

115TH CONGRESS  
1ST SESSION

# S. 755

To amend the Pilot’s Bill of Rights to facilitate appeals, to limit the reexamination of airman certificates, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MARCH 29, 2017

Mr. INHOFE introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To amend the Pilot’s Bill of Rights to facilitate appeals, to limit the reexamination of airman certificates, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fairness for Pilots  
5 Act”.

6 **SEC. 2. EXPANSION OF PILOT’S BILL OF RIGHTS.**

7 (a) APPEALS OF SUSPENDED AND REVOKED AIRMAN  
8 CERTIFICATES.—Section 2(d)(1) of the Pilot’s Bill of  
9 Rights (Public Law 112–153; 126 Stat. 1159; 49 U.S.C.  
10 44703 note) is amended by striking “or imposing a puni-

1 tive civil action or an emergency order of revocation under  
2 subsections (d) and (e) of section 44709 of such title” and  
3 inserting “suspending or revoking an airman certificate  
4 under section 44709(d) of such title, or imposing an emer-  
5 gency order of revocation under subsections (d) and (e)  
6 of section 44709 of such title”.

7 (b) DE NOVO REVIEW BY DISTRICT COURT; BURDEN  
8 OF PROOF.—Section 2(e) of the Pilot’s Bill of Rights  
9 (Public Law 112–153; 126 Stat. 1159; 49 U.S.C. 44703  
10 note) is amended—

11 (1) by amending paragraph (1) to read as fol-  
12 lows:

13 “(1) IN GENERAL.—In an appeal filed under  
14 subsection (d) in a United States district court with  
15 respect to a denial, suspension, or revocation of an  
16 airman certificate by the Administrator—

17 “(A) the district court shall review the de-  
18 nial, suspension, or revocation de novo, includ-  
19 ing by—

20 “(i) conducting a full independent re-  
21 view of the complete administrative record  
22 of the denial, suspension, or revocation;

23 “(ii) permitting additional discovery  
24 and the taking of additional evidence; and

1           “(iii) making the findings of fact and  
2           conclusions of law required by Rule 52 of  
3           the Federal Rules of Civil Procedure with-  
4           out being bound to any findings of fact of  
5           the Administrator or the National Trans-  
6           portation Safety Board.”;

7           (2) by redesignating paragraph (2) as para-  
8           graph (3); and

9           (3) by inserting after paragraph (1) the fol-  
10          lowing:

11          “(2) BURDEN OF PROOF.—In an appeal filed  
12          under subsection (d) in a United States district  
13          court after an exhaustion of administrative remedies,  
14          the burden of proof shall be as follows:

15                 “(A) In an appeal of the denial of an ap-  
16                 plication for the issuance or renewal of an air-  
17                 man certificate under section 44703 of title 49,  
18                 United States Code, the burden of proof shall  
19                 be upon the applicant denied an airman certifi-  
20                 cate by the Administrator.

21                 “(B) In an appeal of an order issued by  
22                 the Administrator under section 44709 of title  
23                 49, United States Code, the burden of proof  
24                 shall be upon the Administrator.”; and

25          (4) by adding at the end the following:

1           “(4) APPLICABILITY OF ADMINISTRATIVE PRO-  
2           CEDURE ACT.—Notwithstanding paragraph (1)(A) of  
3           this subsection or subsection (a)(1) of section 554 of  
4           title 5, United States Code, section 554 of such title  
5           shall apply to adjudications of the Administrator  
6           and the National Transportation Safety Board to  
7           the same extent as that section applied to such adju-  
8           dications before the date of enactment of the Fair-  
9           ness for Pilots Act.”.

10          (c) NOTIFICATION OF INVESTIGATION.—Subsection  
11         (b) of section 2 of the Pilot’s Bill of Rights (Public Law  
12         112–153; 126 Stat. 1159; 49 U.S.C. 44703 note) is  
13         amended—

14                 (1) in paragraph (2)(A), by inserting “and the  
15                 specific activity on which the investigation is based”  
16                 after “nature of the investigation”;

17                 (2) in paragraph (3), by striking “timely”; and

18                 (3) in paragraph (5), by striking “section  
19                 44709(c)(2)” and inserting “section 44709(e)(2)”.

