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Legislative Turbulence: The House Aviation Reauthorization Bill Is in for a Bumpy Ride

Executive Summary

- The House-passed measure to reauthorize the Federal Aviation Administration (FAA), H.R. 2881, contains controversial provisions opposed by aviation interests and is subject to a veto threat by the Administration. At a time of heightened concern over the future of the airline industry and aviation safety, consideration of the House bill will only delay needed reforms of the FAA and improvements in safety.
- In contrast, the Senate committees of jurisdiction have developed a compromise bill that avoids controversial provisions—particularly in the labor area—and provides a framework for funding modernization of the air traffic control system in a manner agreed to by the aviation interests paying for the program.
- Examples of highly controversial labor provisions in the House bill include:
 - Reopening the contract settled in 2006 with the air traffic controllers union. The 2006 contract saves taxpayers nearly \$2 billion over the next five years; and
 - Changing labor law as it applies to the FedEx Corporation.
- Additional controversial provisions in the House bill are:
 - A requirement that the FAA certify foreign repair stations; and
 - Language affecting the 2007 Open Skies agreement between the United States and the European Union.
- Consideration of the House bill would serve to delay enactment of important reforms:
 - Airline passenger service protections;
 - Safety recommendations made by the Department of Transportation's Inspector General; and
 - Improvements in the Essential Air Service program.

The Federal Aviation Administration (FAA) reauthorization bill passed by the House, H.R. 2881, contains controversial labor provisions that have generated strong opposition by aviation interests and provoked a veto threat by the Administration. At a time of increased concern about aviation safety, modernization of aviation infrastructure, and the future of the airline industry, the House's approach is ill-advised and will delay the enactment of needed reforms.

In contrast to the House approach, the Senate Commerce and Finance Committees have agreed on a bill that avoids controversial changes in labor law, utilizes an equitable financing mechanism to pay for urgently needed infrastructure upgrades, and provides a path toward enacting important reforms to enhance aviation safety and passenger protections.

CONTROVERSIAL PROVISIONS IN HOUSE-PASSED BILL

An examination of the contents of H.R. 2881 reveals a list of policy mistakes. The House bill should serve as a guide for what the Senate should avoid when it addresses reauthorization of the Federal Aviation Administration. Key among the concerns is that the bill seeks to re-open the contract settled in 2006 with the air traffic controllers union, changes the application of labor law for FedEx, and changes current law regarding foreign repair stations and the Open Skies agreement with the European Union.

Repeal Air Traffic Controllers' Collective Bargaining Agreement: Change Future Rules

H.R. 2881, the House-passed FAA reauthorization bill, seeks to cancel retroactively the current collective bargaining agreement in place since 2006 for air traffic controllers and replace it with the prior contract from 1996. It also seeks to change the contract negotiations process between the FAA and the National Air Traffic Controllers Association (NATCA), arguably to secure for the union what they were unable to obtain at the bargaining table.

Under current law, passed in 1996, should the FAA and the air traffic controllers union fail to reach a collective bargaining agreement, the FAA is to send its final offer to Congress for review. Congress has 60 days to block the final offer or it can be implemented. Such a situation arose in 2006. Pursuant to law, the FAA sent its final offer to Congress, Congress did not see fit to block the final offer, and the contract was implemented.

According to Secretary of Transportation Mary Peters, NATCA has turned to Congress in an attempt to invalidate a nearly two-year-old contract that saves the American taxpayer more than \$1.9 billion over a five-year period, supports investments in new air traffic equipment, and provides the flexibility needed to manage record demand for air travel.¹ Despite these savings, air traffic controllers remain among the highest paid federal employees, with average compensation totaling \$171,000 in FY 2007. The top 100 controllers earn \$211,000 in annual compensation, on average. New controllers, on average, make \$94,000 in cash annually after five years in the field, excluding benefits.

¹ Statement from the U.S. Secretary of Transportation Mary E. Peters, June 28, 2007. See: <http://www.dot.gov/affairs/dot6107.htm>.

Rolling back to the 1996 NATCA contract as H.R. 2881 requires would serve to raise pay for air traffic controllers by 40 percent. There is also concern that reinstating the 1996 agreement could impact all other collectively-bargained agreements the FAA has with NATCA and other unions. The Congressional Budget Office estimates that the permanent impact of re-imposing the 1996 collective bargaining agreement with NATCA over the six-month period between enactment and the final decision by the arbitrators would be approximately a half-billion dollars over the next four years, plus any additional costs imposed by the arbitrators' final decision.

New Authority for the National Labor Relations Board

The House bill contains a provision that changes the labor law that now applies to FedEx Express workers, and makes it easier for organized labor to unionize these workers. Currently, FedEx Express, deemed an express carrier, falls under the Railway Labor Act (RLA), which allows unionization on a national scale (this is viewed as a more difficult task for unions). The House bill instead puts FedEx Express under the National Labor Relations Board, which allows local units to unionize, an easier task for unions.

