

ISSUE BRIEF

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2018 FAA Reauthorization: Potential for Positive Air Traffic Control Reforms, But More Policy Improvements Needed

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Although the nation's airports and airways move more people more safely than those of any other nation, America's aviation system faces myriad challenges and shortcomings, many of them inflicted by outdated public policies. Indeed, members of Congress and President Trump have recently voiced dismay over the state of the nation's aviation infrastructure.¹

Policymakers have an opportunity to address these issues by enacting large-scale reforms in the reauthorization of the Federal Aviation Administration (FAA) for fiscal year 2018. The current authorization for the FAA and related activities is set to expire at the end of the 2017 fiscal year on September 30, as set by the 14-month FAA Extension, Safety, and Security Act of 2016, enacted on July 15, 2016.²

This June, both chambers of Congress released FAA reauthorization bills that vary drastically across a broad number of issue areas. The House proposed the 21st Century Aviation Innovation, Reform, and Reauthorization Act,³ while the Senate proposed the Federal Aviation Administration Reauthorization Act (FAARA) of 2017.⁴ Although both bills require improvements, the House bill stands out for proposing potentially beneficial reforms, while the Senate proposal solidifies the broken status quo and exacerbates many existing problems.

This *Issue Brief* provides an overview of the bills, a comparative evaluation of key provisions therein, and a course forward for aviation reform.

The 21st Century Aviation Innovation, Reform, and Reauthorization Act (H.R. 2997)

In 2016, Chairman of the House Transportation and Infrastructure Committee Bill Shuster (R-PA) released the Aviation Innovation, Reform, and Reauthorization (AIRR) Act.⁵ The bill proposed structural changes to the FAA's Air Traffic Organization (ATO)—which provides air traffic control (ATC) services to aviators—by removing it from the federal government and establishing it as a private, non-profit corporation. While the bill passed out of committee, it did not receive a vote on the House floor.

Following the Trump Administration's endorsement of corporatizing the ATO, Chairman Shuster released a revised version of the AIRR Act on June 21, 2017, now known as the 21st Century Aviation Innovation, Reform, and Reauthorization Act. The 21st Century AIRR proposal contains a number of improvements over the AIRR Act, and, for purposes of ATC reform, represents a superior alternative to the status quo. However, there are still significant changes that can be made to ATC reform and other aviation policy areas to foster a more efficient and innovative aviation system.

The American Air Navigation Services Corporation. Like the proposal in the 2016 AIRR Act, Title II of the 21st Century AIRR Act removes the ATO from the FAA and establishes it as a private, non-profit corporation known as the American Air Navigation Services Corporation. Importantly, the bill specifies that the corporation be:

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- Established as a non-governmental entity distinct from the federal government, with no taxpayer guarantee for debt assumed by the corporation (Section 90304);
- Authorized to charge user fees for the provision of ATC services (with federal oversight) and seek private-sector financing for capital improvements (Section 90313);
- Governed by a board of 13 user stakeholders, composed of members detailed in Table 1 (Section 90306); and
- Granted the exclusive right to provide ATC services in the United States, with minor exceptions (Section 90302).

Overall, the ATC reform proposal is a substantial step in the right direction for the U.S. Air Traffic Control system. The benefits of removing the operation and modernization of ATC from the safety regulatory bureaucracy are myriad, and similar reforms in Canada have generated significant cost savings for aviation users.⁶ Significantly, the bill also improves on the 2016 AIRR Act by explicitly laying out penalties for workers who participate in a strike, work stoppage, or slowdown against the corporation, and ensures speedy resolution of labor disputes (Sections 91109 and 91107, respectively). Furthermore, Section 91104 prohibits supervisors and managers from joining a union, another improvement over the 2016 AIRR Act.