20          (d) RELEASE OF INVESTIGATIVE REPORTS.—Section  
21         2 of the Pilot’s Bill of Rights (Public Law 112–153; 126  
22         Stat. 1159; 49 U.S.C. 44703 note) is further amended by  
23         inserting after subsection (e) the following:

24                 “(f) RELEASE OF INVESTIGATIVE REPORTS.—

25                 “(1) IN GENERAL.—

1           “(A) EMERGENCY ORDERS.—In any pro-  
2           ceeding conducted under part 821 of title 49,  
3           Code of Federal Regulations, relating to the  
4           amendment, modification, suspension, or rev-  
5           ocation of an airman certificate, in which the  
6           Administrator issues an emergency order under  
7           subsections (d) and (e) of section 44709, sec-  
8           tion 44710, or section 46105(c) of title 49,  
9           United States Code, or another order that takes  
10          effect immediately, the Administrator shall pro-  
11          vide to the individual holding the airman certifi-  
12          cate the releasable portion of the investigative  
13          report at the time the Administrator issues the  
14          order. If the complete Report of Investigation is  
15          not available at the time the Emergency Order  
16          is issued, the Administrator shall issue all por-  
17          tions of the report that are available at the time  
18          and shall provide the full report within 5 days  
19          of its completion.

20          “(B) OTHER ORDERS.—In any non-emer-  
21          gency proceeding conducted under part 821 of  
22          title 49, Code of Federal Regulations, relating  
23          to the amendment, modification, suspension, or  
24          revocation of an airman certificate, in which the  
25          Administrator notifies the certificate holder of a

1 proposed certificate action under subsections  
2 (b) and (c) of section 44709 or section 44710  
3 of title 49, United States Code, the Adminis-  
4 trator shall, upon the written request of the  
5 covered certificate holder and at any time after  
6 that notification, provide to the covered certifi-  
7 cate holder the releasable portion of the inves-  
8 tigative report.

9 “(2) MOTION FOR DISMISSAL.—If the Adminis-  
10 trator does not provide the releasable portions of the  
11 investigative report to the individual holding the air-  
12 man certificate subject to the proceeding referred to  
13 in paragraph (1) by the time required by that para-  
14 graph, the individual may move to dismiss the com-  
15 plaint of the Administrator or for other relief and,  
16 unless the Administrator establishes good cause for  
17 the failure to provide the investigative report or for  
18 a lack of timeliness, the administrative law judge  
19 shall order such relief as the judge considers appro-  
20 priate.

21 “(3) RELEASABLE PORTION OF INVESTIGATIVE  
22 REPORT.—For purposes of paragraph (1), the re-  
23 leasable portion of an investigative report is all in-  
24 formation in the report, except for the following:

25 “(A) Information that is privileged.

1           “(B) Information that constitutes work  
2 product or reflects internal deliberative process.

3           “(C) Information that would disclose the  
4 identity of a confidential source.

5           “(D) Information the disclosure of which is  
6 prohibited by any other provision of law.

7           “(E) Information that is not relevant to  
8 the subject matter of the proceeding.

9           “(F) Information the Administrator can  
10 demonstrate is withheld for good cause.

11           “(G) Sensitive security information, as de-  
12 fined in section 15.5 of title 49, Code of Fed-  
13 eral Regulations (or any corresponding similar  
14 ruling or regulation).

15           “(4) RULE OF CONSTRUCTION.—Nothing in  
16 this subsection shall be construed to prevent the Ad-  
17 ministrator from releasing to an individual subject  
18 to an investigation described in subsection (b)(1)—

19           “(A) information in addition to the infor-  
20 mation included in the releasable portion of the  
21 investigative report; or

22           “(B) a copy of the investigative report be-  
23 fore the Administrator issues a complaint.”.