Since its inception, FedEx, like all express companies, has been covered under the Railway Labor Act. This designation was erroneously dropped by Congress in 1995. At the request of Senator Fritz Hollings, the 1996 FAA reauthorization re-designated FedEx as an express carrier. Trucking companies are generally governed by the National Labor Relations Act, as is the case with UPS. According to *Congressional Quarterly*, FedEx has argued in the past that its operational structure should not be compared with that of UPS because FedEx began as an air freight line, whereas UPS focused primarily on ground freight until the early 1990s.² Such a change in labor law is bound to be controversial and could threaten progress on the bill.

Unsupported Requirement Regarding Repair Stations

Section 304 of H.R. 2881 requires that each FAA-certified foreign repair station be inspected by safety inspectors at least twice a year. Making sure that facilities outside the United States do not corrode aviation safety in the United States is a worthy goal. The Administration, however, has raised concerns that the repair station requirement in H.R. 2881 is unsupported by any safety data or other analysis demonstrating that current safety oversight efforts at repair stations are inadequate.³ The Administration notes that the FAA currently has agreements with France, Germany, and Ireland to perform repair-station inspections on its behalf. Currently, 152 of the approximately 700 currently certificated foreign repair stations are covered by these agreements. Efforts are underway to negotiate similar agreements with the European Aviation Safety Agency (EASA), Australia, China, and New Zealand. The requirement in the House bill could hinder these efforts to expand the reach of FAA safety efforts abroad.

² Kathryn A. Wolfe, "AFL-CIO Begins Drive to Repeal Decade-Old Labor Provision Helpful to Fed-Ex," *Congressional Quarterly*, March 5, 2007.

³ Statement of Administration Policy on H.R. 2881 – FAA Reauthorization Act of 2007, September 19, 2007. <http://www.whitehouse.gov/omb/legislative/sap/110-1/hr2881sap-r.pdf>

Further, the Administration has expressed concern that H.R. 2881 could preclude taking advantage of common-sense, reciprocal agreements. Currently, over 1,200 repair stations in the United States are overseen by the FAA on behalf of foreign regulatory authorities, establishing a complimentary efficiency. The safety of airplanes and air passengers is clearly a shared interest of all countries. If the FAA is required to inspect all U.S.-certificated repair stations abroad, the United States can expect the same from foreign authorities.

Open Skies

In 2007, the United States and the European Union (EU) signed an air transport agreement that permits air carriers in the United States and the EU to operate from any point within the United States to any point within the EU, and vice versa. As part of the agreement, known as Open Skies, the U.S. permitted foreign airlines to invest in U.S. airlines without gaining “actual control of the U.S. carrier.” H.R. 2881 contains a provision that purports to clarify current law concerning what it means for a foreign ownership entity to exercise “actual control” of a U.S. carrier. There is significant concern that the language is susceptible to an interpretation that would disturb the Open Skies alliance agreement.

SENATE SETS A CONSENSUS APPROACH TO FUNDING AVIATION INFRASTRUCTURE IMPROVEMENTS

On April 25, 2008, the Senate Finance and Commerce Committees announced details of a bipartisan compromise regarding modifications to the American Infrastructure Investment and Improvement Act passed by the Finance Committee to reauthorize the Airport and Airway Trust Fund (AATF), while also funding 2009 shortfalls in the Highway Trust Fund. The agreement includes as much as \$290 million in new funding each year to the AATF to finance the satellite-based NextGen air traffic system, and restores \$5 billion to the Highway Trust Fund for 2009.

Based on preliminary estimates by the Finance and Commerce Committees, funding is obtained as follows:⁴

General Aviation: The bill increases the General Aviation jet fuel tax from the current 21.8¢/gallon to 36¢/gallon. This will provide approximately \$240 million per year in additional AATF funding.

Fractionals: Fractionals are partially (fractionally) owned aircraft, with parties owning shares of a plane. The bill classifies Fractionals as General Aviation jets for tax purposes. This portion of the bill will provide approximately \$50 million per year in additional funding for AATF.

Tax Exempt Status: Also included is an \$8 million provision eliminating the tax-exempt status of some light jet aircraft.

⁴ Information contained herein is based on a joint press release by the Senate Finance and Commerce Committees. <http://finance.senate.gov/press/Bpress/2008press/prb042508.pdf>

Not only does the package provide funding to continue infrastructure investments, it also provides resources to increase safety, ease congestion and delays, and create a modern aviation system without saddling the struggling airline industry with additional fees and taxes.⁵ The airline industry currently faces numerous pressures such as surging fuel costs and economic downturn. Since Christmas, six U.S. airlines have ceased operations, and Frontier Airlines filed for Chapter 11 bankruptcy protection. In addition, fuel prices have gone up 217 percent since 2000, while domestic fares have gone down 0.5 percent. Cognizant of such challenges, the Senate package delicately balances the needs of the industry with the demands of modernizing and funding an outdated system.

