

The United States Air Traffic Service Corporation Act
(section-by-section analysis)

The bill is divided into six parts. The first title of the bill sets out the fundamental findings, purpose, and definitions that underlie enactment of the United States Air Traffic Service Corporation Act.

The second title of the bill contains the provisions that create, and set forth the powers and duties of, the new "United States Air Traffic Service Corporation" (Corporation). This title would serve as a corporate charter for the Corporation.

The third title of the bill specifies the three permanent, continuing responsibilities that the Corporation will be required to meet as a federal Corporation throughout its existence despite its creation as a free-standing entity.

The fourth title of the bill amends federal aviation law (formerly the Federal Aviation Act of 1958) to set forth exactly which Federal Aviation Administration (FAA) safety duties would be transferred to the Corporation and what new authorities the FAA would gain to oversee directly the Corporation's activities.

The fifth title of the bill contains other changes to current law that would be made to effectuate the transfer. Exclusion of the activities of the new Corporation from the federal budget is the most important provision in this title.

The sixth title of the bill contains the "transition" provisions that are needed to effectuate transfer but do not need to be maintained as permanent law. The "savings provisions" that assure the continuity of Federal Aviation Regulations and rulings and of litigation related to the air traffic control system are examples of the transition provisions.

TITLE I - GENERAL

Sections 101 and 102 (Findings; Purpose; Definitions). This title contains the Congressional findings and purpose underlying creation of the Corporation, and definitions for important terms used in the Act. The proposed findings set out the reasons why, despite the excellent performance of FAA's air traffic control system from its inception to the present day, it is now desirable and necessary to adopt a new corporate form that relieves the entity of standard government contracting, budgeting, and personnel laws.

Section 102 defines an important term used throughout the legislation—the "date of transfer." Many important changes must occur in advance of transfer (e.g., issuance by FAA of its new rules applicable to the Corporation), and the legislation provides an adequate period between the date of enactment and the date of transfer (specified as October 1, 1996) for such purposes. The FAA

Administrator could delay this date of transfer if the new entity is not prepared to execute fully the safety duties being transferred. Other critical terms would be defined as they are in federal aviation law (formerly the Federal Aviation Act of 1958).

TITLE II - TRANSFER OF AIR TRAFFIC SERVICE FROM THE FEDERAL AVIATION ADMINISTRATION

This title would create a new corporate entity (the Corporation) to succeed to FAA's air traffic control operational activities. This subtitle effectively acts as the charter for the new Corporation. As a body of federal law enacted by Congress, this also means that the Corporation would be fully subject to Congressional oversight as to the performance of its safety activities (and its other activities as well (e.g., the adjustment of user fees)).

Sections 201 and 202 (Establishment of the Corporation). These sections establish the Corporation as a "wholly owned Government corporation" under the current federal authority found in title 31, United States Code. This authority has been used in the past to create entities as varied as the Saint Lawrence Seaway Development Corporation, the Government National Mortgage Association, and the Tennessee Valley Authority.

Creation of the Corporation as a wholly owned Government corporation, rather than a private corporation, is desirable for a number of reasons. First, maintaining air traffic control in a federal entity assures that, to the degree that Congress needs to oversee the activities of the Corporation, its existence as a government corporation would permit this. Second, the FAA air traffic control system is comprised of a vast number of valuable air navigation and related facilities, which the U.S. taxpayer has paid for. No equitable approach for transfer of these facilities to a truly private entity could be developed that would not burden the new entity with an unacceptable debt load. The legislation also contemplates re-transfer of the Corporation to the federal government under some circumstances, including war or other national emergency, which makes creation of a truly private corporation a much less viable option. Third, this legislation prohibits Corporation employees from engaging in a strike as an element of collective bargaining. While this is an accepted prohibition as to federal employment with the FAA and for other public employment, it would be unprecedented in the private sector.

Section 202 addresses several fundamentals of the Corporation. One critical specification is that the Corporation is explicitly made subject to the regulatory authority of the FAA, and also to the authority of the National Transportation Safety Board (NTSB). This is to rule out any diminution of air traffic control oversight by these two organizations. The Corporation would, for example, be required to participate at NTSB's request in the investigation of aviation

accidents and incidents involving air traffic control in the same manner as the FAA currently does.