However, the proposal exhibits serious shortcomings with regard to establishing the private provision of ATC services. Most importantly, it establishes ATC as a government-sanctioned monopoly

TABLE 1

Board Composition of the American Air Navigation Services Corporation Under H.R. 2997

Entities Represented	Board Seats
Corporation CEO	1
Secretary of Transportation	2
Major Air Carriers ^a	1
Cargo Air Carriers	1
Regional Air Carriers ^b	1
General Aviation	1
Business Aviation	1
Air Traffic Controllers	1
Airports	1
Commercial Pilots	1
At-large ^c	2
Total	13

a — Airlines with at least 30 million annual passenger enplanements.
 b — Air carriers that exclusively or primarily operate aircraft with 76 passenger capacity or less, and are not owned or controlled by any other air carrier or holding company. See H.R. 2997, § 211.
 c — Selected by the board and approved by two-thirds vote.
SOURCE: 21st Century AIRR Act, H.R. 2997, 115th Cong., 1st Sess.

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by prohibiting any other entity from operating ATC services in Section 90302(c). This restriction has the potential to chill future innovation in the ATC indus-

1. See, for example, President Trump's statement: "And we have an obsolete plane system; we have obsolete airports; we have obsolete trains. We have bad roads. We're going to change all of that, folks." News release, "Remarks by President Trump in Meeting with the Aviation Industry," The White House, February 9, 2017, <https://www.whitehouse.gov/the-press-office/2017/02/09/remarks-president-trump-meeting-aviation-industry> (accessed June 26, 2017).

2. FAA Extension, Safety, and Security Act of 2016, Public Law No. 114-190.

3. 21st Century Aviation Innovation, Reform, and Reauthorization Act, H.R. 2997.

4. Federal Aviation Administration Reauthorization Act of 2017, S. 1405.

5. Aviation Innovation, Reform, and Reauthorization Act, H.R. 4441, 114th Congress, 2nd Session.

6. Robert Poole, "Corporatizing Air Traffic Control Fixes Key Problems," *The Hill*, June 13, 2017, <http://thehill.com/blogs/pundits-blog/transportation/337586-corporatizing-air-traffic-control-fixes-key-problems> (accessed June 26, 2017), and Robert Poole, "Air Traffic Control FAQs," Reason Foundation, June 8, 2017, <http://reason.org/studies/show/air-traffic-control-faqs> (accessed June 26, 2017).

try, especially as technology advances and reduces the need for capital-intensive, ground-based radar systems.⁷ Given that the corporation would remain the only provider of ATC services at its inception, this provision is unnecessary. Furthermore, keeping this monopoly provision will likely prompt the Congressional Budget Office to keep the corporation's finances as part of the federal budget, complicating its financial independence.⁸

In addition, the proposal expands existing subsidies to general aviation aircraft by exempting them from all future fees levied by the corporation in Section 90313(d)(7). Prescribing what charges the corporation can (and cannot) levy further interferes with the entity's independence. Instead, the corporation should be free to make all relevant business decisions, including establishing a fee structure for its various customers.

Congress can substantially improve the proposal and the resulting corporation it establishes by addressing these concerns. Furthermore, the proposal requires tax and budget titles prior to consideration on the floor of Congress, as mentioned in Table 2. These issues notwithstanding, the 21st Century AIRR Act proposes an improvement over the existing system and a step in the right direction for establishing an independent, market-driven provider of air traffic control.

Other Provisions in the 21st Century AIRR Act. The 21st Century AIRR Act is significantly less innovative when it comes to other aviation issues that require extensive reform, including airport funding and financing. Troublingly, the bill proposes overreaching regulations that micromanage airline and airport business practices. These include:

- Prohibiting mobile telephone calls in commercial aircraft (Section 502);

- Increasing mandatory rest times for flight attendants to 10 hours (Section 414). This provision will make it harder for flight attendants to work the same number of hours, thus likely reducing pay, and will limit worker flexibility. Decisions regarding rest hours are best made between employers and their employees, not by Members of Congress;
- Prescribing specifications for the establishment of airport lactation areas for breastfeeding mothers (Section 122); and
- Prohibiting airlines from continuing existing "bumping" procedures (Section 506).

Airlines and airports are more suitably equipped to make these business decisions in response to consumers. The bill further proposes spending increases in other FAA activities, including the wasteful Essential Air Service program. An overview of these and other issue areas can be found in Table 2.

