H.R. 2997 – 21st Century AIRR Act – 115th Congress (2017-2018)

An analysis of parts of Title II – American Air Navigation Services Corporation

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This first table is a VERY brief outline of what the bill will and will not propose. Further detailed analysis weighing the legal pros and cons will follow, with the actual text in blue *italics*, the cons in red and the pros in green.

**The New Not-For-Profit Entity WILL** The New Not-For-Profit Entity **WILL NOT or CANNOT**

- Be independent of the federal government - Regulate or own the airspace

- Provide ATC services - Regulate or oversee itself

- Be governed by a Board of Directors nominated by - Regulate aircraft operations

system users but with fiduciary duty only to the new

entity

- Be directly regulated by the FAA and the DOT and be - Deny or otherwise determine access to airspace by

subject to congressional oversight like every other any aircraft operator

transportation business

- Recoup its costs through user fees - Receive federal appropriations or be able to request funds from the Treasury

- Have access to capital markets for financing of capital - Have the backing of the federal government for any of its

projects and other business requirements financial obligations

- Comply with presidential orders for the DoD to assume - Set or collect taxes

control of the airspace in times of war - Issue stock

“The legitimate object of government is to do for the people what needs to be done, but which they cannot by individual effort do at all or so well for themselves.” – Abraham Lincoln

