Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

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February 8, 2016

SUMMARY OF SUBJECT MATTER

TO:	Members, Committee on Transportation and Infrastructure
FROM:	Staff, Committee on Transportation and Infrastructure
RE:	Full Committee Hearing on "Review of ATC Reform Proposals"

PURPOSE

The Committee on Transportation and Infrastructure will meet on Wednesday, February 10, 2016, at 10:00 am in 2167 Rayburn House Office Building to examine proposals to reform the air traffic control (ATC) operations of the Federal Aviation Administration (FAA). The Committee will receive testimony from Airlines for America (A4A), the National Air Traffic Controllers Association (NATCA), the Reason Foundation, and the National Business Aviation Association.

BACKGROUND

Aviation is a major driver of economic growth and the ATC system is an essential component of this important sector of the economy. According to the FAA, civil aviation generates $847 billion in annual economic activity, constitutes 5.4 percent of United States Gross Domestic Product (GDP) and supports over 11 million jobs.[1] United States airspace, the busiest and most expansive in the world, covers roughly 30 million square miles—constituting more than 17 percent of the world's airspace.[2] The ATC system is operated by the FAA's more than 14,000 federal air traffic controllers in 317 airport traffic control facilities.[3] Every day, air traffic controllers safely handle more than 50,000 operations.[4] . The FAA also has safety oversight of civil aviation, including the operation of the ATC system itself.

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[1] Federal Aviation Administration, *The Economic Impact of Civil Aviation on the U.S. Economy*, January 2015, p. 1. https://www.faa.gov/air_traffic/publications/media/2015-economic-impact-report.pdf
[2] *Id*.

[3] Federal Aviation Administration, *A Plan for the Future: 10-Year Strategy for the Air Traffic Control Workforce*, 2015-2014, p. 10, and https://www.faa.gov/jobs/career_fields/aviation_careers/atc_roles
[4] FAA Press Release, July 6, 2011
https://www.faa.gov/news/press_releases/news_story.cfm?newsId=12903

While the United States has one of the safest ATC systems in the world, the system has struggled to keep up with increasing demand. According to the FAA, airline delays and cancellations cost passengers, shippers, and airlines nearly $33 billion annually.[5] FAA projects passenger growth to average two percent per year, reaching one billion passengers by 2029.[6] To help the ATC system better prepare for this forecasted growth, the FAA has been working for decades to modernize the system, which remains based on World War II-era radar technology. Without modernization, controllers and aircraft operators will continue to be forced to use the airspace in a very inefficient way.

NEXTGEN

According to government watchdog reports, the FAA's 20-year, $40 billion "NextGen" initiative – intended to transform the ATC system from a radar-based system to a satellite-based system – has been plagued by decades of cost and schedule overruns and has produced only incremental improvements in capacity and safety. Passengers and aircraft operators have seen limited benefits from recent FAA initiatives and those benefits are certainly not in line with taxpayer dollars invested – approximately $6 billion to date.[7]

According to the Department of Transportation Inspector General (DOT IG), "since its inception a decade ago, FAA's progress in implementing NextGen has not met the expectations of Congress and industry stakeholders, and key modernization efforts have experienced significant cost increases and schedule delays."[8] Calvin Scovel, the DOT IG, has warned, "[T]he initial estimates from nine or ten years back called for $20 billion in federal investments, $20 billion in private investments with a stated goal of completing implementation of the program by 2025…. We're clearly not going to make it with a total of $40 billion in investments, federal and private. We're probably looking at years beyond 2025 – perhaps another ten even. We're probably also looking at total expenditures on the magnitude two to three times that of the initial $40 billion."[9]

In a recent report, the DOT IG found that eight of FAA's 15 ongoing major system acquisitions experienced a cumulative cost increase of $3.8 billion beyond original estimates and delays ranging from seven to 174 months, with an average delay of 51 months.[10] Similarly,

[5] Nextor, *Total Delay Impact Study: A Comprehensive Assessment of the Costs and Impacts of Flight Delay in the United States*, Final Report, October 2010, p. vii http://www.isr.umd.edu/NEXTOR/pubs/TDI_Report_Final_10_18_10_V3.pdf