Federal Aviation Administration Reauthorization Act of 2017

The Senate's Federal Aviation Administration Reauthorization Act of 2017⁹ is similar to the Senate's proposed reauthorization in 2016,¹⁰ which was passed in the Senate but did not receive a vote in the House.¹¹ Like its preceding bill, FAARA 2017 does not contain any attempt to make critical reforms to air traffic control, airport funding, or other FAA programs. Instead, the bill doubles down on inefficient aviation programs by increasing funding across the board and adding layers of federal regulations.

Regulatory expansion appears to be the policy hallmark of FAARA 2017, and the bill includes many of the same harmful regulations included in the 21st

7. There are several exceptions to the prohibition. The proposal would allow the Department of Defense, designees of the corporation, and unmanned aircraft systems to provide ATC services.

8. Congressional Budget Office, "How CBO Determines Whether to Classify an Activity as Governmental When Estimating its Budgetary Effects," June 2017, <https://www.cbo.gov/system/files/115th-congress-2017-2018/reports/52803-governmentalactivities.pdf> (accessed June 26, 2017).

9. Federal Aviation Administration Reauthorization Act of 2017, S. 1405.

10. Federal Aviation Administration Reauthorization Act of 2016, S. 2658, 114th Congress, 2nd Session.

11. For an overview of S. 2658, see Michael Sargent, "Senate's FAA Authorization Perpetuates Big-Government Intrusion into Aviation Industry," Heritage Foundation *Issue Brief* No. 4546, April 11, 2016, <http://www.heritage.org/government-regulation/report/senates-faa-authorization-perpetuates-big-government-intrusion>.

Century AIRR Act. Subtitle C of Title II and Title III further expand the government’s micromanagement—already rampant—into aviation business practices under the dubious guise of safety and consumer protection. Some notable regulatory actions include:

- Mandating new flight data recorders for commercial aircraft. These recorders would have no noticeable effect on safety and would come at an estimated cost of \$700 million, which would be passed on fliers through higher fares¹² (Section 2302);
- Increasing mandatory rest times for flight attendants to 10 hours. This provision will make it harder for flight attendants to work the same number of hours, thus likely reducing pay, and will limit worker flexibility. Decisions regarding rest hours are best made between employers and their employees, not by Members of Congress (Section 2303);
- Prescribing mandatory procedures for the disclosure and refund of ancillary fees. In the case of fee disclosure prior to the point of purchase, this rule singles out the airline industry among other online retailers, who do not have the same requirements (Sections 3107 and 3108);
- Dictating how airlines are required to disclose seating assignments (Section 3109);
- Requiring the Secretary of Transportation to conduct a study on the minimum seat dimensions on passenger airplanes (Section 3116); and
- Prohibiting voice telephone calls on commercial aircraft (Section 3117).

The comprehensive burden of these regulations is a marked intrusion into the industry and prevents airlines from establishing their own business prac-

tices, thereby limiting flexibility and reducing consumer choice. Air carriers already have an incentive to provide their passengers with the services and amenities they desire, lest they lose business to a rival carrier. The aviation system is already heavily regulated; lawmakers should not further intrude into the market without a clear and compelling safety interest at stake.

The TICKETS Act of 2017. Section 3118 of FAARA 2017 establishes the Transparency Improvements and Compensation to Keep Every Ticketholder Safe (TICKETS) Act of 2017, likely a response to a heavily publicized forced-deplanement incident on United Airlines in April 2017.¹³ The provision seeks to prevent involuntary boarding denials (known as “bumping”) through regulations that prohibit airlines from bumping any passengers that have already been approved by a gate attendant.

This knee jerk reaction is unwarranted, given how rare involuntary boarding denials are. Indeed, involuntary bumping affected just 0.007 percent of passengers flying on major airlines in 2015.¹⁴ The law would further require the Comptroller General of the U.S. to investigate overbooking, a longstanding practice that allows airlines to provide less inexpensive airfares.