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| **Excerpts from H.R. 2997 that are at the crux of the issue**  **HR 2997** | **Legal issues – precedents or constitutional concerns as well as the organizations who oppose ATC Privatization**  **CONS** | **Reasons why this needs to work and the organizations or individuals in favor of ATC Privatization**  **PROS** |
| ***SEC. 201. PURPOSES.***  *It is declared to be the purpose of Congress in this title to transfer operation of air traffic services currently provided by the Federal Aviation Administration to a separate not-for-profit corporate entity to provide for the more efficient operation and improvement of air traffic services.*  ***§ 90101. Definitions***  *(8) DATE OF TRANSFER.—The term ‘date of transfer’ means the date on which the Corporation assumes operational control of air traffic services from the FAA pursuant to this subtitle, which shall be October 1, 2020.*  ***§ 90301. Establishment of Corporation***  *(a) Federal Charter.—There is established a federally chartered, not-for-profit corporation to be known as the ‘American Air Navigation Services Corporation’, which shall be incorporated in a State of its choosing.*  ***§ 90302. Transfer of air traffic services***  *(c) Entities Authorized To Provide Air Traffic Services After Date Of Transfer.—After the date of transfer, no entity, other than the Corporation, is authorized or permitted to provide air traffic services within United States airspace or international airspace delegated to the United States, except for—*  *(1) the Department of Defense, as authorized by chapter 909;*  *(2) entities to which the United States has delegated certain air traffic services responsibilities;*  *(3) entities with which the Corporation has contracted for the provision of air traffic services; and*  *(4) entities authorized to operate an unmanned aircraft traffic management system or service pursuant to section 45506 or 45507.*  ***§ 90304. Status and applicable laws***  *(a) Non-Federal Entity.—The Corporation is not a department, agency, or instrumentality of the United States Government, and is not subject to title 31.*  *(b) Liability.—The United States Government shall not be liable for the actions or inactions of the Corporation.*  *(c) Not-For-Profit Corporation.—The Corporation shall maintain its status as a not-for-profit corporation exempt from taxation under the Internal Revenue Code of 1986.*  *(d) No Federal Guarantee.—Any debt assumed by the Corporation shall not have an implied or explicit Federal guarantee.* | **National Business Aviation Association (NBAA)** representing more than 11,000 companies that rely on general aviation opposes putting ATC responsibility into hands of unregulated monopoly beyond Congress’s reach and mentions significant constitutional concerns that violate:  - **Article I nondelegation doctrine** (the principle that US Congress being vested with all legislative powers by Article I, Section 1 cannot delegate that power to anyone else).  See also ***Mistretta v. United States***, (1989) where the Supreme Court has insisted that “the integrity and maintenance of the system of government ordained by the Constitution” mandate that Congress generally cannot delegate its legislative power to another Branch.  See also ***Carter v. Carter Coal Co.*** (1936) where 80 years ago the Supreme Court determined that transfer to a private corporation violated the nondelegation doctrine (one person may not be entrusted with the power to regulate the business of another). This was based on the Bituminous Coal Conservation Act of 1935 that was oddly similar to HR 2997. “The power conferred upon the majority is, in effect, the power to regulate the affairs of an unwilling minority…. private persons whose interests may be and often are adverse to the interests of others in the same business.”  - **5th Amendment due process** (due process deals with the administration of justice and thus the due process clause acts as a safeguard from arbitrary denial of life, liberty, or property by the government outside the sanction of law).  See ***Goldberg v. Kelly*** (1970) where the Supreme Court has emphasized an impartial decision maker is an essential element of the fairness equation.  See also ***Eubank v. City of Richmond*** (1912) where the Supreme Court found unconstitutional a city ordinance allowing the owners of two-thirds of the property abutting a street to establish a building line beyond which construction would be illegal. This violated due process because the statute and ordinance, while conferring the power on some property holders to virtually control and dispose of the proper rights of others, created no standard by which the power thus given was to be exercised.  - **Article II, Section 2 appointments** (empowers the US President to appoint certain public officials with the advice and consent of the US Senate)  - **Article II, Section 3 faithful execution** (the US President shall take care that the laws be faithfully executed)  In a nutshell, ATC reform would undermine the founding fathers’ protections against the abuse of power and private citizens exercising governmental authority.  **Helicopter Association International (HAI)** believes that governance structure and nominating panels do not directly address nor support the helicopter community because the board would be largely unaccountable to Congress, and would have sweeping powers to modify airspace, allocate resources and set charges and fees.  Additionally **Experimental Aircraft Association (EAA), Aircraft Owners and Pilots Association (AOPA), General Aviation Manufacturers Association (GAMA)**, **Professional Aviation Safety Specialists (PASS)**, and **National Air Transport Association (NATA)** have voiced similar concerns.  Aviation leaders in the following states have voiced their concern in the **ATC NOT FOR SALE** Campaign: AL, AK AZ, CA, CO, FL, GA, ID, KS, KY, LA, MA, MD, ME, MI, MN, NC, ND, NE, NH, NJ, NM, NY, PA, SC, SD, TN, TX, UT, WA. In addition, 150 general aviation groups, 100 mayors from all 50 states together with a number of members of Congress have lent their support.  Concerns that this will essentially be a monopoly and that impact on pricing.  See issues of Congressional or FAA oversight as concerns (addressed later in another section). | Office of Management and Budget, America First: A Budget Blueprint to Make America Great Again 35 (2017):  In his 2018 budget outline **President Trump** proposed reforming ATC operations by transferring the ATC function of the FAA to an independent, non-governmental organization, making the system more efficient and innovative while maintaining safety.  House Chairman Pushes Privatizing Air Traffic Control in US, NY Times, May 17, 2017: Pennsylvania Rep. **Bill Shuster**, chairman of the House Transportation and Infrastructure Committee said his top priority this year is to overhaul the FAA along those lines. The effort he would pursue would fund the new corporation through fees assessed for air traffic services and would free the operations from government dysfunction, political interference and the uncertainty of the annual appropriations process. The true risk lies in doing nothing. ATC is a technology service business that requires the same commercial freedoms enjoyed by other companies.  **Airlines for America (A4A)** representing **Alaska, American, Atlas Air, Federal Express, Hawaiian, JetBlue, Southwest, United, and UPS**: Now is the time to change the status quo and ensure US leadership in ATC technology, paid for by those who use the system. They ensure that the new entity’s organizational structure will prevent airlines from dominating its governance.  **Air Commerce Act (1926):** Congress did not intend federal agencies to be primary providers of ATC or related services.Secretary of Commerce was charged with encouraging the establishment of airports, civil airways, and other air navigation facilities.The Secretary was simultaneously authorized to designate and establish civil airways and, within the limits of available appropriations hereafter made by Congress to establish, operate, and maintain along such airways all necessary air navigation facilities except airports.  Similar authority is found in the **Civil Aeronautics Act (1938)**: Federal agencies wee not intended to be the exclusive, or even primary, provider of navigation facilities or services.  **Federal Aviation Act (1958)**: the law distinguishes between *may* and *shall*:  *Shall* is used for say the provision of safety, whereas *may* is used for say inspecting, classifying, and rating an air navigation facility as well as issuing air navigation facility certificates to private persons.  **Department of Transportation Secretary Mineta Memorandum** (2002): ATC is NOT an inherently governmental function.  FAA regulations and procedures direct the use of the nation’s airspace and controllers do not create these regulations and procedures while separating and controlling aircraft.  **President Bush Executive Order No. 13,264** (2002): ATC is not an inherently governmental function.  **National Air Traffic Controllers Association (NATCA)** the largest union within the FAA supports this change because they have borne the brunt of budget sequestration with furloughs and now a staffing shortage. |