[6] FAA Press Release, March 16, 2015 https://www.faa.gov/news/press_releases/news_story.cfm?newsId=18434

[7] U.S. Department of Transportation, Office of the Inspector General, Audit Announcement Memorandum, June 9, 2015. https://www.oig.dot.gov/sites/default/files/FAA%20Management%20of%20NextGen%20PLA%20Announcment%20Letter%2006-9-15.pdf

[8] Office of Inspector General, U.S. Department of Transportation, *FAA Made Limited Progress in Implementing NextGen Provisions of the FAA Modernization and Reform Act of 2012*, AV-2014-027, Jan. 28, 2014, p. 2.

[9] Statement of Calvin Scovel, Inspector General, U.S. Department of Transportation, before the House Aviation Subcommittee, *Hearing on ATC Modernization*, February 5, 2014.

[10] Office of the Inspector General, U.S. Department of Transportation, *FAA Reforms Have Not Achieved Expected Cost, Efficiency and Modernization Outcomes*, AV-2016-15, January 20, 2016, p. 13.

according to the Government Accountability Office (GAO), "[t]he three [ATC] programs with the largest cost increases—more than $4 billion—are key to ATC modernization."[11]

The extent to which FAA realigns and consolidates ATC facilities is another important component of the agency's NextGen implementation efforts. To comply with the law, FAA provided Congress with a plan for consolidating and realigning its facilities. The DOT IG found that the plan is "significantly less comprehensive than previous consolidation plans…," and does not include a process for realigning and consolidating facilities that manage high-altitude traffic.[12] In a recent report, the DOT IG found that despite the fact that FAA's air traffic operations dropped 23 percent between fiscal years 2000 and 2012, the FAA's ATC facility footprint has remained essentially unchanged.[13] The report also found that FAA has missed opportunities to complete large-scale facility consolidations that would bring efficiencies, address the costs of maintaining aging facilities, and facilitate the transition to NextGen.[14]

Finally, the GAO found that "… FAA's organizational…has been slow to embrace NextGen's transformational vision. Gaps in leadership have further undermined the Agency's efforts to advance NextGen."[15] A recent GAO survey found that aviation stakeholders lack confidence in FAA's ability to implement ATC modernization.[16] More than three times as many of the stakeholders said that FAA's overall implementation of NextGen was not going well than those who said it was going well.[17]

OVERVIEW OF PREVIOUS U.S. AIR TRAFFIC CONTROL REFORM EFFORTS

In 1981, the FAA began an effort to modernize the ATC system by updating facilities and equipment to meet the anticipated demands of a growing volume of post-deregulation air traffic.[18] At the time, the modernization was estimated to cost roughly $12 billion[19]and take more than ten years to complete.[20] However, in the ensuing years the effort encountered cost overruns, schedule delays, and performance shortfalls, which resulted in calls to reform the FAA.

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[11] U.S. Government Accountability Office, *Air Traffic Control Modernization: Management Challenges Associated with Program Costs and Schedules Could Hinder NextGen Implementation*, GAO-12-223, February 2012, p. 12.

[12] Office of the Inspector General, U.S. Department of Transportation, *FAA's Implementation of the FAA Modernization and Reform Act of 2012 Remains Incomplete*, CC-2014-010, February 5, 2014, p. 3.

[13]Office of the Inspector General, U.S. Department of Transportation, *FAA Reforms Have Not Achieved Expected Cost, Efficiency, and Modernization Outcomes*, January 15, 2016, AV-2016-015, pp. 8-9.

[14] *Id*.

[15] U.S. Government Accountability Office, *Air Traffic Control Modernization: Management Challenges Associated with Program Costs and Schedules Could Hinder NextGen Implementation*, February 2012, GAO-12-223, p. 3.

[16] U.S. Government Accountability Office, *Air Traffic Control System: Selected Stakeholders' Perspectives on Operations, Modernization, and Structure*, September 2014, GAO-14-770, p. 11.

[17] *Id*.

