

# TRANSFORMATIONAL FAA PROPOSAL TAXIS FOR TAKEOFF

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## Public Policy and Law Alert

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The Aviation Innovation, Reform, and Reauthorization Act of 2016 ("AIRR Act") introduced by House Transportation and Infrastructure Committee Chairman Bill Shuster (R-PA) would reshape the U.S. air traffic control (ATC) system by taking most ATC functions out of the hands of the Federal Aviation Administration (FAA) and placing them with a newly established, independent nonprofit corporation. The legislation would also make significant changes to the laws governing aircraft safety and certification, unmanned aircraft systems (UAS), and airline consumer protection, among other areas — in addition to providing the first long-term funding reauthorization for the FAA since 2012. For these reasons, the AIRR Act is a crucial opportunity for aviation stakeholders to influence the future of the industry.

The House Transportation and Infrastructure Committee considered amendments to the AIRR Act and voted to report the bill on February 11, 2016. Before the AIRR Act is cleared for takeoff to the president's desk, there will be many chances for interested parties to weigh in on the bill. Amendment opportunities may arise on the House floor as lawmakers grapple with the sweeping ATC proposal. On the other side of the Capitol, the Senate is working on its own reauthorization proposal, which could offer additional pathways to influence the final outcome. Airlines, airports, manufacturers, and other participants in the aviation industry should consider how the AIRR Act would affect their business and engage in the legislative process to achieve strategic priorities.

## ESTABLISHING AN INDEPENDENT ATC CORPORATION

The proposed ATC privatization is intended to create a system that is more responsive to users and that is free from federal procurement and funding constraints. However, separating the ATC function — and the associated personnel, property, and technology — from the FAA involves considerable complexity. Questions have also been raised regarding oversight and control of the ATC system post-separation. The core elements of the AIRR Act's proposed ATC Corporation are as follows:

- **Purpose** – The ATC Corporation would assume the ATC services currently provided by the FAA. While the corporation would remain subject to the FAA's safety oversight, it would be an independent entity and the U.S. government would have no liability for its actions or provide any guarantee of its debt. Separating ATC operations from their oversight is a model that has been pursued elsewhere, notably in Canada and in the European Union.
- **Governance** – The ATC Corporation would be led by a chief executive officer (CEO) appointed by a governing board of directors composed of the following representatives:

- Two directors appointed by the Secretary of Transportation;
- Four directors representing mainline air carriers;
- Two directors representing noncommercial owners and recreational operators of general aviation aircraft;
- One director representing owners and operators of general aviation aircraft for business purposes;
- One director representing aerospace manufacturers;
- One director representing air traffic controllers;
- One director representing pilots; and
- The CEO.

To assist the governing board, the AIRR Act would also establish a 15-member advisory board, including representatives of stakeholders such as commercial airports, business aviation, aerospace manufacturers, UAS, labor organizations, the Department of Defense, and small communities.

- **Funding** – The ATC Corporation would be authorized to charge user fees for its services, consistent with standards set by the International Civil Aviation Organization. Piston engine aircraft, noncommercial operations of turbine aircraft, and air taxi operations in remote locations would be exempt from such fees. Questions remain regarding the transition from the current system of funding the FAA's ATC services through the aviation fuel excise tax. Members of the tax-writing House Ways and Means Committee have expressed concern about losing their "power of the purse" over the ATC system, and senior members of the Appropriations committees in the House and Senate have also raised oversight concerns.

## ACCELERATING UAS INTEGRATION

The AIRR Act includes several initiatives to help the emerging UAS industry get off the ground pending the completion of the FAA's ongoing rulemaking for commercial operation of small UAS. In particular, the bill provides for a risk-based permitting process to streamline authorization requirements for certain commercial UAS operations.

The legislation also responds to issues regarding the widespread integration of UAS into the national airspace. The bill would require the FAA to disseminate airspace and navigational information for UAS, as well as notice of the criminal and civil penalties that may result from unlawful operation of UAS. It would also commission a variety of pilot programs and studies to consider other issues affecting UAS, such as privacy implications, low altitude traffic management, and detection systems, among others.

## ENHANCING CERTIFICATION AND STANDARDS

The AIRR Act would encourage significant reforms to the FAA's current policies and procedures with respect to aircraft certification and flight standards. In an effort to cut down on delays and improve accountability, the bill would instruct the FAA Administrator to establish performance objectives and metrics for the agency's activities in

both areas. The data generated in this process would be publicly available. These activities would be informed by two new advisory committees comprised of industry representatives: (1) The Safety Oversight and Certification Committee, focused on aircraft and flight standards certification processes; and (2) the "FAA Task Force on Flight Standards Reform," to consider issues including the simplification and streamlining of the flight standards regulatory process, potential structural reorganizations of the FAA's Flight Standards Services, and aviation safety inspector training, standards, and performance.

The legislation would also make discrete improvements to other aspects of the FAA's certification rules, including the implementation of the safety and regulatory improvements for general aviation aircraft described in the Small Airplane Revitalization Act of 2013.

## OTHER PROVISIONS

The AIRR Act includes a number of additional proposals that would touch nearly every aspect of the aviation industry. Many of these provisions address aviation consumer protection, which has been an area of increasing regulatory and enforcement activity for the Department of Transportation (DOT) and FAA in recent years.

- Provide six years of funding for the FAA functions retained by the government.
- Expand the federal funding share for projects funded by the Airport Improvement Program at medium-hub and large-hub airports.
- Require pre-purchase notification if a family will not be seated together on a commercial flight.
- Prohibit cellphone voice communications on commercial flights.
- Extend the term of DOT's Advisory Committee for Aviation Consumer Protection to 2022.
- Require air carriers to refund baggage fees for baggage that arrives at a destination more than 24 hours after the arrival of the corresponding passenger.
- Require additional rulemaking with respect to certain issues described DOT's 2008 regulations under the Air Carrier Access Act.
- Establish a task force to consider improvements to the FAA's rules under part 91 of the Federal Aviation Regulations.

## NEXT STEPS

Having been approved by the House Transportation and Infrastructure Committee, the AIRR Act now moves on for consideration by the full House. The Senate has not announced a formal timeframe for the introduction of its FAA reauthorization proposal. As the current funding authorization for the FAA expires on March 31, another short-term extension will be necessary if both congressional chambers do not complete their work on the bill before the end of March.

## KEY CONTACTS



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