It is also made explicit that the Corporation must operate the air traffic control system as a business enterprise on an efficient, self-supporting, and not-for-profit basis, without federal government appropriations or other sources of federal financing other than those provided as a transitional factor by the legislation. These ground rules are necessary to assure users that the fees they pay to the Corporation will be used strictly to provide necessary air traffic services.

In view of the problems encountered to date in the acquisition of complex new air-traffic computer technology and its integration, the bill would exclude the new entity from the standard acquisition statutes and regulations governing federal procurements. This flexibility is particularly important because the entity would be 100-percent user-fee funded, and a prime objective of this legislation is to provide the opportunity for focused management of this revenue stream to accelerate the adoption of new automation technology as rapidly as possible. The limited applicability of federal personnel requirements is also set forth.

Section 202 also provides that the activities of the new entity must conform to the requirements of the National Environmental Policy Act. Finally, this section provides that the new Corporation would be the exclusive entity for providing civilian air traffic services on behalf of the United States.

Section 203 (Board of Directors). This section establishes the makeup of the board of directors that would oversee the corporation as a whole and, in particular, the primary areas of user-fee structure, the annual budget, the issuance of indebtedness, and appointment of the Chief Executive Officer (CEO) of the Corporation.

The board makeup is directed both toward accountability for the public goals of aviation safety, efficient operation of the system, and the national defense, and the goal of closer accountability to the needs of those users that rely most on air traffic services. The Secretaries of Transportation and Defense would be board members. Additionally, there would be nine Presidential appointees, who would be subject to confirmation by the Senate and, who would serve at the pleasure of the President. These seats would be held by system users that pay fees and by representatives of non-commercial aviation, the Corporation's organized employees, airports, and the business community.

The Chairman would be selected from among the eight Presidential appointees. Members would be appointed for terms of five years, except that the Secretaries would serve terms coincident with their appointments to their positions. Section 205 also provides that the Secretary of Transportation must approve, in advance, borrowing proposed by the full board.

Section 204 (Committees of the Board). This section establishes a "safety committee of the board" and provides authority for any other committees appropriate to the functioning of the new Corporation. The safety committee is designed to provide further assurance that the safety practices and performance of the new Corporation will maintain the same high level of performance currently provided by the FAA.

Section 205 (Corporation Officers and Their Responsibilities). This section establishes the broad authorities of the Chief Executive Officer to manage the personnel of the Corporation, and in particular to set the pay and other benefits of employees without regard to federal personnel requirements.

The section also specifies that the President would, upon enactment of the legislation, have the authority to appoint an interim CEO immediately to exercise all the authority of the Corporation until a board of directors is named and in place. This would be desirable to undertake the extensive preparation that would be necessary to prepare the new entity to succeed to the air traffic operational responsibilities of the FAA.

Section 206 (General Corporate Authority). This section sets out in the broadest terms the general corporate authority that would be available to the Corporation, in addition to the specific air traffic authority to which the entity would succeed, pursuant to section 207 of the bill.

Section 207 (Air Traffic Responsibilities and Authorities). This section specifies in detail the operational authorities and responsibilities that would be transferred from the FAA to the Corporation over the movement of aircraft in United States airspace. This authority dovetails with the amendments to aviation safety law (formerly the Federal Aviation Act of 1958) that are the subject of title IV of the bill. Related authority, such as research and development authority in support of air traffic management, is also authorized. Subsection (a), for example, provides that the Corporation would "exercise day-to-day operational supervision and control over the movement of aircraft on behalf of the United States that was provided by the Federal Aviation Administration prior to the date of transfer." Paragraph (2) of the subsection sets out the basis on which the Corporation and the FAA would jointly implement airspace rules and more routine airspace actions and assignments.

Paragraph (5) sets forth a basis for interaction with military aircraft and the Department of Defense that assures continuation of the existing precedence of military maneuvers in U.S. airspace. Paragraph (6) maintains the current policy of systematic planning for future airspace needs.

Paragraph (8) provides that the Corporation "shall establish procedures, before transition, to notify the Administrator and the public when major changes in service are contemplated." This would ensure that actions of this nature by the

Corporation are brought to the attention of affected parties in advance of their implementation.