[18] This included plans to replace the computers at air route traffic control centers with new software, consoles and displays, facility consolidation, new secondary radars, upgraded weather services and a new landing system. U.S. Government Accountability Office, *FAA's Plan to Improve the Air Traffic Control System*, AFMD-83-34, 1983. http://www.gao.gov/assets/140/139683.pdf

[19] U.S. Government Accountability Office, *Transportation: Examination of the Federal Aviation Administration's Plan for the National Airspace System – Interim Report*, AFMD-82-66, 1982, p.2. This report claims initial estimates to be roughly $10 billion; however, a later GAO report states the $12 billion figure.

[20] Gerald L. Dillingham, U.S. Government Accountability Office, Testimony before the Subcommittee on Aviation, Committee on Transportation and Infrastructure, House of Representatives, *FAA's Modernization Efforts – Past, President and Future*, October 30, 2003, p. 1.

There have been previous bipartisan ATC reform recommendations calling for an independent, nongovernmental, self-financing entity:

- In 1988, the Aviation Safety Commission urged creation of a self-financing air navigation service provider free of federal personnel and procurement rules, to be overseen by a board that would include industry stakeholders.[21]

- In its 1993 report, the National Commission to Ensure a Strong Competitive Airline Industry, chaired by former Virginia Governor Gerald Baliles, recommended that the FAA be "reinvented" and restructured as an independent federal corporate entity, with its expenditures and revenues removed from the federal budget.[22]

- Also in 1993, then-Vice President Al Gore's task force on government reorganization proposed a detailed plan for shifting ATC to a user-fee supported government corporation to be called the U.S. Air Traffic Services Corporation (USATS).

- In 1997, the National Civil Aviation Review Commission, chaired by former Secretary of Transportation Norman Mineta, recommended a financially self-supporting ATC entity within the FAA. [23] Cost-based user fees from airlines would provide a revenue stream outside the federal budget process and support bonding to finance large-scale modernization.[24]

- In 2007, the Bush administration called for a hybrid, cost-based system for financing FAA programs, under which commercial airlines and business jet operators would pay direct charges for ATC services while general aviation (GA) non-jet operators would continue to pay the GA fuel tax.[25]

Congress responded by enacting only portions of the Baliles and Mineta commissions' recommendations.[26] In 1995, Congress passed legislation exempting FAA from most federal personnel rules and allowed the agency to implement a new personnel management system that provided greater flexibility in hiring, training, and compensating personnel.[27] In 1996, other legislation was passed that included additional personnel reforms and required the agency to establish a cost accounting system.[28] In 1995, Congress also granted FAA relief from principal federal acquisition laws and regulations.[29] In April 2000, Congress required the appointment of a Chief Operating Officer to oversee the day-to-day operation and modernization of the ATC

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[21] *Aviation Safety Commission Final Report and Recommendations*, April 1988, p. 1.
[22] The National Commission to Ensure a Strong Competitive Airline Industry, *Change, Challenge and Competition: A Report to the President and Congress*, August 1993, pp. 8-9.
[23] National Civil Aviation Review Commission, *Avoiding Aviation Gridlock and Reducing the Accident Rate*, December 1997.
[24] *Id.* at p. 144.
[25] *Id.* at pp. 18-19.
[26] Robert W. Poole, *The Urgent Need to Reform the FAA's Air Traffic Control System*, March 2007, p. 18.
[27] *Fiscal Year 1996 Department of Transportation and Related Agencies Appropriations Act*, Section 347(a), P.L. 104-50, Nov. 15, 1995.
[28] *Federal Aviation Reauthorization Act of 1996*, Sections 253 & 276, P.L. 104-264, Oct. 9, 1996.
[29] *Fiscal Year 1996 Department of Transportation and Related Agencies Appropriations Act*, Section 347(a), P.L. 104-50, Nov. 15, 1995.

system.[30] However, Congress rejected the proposal to shift from excise taxes to user fees.[31] Similarly, the 110th Congress did not include the Bush Administration's finance reform proposal in the FAA reauthorization legislation.