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| ***§ 90305. Nomination Panels for Board***  *(a) In General.—The Nomination Panels described in subsection (b) shall be responsible for nominating individuals to serve as Directors pursuant to section 90306.*  *(b) Nomination Panels.—The Nomination Panels shall be as follows:*  *(1) PASSENGER AIR CARRIER NOMINATION PANEL.—A Passenger Air Carrier Nomination Panel composed of passenger air carrier representatives, with each air carrier with more than 30,000,000 annual passenger enplanements designating 1 representative to the Panel.*  *(2) CARGO AIR CARRIER NOMINATION PANEL.—A Cargo Air Carrier Nomination Panel composed of cargo air carrier representatives, with each all-cargo air carrier with more than 1,000,000 total annual enplaned cargo revenue tons designating 1 representative to the Panel.*  *(3) REGIONAL AIR CARRIER NOMINATION PANEL.—A Regional Air Carrier Nomination Panel composed of regional air carrier representatives, with each of the 3 largest regional air carriers, as measured by annual passenger enplanements, designating 1 representative to the Panel.*  *(4) GENERAL AVIATION NOMINATION PANEL.—A General Aviation Nomination Panel composed of 6 representatives designated by the principal organization representing noncommercial owners and recreational operators of general aviation aircraft.*  *(5) BUSINESS AVIATION NOMINATION PANEL.—A Business Aviation Nomination Panel composed of—*  *(A) 2 representatives designated by the principal organization representing owners, operators, and users of general aviation aircraft used exclusively in furtherance of business enterprises;*  *(B) 2 representatives designated by the principal organization representing aviation-related businesses, including fixed-base operators; and*  *(C) 2 representatives designated by the principal organization representing aerospace manufacturers of general aviation aircraft and equipment.*  *(6) AIR TRAFFIC CONTROLLER NOMINATION PANEL.—An Air Traffic Controller Nomination Panel composed of 6 representatives designated by the largest organization engaged in collective bargaining on behalf of air traffic controllers employed by the Corporation.*  *(7) AIRPORT NOMINATION PANEL.—An Airport Nomination Panel composed of—*  *(A) 3 representatives designated by the principal organization representing commercial service airports; and*  *(B) 3 representatives designated by the principal organization representing airport executives.*  *(8) COMMERCIAL PILOT NOMINATION PANEL.—A Commercial Pilot Nomination Panel composed of commercial pilot representatives, with each organization engaged in collective bargaining on behalf of air carrier pilots with more than 5,000 members designating 1 member to the Panel.*  *(c) Determination Of Entities.—*  *(4) LIMITATIONS.—*  *(A) SINGLE DESIGNATION.—No entity determined under this subsection may designate a representative to more than 1 Nomination Panel.*  *(B) CARRIERS OWNED OR CONTROLLED BY SAME HOLDING COMPANY.—If 2 or more air carriers determined under this subsection are owned or controlled by the same holding company, only 1 of those air carriers may designate a representative to a Nomination Panel.*  *(d) Terms.—An individual on a Nomination Panel shall serve at the pleasure of the entity that the individual is representing.*  *(e) Qualifications.—Only an individual who is a citizen of the United States may be designated to a Nomination Panel.*  *(f) Prohibitions.—An individual may not serve on a Nomination Panel if the individual is—*  *(1) an officer or employee of the Corporation;*  *(2) a Member of Congress or an elected official serving in a State, local, or Tribal government; or*  *(3) an officer or employee of the Federal Government or any State, local, or Tribal government.*  *(g) Largest Organization Engaged In Collective Bargaining On Behalf Of Air Traffic Controllers Employed By The Corporation Defined.—Before the date of transfer, in this section, the term ‘largest organization engaged in collective bargaining on behalf of air traffic controllers employed by the Corporation’ means the largest organization engaged in collective bargaining on behalf of air traffic controllers employed by the FAA.* | Airports concerns:  - Ensuring that noise and community concerns are addressed – with the FAA there was a public accountability to ensure community engagement and outreach to avoid litigation of noise complaints (see ***City of Phoenix v. Huerta***, 2015) but will the new ATC Corporation even care or be obligated to future engagement?  - It is unclear whether the FAA would have the ability to require the ATC entity to modify its procedures to ameliorate noise-related concerns.  - Will ATC Corporation manage environmental issues and be required to follow federal National Environmental Policy Act (NEPA) requirements – Congress must specify which entity is responsible – the FAA or the new ATC Corporation!!  - Congress must ensure that the **Airport Improvement Plan (AIP)** funding structure remains stable. Currently the Airport and **Airway Trust Fund (AATF)** funds the AIP. To date Congress has not put forward a proposal for rebalancing the AATF’s revenue streams to ensure that the AIP remains adequately funded. (Note that AATF is funded through a variety of excise taxes, including those on airline tickets, aviation fuel, and the use of international arrival and departure facilities). There has been no indication that user fees generated by ATC Corporation would be redirected in part to the AATF. | The panels model NAV Canada who privatized their ATC already, in that there is representation from commercial aviation management, airline pilots, air traffic controllers, business aviation, general aviation, and unions.  Airports and communities have a meaningful role on governing board of new ATC corporation.  **Airway Trust Fund (AATF)** (2017)reports that over the next 5 years FAA has estimated over $30 billion in AIP-eligible, unmet capital development needs- a significant portion of the $100 billion total that must be invested in US airports over that same time period. |