1 **SEC. 3. LIMITATIONS ON REEXAMINATION OF CERTIFICATE**  
 2 **HOLDERS.**

3 (a) IN GENERAL.—Section 44709(a) of title 49,  
 4 United States Code, is amended—

5 (1) by striking “The Administrator” and insert-  
 6 ing the following:

7 “(1) IN GENERAL.—The Administrator”;

8 (2) by striking “reexamine” and inserting “, ex-  
 9 cept as provided in paragraph (2), reexamine”; and

10 (3) by adding at the end the following:

11 “(2) LIMITATION ON THE REEXAMINATION OF  
 12 AIRMAN CERTIFICATES.—

13 “(A) IN GENERAL.—The Administrator  
 14 may not reexamine an airman holding a stu-  
 15 dent, sport, recreational, or private pilot certifi-  
 16 cate issued under section 44703 of this title if  
 17 the reexamination is ordered as a result of an  
 18 event involving the fault of the Federal Aviation  
 19 Administration or its designee, unless the Ad-  
 20 ministrator has reasonable grounds—

21 “(i) to establish that the airman may  
 22 not be qualified to exercise the privileges of  
 23 a particular certificate or rating, based  
 24 upon an act or omission committed by the  
 25 airman while exercising those privileges,  
 26 after the certificate or rating was issued by



1 the Federal Aviation Administration or its  
2 designee; or

3 “(ii) to demonstrate that the airman  
4 obtained the certificate or the rating  
5 through fraudulent means or through an  
6 examination that was substantially and de-  
7 monstrably inadequate to establish the air-  
8 man’s qualifications.

9 “(B) NOTIFICATION REQUIREMENTS.—Be-  
10 fore taking any action to reexamine an airman  
11 under subparagraph (A), the Administrator  
12 shall provide to the airman—

13 “(i) a reasonable basis, described in  
14 detail, for requesting the reexamination;  
15 and

16 “(ii) any information gathered by the  
17 Federal Aviation Administration, that the  
18 Administrator determines is appropriate to  
19 provide, such as the scope and nature of  
20 the requested reexamination, that formed  
21 the basis for that justification.”.

22 (b) AMENDMENT, MODIFICATION, SUSPENSION, OR  
23 REVOCATION OF AIRMAN CERTIFICATES AFTER REEXAM-  
24 INATION.—Section 44709(b) of title 49, United States  
25 Code, is amended—

1           (1) in paragraph (1), by redesignating subpara-  
2           graphs (A) and (B) as clauses (i) and (ii), respec-  
3           tively, and indenting appropriately;

4           (2) by redesignating paragraphs (1) and (2) as  
5           subparagraphs (A) and (B), respectively, and indent-  
6           ing appropriately;

7           (3) in the matter preceding subparagraph (A),  
8           as redesignated, by striking “The Administrator”  
9           and inserting the following:

10           “(1) IN GENERAL.—Except as provided in para-  
11           graph (2), the Administrator”;

12           (4) by adding at the end the following:

13           “(2) AMENDMENTS, MODIFICATIONS, SUSPEN-  
14           SIONS, AND REVOCATIONS OF AIRMAN CERTIFICATES  
15           AFTER REEXAMINATION.—

16           “(A) IN GENERAL.—The Administrator  
17           may not issue an order to amend, modify, sus-  
18           pend, or revoke an airman certificate held by a  
19           student, sport, recreational, or private pilot and  
20           issued under section 44703 of this title after a  
21           reexamination of the airman holding the certifi-  
22           cate unless the Administrator determines that  
23           the airman—

24           “(i) lacks the technical skills and com-  
25           petency, or care, judgment, and responsi-

1                    bility, necessary to hold and safely exercise  
2                    the privileges of the certificate; or

3                    “(ii) materially contributed to the  
4                    issuance of the certificate by fraudulent  
5                    means.

6                    “(B) STANDARD OF REVIEW.—Any order  
7                    of the Administrator under this paragraph shall  
8                    be subject to the standard of review provided  
9                    for under section 2 of the Pilot’s Bill of Rights  
10                    (49 U.S.C. 44703 note).”.

11                    (c)            CONFORMING            AMENDMENTS.—Section  
12 44709(d)(1) of title 49, United States Code, is amended—

13                    (1) in subparagraph (A), by striking “sub-  
14                    section (b)(1)(A)” and inserting “subsection  
15                    (b)(1)(A)(i)”; and

16                    (2) in subparagraph (B), by striking “sub-  
17                    section (b)(1)(B)” and inserting “subsection  
18                    (b)(1)(A)(ii)”.

