

115TH CONGRESS
1ST SESSION

H. R. 2800

To amend title 49, United States Code, to ensure improvement of air traffic control services, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 7, 2017

Mr. DEFAZIO (for himself, Ms. NORTON, Mr. NADLER, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. CUMMINGS, Mr. LARSEN of Washington, Mr. CAPUANO, Mrs. NAPOLITANO, Mr. LIPINSKI, Mr. COHEN, Mr. SIRES, Mr. GARAMENDI, Mr. JOHNSON of Georgia, Mr. CARSON of Indiana, Mr. NOLAN, Ms. TITUS, Mr. SEAN PATRICK MALONEY of New York, Ms. ESTY of Connecticut, Ms. FRANKEL of Florida, Mrs. BUSTOS, Mr. HUFFMAN, Ms. BROWNLEY of California, Ms. WILSON of Florida, Mr. PAYNE, Mr. LOWENTHAL, Mrs. LAWRENCE, and Mr. DESAULNIER) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committees on Armed Services, the Budget, and Appropriations, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title 49, United States Code, to ensure improvement of air traffic control services, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Aviation Funding Sta-
3 bility Act”.

4 **SEC. 2. TRUST FUND OFF BUDGET.**

5 (a) TRUST FUND OFF BUDGET.—Section 48114 of
6 title 49, United States Code, is amended to read as fol-
7 lows:

8 **“§ 48114. Trust fund off budget**

9 “(a) AIRPORT AND AIRWAY TRUST FUND GUAR-
10 ANTEE.—Beginning October 1, 2017, receipts and dis-
11 bursements of the Airport and Airway Trust Fund estab-
12 lished under section 9502 of the Internal Revenue Code
13 of 1986 shall not be subject—

14 “(1) to any sequestration order issued under
15 the Balanced Budget and Emergency Deficit Control
16 Act of 1985 or any subsequent law requiring such
17 sequestration;

18 “(2) to apportionment pursuant to section
19 1513(b) of title 31, United States Code;

20 “(3) to appropriation and shall be authorized
21 and made available immediately for obligation and
22 expenditure; and

23 “(4) to any legal requirement, directive, or
24 other provision of law of or related to the Office of
25 Management and Budget.

1 “(b) GENERAL FUND SHARE.—In addition to
2 amounts made available under subsection (a), there is fur-
3 ther authorized to be appropriated from the general fund
4 of the Treasury such sums as may be necessary for the
5 Federal Aviation Administration Operations account.
6 Such funds shall not be subject to any sequestration order
7 issued under the Balanced Budget and Emergency Deficit
8 Control Act of 1985 or any subsequent law requiring such
9 sequestration.

10 “(c) AUTHORIZATION TO TRANSFER CERTAIN
11 FUNDS TO PREVENT REDUCED OPERATIONS AND STAFF-
12 ING.—Notwithstanding any other provision of law, within
13 any fiscal year, the Administrator may transfer, to the ac-
14 count funding Administration operations, up to 5 percent
15 of funds available for any budget activity in any other ac-
16 count of the Federal Aviation Administration to prevent
17 reduced operations and staffing of the Federal Aviation
18 Administration and to ensure a safe and efficient air
19 transportation system.”.

20 (b) ESSENTIAL AIR SERVICE.—Section 41742 of title
21 49, United States Code, is amended by striking paragraph
22 (2) of subsection (a) and inserting the following:

23 “(2) ADDITIONAL FUNDS.—Beginning October
24 1, 2017, from amounts deposited into the Airport
25 and Airway Trust Fund, the sum of \$175,000,000

1 for each fiscal year is authorized and shall be made
2 available immediately, in addition to amounts made
3 available under paragraph (1) and subsection (b),
4 for obligation and expenditure to carry out the es-
5 sential air service program under this subchapter.”.