A far better approach to deter airlines from relying on involuntary boarding denials would be to increase the legal cap set on mandatory compensation for those affected by bumping, which is now set at 400 percent of the passenger’s airfare, or a maximum of \$1,350. This cap acts as a backstop for airlines to fall on if they do not wish to exceed a payment of \$1,350 while trying to lure a volunteer to forego an assigned seat. Indeed, FAARA 2017 contains a provision that would eliminate this cap, a sound policy that would make the other regulations regarding denied boardings unnecessary.

In addition to snowballing regulations, the bill proposes spending increases for other FAA activities, including the wasteful Essential Air Service program. An overview of these and other issue areas can be found in Table 2.

12. Cost estimate from Airlines for America. The calculation assumes a cost of \$100,000 per new unit installed on 7,000 aircraft.

13. See Daniel Victor and Matt Stevens, “United Airlines Passenger Is Dragged from an Overbooked Flight,” *New York Times*, April 10, 2017, <https://www.nytimes.com/2017/04/10/business/united-flight-passenger-dragged.html?mcubz=2> (accessed June 26, 2017).

14. U.S. Department of Transportation, Bureau of Transportation Statistics, *National Transportation Statistics*, Table 1-64: “Passengers Boarded and Denied Boarding by the Largest U.S. Air Carriers,” https://www.rita.dot.gov/bts/sites/rita.dot.gov/bts/files/publications/national_transportation_statistics/html/table_01_64.html (accessed June 26, 2017).

TABLE 2

Key Reforms and Provisions in H.R. 2997 and S. 1405 (Page 1 of 2)

Issue Area	Required Reform	21st Century AIRR (H.R. 2997)	FAARA 2017 (S. 1405)
Overview		Authorizes FAA programs for 2018–2023. Authorizes spending of roughly \$58 billion from 2018–2021 and a total of \$70 billion for 2018–2023.	Authorizes FAA programs for 2018–2021. Authorizes total spending of roughly \$70 billion for 2018–2021
Air Traffic Control	Establish air traffic control within a fully private entity in a competitive market. Ensure the transition to a private corporation does not result in handouts to labor organizations or further subsidies to general aviation interests. Drawdown aviation taxes to avoid double-charging users and lower discretionary budget caps of roughly \$12 billion per year to accommodate reclassified ATC spending.	Title II proposes positive reforms to air traffic control by removing ATC from the FAA and housing it in non-governmental, non-profit corporation. However, the proposal requires tax and budget titles for holistic evaluation. Furthermore, the proposal exhibits important shortcomings, especially with regard to the corporation's structure as a legal monopoly, which may chill innovation.	Does not provide for adequate structural reform. Instead, Title IV of the bill calls on the FAA to produce various studies and planning documents. These proposals are largely symbolic steps that betray Congress's micromanagement of ATC and solidify the broken status quo.
Airport Funding	Localize airport funding by eliminating the Airport Improvement Program (AIP), corresponding aviation taxes, and burdensome airport revenue regulations. ^a Alternatively, uncap the Passenger Facility Charge (PFC) and lower AIP grants and ticket taxes proportionally. ^b	Does not reform airport funding. Increases AIP grants by 2.2 percent per year, from \$3.35 billion in 2017 to \$3.82 billion in 2023. Modestly streamlines the PFC for airports charging \$4 and \$4.50 per passenger.	Does not reform airport funding. Increases AIP grants by 12 percent in 2019, from \$3.35 billion in 2017 to \$3.75 billion and sustains that level through 2021. Section 1302 increases federal involvement by increasing the federal cost share for AIP projects to 95 percent for certain general aviation airports. Allows PFCs to be used for transit projects. Modestly streamlines the PFC for airports charging \$4 and \$4.50 per passenger.
Essential Air Service (EAS)	Eliminate EAS. Alternatively, reform EAS by enforcing or lowering the \$200 per passenger subsidy cap and raising the minimum distance a recipient airport can be located in relation to the closest hub airport.	Maintains EAS and increases funding by 2 percent to 4 percent per year. Slightly improves accountability by shifting the portion of EAS funding classified as mandatory to the discretionary budget beginning in 2021.	Maintains EAS. Keeps discretionary funding flat while continuing mandatory spending.

a — See Michael Sargent, “End of the Runway: Rethinking the Airport Improvement Program and the Federal Role in Airport Funding,” Heritage Foundation *Background* No. 3170, November 23, 2016, <http://www.heritage.org/budget-and-spending/report/end-the-runway-rethinking-the-airport-improvement-program-and-the>.

b — See, for example, Investing in America: Rebuilding America's Airport Infrastructure Act,” H.R. 1265, 115th Cong., 1st Sess.