Paragraph (10) is another important provision. It provides that enforcement of airspace and air traffic rules will continue to be the responsibility of the FAA, even if the rules have been promulgated by the Corporation. This is to ensure that there is no reduction in the efficacy and speed of enforcement, and no delays due to lack of coordination between the entities.

Section 208 (Authority to Incur Indebtedness). This section authorizes the Corporation to borrow from the U.S. Treasury, or to enter private financial markets to sell bonds or other obligations, to raise capital for development of air traffic facilities and equipment. One of the primary purposes for creation of the free-standing entity is to provide a means of raising needed capital without affecting the federal deficit. The FAA's existing air traffic facilities require modernization, and the newest technologies coming on line (e.g., global positioning system) may justify further, cost-beneficial investment that is not now even contemplated.

Section 208 bars state and local taxation of the principal and interest of the Corporation indebtedness. This is specified in the recognition that the current deficit borrowing that would be supplanted by Corporation borrowing is similarly free of state and local taxation.

Section 209 (Corporation User Fees). This section sets forth the basis on which the new Corporation would finance its operational activities and capital projects. One of the primary reasons to shift air traffic services to the Corporation is to shape future developments from the perspective of those who actually use air traffic services. One of the most direct mechanisms for accomplishing this is funding the entity directly from user fees paid for services rendered, with representation of those paying user fees on the board of directors of the entity. Section 209 mandates that the adjustment of fees be undertaken using a public process, to permit the input of direct users and other interested parties.

Section 209 contains other statutory limits on the imposition of user fees. The Corporation would be required not to discriminate against similarly situated users, for example. A provision for the review of the fee structure and changes by the Justice Department for anti-competitive problems is also provided.

To provide a predictable transition from current federal excise taxes to a future combination of the Corporation fees and lowered federal excise taxes, the fee structure is dictated in statute for an initial period of two years following the date of transfer. This will give the board of directors a limited period in which to focus broadly on all matters of corporate policy and direction, but with the recognition that a revised user-fee structure would be established after the initial

period. A comprehensive cost-allocation study is also required to guide this transition to fees that better reflect the actual cost of services provided.

In order to maintain continuity during the 2-year transition, section 209 would establish that the current, major aviation excise taxes be effectively divided between the Corporation and remaining FAA programs. That is, the 10-percent airline ticket tax would be split into an 8.5-percent user fee for the Corporation and a 1.5-percent airline ticket tax for deposit in the Airport and Airway Trust Fund to support the FAA's airport improvement grant program. In this way, the support of existing federal programs, the overall costs borne by users and providers of air transportation, and the resources available for air traffic control would all continue in line with current, planned budgets for the statutory transition period. The same treatment would be accorded the waybill excise taxes and international departure fee.

In the case of non-commercial aviation, general aviation (including business aircraft) excise taxes levied on the spectrum of aviation fuels would continue at their current levels, and the new Corporation would not impose added user fees. This approach would continue to motivate general aviation users to make maximum use of the many air traffic services available to them on a discretionary basis. It is a safety concern that future Corporation user-fee policy could otherwise price some of these services at a level that would discourage their use.

Section 209 takes the same approach to use of the air traffic control system by "public users." This is a broad spectrum of users that includes the FAA itself, municipal and state aircraft such as hospital helicopter emergency rotorcraft, and military aircraft. User fees have never been imposed on this group because their activities benefit the public as a whole. While it can be asserted that these users would make more efficient use of the airspace (i.e., less use) if user fees were charged, there are compelling reasons to maintain the status quo. For instance, the imposition (or waiver for that matter) of fees on FAA aircraft conducting inspections of the ATC system could be viewed as having the potential to influence the outcome of official U.S. inspections of the Corporation's activities. On this basis, public aircraft would be statutorily granted the same user-fee status as non-commercial aviation.

Section 210 (Limitation on State and local taxation). In view of the substantial public benefits to be provided by the new Corporation, including providing air traffic control services at no cost to public entities, it is proposed that the new entity be free of state and local tax burdens. This section provides that the Corporation would be relieved of state or local taxation generally, except for direct provision of services such as water and sewer service and for unemployment insurance coverage.