6 **SEC. 3. FLEXIBILITY.**

7 (a) OFFICE OF MANAGEMENT AND BUDGET.—The
8 Federal Aviation Administration shall be exempt from any
9 order, directive, rule, or other requirement of the Office
10 of Management and Budget.

11 (b) OFFICE OF THE SECRETARY OF TRANSPOR-
12 TATION.—The revisions to the procurement and personnel
13 systems of the Federal Aviation Administration under sec-
14 tions 6(a) and 7(a) shall not be subject to approval, modi-
15 fication, or review by the Secretary of Transportation.

16 **SEC. 4. MANAGEMENT ADVISORY COUNCIL INPUT.**

17 (a) AIR TRAFFIC CONTROL SYSTEM PERFORM-
18 ANCE.—Chapter 401 of title 49, United States Code, is
19 amended by adding at the end the following:

20 **“§ 40131. Air traffic control system performance**

21 “(a) IN GENERAL.—The Federal Aviation Manage-
22 ment Advisory Council established under section 106(p)
23 shall, in addition to performing the responsibilities under
24 such section—

1 “(1) assess the performance of the air traffic
2 control system and the Administrator’s policy and
3 strategic decisions with respect to operation and
4 modernization of the system; and

5 “(2) make recommendations to the Adminis-
6 trator to improve the system.

7 “(b) PUBLIC RESPONSE.—The Administrator shall
8 publicly respond in writing to each recommendation of the
9 Council under subsection (a).

10 “(c) CONTENTS.—A response by the Administrator
11 under subsection (b) shall include—

12 “(1) a restatement of the recommendation to
13 which the response is directed;

14 “(2) the Administrator’s analysis of the rec-
15 ommendation;

16 “(3) if the Administrator intends to implement
17 the recommendation, a detailed schedule for imple-
18 mentation; and

19 “(4) if the Administrator does not concur in the
20 recommendation, a statement explaining the reasons
21 for such nonconcurrence.

22 “(d) PUBLICATION.—Not later than 90 days after
23 the Administrator’s receipt of a recommendation under
24 subsection (a), each response by the Administrator under

1 this section shall be posted on the internet website of the
2 Federal Aviation Administration.”.

3 (b) CONFORMING AMENDMENT.—Section 106(p)(1)
4 is amended by striking the period at the end and adding
5 “, except as provided in section 40131.”.

6 **SEC. 5. AIR TRAFFIC CONTROL FACILITY MODERNIZATION**
7 **AND SUSTAINMENT.**

8 (a) FACILITY MODERNIZATION AND
9 SUSTAINMENT.—Chapter 481 of title 49, United States
10 Code, is amended by adding at the end the following:

11 **“§ 48115. Air traffic control facility modernization**
12 **and sustainment**

13 “(a) MODERNIZATION AND SUSTAINMENT.—In any
14 fiscal year between 2018 and 2030, in addition to amounts
15 made available under section 48101, there is further au-
16 thorized to be appropriated from the uncommitted balance
17 of the Airport and Airway Trust Fund such sums as are
18 necessary to bring any air traffic control facility of the
19 Federal Aviation Administration into acceptable condition.

20 “(b) CONSULTATION.—Before taking any action
21 under subsection (a) to modernize or sustain air traffic
22 control facilities of the Federal Aviation Administration,
23 the Administrator shall consult with the exclusive bar-
24 gaining representatives of air traffic controllers and air-

1 way transportation system specialists certified under sec-
2 tion 7111 of title 5, United States Code.”.

3 (b) CLERICAL AMENDMENT.—The analysis for chap-
4 ter 481 of title 49, United States Code, is amended by
5 inserting after the item relating to section 48114 the fol-
6 lowing:

“48115. Air traffic control facility modernization and sustainment.”.

7 **SEC. 6. ACQUISITION REFORM.**

8 (a) IN GENERAL.—Not later than 1 year after the
9 date of enactment of this Act, the Administrator shall de-
10 velop and implement a revised system governing all of the
11 Administration’s acquisitions, including services, facilities,
12 equipment, and real, personal, and intellectual property.