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| ***§ 90306. Board of Directors***  *(a) Authority.—The powers of the Corporation shall be vested in a Board of Directors that governs the Corporation.*  *(b) Composition Of Board.—The Board shall be composed of the following Directors:*  *(1) The CEO.*  *(2) 2 Directors appointed by the Secretary.*  *(3) 1 Director nominated by the Passenger Air Carrier Nomination Panel.*  *(4) 1 Director nominated by the Cargo Air Carrier Nomination Panel.*  *(5) 1 Director nominated by the Regional Air Carrier Nomination Panel.*  *(6) 1 Director nominated by the General Aviation Nomination Panel.*  *(7) 1 Director nominated by the Business Aviation Nomination Panel.*  *(8) 1 Director nominated by the Air Traffic Controller Nomination Panel.*  *(9) 1 Director nominated by the Airport Nomination Panel.*  *(10) 1 Director nominated by the Commercial Pilot Nomination Panel.*  *(11) 2 Directors nominated and selected by the other Directors.*  *(e) Terms.—*  *(1) INITIAL TERMS.—The term of each Director appointed, or nominated and selected, before the date of transfer (other than the CEO) shall expire on the date that is 2 years after the date of transfer.*  *(2) SUBSEQUENT TERMS.—The term of each Director appointed, or nominated and selected, on or after the date of transfer (other than the CEO) shall be 4 years, except as provided by paragraph (3).*  *(3) STAGGERING.—The Board shall stagger the duration of the terms of the initial Directors appointed, or nominated and selected, after the date of transfer to promote the stability of the Board.*  *(4) TERM LIMIT.—Except as provided by subsection (f)(3), a Director may not serve on the Board for more than 8 years.* | In HR 2997 any number of scenarios could potentially exist in which the four mainline air carrier directors, needing only one or two additional votes, could propose the adoption of measures (subject to limited Transportation Secretary review) that benefit themselves or their favored stakeholder groups to the disadvantage of others.  See ***Commonwealth ex rel. Kane v. McKechnie*** (1976) where the court held that the private interest of the members rather than the public interest is most probably the controlling consideration in the election of the president of this private group.  The executive branch would have no control over the ATC Corporation, although it would be functioning as a government agency and wielding government powers.  See ***Myers v. United States*** (1926) where the Supreme Court reaffirmed that the President must have general administrative control over those executing the laws as well as power to remove those for whom he cannot continue to be responsible.  See ***Free Enterprise Fund v. Public Company Accountability Oversight Board*** (2010) where the Court declared unconstitutional a law that delegated expansive regulatory powers over the accounting industry to the Public Company Accounting Oversight Board and protected Board members from removal except for good cause. |  |

