be used to replace/repair noise mitigation in cases where you could attribute the damage to faulty installation and/or poor quality materials, there was a lot of resistance to changing the program such that a structure could get a replacement noise mitigation package every 20-30 years. There are a couple of large groups representing airports that are resistant to this change as well.
- **Encouraging airports to pick lower quality contractors or materials:** Concerns about how providing 80% federal funding (which is the current federal share for AIP noise projects) for re-mitigation may encourage airports to be less careful in determining

which manufacturers and/or contractors to partner with on noise mitigation programs.

- **Determining need for repair or replacement:** How difficult is it for certified building inspectors (or other professionals) to judge whether or not a noise mitigation package is deteriorating/failed/causing structural damage because of the way it was installed, because the products were faulty, or due to homeowner neglect/failure to upkeep?

Questions:

- What is the estimated scope of the problem (number of homes in the Seattle area that have failed/deteriorated noise mitigation)?
- Of those homes, who are the individuals with the most urgent need, and what short term strategy might accomplish the goal of meeting those needs?
- What is the long-term goal and vision we should be working towards?
Replacement/repair in the event of poor installation/failure? A noise mitigation program that offers updates/repairs/replacements as products age?
- How many households with these issues fall outside of the 65 DNL, and are the issues they experience solely with Alpine window failure, or are there other issues that would need to be remedied with repair/replacement? Is there a criteria/description we might be able to use that would capture the homeowners who have problems who lie outside of the 65 DNL? This could be helpful in designing a one-time solution right now for those folks as we work towards negotiating on the repair/replacement program for households within the contour.
- What eligibility criteria/limitations might we consider to narrow the scope of the legislation while still ensuring that structures with need for repair/replacement are eligible?

Thanks again!

Alex

Alex Stone

District Representative

Congressman Adam Smith (WA-09)

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What these amendments accomplish:

Amendment 1: Rather than the airport agency hiring a separate state-certified building inspector, airport agency would reach prior agreement with local jurisdictions to purchase construction permits from their local jurisdiction(s) (creates a revenue stream to the city to pay for conducting inspection of the necessary construction of mitigation products).

Rationale: Creates goodwill between local jurisdictions and the airport agency and builds confidence with homeowners who do not trust that the airport agency will conduct inspections honestly. Also, this provision insures that federal noise metrics are honored since noise testing after construction did not occur when mitigation was originally installed.

Page 3, beginning on line 7:

“(B) the building or other structure previously mitigated will require new construction permits purchased by sponsoring airport agencies from local municipal jurisdictions before deficiencies are corrected; and those buildings will be inspected both before and after sound insulation products and services are installed to assure they were properly installed. FAA mandated noise testing will occur after any authorized installations to determine whether the subject building measures 45 dB DNL or less in interior spaces consistent with FAA regulations.”

No change to paragraph beginning on lines 8-12.

Amendment 2: This provision assures that qualified local jurisdictional building inspectors are used that are familiar with local municipal building codes. Local municipalities will welcome the revenue stream and the face of the inspector will be viewed as a neutral agent rather than a suspicious representative from the airport agency.

Beginning after (B) paragraph above, insert on approximately line 16:

“(ii) fell within qualifying noise contours of 65 dB DNL or greater at the time the initial noise mitigation occurred. Further, the local jurisdictional building inspector referenced in (B) above fulfills the requirements of inspecting work committed pursuant to earlier mitigation that has either deteriorated or failed; and the permit issued pursuant to this waiver action addresses defects that previous mitigation may have caused physical harm or damage to the building or structure; or failed by no fault of the property owner.

Following the previous paragraphs, insert new language on page 3:

“(2) Eligibility Determination.—To be eligible for waiver under this subsection for a project, the airport agency shall demonstrate that the building inspector from the appropriate municipal jurisdiction conducted an inspection of the applicable building or structure and determined that—

Amendment 3: This provision further elaborates compliance with current federal FAA regulations and requires noise testing to determine that interior noise levels of 45 dB DNL or less is accomplished.

Page 4, lines 1-5, amend to read:

“(A) the noise mitigation for which Federal assistance was previously provided is degraded or ineffective, or the manner of installation of such mitigation failed to reduce noise in interior spaces to 45 dB DNL or below consistent with Federal FAA regulations; and

No change to paragraph beginning on line 6, page 4.