THE CONTINUING NEED FOR U.S. ATC REFORM

In a January 2016 report, the DOT IG found that previous efforts by executive and legislative branches to reform the agency have failed.[32] Since the implementation of the personnel and procurement reforms, costs have continued to rise while operational productivity has declined.[33] Between fiscal years 1996 and 2012, the DOT IG found that FAA's total budget grew by 95 percent, from $8.1 billion to $15.9 billion, and its total personnel, compensation, and benefits costs increased by 98 percent, from $3.7 billion to $7.3 billion, while air traffic dropped 23 percent.[34] The DOT IG attributed FAA's disappointing reform outcomes largely to the agency's failure to take full advantage of its authorities when implementing new personnel systems, and not using business-like practices to improve its operational efficiency and cost effectiveness.[35] In addition, FAA's workforce levels have remained relatively constant over the past two decades and the number of air traffic facilities the FAA operates has not changed since 2000 despite the drop in air traffic.[36] The DOT IG stated that FAA's organizational culture, which has been resistant to change, further deters its reform efforts.[37]

Today, the FAA, like other Federal entities, must conduct capital project planning, including efforts to modernize the ATC system, on the basis of an annual Congressional appropriations cycle. The agency is likewise impacted by sequestration, extensions, continuing resolutions, and government shut downs. Three years of federal budget disputes, including the FAA's decision in April 2013 to furlough ten percent of its air traffic controller workforce to meet sequester-driven budgetary cuts, the partial shutdown of the FAA in August 2011 due to the lapse of FAA's operating authority, and the continuing schedule delays and cost overruns that have plagued FAA's efforts to modernize the ATC system, have rekindled the debate over ATC reform. The lack of a steady, predictable funding stream and short term authorization extensions are not conducive to the long-term planning needed to deliver large, multi-year capital projects like ATC modernization.

The Reason Foundation, The Brookings Institution, and the Cato Institute have all found that aviation safety and efficiency would be enhanced by providing a steady, predictable funding stream (via direct charges paid by users) for NextGen, as well as more effective management.[38] Proponents

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30 *Wendell H. Ford Aviation Investment and Reform Act for the 21st Century*, Section 303, P.L. 106-181, Apr. 5, 2000.
31 Robert W. Poole, *The Urgent Need to Reform the FAA's Air Traffic Control System*, March 2007, p. 18.
32 Department of Transportation, Office of Inspector General, *FAA Reforms Have Not Achieved Expected Cost, Efficiency, and Modernization Outcomes*, January 15, 2016, AV-2016-015, p. 2.
33 *Id*. at p. 8.
34 *Id*.
35 *Id*. at p. 2.
36 *Id*. at p. 8.
37 *Id*. at p. 2.
38 Robert W. Poole, *Why An Air Traffic Control Corporation Makes Sense*, Reason Foundation Policy Study No. 278, February 2001, p. 15; Chris Edwards, *Privatize the FAA!*, Cato Institute, April 24, 2013; and Dorothy Robyn, *Air Support: Creating a Safer and More Reliable Air Traffic Control System*, The Brookings Institution, July 2008, pp. 18-19.
http://reason.org/files/c1a82c766aec1c5b8ee55404ca00fb30.pdf
http://www.cato.org/publications/commentary/privatize-faa

of ATC reform argue that, under some reform scenarios, a self-financed ATC service provider would access capital through the private markets.[39] In addition, a self-financed ATC service provider would be free from federal procurement regulations that, according to some observers, have prevented the FAA from purchasing and deploying new technologies in a timely, cost-efficient manner in some cases.[40]

At a March 24, 2015 Subcommittee on Aviation hearing, witnesses urged Congress to consider comprehensive reform of how the FAA is governed and financed.[41] Dorothy Robyn, a former Clinton Administration official, citing ongoing problems with NextGen implementation, declining budget projections for FAA, and the prospect of another sequester-related shutdown, recommended that Congress move the ATO out of the FAA, and replace the aviation excise taxes with cost-based charges on commercial and business aircraft operators.[42] Citing the success of commercialized ATC service providers abroad, all the witnesses supported separating ATC services from the FAA and establishing an independent, not-for-profit corporation governed by stakeholders and financed by user fees to manage the nation's ATC system.

