



## Latest News on FAA Reauthorization

**07.14.16**

On July 13, 2016, the Senate passed the FAA Extension, Safety, and Security Act of 2016 extending the FAA's authorization through September 2017. The Senate's vote follows the House's successful passage of the bill on July 11, 2016, clearing the way for the President's signature before the FAA's existing authority expires on July 15, 2016. As noted below, the bill contains a number of provisions of particular interest to airports. We will publish an analysis of these provisions in an upcoming law alert. In the interim, please do not hesitate to contact any of our attorneys if you have questions about the FAA extension bill.

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On July 7, 2016, the House Transportation and Infrastructure Committee and the Senate Commerce, Science, and Transportation Committee announced a bipartisan agreement on an extension of the FAA's authorization to September 30, 2017. Although the bill is a relatively short-term extension, it introduces a number of non-controversial reforms of particular interest to airports. Specifically, the bill would:

- Significantly enhance standards applicable to access controls and security vetting standards for workers with access to the sterile areas of an airport;
- Require TSA to work with private partners to expand the TSA PreCheck® program and facilitate enhanced enrollment opportunities;
- Establish a new working group focused on methods of improving air service to small communities; and
- Permit FAA to use 2012 enplanement data in calculating AIP apportionments for certain small airports with reduced air service.

The bill also contains several UAS-related provisions of importance for airports:

- FAA would be required to establish a process allowing the owners or proprietors of critical infrastructure, oil refineries, chemical facilities, amusement parks, or other locations to apply to restrict the operation of UAS in "close proximity";
- UAS operators who knowingly or recklessly interfere with wildfire suppression, law enforcement, or other emergency response efforts would be subject to a \$20,000 fine;
- Manufacturers of UAS would be required to make a "safety statement" available to owners at the time of delivery, after FAA develops appropriate guidance;
- The bill would expand the FAA's Section 333 exemption authority to permit it to authorize beyond visual line of sight and/or night operations for the inspection and maintenance of certain critical infrastructure; and
- FAA would implement an airspace hazard mitigation pilot program to counter threats from errant or hostile UAS at airports and critical infrastructure facilities.

This extension bill appears to be garnering broad support among both chambers of Congress, and will likely be agreed to by vote later this week or next. The FAA's current authorization expires on July 15, 2016.

We will provide further details on these provision if the bill becomes law.



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On April 19, 2016, the Senate passed H.R. 636, the vehicle for its version of the FAA Reauthorization Bill. The bill would reauthorize the FAA through September 30, 2017, and introduce a number of reforms of particular interest to airports:

- Eliminate the “significant contribution” test for PFC collections above \$3.00.
- Create an Airspace Management Advisory Committee to review the FAA’s policies and procedures with respect to certain actions affecting airport operations, capacity, the environment, or communities around an airport.
- Increase TSA presence at many airports and introduce new employee vetting and access control requirements.
- Criminalize the operation of unmanned aircraft in safety-critical areas.
- Expand streamlined PFC application process to include all airports.

We will provide further analysis of the bill’s provisions as the debate over reauthorization continues. House Transportation and Infrastructure Committee Chairman Shuster has yet to introduce his version of the FAA Reauthorization Bill on the House floor, but continues to advocate for the privatization of air traffic control services and other proposals that are not addressed by the Senate’s bill. There are accordingly many issues left to resolve as between the two proposals, and final passage of either chambers’ bill or a conference bill by the end of the current short-term extension (July 15, 2016) remains uncertain.

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On April 6, 2016, the U.S. Senate cleared an important procedural step toward bringing the Commerce Committee’s FAA Reauthorization proposal to a vote on the Senate floor. Earlier in the week, the Committee released a substitute amendment incorporating the amendments adopted in its March 16 markup. The bill will now proceed to debate and potentially further amendment.

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On March 21, 2016, the House passed the Senate-amended H.R. 4721, reauthorizing the Federal Aviation Administration through July 15, 2016. The bill will now be sent to the President for his signature.