Section 211 (Preemption of authority over air traffic control). This section merely makes explicit what has always been elemental about federal aviation activities--

that federal air traffic control activities supplant and preempt the exercise of such authority by states or localities.

Section 212 (Civil Liability). This section effectively extends to the Corporation the same tort liability standard under which the FAA operates. This means that activities of the Corporation will be litigated under the Federal Tort Claims Act. Also, the same basic jurisdictional and procedural rules would be extended from FAA practice to the Corporation. Arrangements would be permissible for use of private attorneys (with the consent of the Attorney General) and for limits on the use of Corporation personnel as expert witnesses in general civil litigation.

Section 213 (Eminent domain authority). This section provides the new Corporation with the needed authority to obtain sites for new and expanded air traffic control facilities, comparable to the authority now exercised by the FAA.

Section 214 (Relationships with Other Agencies). This section provides the basic authority for the Corporation to continue the existing inter-agency agreements and joint projects that the FAA has entered into over the years with the Department of Defense (DoD), including the exchange of personnel. The DoD would also be able to participate in Corporation acquisitions in areas of joint activity or responsibility.

Subsection (b) of this section provides that the National Telecommunications and Information Administration retains ultimate control over the frequency spectrum dedicated to civilian air traffic control, and that the Corporation would rely on the FAA to obtain needed frequency licenses for its operations.

TITLE III – PERMANENT FEDERAL REQUIREMENTS

Section 301 (Transfer to Defense Department in Time of War). This section repeats, in the Corporation chartering legislation, the provision of law already found in aviation safety law (formerly the Federal Aviation Act of 1958) that provides for the transfer of air traffic control activities to the Department of Defense in time of war or other national emergency, pursuant to direction of the President by executive order. The Corporation is directed to participate in developing plans for this contingency.

Section 302 (Collective bargaining). This section would provide Corporation employees the right to engage in collective bargaining over wages and working conditions, an authority not available to current FAA employees. However, the prohibition on self-help involving the withdrawal of services would continue, substituting binding arbitration for strike action. In place of the right to participate in a strike, work stoppage, or slowdown, section 302 would establish in statute a "Labor Resolution Board" for the binding resolution of bargaining impasses. This three-member board would consist of a Corporation

management representative, a Corporation organized-labor representative, and a neutral individual appointed by the Secretary of Labor. No member of this board could be a Corporation employee.

Section 303 (International Activities). This section requires the Corporation to carry out its responsibilities and duties consistently with international obligations the United States has entered into, and to take into consideration any applicable law and requirements of foreign countries.

TITLE IV – AMENDMENTS TO FEDERAL AVIATION LAWS

Section 401 (Access to the Air Traffic System). This section addresses current law concerning the public right of transit through the navigable airspace, to make explicit that the FAA will ensure, through regulation, that the Corporation maintains this freedom of transit, explicitly defined to mean, in part, "reasonable access to airports, airways, and airway facilities without regard to category and class of aircraft." Thus, non-commercial aviation could not be deprived of access to the air traffic system by the Corporation in favor of other categories or classes of users.

Section 402 (Definitions). This section makes minor additions and changes to the existing definitions found in federal aviation safety law, to permit the transfer of some of FAA's air traffic control duties to the Corporation.

Section 403 (Airspace Control and Air Traffic Rules). This section makes some of the most significant amendments proposed for current FAA authority. In essence, this section recasts the FAA's fundamental authority to control U.S. airspace into "before" and "after" snapshots of its existing powers. In the case of each relevant authority, the current law is restated for the period up to the date of transfer, and then a subset of that authority is continued for the period after transfer. The FAA's authority over daily operations is effectively extracted and moved to the new authority governing the Corporation (see section 207 of the bill). This division of authority has been precisely allocated so that the FAA retains full authority to direct policy and rulemaking changes as necessary to assure the maintenance of the utmost in aviation safety and security, and other vital matters such as maintaining the national defense.

Section 404 (Emergency Powers). This section simply amends current law authorizing deviations by military aircraft from FAA regulations where justified due to urgent military necessity, to reflect the role the Corporation will play in the regulation of airspace and air traffic following enactment of the legislation and the subsequent transfer of authority.