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| ***§ 90307. Fiduciary duties and qualifications of Directors***  *(a) Fiduciary Duties.—The fiduciary duties of a Director shall be solely and exclusively to the Corporation.*  *(b) Qualifications.—*  *(1) IN GENERAL.—Only a citizen of the United States may be appointed or nominated as a Director.*  *(2) PROHIBITIONS.—An individual may not serve as a Director if the individual—*  *(A) is an officer, agent, or employee of the Corporation (other than the CEO);*  *(B) is, or has been within the preceding 2 years, a Member of Congress;*  *(C) is an elected official serving in a State, local, or Tribal government;*  *(D) is an officer or employee of the Federal Government or any State, local, or Tribal government;*  *(E) is a director, officer, trustee, agent, or employee of—*  *(i) a bargaining agent that represents employees of the Corporation;*  *(ii) an entity that has a material interest as a supplier, client, or user of the Corporation’s services; or*  *(iii) any of the entities determined under section 90305(c);*  *(F) receives any form of compensation or material benefit from an entity that has a material interest as a supplier, client, or user of the Corporation’s services, excluding compensation from a defined benefit plan resulting from the individual’s past employment; or*  *(G) has or holds any other fiduciary duty, legal obligation, office, employed position, or material interest that would prevent the individual from satisfying the requirements of subsection (a) under the applicable laws of the State in which the Corporation is incorporated.*  *(3) EXCEPTION.—Subparagraphs (C) and (D) of paragraph (2) shall not apply to an individual solely because the individual is an elected member of a school board or is employed by an institution of higher education (as defined in section 101 of the Higher Education Act of 1965 (*[*20 U.S.C. 1001*](http://uscode.house.gov/quicksearch/get.plx?title=20&section=1001)*)).* | Does not cure due process issues (see above)  Favoritism for specific stakeholder groups in derogation of the public interest and minority stakeholders could arise, for example:  - Establishing and assessing charges and fees for different users of the airspace  - Giving preference to operators with certain types of equipment  - Prioritizing a certain class/type of aircraft over another  - Making modernization decisions requiring certain private entities to invest in certain types of equipment  - Choosing the locations where modernization projects will be implemented first, thus benefitting one airport or users of that airspace | Nonairline stakeholders would hold 10 of the 13 proposed seats – a super majority – on the board despite airlines contributing the majority of the flight activity and almost 100% of the revenue. |

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| ***§ 90309. Committees of Board; independent auditors***  *(b) Independent Auditors.—The Board shall retain independent auditors to conduct annual audits of the Corporation’s financial statements and internal controls.* |  | Should alleviate concerns over breach of fiduciary duties by the Board. |

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| ***§ 90310. Advisory Board***  *(c) Membership.—*  *(1) NUMBER.—The Advisory Board shall consist of not more than 15 individuals, who are citizens of the United States, representing interested entities.*  *(2) REPRESENTATIVES.—The members of the Advisory Board shall include, at a minimum, representatives of the following:*  *(A) Air carriers.*  *(B) General aviation.*  *(C) Business aviation.*  *(D) Commercial service airports.*  *(E) Operators and manufacturers of commercial unmanned aircraft systems.*  *(F) Appropriate labor organizations.*  *(G) The Department of Defense.*  *(H) Small communities, including at least 1 community primarily served by a nonhub airport.* | Nav Canada alleges this did not help much in their privatization model. |  |