The Senate is on recess until April 4, and the House will begin its recess on Thursday, through April 11. We will update this page as both chambers return and the debate over the FAA’s long-term reauthorization continues.

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On March 17, 2016, the Senate passed an amended version of H.R. 4721 that would reauthorize the FAA through July 15, 2016. The Senate rejected the original provisions of the bill that would have separately extended aviation taxing authority through March 2017. The bill will now return to the House for a final vote. Because the Senate begins its recess next week and does not return until April, the House must pass H.R. 4721 as amended in order to keep the FAA operating past March 31, when its current authorization expires.

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On March 16, 2016, the Senate Commerce Committee unanimously approved its version of the FAA Reauthorization Bill with fifty-nine amendments. Among the many amendments affecting airports are provisions that would:



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- Require FAA to develop an implementation plan to provide all FAA airport traffic control towers with approach radar control;
- Require TSA to resume screening services at small airports that had previously lost commercial air service;
- Allow AIP funds to be used for the repair of runway safety areas damaged by natural disasters;
- Require certain airports to provide lactation rooms; and
- Require the FAA to block the registration numbers of non-commercial aircraft from public dissemination.

On March 10, we issued a law alert regarding a provision in the Senate bill that would preempt state and local efforts to regulate the location of UAS flight, including the area surrounding an airport. This provision (Section 2142) was not modified in the bill approved by the Committee. Airport operators may wish to review our alert and contact their Senators if they have concerns about the provision.

Chairman Thune has indicated that he will seek to introduce the bill on the floor when the Senate returns from its recess in April. The status of Chairman Shuster's bill reported out of the House Committee on Transportation and Infrastructure remains unknown. Both sides agree, however, that a short-term extension is required. On March 14, the House passed an extension reauthorizing the FAA through July 15, which is expected to be taken up by the Senate this week.

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On March 9, 2016, Chairman Thune and Ranking Member Nelson of the Senate Commerce, Science, and Transportation Committee released their proposal for an 18-month reauthorization of the Federal Aviation Administration. The draft Senate bill follows on the heels of Chairman Shuster of the House Transportation and Infrastructure Committee's proposal, which has been largely overtaken by controversy surrounding the privatization of air traffic control services and other provisions.

As anticipated, Chairman Thune's proposal does not propose to privatize air traffic control services, but introduces a number of significant reforms to FAA operations and programs. We will carefully analyze the draft bill over the coming days. In the interim, please refer to the Committee's highlights or section-by-section summary.

The bill is scheduled for committee markup on Wednesday, March 16, 2016.

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On Wednesday, February 3, 2016, Representative Bill Shuster, Chairman of House Transportation and Infrastructure Committee, introduced his long awaited Federal Aviation Administration (FAA) Reauthorization Bill, the Aviation, Innovation, Reform, and Reauthorization Act (AIRRA). AIRRA would reauthorize the FAA for six years, through fiscal year 2022, and propose a number of reforms and changes that are sure to generate controversy and a great deal of legislative activity over the coming weeks and months.

Among the most anticipated provisions of AIRRA are those that propose to remove air traffic control services (including the existing staff of air traffic controllers and probably most of the 35,000 Air Traffic Organization employees) from the FAA, and move them to a new, federally-chartered non-profit corporation: the "ATC Corporation." The proposal is complex and will be heavily scrutinized by industry-stakeholders as the bill heads into markup, scheduled for February 11, 2016. Several key features are particularly important:

- The ATC Corporation would be run by an eleven-member board comprised of a Chief Executive Officer and delegates from commercial airlines, the general aviation community, the air traffic controllers' and airline pilots' labor unions, and the U.S. Department of Transportation. Airports



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would not be represented on the board, but would be represented on a separate advisory board to the ATC Corporation, along with representatives of aerospace manufacturers, operators of unmanned aircraft, small communities, and other sections of the industry.