Section 405 (Presidential Transfers in Time of War). This section amends the current law directing transfer of the FAA to the Department of Defense in time of

war, to include the Corporation in the development of contingency plans for such a transfer and in any actual transfer.

Section 406 (Preemption). This section amends the "prices, routes, and service preemption" provision of current law, to make clear that the Corporation may not interfere with these economic aspects of aviation activities in establishing a user-fee structure or in other respects.

Sections 407 (Airway Capital Investment Plan; Research and Development Planning). This section amends the current provision directing the publication of an annual airways system plan to fulfill the Airway Capital Investment Plan. Once operational control over airspace and air traffic shifts to the Corporation, it will become responsible for further development of facilities and equipment in support of air traffic services. The language in this section terminates FAA responsibility for updating the plan at that time. This section also directs coordination between the Corporation and the FAA in their R&D program plans.

Section 408 (Aviation Facilities). This section amends the current provision authorizing the FAA to establish and operate air navigation facilities, including staffing them, ending this authority as of the date of transfer of operational responsibilities to the Corporation.

Section 409 (Regulation of the Corporation by the Federal Aviation Administration). This section creates a new section in the FAA's current statutory authority, to establish the statutory basis for the FAA's oversight of the Corporation. The new section specifies a positive responsibility for the FAA Administrator to assure that Corporation actions will "assure the highest level of aviation safety in the public interest, and [] insure that national defense needs are met."

The section also sets out that the FAA has the authority and responsibility to undertake enforcement of the Corporation's orders, procedures, and other directives.

TITLE V - OTHER APPLICABLE STATUTES

Section 501 (Employee Management, and Exemption from Title 5, United States Code). This section sets forth the limited applicability of title 5, United States Code, to the new Corporation. While the employees of the new Corporation would be "officers and employees of the United States" for purposes of the specific statutory areas listed in this section, they would not qualify as such for other purposes. This is intended to accord with the underlying objective of the legislation - to make the new Corporation a business-like entity to the maximum possible extent. This can be best accomplished by restricting the federal personnel requirements imposed on the entity to the very few that are

appropriate to maintain for existing FAA employees – the basic federal benefits associated with federal careers. Basically, these are continuation in the federal retirement systems, and provision of equivalent health, life insurance, and compensation for work injury programs. Section 501 would accomplish this by directing the new entity to create a comprehensive system for the management, compensation, and advancement of Corporation employees that best serves airspace management needs.

Section 502 (Government Corporation Control Act). This section amends title 31, United States Code, to add the "United States Air Traffic Service Corporation" to the list of wholly owned Government corporations listed in section 101 of the Government Corporation Control Act (31 U.S.C. 9103). Also, it specifies the particular provisions that Act that would not apply to the new entity to maximize its ability to perform in a business-like fashion.

Section 503 (Aviation-related Taxes and Trust-Fund Spending Authority). This section would amend the Internal Revenue Code as appropriate to reflect the transfer of significant FAA activities to the Corporation. First, the tax proposals would extend existing excise tax levels for airline tickets and cargo waybills from their current December 31, 1995, expiration to December 31, 1996, thereby covering the period up to the date of transfer (scheduled for October 1, 1996). Second, the tax proposals would be reduced as of January 1, 1997, to reflect the much lower levels needed to finance the remaining FAA after air traffic control responsibilities have been shifted. The reduced levels would continue until December 31, 1998, paralleling the two-year initial user-fee levels specified by section 209 of the bill for the Corporation. This makes explicit (and a matter of law) that the activities of both the Corporation and the residual FAA can and will be carried out consistent with the current user-fee structure for aviation. Other excise taxes (e.g., general aviation fuel taxes) would be extended at current rates from the December 31, 1995, expiration to the end of the 2-year transition period (December 31, 1998), to make explicit that there would be no tax increases in this area associated with the proposal.

The October 1 "date of transfer" aligns with the federal Fiscal Year but does not align with the calendar-year cycle for tax changes. It is also conceivable that the planned "date of transfer" could be delayed for safety reasons from October 1, 1996, by the FAA Administrator. For these reasons, the proposal would continue the current tax levels for three months beyond the expected date of transfer, with provision for transfer from the Treasury to the Corporation of funds equal to the amount that otherwise would have been imposed by the Corporation during those three months (e.g., 8.5% of passenger ticket tax revenues in October, November, and December 1996).