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| ***§ 90313. Charges and fees for air traffic services***  *(a) Assessment And Collection Of Charges And Fees.—Beginning on the date of transfer, and subject to this section and section 90502, the Corporation may assess and collect charges and fees from air traffic services users for air traffic services provided by the Corporation in United States airspace or international airspace delegated to the United States.*  *(c) Secretarial Review.—*  *(1) PUBLIC COMMENT.—Upon receiving a proposal from the Corporation under subsection (b)(3), the Secretary shall solicit public comments on the proposal for a 30-day period.*  *(d) Standards.—The Secretary shall apply the following standards in reviewing a proposal from the Corporation under subsection (c):*  *(1) The amount or type of charges and fees paid by an air traffic services user may not—*  *(A) be determinant of the air traffic services provided to the user; or*  *(B) adversely impact the ability of the user to use or access any part of the national airspace system.*  *(2) Charges and fees shall be consistent with the document titled ‘ICAO’s Policies on Charges for Airports and Air Navigation Services’, Ninth Edition, 2012.*  *(3) Charges and fees may not be discriminatory.*  *(4) Charges and fees shall be consistent with United States international obligations.*  *(5) Certain categories of air traffic services users may be charged on a flat fee basis so long as the charge or fee is otherwise consistent with this subsection.*  *(6) Charges and fees may not be imposed for air traffic services provided with respect to operations of aircraft that qualify as public aircraft under sections 40102(a) and 40125.*  *(7) Charges and fees may not be imposed for air traffic services provided with respect to aircraft operations conducted pursuant to part 91, 133, 135, 136, or 137 of title 14, Code of Federal Regulations.*  *(8) Charges and fees may not be structured such that air traffic services users have incentives to operate in ways that diminish safety to avoid the charges and fees.*  *(9) Charges and fees, based on reasonable and financially sound projections, may not generate revenues exceeding the Corporation’s current and anticipated financial requirements in relation to the provision of air traffic services.* | Much like in the following case, the new ATC Corporation would not be subject to the Transportation Secretary’s pervasive surveillance and authority:  ***Association of American Railroads v. US Department of Transportation*** (2015) where the US Court of Appeals for the District of Columbia held that Amtrak is a private corporation and Congress violated the constitutional provisions regarding separation of powers. Furthermore, that court rejected the notion that such limited government oversight, much like in HR 2997, renders activity nonregulatory and thus exempt from constitutional scrutiny.  **Delta Airlines** study (2016): estimated an increase of 20-29% in ATC fees on airline ticket under privatization. And privatization will not decrease delays 80% of which are airline or weather caused. Lastly, privatization could put further strain on smaller airports that serve rural communities. | ATC Corporation would have no regulatory power over their competitors as was the case in ***Association of American Railroads v. US Department of Transportation*** (2015) thus there would be no due process violation.  US airlines would fund ATC Corporation through user fees that they, not their passengers, would pay.  Corporate jet users would fund ATC Corporation through a fuel tax.  Nav Canada that privatized in 1996 showed from 1999 only a 5% increase in charges (which is 32% less than the rate of inflation!) |

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| ***§ 90314. Preemption of authority over air traffic services***  *(b) Preemption.—A State, political subdivision of a State, or political authority of at least 2 States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to air traffic services.*  *(c) Airport Owner Or Operator.—Subsection (b) may not be construed to limit a State, political subdivision of a State, or political authority of at least 2 States that owns or operates a landing area from carrying out its proprietary powers and rights over the landing area.* |  |  |

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| ***§ 90320. Transition plan***  *(a) Transition Team.—Not later than 120 days after the date of enactment of this subtitle, the Secretary, after meeting and conferring with the CEO or Interim CEO, shall establish a transition team to develop, consistent with this subtitle, a transition plan to be reviewed by the Secretary and, if approved, utilized by the Department of Transportation during the period in which air traffic services are transferred from the FAA to the Corporation.*  *(b) Membership.—The transition team shall consist of 12 individuals, who are citizens of the United States, as follows:*  *(1) 5 representatives appointed by the Secretary, including—*  *(A) the Deputy Administrator of the FAA;*  *(B) the Director of the FAA Mike Monroney Aeronautical Center;*  *(C) the Director of the FAA William J. Hughes Technical Center; and*  *(D) 2 representatives from the Office of Management and Budget, appointed with the concurrence of the Director of the Office of Management and Budget.*  *(2) 1 representative appointed by the exclusive bargaining representative of air traffic controllers certified under section 7111 of title 5.*  *(3) 1 representative appointed by the exclusive bargaining representative for airway transportation systems specialists in the Air Traffic Organization technical operations services certified under section 7111 of title 5.*  *(4) 5 representatives appointed by the CEO.* | Numerous entities have determined that 2 years is unfeasible and it would take around 10 years. |  |