- The ATC Corporation would be given authority to charge a fee for services consistent with the International Civil Aviation Organization’s (ICAO) Policies on Charges for Air Navigation Services, but would not be permitted to assess a fee against any operation of piston engine aircraft or the non-commercial operation of turbine engine aircraft. The latter provision was designed to gain support from the general aviation community.
- The FAA would continue to oversee the ATC Corporation through performance-based regulations and minimum safety standards, which either the ATC Corporation or other interested parties may petition the FAA to amend under expedited procedures subject to judicial review.

Other significant provisions reforms proposed by AIRRA include:

- **Airport Improvement Program (AIP).** AIRRA proposes a modest increase in the authorized funding level for the AIP to \$3.4 billion in fiscal year 2017, increasing to \$3.8 billion by fiscal year 2022. AIRRA would also expand the cap on participation in the State Block Grant Program to twenty states.
- **Passenger Facility Charges.** AIRRA would eliminate the “significant contribution” test for airports seeking authority to impose PFCs at the \$4.00 or \$4.50 level, as well as make the FAA’s streamlined PFC application procedures for non-hub airports available to small and medium hub airports. AIRRA would *not* lift or index the cap on PFCs, something that the airport industry has been aggressively seeking.
- **Critical Habitats.** AIRRA proposes to require that the FAA work more closely with other federal agencies and states to ensure that the designation of critical habitat under Endangered Species Acts in areas surrounding airports does not conflict with an airport’s other obligations or interfere with the safe operation of aircraft. This provision also seeks to prevent the designation of critical habitat as a result of an airport’s actions to prepare land for future development, create a noise buffer, or to guard against non-compatible encroachments.
- **Noise.** Several provisions in AIRRA address the issue of aircraft noise and its impact on communities surrounding an airport. Upon request by an airport operator, AIRRA would require the FAA to consider the feasibility of dispersal headings or lateral track variations when it proposes to amend an RNAV departure over noise sensitive areas. AIRRA would also require FAA to assess its efforts to engage communities affected by aircraft noise, including meeting with communities to explore alternatives to already-completed projects that have resulted in significant impacts on the human environment. AIRRA further directs FAA to study the relationship between aircraft noise and communities and consider changes to its land use compatibility guidelines.
- **Contract Tower Program.** AIRRA reforms the Contract Tower Program by limiting the airports at which FAA may conduct a benefit/cost analysis and the costs that the FAA may use to calculate benefit/cost, and effectively reduces the maximum share for an airport in the contract tower cost-share program to ten (10%) percent. AIRRA would also provide several important procedural protections for contract towers once air traffic control services are transferred to the ATC Corporation.
- **Essential Air Service (EAS).** AIRRA would eliminate overflight fees which currently fund a portion of the EAS program, but proposes increasing the funding authorized to be appropriated for the EAS program from \$275 million in fiscal year 2016, to \$315 million by fiscal year 2022. Reforms would also permit the Secretary of Transportation to waive certain EAS requirements, including those provisions that require the Department to “hold-in” a carrier seeking to discontinue service until another can be found.
- **Unmanned Aircraft Systems (UAS).** Like the transfer of air traffic control services outside of the FAA, AIRRA contains several provisions eagerly anticipated by industry-watchers. Among several provisions designed to foster innovation and require the FAA to respond more quickly to authorize



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certain lower-risk UAS operations, AIRRA would require FAA to establish a pilot program at three airports with scheduled service to deploy and evaluate systems to detect UAS operating in the vicinity.

Many industry groups and members of Congress have lined up in support or opposition to the key features of AIRRA, and the next few weeks (and, perhaps, months) are sure to bring additional legislative developments and proposals. The bill is scheduled for hearing and markup by the Transportation and Infrastructure Committee on February 10 and 11, respectively. FAA's current authorization expires on March 31, 2016. A short-term patch may be necessary—and appears likely—since it is doubtful that both the House and Senate can complete action by that deadline.

The House Transportation and Infrastructure Committee has compiled its own useful summary of AIRRA's provisions. This summary is not intended to be exhaustive or to provide legal advice. *Firm clients who are interested in specific provisions or have questions about how the proposal would apply to their airport are encouraged to contact the Kaplan Kirsch & Rockwell attorney with whom they work.*