CERTIFICATION OF ENROLLMENT

HOUSE BILL 2315

66th Legislature
2020 Regular Session

Passed by the House March 7, 2020
Yeas 97 Nays 0

**Speaker of the House of
Representatives**

Passed by the Senate March 4, 2020
Yeas 47 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 2315** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

HOUSE BILL 2315

AS AMENDED BY THE SENATE

Passed Legislature - 2020 Regular Session

State of Washington

66th Legislature

2020 Regular Session

By Representatives Orwall, Fitzgibbon, and Pellicciotti

Prefiled 01/08/20. Read first time 01/13/20. Referred to Committee on Local Government.

1 AN ACT Relating to repairing and replacing mitigation equipment
2 installed as part of a remedial program within an impacted area; and
3 amending RCW 53.54.030.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 53.54.030 and 1993 c 150 s 1 are each amended to
6 read as follows:

7 For the purposes of this chapter, in developing a remedial
8 program, the port commission may utilize one or more of the following
9 programs:

10 (1) Acquisition of property or property rights within the
11 impacted area, which shall be deemed necessary to accomplish a port
12 purpose. The port district may purchase such property or property
13 rights by time payment notwithstanding the time limitations provided
14 for in RCW 53.08.010. The port district may mortgage or otherwise
15 pledge any such properties acquired to secure such transactions. The
16 port district may assume any outstanding mortgages.

17 (2) Transaction assistance programs, including assistance with
18 real estate fees and mortgage assistance, and other neighborhood
19 remedial programs as compensation for impacts due to aircraft noise
20 and noise associated conditions. Any such programs shall be in
21 connection with properties located within an impacted area and shall

1 be provided upon terms and conditions as the port district shall
2 determine appropriate.

3 (3) Programs of soundproofing structures located within an
4 impacted area. Such programs may be executed without regard to the
5 ownership, provided the owner waives damages and conveys an easement
6 for the operation of aircraft, and for noise and noise associated
7 conditions therewith, to the port district.

8 (4) Mortgage insurance of private owners of lands or improvements
9 within such noise impacted area where such private owners are unable
10 to obtain mortgage insurance solely because of noise impact. In this
11 regard, the port district may establish reasonable regulations and
12 may impose reasonable conditions and charges upon the granting of
13 such mortgage insurance: PROVIDED, That such fees and charges shall
14 at no time exceed fees established for federal mortgage insurance
15 programs for like service.

16 (5)(a) An individual property may be provided benefits by the
17 port district under each of the programs described in subsections (1)
18 through (4) of this section. However, an individual property may not
19 be provided benefits under any one of these programs more than once,
20 unless the property (~~is~~):

21 (i) Is subjected to increased aircraft noise or differing
22 aircraft noise impacts that would have afforded different levels of
23 mitigation, even if the property owner had waived all damages and
24 conveyed a full and unrestricted easement; or

25 (ii) Contains a soundproofing installation, structure, or other
26 type of sound mitigation equipment product or benefit previously
27 installed pursuant to the remedial program under this chapter by the
28 port district that is determined through inspection to be in need of
29 a repair or replacement.

30 (b) Port districts choosing to exercise the authority under
31 (a)(ii) of this subsection are required to conduct inspections of
32 homes where mitigation improvements are no longer working as
33 intended. In those properties, port districts must work with a state
34 certified building inspector to determine whether package failure
35 resulted in additional hazards or structural damage to the property.

36 (6) Management of all lands, easements, or development rights
37 acquired, including but not limited to the following:

38 (a) Rental of any or all lands or structures acquired;

1 (b) Redevelopment of any such lands for any economic use
2 consistent with airport operations, local zoning and the state
3 environmental policy;

4 (c) Sale of such properties for cash or for time payment and
5 subjection of such property to mortgage or other security
6 transaction: PROVIDED, That any such sale shall reserve to the port
7 district by covenant an unconditional right of easement for the
8 operation of all aircraft and for all noise or noise conditions
9 associated therewith.

10 (7) A property shall be considered within the impacted area if
11 any part thereof is within the impacted area.

--- END ---

1 Page 3, beginning on line 7:

“(B) the building or other structure previously mitigated will require new construction permits purchased by sponsoring airport agencies from local municipal jurisdictions before deficiencies are corrected; and those buildings will be inspected both before and after sound insulation products and services are installed to ascertain they were properly installed. FAA mandated noise testing will occur after any authorized installations to determine whether the subject building measures 45 dB DNL or less in interior spaces consistent with FAA regulations.”

No change to paragraph beginning on lines 8-12.

