

AIR TRAFFIC CONTROL DÉTENTE SENDS FAA REAUTHORIZATION DOWN THE RUNWAY

Date: 16 May 2018

U.S. Public Policy and Law/Aviation Industry Alert

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More than two years after the underlying legislation was first introduced, the House of Representatives voted on April 27, 2018 to pass the FAA Reauthorization Act of 2018 (H.R. 4; the "Act"), a five-year reauthorization of the nation's aviation programs. The breakthrough came after House Transportation and Infrastructure Committee Chairman Bill Shuster (R-PA) pulled back a hotly debated proposal to reshape the U.S. air traffic control ("ATC") system by transferring most ATC functions from the Federal Aviation Administration ("FAA") to an independent nonprofit corporation. Without the ATC provision, the Act easily cleared the House by a bipartisan vote of 393 to 13.

The aviation policy focus now shifts to the Senate, where the Committee on Commerce, Science, and Transportation voted to report its version of FAA reauthorization legislation last June. As the first comprehensive aviation bill since the last FAA reauthorization in 2012, the House and Senate legislation would have a sweeping impact on all corners of the industry — both in the traditional manned aviation space, as well as the emerging unmanned aircraft systems ("UAS") and commercial space industries. Stakeholders with an interest in aviation should evaluate the impact of the changes that would be made by the Act, and consider engaging in the debate as the Senate process moves forward to shape the final outcome.

KEY POLICY PROVISIONS

As the product of more than two years of legislative consideration and a process that saw the adoption of 105 floor amendments to the underlying text, the Act has a broad scope and significant implications for many different aviation industry participants. Key provisions and areas of focus include the following:

- **Safety & Certification Reform** – The Act would create a Safety Oversight and Certification Advisory Committee to develop recommendations for minimizing delays and enhance transparency and accountability in the certification process. It would also establish an FAA Task Force on Flight Standards Reform responsible for discovering best practices on various issues including, consistent FAA regulatory interpretations, streamlining the flight standard regulatory processes, and timely review and responses for aircraft type certification. These improvements are intended to enhance the global competitiveness of the U.S. aviation industry.
- **Airport Funding** – The Act continues funding for the Airport Improvement Program at a "stable" level while making certain enhancements to the Passenger Facility Charge ("PFC") program (although not an increase in the maximum PFCs airports may charge). In addition to these public-sector sources of funding for airports, the bill would also strengthen the FAA's pilot program on private ownership of airports, which

would be rechristened as the "Airport Investment Partnership Program." As described in the Trump Administration's Statement of Administration Policy on the Act, these changes are meant to "encourage[] partnering with the private sector to modernize our Nation's airports."

- **Consumer Protection** – The Act would strengthen air passenger rights by placing new limitations on involuntary "bumping" of boarded passengers and enhancing disclosures about airline fees and practices in the event of a widespread travel disruption, among other matters. Carriers would be required to prepare and publish a one-page summary of passenger rights with respect to compensation in the event of flight delays, diversions, or cancellation; mishandled baggage; voluntary relinquishment of a ticketed seat; and involuntary denied boarding.
- **UAS** – Significant amendments to the bill would authorize the FAA to create a more robust regulatory framework for non-commercial UAS that do not fall within the agency's existing regulations under part 107. Other provisions would seek to support the development of unmanned traffic management capabilities, property carriage by UAS, and the Trump administration's pilot partnership with state and local governments to support UAS integration.
- **Airport Noise** – The Act includes a number of provisions aimed at facilitating deeper engagement between the FAA, airports, and surrounding communities with respect to the noise generated by aviation operations.
- **Aviation Research and Development** – Title VII of the Act incorporates the "FAA Leadership in Groundbreaking High-Tech Research and Development Act" or the "FLIGHT R&D Act," which would provide significant new R&D funding for the FAA, authorize the appointment of a new Associate Administrator for Research and Development, and direct research activities with respect to UAS, cybersecurity, and other new technologies.
- **Reauthorizations** – The Act would authorize funding for aviation programs through 2023, supported by extensions of the excise and other taxes that support the Airport and Airway Trust Fund.

The K&L Gates aviation policy team has been actively engaged in shaping and interpreting many of these provisions. For further information and analysis on provisions that would affect your business specifically, please contact the authors of this alert or your usual K&L Gates contact.

TURBULENCE AHEAD IN THE SENATE?

The FAA reauthorization bill advanced by the Senate's Commerce Committee last June is broadly similar to the version passed by the House. Although the current FAA extension runs through September, the respective committee leaders in the House and Senate have set a goal of completing work prior to the August congressional recess. In order to meet this timeline, the Senate would likely need to move prior to the July 4th district work period in order to have enough time to work out the differences between the two bills prior to the long August break. However, consideration of the bill on the Senate floor could fly straight into the complicated politics of an election year. With the control of both chambers of Congress hanging in the balance, it remains to be seen whether Senate Democrats, in particular, will be willing to support a significant legislative accomplishment like

FAA reauthorization under the Republicans' watch — even though the Senate bill enjoyed broad bipartisan support in committee.

If the Senate does take up the bill in the coming months, floor consideration will provide another opportunity for amendment. Stakeholders should consider their strategic priorities in light of both the House-passed bill and the Senate's 2017 version and seek to engage in the amendment process to address issues of interest. Another opportunity for engagement could come if the Senate votes to pass its bill, as the differences in the House and Senate versions will likely be reconciled in a conference committee before returning to each chamber for final passage.

THE SKY'S THE LIMIT

On its current course, FAA reauthorization is shaping up to be a once-in-a-decade chance to shape the direction of aviation policy and regulation. House passage of the Act should be viewed as the opening salvo in a sprint toward the finish line to enact a bill before the 115th Congress concludes this December. Further consideration in the Senate and in potential conference negotiations will offer many opportunities to shape the final package. The K&L Gates aviation policy team can assist clients in developing strategies to intersect with, and capitalize on, these openings to advance priorities and address risks.

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