KEY REFORMS INCLUDED IN THE SENATE PACKAGE

The Senate package includes critical items that make necessary adjustments to DOT and FAA operations. These include changes to airline passenger service procedures, the adoption of important changes to the way FAA executes its safety imperatives and mandate, and modifications to programs that provide air service to certain small communities.

Because the House bill elicited a veto threat, these reforms are now in danger of failing to become law. Adoption of these needed reforms and improvements depends on the Senate's ability to keep the compromise package free of extraneous and additional controversial provisions like those included in the House bill.

Airline Passenger Services Protections

Recent reports of passengers stranded in airports and on planes, along with chronically delayed flights, have focused public attention on the treatment of airline passengers on planes and in airports. The airline service provision in the Senate package requires airlines to develop contingency plans to address situations in which the departure of a flight is substantially delayed while passengers are confined to an aircraft. A plan must outline how an airline will ensure that passengers are provided:

- a) Adequate food, potable water, and restroom facilities; and
- b) Timely and accurate information regarding the status of the flight.

These airline plans must be filed with the Department of Transportation (DOT) and, if approved by DOT, airlines must make the information publicly available and accessible.

In the absence of such a plan the air carrier must permit passengers to deplane after three hours have elapsed, unless the pilot believes the flight will depart within 30 minutes after the three hour delay mark, or if deplaning raises significant safety or security concerns.

⁵ The Senate compromise does not contain an increase in the international departure and arrival tax or the \$25 per flight surcharge. The \$25 per flight surcharge was originally in the Commerce Committee bill, S. 1300, and the increase in the international departure and arrival tax was originally in the Finance Committee bill, S. 2345.

These service provisions also mandate improved disclosure of flight information to passengers when purchasing tickets. Airlines are required to post the on-time performance of chronically delayed or cancelled flights on their websites—including delays, diversions, and cancellations—updated on a monthly basis. Chronically delayed or cancelled flights must also be identified by the airline when a customer is booking a ticket on a website, prior to purchase.

A related provision in the package creates an advisory committee for aviation consumer protection to advise the DOT Secretary on carrying out air passenger service improvements. The committee will evaluate existing aviation consumer protection programs and provide recommendations for improvement.

Key Safety Improvements

Recent events have underscored the urgent need for the FAA to address its oversight of required safety inspections and maintenance. Notably, the FAA found that certain carriers were not in compliance with required safety inspections. In response, the FAA levied significant fines and air carriers grounded nearly 700 planes after it widened its review across the entire industry.

Subsequent recommendations from the Department of Transportation’s Inspector General (IG) identified key safety weaknesses at the FAA: the agency’s oversight and inspection of air carriers needs to be strengthened; the variety of programs aimed at runway safety need to be updated and improved; and the recruitment and retention of the agency’s core safety workforce— its inspectors and air traffic controllers—must be upgraded. The Senate package meets this challenge directly by largely adopting the DOT IG's recommendations.

With regard to FAA safety inspections in particular, the package:

- Makes key changes to the Voluntary Disclosure Reporting Process to ensure that air carriers take comprehensive actions to correct the underlying causes of violations;
- Implements a process to track field office inspections and notify local, Regional, and Headquarters offices of overdue inspections;
- Establishes an independent body to investigate safety issues identified by FAA employees; and
- Develops a National Review Team to conduct reviews of the FAA’s oversight of air carriers.

Essential Air Service and Small Community Air Service Development Program

The remaining provisions propose improvements to the Essential Air Service program (EAS) and Small Community Air Service Development Program (SCASDP). Authorized funding for EAS is increased to \$175 million, a \$48 million increase from the current authorized amount. Other provisions aimed at improving service to EAS communities include:

- Incorporation of financial incentives into contracts with EAS carriers to encourage better service;

- Establishment of longer-terms EAS contracts if it is determined to be in the public interest;
- Development of a program to create incentives for large carriers to code-share on service to small communities;
- A requirement that large airlines code-share on EAS flights in up to 10 communities;
- The addition of Airport Improvement Program (AIP) funding for converting EAS airports into general aviation airports if EAS communities exit the program; and
- An increase in funding for contract towers that benefit small communities.

CONCLUSION

The Senate substitute to H.R. 2881, the FAA reauthorization bill, is a bipartisan compromise that avoids the poor policy choices contained in the House bill, provides critical financing needed for system improvements, and avoids heaping additional financial burdens on key air system sectors. The substitute also contains key safety improvements articulated in light of the most recent evaluations of FAA safety practices and makes critical upgrades to the Essential Air Service and Small Community Air Service Development programs.

Rejecting the House bill and its controversial approach to FAA reauthorization is the best way to insure that these critical changes to current practice and structure can become law.