Beginning after above paragraphs, insert on approximately line 16:

“(ii) fell within qualifying noise contours of 65 dB DNL or greater at the time the initial noise mitigation occurred. Further, the local jurisdictional building inspector referenced in (B) above fulfills the requirements of inspecting work committed pursuant to earlier mitigation that has either deteriorated or failed; and the permit issued pursuant to this waiver action and has determined that previous mitigation caused physical harm or damage to the building or structure or failed by no fault of the property owner.

Following the previous paragraphs, insert new language in

“(2) Eligibility Determination.—To be eligible for waiver under this subsection for a project, the airport agency shall demonstrate that the building inspector from the appropriate municipal jurisdiction conducted an inspection of the applicable building or structure and determined that—

Page 4, lines 1-5, amend to read:

“(A) the noise mitigation for which Federal assistance was previously provided is degraded or ineffective, or the manner of installation of such mitigation failed to reduce noise in interior spaces to 45 dB DNL or below consistent with Federal FAA regulations; and

No change to paragraph beginning on line 6, page 4.

.....
(Original Signature of Member)

116TH CONGRESS
1ST SESSION

H. R. _____

To amend title 49, United States Code, to allow additional funds to be provided under the airport improvement program for certain noise mitigation projects, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. SMITH of Washington introduced the following bill; which was referred to the Committee on _____

A BILL

To amend title 49, United States Code, to allow additional funds to be provided under the airport improvement program for certain noise mitigation projects, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. NOISE MITIGATION PROJECTS.**

4 (a) GOVERNMENT SHARE.—Section 47109 of title
5 49, United States Code, is amended by adding at the end
6 the following:

1 “(g) SPECIAL RULE FOR NOISE MITIGATION
2 PROJECTS.—With respect to a project to carry out noise
3 mitigation that is granted a waiver under section
4 47110(j), the allowable project cost for such project shall
5 be calculated without consideration of any costs that were
6 previously paid by the Government.”.

7 (b) NOISE MITIGATION PROJECTS.—Section 47110
8 of title 49, United States Code, is amended by adding at
9 the end the following:

10 “(j) SPECIAL RULE FOR NOISE MITIGATION
11 PROJECTS.—

12 “(1) IN GENERAL.—The Secretary shall waive
13 the requirement of subsection (b)(4) for a project to
14 carry out noise mitigation for a building or other
15 structure that has previously received Federal assist-
16 ance under this subchapter for noise mitigation if—

17 “(A) the Secretary determines that the ad-
18 ditional assistance is justified due to—

19 “(i) increased aircraft noise that
20 would have afforded different levels of
21 mitigation, even if the property owner had
22 waived all damages and conveyed a full
23 and unrestricted easement; or

24 “(ii) the building or other structure
25 containing soundproofing installation,

1 structure, or other type of sound mitiga-
 2 tion equipment product or benefit pre-
 3 viously installed under a noise mitigation
 4 program under this subchapter that is de-
 5 termined through inspection to be in need
 6 of repair or replacement; and

7 “(B) the building or other structure—

8 “(i) falls within the Day Night Level
 9 (DNL) 65 standard according to the most
 10 recent noise exposure map, as such term is
 11 defined in section 150.7 of title 14, Code
 12 of Federal Regulations; or

13 “(ii) fell within such standard at the
 14 time the initial noise mitigation was ear-
 15 ried out and a building inspector has de-
 16 termined that such mitigation caused phys-
 17 ical damage the building or other struc-
 18 ture.

19 “(2) ELIGIBILITY DETERMINATION.—To be eli-
 20 gible for waiver under this subsection for a project,
 21 an applicant shall demonstrate that a State-certified
 22 building inspector conducted an inspection of the ap-
 23 plicable building or other structure and determined
 24 that—

*existing at the
 time of installation*

implemented

*|| ?
 measures have
 failed to
 reduce the
 interior noise
 level to 45 dB
 DNL or less as
 prescribed by
 the EPA's regula-
 tions*

1 “(A) the noise mitigation for which Fed-
2 eral assistance was previously provided is de-
3 graded or ineffective, or the manner of installa-
4 tion of such mitigation has ~~caused damage~~ to
5 the building or other structure; and

6 “(B) the condition of noise mitigation im-
7 provement described in subparagraph (A) is not
8 attributed to actions taken by an owner or oc-
9 cupant of the building or other structure.”.

interior
failed to reduce noise level
to 45 dBDNL or
below; and/or
caused damage
to ...