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| ***§ 90501. Safety oversight and regulation of Corporation***  *(b) Safety Management System.—*  *(4) FAA OVERSIGHT.—To the maximum extent practicable, for at least 2 years after the date of transfer, the Air Traffic Safety Oversight Service of the FAA shall employ the same oversight processes and procedures in use before the date of transfer.* |  | **Air Traffic Safety Oversight Service**:  (https://www.faa.gov/about/office\_org  /headquarters\_offices/avs/offices/aov/)  Currently, the FAA is both the ATC service provider and its own regulator. Under the new system there would be an arm’s length relationship. This proposed structure will separate ATC services from ATC safety regulation significantly reducing the potential for conflicts of interest due to self-regulation. Indeed, ICAO guidance calls for this separation, which will only make the FAA as a regulator that much more efficient.  **MITRE Corp** (Dan Brown et al.) (2014): comparing Canada, New Zealand, Australia, United Kingdom, France, and Germany (6 of over 40 countries) who have separate Air Navigation Service Providers (ANSPs) showed that the civil aviation authority being separate from the ANSPs was more successful, safer overall, and no country wanted to revert back to the previous model. |

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| ***§ 90705. Special rules and appeals process for air traffic management procedures, assignments, and classifications of airspace***  *(a) In General.—If the Corporation proposes to modify, reduce, decommission, or eliminate an air traffic service or air navigation facility that would result in the loss of or material reduction in access to a public-use airport or adjacent airspace for any class, category, or type of aircraft or aircraft operation, as determined by the Secretary, the Secretary shall designate an officer to issue a notice in the Federal Register and establish a docket that includes—*  *(1) a copy of the Corporation’s proposal;*  *(2) available data on the usage of the affected air traffic service or air navigation facility;*  *(3) an assessment of the designated officer on the effects of the proposal; and*  *(4) an assessment of the designated officer on any proposed action to mitigate the loss of or material reduction in access to the public-use airport or adjacent airspace.*  *(b) Proceeding.—The designated officer shall provide an opportunity for public comment on the proposal for a period of at least 60 days.*  *(c) Decision.—Not later than 30 days after the last day of the public comment period, the designated officer shall—*  *(1) determine whether the proposal is in the public interest, including whether any material reduction in access to a public-use airport or adjacent airspace has been mitigated to the maximum extent practicable; and*  *(2) approve or disapprove the proposal on that basis.* |  |  |

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| ***§ 90706. Definitions***  *In this chapter, the following definitions apply:*  *(1) MATERIAL REDUCTION.—The term ‘material reduction’ means, with respect to access to a public-use airport, including a general aviation or rural airport, a materially diminished ability to safely operate or navigate to or from the airport or adjacent airspace during a time of day, weather condition, or season of the year.*  *(2) RURAL AIRPORT.—The term ‘rural airport’ means a public-use airport located in a rural area (as that term is defined in section 520 of the Housing Act of 1949 (*[*42 U.S.C. 1490*](http://uscode.house.gov/quicksearch/get.plx?title=42&section=1490)*)).* |  |  |

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| ***§ 90907. Cooperation with Department of Defense and other Federal agencies after date of transfer***  *At least 1 year prior to the date of transfer, the Corporation, the Department of Transportation, and each Federal department or agency supported by the FAA’s operation of air traffic services, including the Armed Forces, shall enter into a tripartite agreement to—*  *(1) ensure cooperation between the Corporation and the department or agency on the delivery of air traffic services;*  *(2) facilitate the safe provision of air traffic services to the department or agency; and*  *(3) address how the Corporation and the department or agency will coordinate and communicate on the day-to-day operations of the national airspace system.* |  |  |

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| ***§ 91109. Prohibition on striking and other activities***  *(a) In General.—Employees of the Corporation are prohibited from—*  *(1) participating in a strike, work stoppage, or slowdown against the Corporation; or*  *(2) picketing the Corporation in a labor-management dispute if such picketing interferes with the Corporation’s operations.*  *(b) Termination.—An employee who participates in an activity described in subsection (a) shall be terminated from employment with the Corporation.* |  |  |