19 **SEC. 4. EXPEDITING UPDATES TO NOTAM PROGRAM.**

20                    (a) IN GENERAL.—

21                    (1) Beginning on the date that is 180 days  
22                    after the date of enactment of this Act, the Adminis-  
23                    trator of the Federal Aviation Administration may  
24                    not take any enforcement action against any indi-  
25                    vidual for a violation of a NOTAM (as defined in

1 section 3 of the Pilot’s Bill of Rights (49 U.S.C.  
2 44701 note)) until the Administrator certifies to the  
3 appropriate congressional committees that the Ad-  
4 ministrator has complied with the requirements of  
5 section 3 of the Pilot’s Bill of Rights, as amended  
6 by this section.

7 (2) In this subsection, the term “appropriate  
8 congressional committees” means—

9 (A) the Committee on Commerce, Science,  
10 and Transportation of the Senate; and

11 (B) the Committee on Transportation and  
12 Infrastructure of the House of Representatives.

13 (b) AMENDMENTS.—Section 3 of the Pilot’s Bill of  
14 Rights (Public Law 112–153; 126 Stat. 1162; 49 U.S.C.  
15 44701 note) is amended—

16 (1) in subsection (a)(2)—

17 (A) in the matter preceding subparagraph

18 (A)—

19 (i) by striking “this Act” and insert-  
20 ing “the Fairness for Pilots Act”; and

21 (ii) by striking “begin” and inserting  
22 “complete the implementation of”;

23 (B) by amending subparagraph (B) to read  
24 as follows:

1           “(B) to continue developing and modern-  
 2           izing the NOTAM repository, in a public cen-  
 3           tral location, to maintain and archive all  
 4           NOTAMs, including the original content and  
 5           form of the notices, the original date of publica-  
 6           tion, and any amendments to such notices with  
 7           the date of each amendment, in a manner that  
 8           is Internet-accessible, machine-readable, and  
 9           searchable;”;

10           (C) in subparagraph (C), by striking the  
 11           period at the end and inserting a semicolon;  
 12           and

13           (D) by adding at the end the following:

14           “(D) to specify the times during which  
 15           temporary flight restrictions are in effect and  
 16           the duration of a designation of special use air-  
 17           space in a specific area.”; and

18           (2) by amending subsection (d) to read as fol-  
 19           lows:

20           “(d) DESIGNATION OF REPOSITORY AS SOLE  
 21           SOURCE FOR NOTAMS.—

22           “(1) IN GENERAL.—The Administrator—

23           “(A) shall consider the repository for  
 24           NOTAMs under subsection (a)(2)(B) to be the

1 sole location for airmen to check for NOTAMs;  
2 and

3 “(B) may not consider a NOTAM to be  
4 announced or published until the NOTAM is in-  
5 cluded in the repository for NOTAMs under  
6 subsection (a)(2)(B).

7 “(2) PROHIBITION ON TAKING ACTION FOR VIO-  
8 LATIONS OF NOTAMS NOT IN REPOSITORY.—

9 “(A) IN GENERAL.—Except as provided in  
10 subparagraph (B), beginning on the date that  
11 the repository under subsection (a)(2)(B) is  
12 final and published, the Administrator may not  
13 take any enforcement action against an airman  
14 for a violation of a NOTAM during a flight if—

15 “(i) that NOTAM is not available  
16 through the repository before the com-  
17 mencement of the flight; and

18 “(ii) that NOTAM is not reasonably  
19 accessible and identifiable to the airman.

20 “(B) EXCEPTION FOR NATIONAL SECUR-  
21 RITY.—Subparagraph (A) shall not apply in the  
22 case of an enforcement action for a violation of  
23 a NOTAM that directly relates to national se-  
24 curity.”.

1 **SEC. 5. ACCESSIBILITY OF CERTAIN FLIGHT DATA.**

2 (a) IN GENERAL.—Subchapter I of chapter 471 of  
3 title 49, United States Code, is amended by inserting after  
4 section 47124 the following:

5 **“§ 47124a. Accessibility of certain flight data**

6 “(a) DEFINITIONS.—In this section:

7 “(1) ADMINISTRATION.—The term ‘Administra-  
8 tion’ means the Federal Aviation Administration.