TABLE 2

Key Reforms and Provisions in H.R. 2997 and S. 1405 (Page 2 of 2)

Issue Area	Required Reform	21st Century AIRR (H.R. 2997)	FAARA 2017 (S. 1405)
Regulatory Restraint	Do not impose costly and burdensome airline and airport regulations that can result in unintended consequences for consumers.	Proposes burdensome and unnecessary regulations. These include regulations that govern mobile phone use aboard aircraft (§ 502), airport grant assurance regulations (§ 122), flight attendant rest hours (§ 414), and mandatory “bumping” procedures (§ 506). These provisions signify a troubling reversal of several decades of successful deregulatory policies in the aviation industry.	Proposes expansive regulations that significantly intrude on aviation business practices (largely contained in Title II, subtitle C; and Title III). Costs to the airline industry and passengers are likely to be substantial. These provisions signify a troubling reversal of several decades of successful deregulatory policies in the aviation industry.
Airport Privatization	Expand access to the Airport Privatization Pilot Program by reducing airlines’ veto power, uncapping the number of available pilot slots, allowing partial privatization, and approving the use of tax-exempt bonds at private airports. ^c	No significant privatization reforms.	No significant privatization reforms.
Consumer Empowerment	Empower consumers through fostering competition, not prescriptive regulations. To increase airline competition, Congress should lower the domestic ownership requirements for U.S. airlines; further market incentives by removing the cap on payments for involuntary denied boarding compensation; ^d and allow airports to employ destination marketing and cash incentives.	Does not make substantive reforms to expand competition. Limits airline “bumping” procedures in § 506 through regulations, not market incentives.	Lifts the cap on payments for involuntary denied-boarding compensation, but includes additional regulations of “bumping” procedures. No additional reforms are made to enhance competition.
Small Unmanned Aircraft Operations in Low Altitude Airspace	Allow local, state, and tribal authorities to set reasonable time, place, and manner restrictions on drone operations in low altitude airspace. Respect property rights to the airspace above private property. Promote innovation, competition, and job creation. Restrict federal regulatory authority over recreational drone activity.	Allows the FAA to reestablish a recreational drone owners’ registry, which was recently struck down by the Court of Appeals for the D.C. Circuit. Requires companies engaged in drone delivery to obtain federal air carrier certification, fully removing the ability of local and state governments to regulate drone delivery activities taking place within and among local jurisdictions.	Grants broad authority to the FAA to regulate the design, manufacture, and operational safety standards of drones, and criminalizes noncompliance. Allows reestablishment of the drone owners’ registry and FAA knowledge test for hobbyists. Requires air carrier certification for drone deliveries, limiting the regulatory authority of state and local governments.

c — Michael Sargent and Nick Loris, “Driving Investment, Fueling Growth: How Strategic Reforms Can Generate \$1.1 Trillion in Infrastructure Investment,” Heritage Foundation *Backgrounder* No. 3209, May 8, 2017, <http://www.heritage.org/government-regulation/report/driving-investment-fueling-growth-how-strategic-reforms-can-generate>.

d — See previous section in this *Issue Brief* on The TICKETS Act of 2017.

Conclusion

The U.S. aviation system requires updated public policies to improve modernization, incentivize innovation, and provide consumers with more choices. The 21st Century AIRR Act provides noteworthy yet incomplete reforms in regard to ATC modernization, but misses the opportunity to address other much-needed areas of reform. The Senate's FAARA bill does not propose any substantial reforms to major aviation issues and instead layers on burdensome and unnecessary regulations. While formulating a final bill, policymakers should break the mold and embrace the reforms listed in this *Issue Brief* to truly bring the U.S. aviation system into the 21st century and make America a leader in aviation once again.

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