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| [**Subtitle C—Other Matters**](https://www.congress.gov/bill/115th-congress/house-bill/2997/text#H3A5F8692D7A64A90AC114E46AFE411EA)  **SEC. 242. ENSURING PROGRESS ON NEXTGEN PRIORITIES BEFORE DATE OF TRANSFER.**  (a) Near-Term NextGen Priorities.—Prior to the date of transfer (as defined by section 90101(a) of title 49, United States Code, as added by this Act), the Administrator of the Federal Aviation Administration, in consultation with the NextGen Advisory Committee, shall prioritize the implementation of the following programs:  (1) Multiple runway operations.  (2) Performance-based navigation.  (3) Surface operations and data sharing.  (4) Data communications. | **Government Accountability Office (GAO)** (Sept 7, 2017): While specific NextGen initiatives and programs have changed over time, FAA's 2016 cost estimates for implementing NextGen through 2030 for 1) FAA and 2) industry—$20.6 and $15.1 billion, respectively—are both within range of 2007 cost estimates.  The **U.S Congressional Budget Office (CBO)** estimates that the proposal to create an independent air traffic control organization by the House of Representatives would increase the federal deficit by nearly $100 billion through 2027. | ATC Corporation will continue to implement and deliver the benefits of NextGen technologies.  **Office of Inspector General (OIG) Report** (2016): En Route Automation Modernization (ERAM) program, originally scheduled for completion in 2010, finished more than $400 million over budget in 2015. |
|  | Letters against HR 2997:  [http://www.atcnotforsale.com/our-supporters-members-of-congress/#](http://www.atcnotforsale.com/our-supporters-members-of-congress/)  <http://www.atcnotforsale.com/who-is-opposed-mayors-and-opinion-leaders/>  <http://www.atcnotforsale.com/aviation-leaders-in-your-state/> | Letters in support of HR 2997:  <https://transportation.house.gov/21st-century-airr-act/letters-of-support.htm> |

Quotes from prominent aviators and industry:

Capt “Sully” Sullenberger – “Lobbyists want to privatize air traffic control, handing control to the largest airlines, giving them the keys to the kingdom. We can’t trust the people who make your airline seats smaller to run ATC.”

Title 31: (see text of bill) refers to the appropriation process and government oversight by control of the power of the purse. Title 31 authority explains why we currently have hearings, controls, measures, and prohibitions on ATC.

Reasons why the bill is incomplete:

* Failure to address a national security issue regarding the employment of foreign nationals.
* Implications include controlling the US President’s flights and DoD missions

About the Authors

Dr. Sarah J. Nilsson, Esq.

Sarah Nilsson has both an aviation and a legal background. She began her career as a pilot in 1994. She holds an ATP in multi and single engine fixed-wing airplanes, a gold seal CFI, CFII, MEI, and a small UAS pilot certificate.

In 2014, Sarah began her legal career, becoming founder and managing attorney of Nilsson Law, PLLC. Since 2015, she has been full-time faculty at Embry-Riddle Aeronautical University (ERAU) in Prescott, Arizona, teaching Aviation Law, Global UAS Regulations, Global UAS Risk Management, UAS Ground School, Business Law, and Business Ethics. Sarah volunteers as a FAA Safety Team Representative.

Sarah is co-author of the 6th edition of Practical Aviation and Aerospace Law, with Scott Hamilton. In 2017, she published her own book on U.S. Drone Law for the American Bar Association entitled Drones Across America. She makes multiple media appearances as an expert in UAS regulation, law, and policy.



Michael Ledermann earned a Bachelor of Science in Aerospace Engineer from Embry-Riddle Aeronautical University (ERAU) - Daytona Beach, Florida, and has varied aerospace project experience most recently as a contractor at Google X and his Unmanned Aircraft Systems startup company, Aerial Applications.

Michael’s interdisciplinary interests include disruptive technology, flight, and the impact federal regulations have on the aviation industry.  Michael is currently furthering his education as a flight student pursuing a Bachelor of Science in Aeronautics at ERAU - Prescott, Arizona.  He can be contacted at mike.ledermann@gmail.com