This section would also amend the Trust Fund Code of 1981 to make the conforming changes necessary to reflect enactment of the United States Air Traffic Service Corporation Act.

Section 504 (Transfers from the Airport and Airway Trust Fund). The Corporation will be fully self-supporting from its user fees (see section 202(a)(3) of the bill). However, two forms of transition funding will be provided to assure that the Corporation is fully capable of undertaking air traffic responsibilities on the date of transfer. First, the estimated "obligated but unexpended balance" of appropriations for FAA operations on the projected date of transfer (October 1, 1996) would be transferred on a one-time basis by the Treasury to the Corporation. Second, funding needed to cover obligations already entered into by the FAA in the air traffic area for capital expenditures as of the projected date of transfer would also be transferred. This would be a fixed amount, but would transfer in quarterly installments as payment becomes due.

Section 505 (Exclusion of the Corporation from the Budget and Budget Enforcement). Subsection (a) of this section would exempt the proposal from any PAYGO scoring. The increase in mandatory spending from removing operating expenses and the current level of capital investment from discretionary appropriations control would not be scored by OMB. Any estimates of increased capital spending would not be scored by OMB.

Subsection (b) would exempt the contingent appropriation of amounts from the Airport and Airway Trust Fund to the Corporation authorized by section 504.

Subsection (c) would exempt the corporation from sequestration under the Balanced Budget and Emergency Deficit Control Act of 1985.

Subsection (d) would put the Corporation off-budget using the same language as used for Social Security.

Section 506 (Domestic Discretionary Caps). Necessary adjustment of "domestic discretionary caps" in the Budget Enforcement Act is provided.

TITLE VI - TRANSITION PROVISIONS

Section 601 (Employee Transfer to the Corporation). This section provides for the transfer of federal employees to the Corporation under the legislation. The employee assurances here are parallel to the rights and benefits provided to FAA employees who transferred with National and Dulles Airports to the Metropolitan Washington Airports Authority in 1986. However, in the interests of establishing new collective bargaining relationships as soon as possible, the continuation of the status quo is established at three years instead of five years. This section also makes explicit how the oversight of labor-management relations will shift from the Federal Labor Relations Authority (currently in place) to new oversight by a Labor Resolution Board and the National Labor Relations Authority.

Section 602 (Payments to the United States, and Reimbursements). This section also parallels the airport transfer legislation, and provides for payment by the Corporation into the Civil Service Retirement and Disability Fund of amounts that compensate the United States for retirement costs that accrue following the transfer. Specifically, the Corporation would make payments to represent the portion of the so-called "unfunded liability" for federal retirement that is attributable to employee service following the date of transfer.

Section 603 (Transfer of Facilities to the Corporation). This section directs FAA to transfer at no cost air traffic and related facilities to the Corporation as of the date of transfer, except for the Atlantic City Technical Center. This facility is needed by the FAA and would continue as a part of FAA. This section also assures that the FAA could continue to locate necessary facilities at airports at no cost as it has in the past.

Comparable authority is provided in the case of the Department of Defense for facilities affected by base closure or re-alignment.

Sections 604-607 (Savings Provisions; Administrative and Budgetary Transition; Statutory References; Separability). These sections contain standard provisions to assure the continuity and continued effectiveness of current law and action under the new legislation, especially with regard to actions undertaken by or against the FAA in areas that would transfer to the Corporation. Examples are on-going rulemaking, pending litigation instituted by FAA or against FAA, and contractual and other obligations of the FAA that would be succeeded to by the Corporation. These same savings provisions were used successfully in the transfer of Civil Aeronautics Board functions to the Department of Transportation in 1985. Section 406 authorizes action by the Office of Management and Budget and others to assist in the shift of assets and personnel to the Corporation from the FAA.

Section 608 (Effective Date). This section establishes the immediate effectiveness of the legislation upon enactment by the President. The major exception would be for the coordinated set of changes that occur on the "date of transfer," which is extensively described throughout this section-by-section analysis.