Similarly, a wide-range of aviation stakeholder groups have called for governance and/or finance reform of the FAA's air traffic control operations. In May 2015, the Eno Center for Transportations NextGen Working Group issued a report on options for ATC reform in the United States.[43] The Eno report recommended that ATC services should be taken out of the direct control of the federal government and be provided by a more independent organization, be it a non-profit organization or a government corporation.[44] Under the Eno proposal, the entity would have a non-profit mandate, and all key stakeholders would be represented in a governing board.[45] The Eno report called for replacing the current funding of the ATC system, with direct payments to the ATC provider.[46]

On February 1, 2016, a bipartisan group of former federal officials sent a letter to the House Committee on Transportation and Infrastructure calling for "bipartisan support for transformational change" of the ATC system, specifically the establishment of a federally-chartered, non-profit organization that would be governed and funded by the stakeholders and users of the aviation system.[47] The officials asserted that Congress should enact reforms now given the fact that ATC infrastructure and technology are falling behind the world's ATC providers.

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[39] Robert W. Poole, *Organization and Innovation in Air Traffic Control*, Hudson Institute Initiative on Future Innovation, 2013, p. 5.
[40] *Id.*
[41] Statements by Robert Poole, the Reason Foundation; Doug Parker, President and CEO, American Airlines, on behalf of A4A; Dorothy Robyn; and David Grizzle, former COO of the FAA, before the Subcommittee on Aviation, House Transportation and Infrastructure Committee, March 24, 2015.
http://transport.house.gov/calendar/eventsingle.aspx?EventID=398745
[42] Statement of Dorothy Robyn, House Committee on Transportation and Infrastructure, Subcommittee on Aviation, March 24, 2015
http://transport.house.gov/calendar/eventsingle.aspx?EventID=398745
[43] Eno Center for Transportation NextGen Working Group, Final Report, May 2015
https://www.enotrans.org/wp-content/uploads/wpsc/downloadables/NextGen-Final-Report-12am2.pdf.
[44] *Id.* at p. 61.
[45] *Id.*
[46] *Id.*
[47] Letter was signed by former Senators Byron Dorgan (D-ND) and Trent Lott (R-MS); former Secretaries of Transportation James Burnley, Norman Mineta, and Mary Peters; former FAA Administrator Randy Babbitt; former

OVERVIEW OF FOREIGN AIR TRAFFIC CONTROL REFORM EFFORTS

Since 1987, over 50 nations have shifted the responsibility for providing ATC services from the national government to independent, self-financed ATC service providers.[48] While the majority of these service providers are government corporations, the ATC service providers of Canada and the United Kingdom are wholly or partially private and their respective governments regulate them but do not run their day-to-day operators.[49]

The DOT IG recently conducted a study on the performance of four Air Navigation Service Providers (ANSPs).[50] According to the DOT IG, since these countries commercialized their respective ANSPs (with the exception of France's ANSP, which is a government agency), there has been no evidence of any degradation in aviation safety levels.[51] Similarly, in a 2005 report that studied five independent, self-financed ATC service operators, the GAO found that the safety of air traffic control services "remained the same or improved"; the nongovernmental, self-financing ATC service providers had lowered their costs and "improved efficiency"; and all also invested in new technologies and equipment.[52]

In October 2014, the MITRE Corporation prepared a report at the request of the FAA on six international civil aviation authorities (CAAs).[53] The six countries shared the experience of separating the ANSP from the government.[54] In all cases, MITRE found that the separation of the ANSP from the CAA was reasonably successful.[55] While there were difficulties in the shift to an independent regulator of a corporatized ANSP, adjustments were made in response to the difficulties encountered.[56] The CAAs interviewed by MITRE were unanimous in stating that the separation of the ATC from the CAA was worth it.[57] Among the benefits they expressed were increased focus on safety by the regulator and the ANSP, improved efficiency of the ANSP, reduction in total cost to users, and improved participation by aviation stakeholders.[58]

FAA Chief Operating Officers Russell Chew (; Hank Krakowski and David Grizzle; and former White House National Economic Council Special Assistant Dorothy Robyn.