13 (b) STREAMLINED PROCESS.—The system revised
14 under subsection (a) shall take advantage of the independ-
15 ence already provided by Congress from all acquisition and
16 acquisition-related laws to further streamline processes for
17 acquisitions that substantially improve the flexibility and
18 cost effectiveness of the Administration’s acquisitions
19 process. Notwithstanding any other provision of law, the
20 only rules, policies, and procedures that shall govern or
21 affect this system are those promulgated by the Adminis-
22 trator.

23 (c) DESIGN OF SYSTEM.—The system revised under
24 subsection (a) shall, at minimum—

1 (1) account for the complexity and multiple
2 stages of acquisitions of interdependent systems that
3 constitute the Next Generation Air Transportation
4 System;

5 (2) include measures for appropriate program
6 managers to verify the readiness of software-inten-
7 sive programs prior to acceptance;

8 (3) include measures for the Administrator to
9 identify and implement cost reductions across the
10 Administration according to such timelines and
11 metrics as the Administrator shall identify;

12 (4) include measures for the Administrator to
13 reliably estimate the cost of each segment with re-
14 spect to each acquisition, along with reliable esti-
15 mates of all costs that are reasonably expected to be
16 incurred as a result of such acquisition; and

17 (5) incorporate private-sector best practices for
18 major capital investments in information technology,
19 telecommunications, and other relevant systems.

20 (d) EVALUATION.—In carrying out subsection (a),
21 the Administrator shall ensure that any requirement or
22 provision of the acquisition management system of the Ad-
23 ministration in effect on the day before the date of enact-
24 ment of this Act—

1 (1) is necessary to promote transparency, ac-
2 countability, and cost effectiveness;

3 (2) shall not materially affect the Administra-
4 tion's ability to reduce costs associated with acquisi-
5 tions programs;

6 (3) is necessary to protect the interests of the
7 Administration in any potential claim or defense in
8 litigation arising from an acquisition; or

9 (4) is necessary to provide for the continuity of
10 one or more acquisition programs.

11 (e) ACQUISITION OF SERVICES.—In developing a re-
12 vised system governing the Administration's acquisitions
13 under subsection (a), the Administrator shall consult with
14 the exclusive bargaining representative of airway transpor-
15 tation system specialists certified under section 7111 of
16 title 5, United States Code, before taking any action re-
17 lated to services acquisition.

18 (f) REPORT TO CONGRESS.—Not later than 12
19 months after revising the system required under sub-
20 section (a), the Administrator shall submit to the Com-
21 mittee on Transportation and Infrastructure of the House
22 of Representatives and the Committee on Commerce,
23 Science, and Transportation of the Senate a report on the
24 revised process.

1 **SEC. 7. PERSONNEL REFORM.**

2 (a) REFORM OF PERSONNEL MANAGEMENT SYS-
3 TEM.—Not later than 1 year after completion of the re-
4 view required under subsection (b), the Administrator of
5 the Federal Aviation Administration shall make changes
6 to the personnel management system developed under sec-
7 tion 40122(g) of title 49, United States Code, to improve
8 the productivity, cost effectiveness, and technical pro-
9 ficiency of that part of the Administration’s workforce
10 that is not represented by an exclusive representative rec-
11 ognized under section 7111 of title 5, United States Code,
12 or eligible to be represented by such a labor organization.
13 The changes required under this subsection shall include
14 new performance incentive policies, including awards for
15 performance, and shall, notwithstanding any other provi-
16 sion of law, include procedures for the Administration to
17 take expedited personnel actions with respect to employees
18 not covered by valid collective bargaining agreements. In
19 no instance may the changes implemented under this sub-
20 section alter or otherwise affect the terms and conditions
21 of employment of any employee represented or eligible to
22 be represented by an exclusive representative recognized
23 under section 7111 of title 5, United States Code.