9 “(2) ADMINISTRATOR.—The term ‘Adminis-  
10 trator’ means the Administrator of the Federal Avia-  
11 tion Administration.

12 “(3) APPLICABLE INDIVIDUAL.—The term ‘ap-  
13 plicable individual’ means an individual who is the  
14 subject of an investigation initiated by the Adminis-  
15 trator related to a covered flight record.

16 “(4) CONTRACT TOWER.—The term ‘contract  
17 tower’ means an air traffic control tower providing  
18 air traffic control services pursuant to a contract  
19 with the Administration under the contract air traf-  
20 fic control tower program under section  
21 47124(b)(3).

22 “(5) COVERED FLIGHT RECORD.—The term  
23 ‘covered flight record’ means any air traffic data (as  
24 defined in section 2(b)(4)(B) of the Pilot’s Bill of  
25 Rights (49 U.S.C. 44703 note)), created, main-  
26 tained, or controlled by any program of the Adminis-

1       tration, including any program of the Administration  
2       carried out by employees or contractors of the Ad-  
3       ministration, such as contract towers, flight service  
4       stations, and controller training programs.

5       “(b) PROVISION OF COVERED FLIGHT RECORD TO  
6       ADMINISTRATION.—

7               “(1) REQUESTS.—Whenever the Administration  
8       receives a written request for a covered flight record  
9       from an applicable individual and the covered flight  
10      record is not in the possession of the Administration,  
11      the Administrator shall request the covered flight  
12      record from the contract tower or other contractor  
13      of the Administration in possession of the covered  
14      flight record.

15              “(2) PROVISION OF RECORDS.—Any covered  
16      flight record created, maintained, or controlled by a  
17      contract tower or another contractor of the Adminis-  
18      tration that maintains covered flight records shall be  
19      provided to the Administration if the Administration  
20      requests the record pursuant to paragraph (1).

21              “(3) NOTICE OF PROPOSED CERTIFICATE AC-  
22      TION.—If the Administrator has issued, or subse-  
23      quently issues, a Notice of Proposed Certificate Ac-  
24      tion relying on evidence contained in the covered  
25      flight record and the individual who is the subject of



1 an investigation has requested the record, the Ad-  
2 ministrator shall promptly produce the record and  
3 extend the time the individual has to respond to the  
4 Notice of Proposed Certificate Action until the cov-  
5 ered flight record is provided.

6 “(c) IMPLEMENTATION.—

7 “(1) IN GENERAL.—Not later than 180 days  
8 after the date of enactment of the Fairness for Pi-  
9 lots Act, the Administrator shall promulgate regula-  
10 tions or guidance to ensure compliance with this sec-  
11 tion.

12 “(2) COMPLIANCE BY CONTRACTORS.—

13 “(A) Compliance with this section by a  
14 contract tower or other contractor of the Ad-  
15 ministration that maintains covered flight  
16 records shall be included as a material term in  
17 any contract between the Administration and  
18 the contract tower or contractor entered into or  
19 renewed on or after the date of enactment of  
20 the Fairness for Pilots Act.

21 “(B) Subparagraph (A) shall not apply to  
22 any contract or agreement in effect on the date  
23 of enactment of the Fairness for Pilots Act un-  
24 less the contract or agreement is renegotiated,  
25 renewed, or modified after that date.”.

1 (b) TECHNICAL AND CONFORMING AMENDMENTS.—  
2 The table of contents for chapter 471 of title 49, United  
3 States Code, is amended by inserting after the item relat-  
4 ing to section 47124 the following:

“47124a. Accessibility of certain flight data.”.

5 **SEC. 6. AUTHORITY FOR LEGAL COUNSEL TO ISSUE CER-**  
6 **TAIN NOTICES.**

7 Not later than 180 days after the date of enactment  
8 of this Act, the Administrator of the Federal Aviation Ad-  
9 ministration shall revise section 13.11 of title 14, Code  
10 of Federal Regulations, to authorize legal counsel of the  
11 Federal Aviation Administration to close enforcement ac-  
12 tions covered by that section with a warning notice, letter  
13 of correction, or other administrative action.

○