[48] Robert W. Poole, Jr., *The Urgent Need to Reform the FAA's Air Traffic Control System*, Reason Foundation, March 2007, p. 11.

[49] *Id.* at p. 12.

[50] ANSPs studied included: Canada, France, Germany, and the United Kingdom.

[51] Statement of Matthew Hampton, Assistant Inspector General for Aviation, U.S. Department of Transportation, before the Committee on Transportation and Infrastructure, Subcommittee on Aviation, March 24, 2015.

[52] U.S. Government Accountability Office, *Air Traffic Control: Characteristics and Performance of Selected International Air Navigation Service Providers and Lessons Learned from Their Commercialization*, GAO-05-769, July 2005, p. 4. ANSPs studied included: Australia, Canada, Germany New Zealand and the United Kingdom.

[53] Dan Brown, Tom Berry, Steve Welman and E.J. Spear, The MITRE Corporation, *CAA International Structures*, October 2014.

[54] Studied Canada, New Zealand, Australia, France, Germany, and the United Kingdom. The CAAs were selected because their level of technological sophistication is similar to the FAA's and because their countries share many common economic and political characteristics with the United States, although none approximate the scale or complexity of the U.S. system.

[55] *Id.* at p. 9.

[56] *Id.*

[57] *Id.*

[58] *Id.* at pp. 9-10.

ATC REFORM PROPOSAL IN AIRR ACT

Title II of the Aviation Innovation, Reform, and Reauthorization Act of 2016 (AIRR Act) creates the ATC Corporation, an independent, Federally-chartered, not-for-profit corporation to operate and modernize air traffic (AT) services.

Corporation and Governance

ATC Corporation will be an independent corporation completely outside the government and exempt from taxation as a not-for-profit corporation. The Federal government will not be liable for any action or inaction of ATC Corporation and will not explicitly or implicitly guarantee any debt or obligation of the Corporation. ATC Corporation, which will have all the powers and authorities of any corporation, will be responsible for providing AT services and necessary safety information to AT service users to ensure the safe an efficient management of air traffic.

ATC Corporation will be governed by a Board of Directors nominated by aviation stakeholder groups. The Board will be populated through a two-step process by which certain stakeholder groups, known as "principal organizations," will nominate Directors to the Board. Within 30 days of enactment, the Secretary will identify the principal organizations representing the following aviation stakeholder communities: mainline air carriers, noncommercial owners and recreational operators of general aviation aircraft, air traffic controllers, and airline pilots.

Once the principal organizations are identified, they will appoint "Nominating Members" who will nominate Directors for the Board. The Secretary will directly appoint two Directors to the Board to confirm the nominations of the Nominating Members. The Board's composition will be:

- Two Directors **appointed** by the Secretary of Transportation.
  - Only the Directors appointed by the Secretary are exempt from having to be approved by the Board.
- The Chief Executive Officer (CEO) of ATC Corporation.
- Four Directors nominated by the Nominating Member appointed by the principal organization representing mainline air carriers.
- Two Directors nominated by the Nominating Member appointed by the principal organization representing noncommercial owners and recreational operators of general aviation aircraft.
- One Director nominated by the Nominating Member appointed by the principal organization representing the union representing the Corporation's air traffic controllers.
  - Prior to the date of transfer, this is taken to mean the union representing FAA air traffic controllers.
- One Director nominated by the Nominating Member appointed by the principal organization representing the largest group of airline pilots.

The terms of the first Directors appointed or nominated will expire on the date of transfer. Following the date of transfer, Directors will serve staggered three year terms. A Director can serve after the expiration of the Director's term until a successor has taken office. After the date of transfer, the full Board will be responsible for confirming nominations by the Nominating Members and will have the ability to determine the identity of principal organizations.