24 (b) REVIEW.—Not later than 6 months after the date
25 of enactment of this Act, the Administrator shall conduct
26 a comprehensive review of the legal requirements, includ-

1 ing policies, standards, rules, and orders of the Adminis-
2 tration, pertaining to the Administration's personnel man-
3 agement system, except to the extent that such require-
4 ments may affect or relate to the terms and conditions
5 of employment or dispute resolution processes governing
6 employees who are represented or eligible to be rep-
7 resented by an exclusive bargaining representative recog-
8 nized under section 7111 of title 5, United States Code.
9 This review shall identify—

10 (1) any requirements that do not substantially
11 contribute to the system's cost effectiveness, admin-
12 istrative flexibility, and transparency;

13 (2) any requirement not related to maintaining
14 collective bargaining and due process;

15 (3) any requirements not reasonably related to
16 the Administration's efforts to maintain a strong,
17 mutually beneficial relationship between employees
18 and management of the Administration; and

19 (4) any requirements with respect to personnel
20 management that the Administration applies
21 through circulars, guidance, or other documents
22 issued by the Office of Management and Budget or
23 the Office of Personnel Management.

24 (c) REPORT.—Not later than 6 months after comple-
25 tion of the review required in subsection (b), the Adminis-

1 trator shall submit to the Committee on Transportation
2 and Infrastructure of the House of Representatives and
3 the Committee on Commerce, Science, and Transportation
4 of the Senate a report on the results of the review.

5 (d) AIR TRAFFIC CONTROLLER STAFFING.—

6 (1) STAFFING REPORT.—Section 44506(e) of
7 title 49, United States Code, is amended—

8 (A) by redesignating paragraphs (2) and
9 (3) as paragraphs (3) and (4), respectively; and

10 (B) by inserting after paragraph (1) the
11 following:

12 “(2) for each facility in the system, the current
13 certified professional controller staffing levels, the
14 operational staffing targets for certified professional
15 controllers, and the anticipated certified professional
16 controller attrition for each of the next 3 years;”.

17 (2) STAFFING STANDARD.—Not later than 180
18 days after the date of enactment of this Act, the Ad-
19 ministrator of the Federal Aviation Administration
20 and the exclusive bargaining representative of air
21 traffic controllers certified under section 7111 of
22 title 5, United States Code, shall jointly develop a
23 staffing standard to determine the number of cer-
24 tified professional controllers and trainees needed to
25 operate each air traffic control facility operated by

1 the Administration. Once developed, this standard
2 shall be used for the staffing report referenced in
3 section 44506(e) of title 49, United States Code.

4 (e) AIRWAY TRANSPORTATION SYSTEM SPECIALIST
5 STAFFING MODELS.—

6 (1) IN GENERAL.—Not later than 1 year after
7 the date of enactment of this Act, the Administrator
8 shall implement, after consultation with the National
9 Academy of Sciences, and notwithstanding section
10 7106(b)(1) of title 5, United States Code, after ne-
11 negotiations with the exclusive bargaining representa-
12 tive of airway transportation system specialists cer-
13 tified under section 7111 of title 5, United States
14 Code, appropriate airway transportation system spe-
15 cialists staffing levels for each of the Administra-
16 tion's facilities that support the National Airspace
17 System. If the Administrator and the exclusive bar-
18 gaining representative are unable to reach agree-
19 ment, they shall use the process set forth in clauses
20 (i) through (v) and (vii) of section 40122(a)(2)(C) of
21 title 49, United States Code, to resolve the dispute.

22 (2) AIRWAY TRANSPORTATION SYSTEM SPE-
23 CIALISTS PLACEMENT.—Upon determination of
24 staffing levels under paragraph (1), and notwith-
25 standing section 7106(b)(1) of title 5, United States

1 Code, the Administrator shall negotiate with the ex-
2 clusive bargaining representative of airway transpor-
3 tation system specialists certified under section 7111
4 of title 5, United States Code, to develop and imple-
5 ment measures to place airway transportation sys-
6 tem specialists at all relevant facilities of the Admin-
7 istration. If the Administrator and the exclusive bar-
8 gaining representative are unable to reach agree-
9 ment, they shall use the process set forth in clauses
10 (i) through (v) and (vii) of section 40122(a)(2)(C) of
11 title 49, United States Code, to resolve the dispute.

