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ATC Privatization: Bill Set to Union Calendar

Transportation Legal Update

The 21st Century Aviation Innovation, Reform, and Reauthorization (AIRR) Act — H.R. 2997 — proposes to transfer operation of the U.S. air traffic control system (ATC) from the Federal Aviation Administration (FAA) to a private nonprofit corporation. The bill to privatize air traffic control is sponsored by Pennsylvania Rep. Bill Shuster (R-PA), Chairman of the House Transportation Committee, and received formal endorsement from President Trump earlier this year. The air traffic controllers union and most commercial airlines support separation of ATC from the FAA, citing the need for ATC technology modernization and for deregulation from cumbersome bureaucratic oversight to provide stable ATC funding. The general (noncommercial) aviation industry and aviation groups, including the Aircraft Owners and Pilots Association and the National Business Aviation Association, vehemently oppose the bill. They warn that privatization of ATC will harm smaller stakeholders in the aviation community and relinquish control to commercial airlines while public oversight and accountability cease.

The concept of ATC privatization is not new. The aviation industry's largest commercial players have long supported removing ATC operational control from the FAA while the FAA has stumbled to bring modernization to ATC technology. H.R. 2997 proposes a three-year transition period to privatization, after which management of ATC services (currently under the purview of the FAA) would be controlled by a newly established and private, nonprofit corporation. The bill specifies that the corporation be (i) granted exclusive rights to provide ATC services in the United States (with limited exceptions), (ii) governed by a board of approximately 13 user stakeholders, and (iii) authorized to charge user fees for the provision of ATC services and seek private-sector financing for capital improvements. Opponents of H.R. 2997 find concern with each of these specifics.

The text of the proposed legislation establishes ATC as a type of government-sanctioned monopoly, as no other entity will be permitted to operate ATC services in the United States (with limited exceptions). Such a structure, critics warn, has the potential to chill ATC technology innovation and hinder the ATC modernization that many in support of this transition rely on. Critics also argue that early iterations of the new managing entity's board composition appear to favor a controlling majority by commercial airlines or organizations that might support the airlines, with general aviation and airport representatives potentially falling to minority representation. The general aviation community and smaller stakeholders, including rural airports and communities, may be underrepresented at the table, and the proposed funding mechanism may worsen this fate. Rep. Shuster (R-PA) and supporters have indicated that funding for the new ATC system will require each operator to pay its fair share, but it is unclear how this will play out in practice. Internationally, ATC systems have charged users on a weight-based, distance-based, or even touch-and-go-landing-based fee system. Small general aviation aircraft may benefit from an annual user fee while charges for landing at a remote airport would hurt the general aviation operator. The concern among critics remains that this user-fee-based system may favor the likely largest revenue generators — the commercial airlines and major metropolitan airports.

Variations on privatization and removal of air traffic control systems from government management have been successfully implemented around the globe. Whether ATC privatization in the U.S. can be implemented on this attempt through H.R. 2997 will be apparent relatively quickly. The bill was placed on the House of Representative's Union Calendar September 6, 2017. Advertisements by both the commercial and general aviation players supporting and opposing the bill aired in D.C. last week, and industry groups are leaning heavily on their members for support on both sides.