The fiduciary duties of the Directors will be to ATC Corporation, not to the stakeholder groups that nominated them. As such, there are certain qualifications for individuals to serve as Directors. Directors must be American citizens and are subject to restrictions that prohibit individuals with possible conflicts of interest from serving on the Board. No employees of ATC Corporation (except the CEO), government officials or employees, employees of any principal organizations, or employees of any entity with a material interest as a user or supplier of ATC Corporation services can serve as a Director. The last restriction may be waived under extremely strict standards if it is determined that there was likely to be no conflict of interest for such a Director.

A Director may only be removed by the Board in accordance with the Corporation's bylaws. The Board is responsible for hiring a CEO to manage and direct the day-to-day operations of ATC Corporation. The CEO, who must be an American citizen, will also be responsible for all officers and employees of the Corporation, and will serve at the pleasure of the Board.

The Board will be responsible for corporate governance of ATC Corporation, and has the sole authority to amend corporate bylaws, adopt annual budgets, approve strategic plans, approve the issuance of bonds, and to hire a CEO. The Board will be required to maintain a Safety Committee composed of Directors to ensure ATC Corporation will maintain and improve upon the current high level of safety in the ATC system.

ATC Corporation will have an Advisory Board consisting of no more than 15 individuals representing interested organizations and other parties that do not choose Nominating Members, including, but not limited to: commercial service airports; owners, operators and users of business general aviation aircraft; aerospace manufacturers; operators of commercial unmanned aircraft systems; appropriate labor organizations; the Department of Defense (DoD); and small communities.

The Advisory Board will conduct activities directed by the Board of Directors and may, on its own initiative, study, report and make AT services-related recommendations to the Board of Directors.

Transition

The Secretary of Transportation will manage and oversee the transfer of AT services to ATC Corporation to ensure that the transition receives the proper level of attention. The transfer of operational control of AT services, as well as all federal personnel, facilities, and activities needed to provide those services, will occur on October 1, 2019.

Between date of enactment and date of transfer, there will be formal processes for determining which activities and personnel will move to the Corporation or be retained at the FAA. Other more informal processes will be taking place as well to ensure that inward facing FAA protocols for AT services are either carried over to the ATC Corporation or rewritten as outward-facing safety regulations. The processes and negotiations will involve ATC Corporation, the Secretary, the FAA, and appropriate labor organizations. To ensure Congress is kept well informed on the transition, the DOT IG will submit quarterly reports on the progress of the transition.

Safety Oversight and Regulation of the Corporation

The Secretary will be responsible for the performance-based safety oversight of ATC Corporation. Prior to the date of transfer, the Secretary will prescribe performance-based regulations and minimum safety standards for ATC Corporation's operation of AT services. The regulations will include a safety management system (SMS) for the assessment and management of risk in all procedures, processes, and practices necessary to operate AT services. Initially, this SMS will be based on the one currently used by the FAA, but specific safety review processes with the Secretary's approval will allow ATC Corporation to modify the SMS as needed over time. The safety standards combined with the SMS will ensure that ATC Corporation continues and improves upon the safety the ATC system currently enjoys.

ATC Corporation will be required to maintain adequate levels of insurance and coverage to provide complete indemnification of the Corporation's employees and protect the Corporation from financial harm. As part of the safety oversight of ATC Corporation, the Secretary will determine what constitutes adequate levels of insurance.

ATC Corporation, as an independent corporation, will not exercise any regulatory authority, meaning the Secretary will be responsible for taking any regulatory action related to AT services, including the reclassification of airspace or imposition of required equipage standards. ATC Corporation, as the provider of AT services, will be in a unique position of being able to analyze how airspace or air route should be configured. As part of the transition, the Secretary will establish a process for the expeditious review of proposed changes to the airspace by ATC Corporation. To be clear, ATC Corporation will only be able to suggest changes to airspace classifications or other similar changes; the Secretary will ultimately be responsible for exercising regulatory power to enact those changes.

The bill directs the Secretary to develop a process for the Secretary to review any proposals to close an air traffic control tower that prior to the date of transfer was operated under the FAA's Contract Tower Program. The process would apply when the proposed closure would result in an airspace change and at the request of the airport sponsor. There are other types of changes, or locations where changes may occur, that will merit special attention by the Secretary. For example, changes near major airports or specific national security or defense designations will have a longer review period than other airspace modification proposals.