12 (3) AVIATION SAFETY INSPECTORS.—Notwith-
13 standing section 7106(b)(1) of title 5, United States
14 Code, the Administrator shall negotiate with the ex-
15 clusive bargaining representative of aviation safety
16 inspectors certified under section 7111 of title 5,
17 United States Code, regarding appropriate total
18 staffing levels for aviation inspectors and facilities
19 that support inspection activities of the Administra-
20 tion. If the Administrator and the exclusive bar-
21 gaining representative are unable to reach agree-
22 ment, they shall use the process set forth in clauses
23 (i) through (v) and (vii) of section 40122(a)(2)(C) of
24 title 49, United States Code, to resolve the dispute.

1 Any agreement or award shall include a plan to im-
2 plement such staffing levels.

3 **SEC. 8. ANTI-SILOS REQUIREMENT.**

4 (a) ORGANIZATIONAL STREAMLINING.—The Admin-
5 istrator shall take appropriate measures, including devel-
6 opment of internal policies and procedures, to organize the
7 Administration’s assignments of personnel in a manner
8 that facilitates open communication and collaboration
9 among the Administration’s employees across the Admin-
10 istration’s lines of business and offices. Such measures
11 shall promote the cross-utilization of employees whenever
12 feasible to leverage the employees’ knowledge and skill sets
13 across disciplines.

14 (b) REPORT TO CONGRESS.—Not later than 1 year
15 after the date of enactment of this Act, and annually
16 thereafter, the Administrator shall submit to the Com-
17 mittee on Transportation and Infrastructure of the House
18 of Representatives and the Committee on Commerce,
19 Science, and Transportation of the Senate a report on the
20 measures required under subsection (a) and the effective-
21 ness of such measures in reducing organizational barriers
22 and stovepipes.

23 **SEC. 9. AIR TRAFFIC EMPLOYEES ASSIGNED TO GUAM.**

24 (a) SERVICES FOR CERTAIN EMPLOYEES.—The Sec-
25 retary of Defense shall provide military medical treatment

1 facilities, commissary, and exchange access to employees
2 of the Federal Aviation Administration assigned to Guam,
3 their spouses, and their dependent children through the
4 Defense Enrollment Eligibility Reporting System and the
5 Real Time Automated Personnel Identification System.

6 (b) REIMBURSEMENT FOR EXPENSES.—The Admin-
7 istrator of the Federal Aviation Administration shall reim-
8 burse the Secretary of Defense for expenses incurred by
9 the Department of Defense for enrollment of Federal
10 Aviation Administration employees, their spouses, and
11 their dependent children for services provided under sub-
12 section (a).

13 **SEC. 10. TECHNICAL REVISIONS.**

14 Section 40122(g)(2) of title 49, United States Code,
15 is amended—

16 (1) in subparagraph (A), by—

17 (A) striking “(b)” after “2302”; and

18 (B) inserting “prohibited personnel prac-
19 tices and” before “whistleblower protection”;

20 (2) in subparagraph (B), by—

21 (A) inserting “3304,” before “3308–
22 3320,”; and

23 (B) inserting “3330a, 3330b, 3330c, and
24 3330d,” before “relating to veterans’ pref-
25 erence;”;

1 (3) in subparagraph (I)(iii) by striking “and”
2 at the end;

3 (4) in subparagraph (J) by striking “leave.”
4 and inserting “leave; and”; and

5 (5) by inserting at the end the following:

6 “(K) section 5596 relating to back pay due
7 to unjustified personnel action.”.

○