Financing

ATC Corporation will be funded entirely through charges and fees assessed and collected from air traffic services users that are consistent with a set of statutory charging principles.

- Charges and fees must be consistent with the International Civil Aviation Organization's (ICAO) policies on ATC service charges and international obligations of the United States;
- Charges for certain categories of users may be charged on a flat-fee basis if consistent with ICAO charging principles;
- Access to airspace cannot be based on the level of charges a user pays;
- Charges and fees may not violate any international obligation of the United States.

Importantly, charges may not be imposed on *any* piston engine aircraft, *any* noncommercial turbine engine aircraft (including jet and turboprop), operators of air taxis in remote areas, or military flights. General aviation users will support the aviation system just as they always have; through fuel taxes that are controlled by Congress and paid at the pump. Military flights will be exempt in recognition that the Department of Defense, as a byproduct of its aeronautical mission, provides some AT services to civil aviation.

ATC Corporation's Board of Directors will be responsible for setting and approving its own charges and fees within the limit of the statutory charging principles. Before any charge or fee may become effective, ATC Corporation must publish it 90 days in advance. AT service users may file a complaint with the Secretary of Transportation if the user believes a charge or fee to be unreasonable. The bill provides for an expedited consideration of complaints by the Secretary to help ensure that the charges and fees-setting process does not become bogged down in litigation.

As an independent, not-for-profit corporation, ATC Corporation will be able to issue revenue bonds and other debt instruments in the private markets, providing more stable and effective capital financing. However, ATC Corporation will not be permitted to issue or sell equity shares or stock in the Corporation.

Employee Management

Many thousands of Federal personnel will transfer from the FAA to ATC Corporation, including more than 14,000 air traffic controllers. A central tenant of the bill is that Federal employees who transfer to ATC Corporation will be held whole in terms of the benefits or compensation they received and were promised as Federal employees. Transferred Federal employees may retain their federal retirement and health insurance plans or opt for the benefit plans offered by the Corporation. For its employees retaining their federal retirement and health insurance plans, ATC Corporation will pay any required deductions and employer contributions.

To ensure total system continuity, many aspects of existing labor-management relations will be preserved through partial application of the laws that currently apply to the FAA and its labor organizations. The rights of air traffic controllers and other employees to participate in labor organizations and to collectively bargain would also be preserved. ATC Corporation must recognize and bargain with the labor organizations selected by the employees and comply with the terms of collective bargaining agreements (CBAs) and arbitration awards in effect on the date of transfer until such agreements and awards expire or are lawfully altered or amended. CBAs must be effective for no less than two years.

Because ATC services are so vital to the national economy, ATC Corporation employees are prohibited from engaging in any strike or other organized disruption. Disputes arising from CBAs must be resolved through mediation. If mediation fails, the dispute will be resolved through binding arbitration.

THE DEFAZIO ALTERNATIVE TO AIR TRAFFIC CONTROL PRIVATIZATION[59]

Like the air traffic control system, the FAA's safety oversight, certification, airports, and related programs are in need of stable, predictable funding from year to year. The DeFazio

[59] This section was drafted by the Minority Staff of the Transportation and Infrastructure Committee.

alternative would provide relief to the entire FAA from the adverse effects of budget sequestration and shutdowns by treating all excise tax revenue deposited into the Airport and Airway Trust Fund as mandatory spending, exempt from sequestration and the annual appropriations process.

The DeFazio alternative would also require substantial reforms of the FAA's procurement and personnel management. As the Department of Inspector General reported in January, prior reforms of the FAA's procurement and personnel management systems in 1995 and 1996 have not had their intended effects. The Inspector General concluded, for example, that the FAA has not taken advantage of the reforms to adopt industry best practices in running large-scale capital investments and managing a large, diverse workforce. The DeFazio alternative would address these weaknesses by requiring significant, bold reforms of the FAA's existing procurement and personnel rules, further insulating the agency from cumbersome Federal rules that, while providing for sound management controls in other agencies, are not suitable for a complex, capital-intensive, 21st-century aviation system.

WITNESSES

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