H. R. 2800

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

IN THE HOUSE OF REPRESENTATIVES

JUNE 7, 2017

Mr. DeFazio (for himself, Ms. Norton, Mr. Nadler, Ms. Eddie Bernice Johnson of Texas, Mr. Cummings, Mr. Larsen of Washington, Mr. Capuano, Mrs. Napolitano, Mr. Lipinski, Mr. Cohen, Mr. Sires, Mr. Garamendi, Mr. Johnson of Georgia, Mr. Carson of Indiana, Mr. Nolan, Ms. Titus, Mr. Sean Patrick Maloney of New York, Ms. Esty of Connecticut, Ms. Frankel of Florida, Mrs. Bustos, Mr. Huffman, Ms. Brownley of California, Ms. Wilson of Florida, Mr. Payne, Mr. Lowenthal, Mrs. Lawrence, and Mr. DeSaulnier) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committees on Armed Services, the Budget, and Appropriations, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE.

This Act may be cited as the “Aviation Funding Stability Act”.

SEC. 2. TRUST FUND OFF BUDGET.

(a) TRUST FUND OFF BUDGET.—Section 48114 of title 49, United States Code, is amended to read as follows:

“§ 48114. Trust fund off budget

“(a) AIRPORT AND AIRWAY TRUST FUND GUARANTEE.—Beginning October 1, 2017, receipts and disbursements of the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 shall not be subject—

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

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

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

“(4) to any legal requirement, directive, or other provision of law of or related to the Office of Management and Budget.
“(b) General Fund Share.—In addition to amounts made available under subsection (a), there is further authorized to be appropriated from the general fund of the Treasury such sums as may be necessary for the Federal Aviation Administration Operations account. Such funds shall not be subject to any sequestration order issued under the Balanced Budget and Emergency Deficit Control Act of 1985 or any subsequent law requiring such sequestration.

“(c) Authorization To Transfer Certain Funds To Prevent Reduced Operations and Staffing.—Notwithstanding any other provision of law, within any fiscal year, the Administrator may transfer, to the account funding Administration operations, up to 5 percent of funds available for any budget activity in any other account of the Federal Aviation Administration to prevent reduced operations and staffing of the Federal Aviation Administration and to ensure a safe and efficient air transportation system.”.

(b) Essential Air Service.—Section 41742 of title 49, United States Code, is amended by striking paragraph (2) of subsection (a) and inserting the following:

“(2) Additional Funds.—Beginning October 1, 2017, from amounts deposited into the Airport and Airway Trust Fund, the sum of $175,000,000
for each fiscal year is authorized and shall be made
available immediately, in addition to amounts made
available under paragraph (1) and subsection (b),
for obligation and expenditure to carry out the es-
sential air service program under this subchapter.”.

SEC. 3. FLEXIBILITY.
(a) Office of Management and Budget.—The
Federal Aviation Administration shall be exempt from any
order, directive, rule, or other requirement of the Office
of Management and Budget.
(b) Office of the Secretary of Transpor-
tation.—The revisions to the procurement and personnel
systems of the Federal Aviation Administration under sec-
tions 6(a) and 7(a) shall not be subject to approval, modi-
fication, or review by the Secretary of Transportation.

SEC. 4. MANAGEMENT ADVISORY COUNCIL INPUT.
(a) Air Traffic Control System Perform-
ance.—Chapter 401 of title 49, United States Code, is
amended by adding at the end the following:

“§ 40131. Air traffic control system performance
“(a) In General.—The Federal Aviation Manage-
ment Advisory Council established under section 106(p)
shall, in addition to performing the responsibilities under
such section—
“(1) assess the performance of the air traffic control system and the Administrator’s policy and strategic decisions with respect to operation and modernization of the system; and

“(2) make recommendations to the Administrator to improve the system.

“(b) Public Response.—The Administrator shall publicly respond in writing to each recommendation of the Council under subsection (a).

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

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

“(2) the Administrator’s analysis of the recommendation;

“(3) if the Administrator intends to implement the recommendation, a detailed schedule for implementation; and

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

“(d) Publication.—Not later than 90 days after the Administrator’s receipt of a recommendation under subsection (a), each response by the Administrator under
this section shall be posted on the internet website of the
Federal Aviation Administration.”.
(b) Conforming Amendment.—Section 106(p)(1)
is amended by striking the period at the end and adding
“, except as provided in section 40131.”.
SEC. 5. AIR TRAFFIC CONTROL FACILITY MODERNIZATION
AND SUSTAINMENT.
(a) Facility Modernization and Sustainment.—Chapter 481 of title 49, United States
Code, is amended by adding at the end the following:
“§ 48115. Air traffic control facility modernization
and sustainment
“(a) Modernization and Sustainment.—In any
fiscal year between 2018 and 2030, in addition to amounts
made available under section 48101, there is further au-
thorized to be appropriated from the uncommitted balance
of the Airport and Airway Trust Fund such sums as are
necessary to bring any air traffic control facility of the
Federal Aviation Administration into acceptable condition.
“(b) Consultation.—Before taking any action
under subsection (a) to modernize or sustain air traffic
control facilities of the Federal Aviation Administration,
the Administrator shall consult with the exclusive bar-
gaining representatives of air traffic controllers and air-
way transportation system specialists certified under section 7111 of title 5, United States Code.”.

(b) CLERICAL AMENDMENT.—The analysis for chapter 481 of title 49, United States Code, is amended by inserting after the item relating to section 48114 the following:

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

SEC. 6. ACQUISITION REFORM.

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

(b) STREAMLINED PROCESS.—The system revised under subsection (a) shall take advantage of the independence already provided by Congress from all acquisition and acquisition-related laws to further streamline processes for acquisitions that substantially improve the flexibility and cost effectiveness of the Administration’s acquisitions process. Notwithstanding any other provision of law, the only rules, policies, and procedures that shall govern or affect this system are those promulgated by the Administrator.

(c) DESIGN OF SYSTEM.—The system revised under subsection (a) shall, at minimum—
(1) account for the complexity and multiple stages of acquisitions of interdependent systems that constitute the Next Generation Air Transportation System;

(2) include measures for appropriate program managers to verify the readiness of software-intensive programs prior to acceptance;

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

(4) include measures for the Administrator to reliably estimate the cost of each segment with respect to each acquisition, along with reliable estimates of all costs that are reasonably expected to be incurred as a result of such acquisition; and

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

(d) Evaluation.—In carrying out subsection (a), the Administrator shall ensure that any requirement or provision of the acquisition management system of the Administration in effect on the day before the date of enactment of this Act—
(1) is necessary to promote transparency, accountability, and cost effectiveness;

(2) shall not materially affect the Administration’s ability to reduce costs associated with acquisitions programs;

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

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

(e) ACQUISITION OF SERVICES.—In developing a revised system governing the Administration’s acquisitions under subsection (a), the Administrator shall consult with the exclusive bargaining representative of airway transportation system specialists certified under section 7111 of title 5, United States Code, before taking any action related to services acquisition.

(f) REPORT TO CONGRESS.—Not later than 12 months after revising the system required under subsection (a), the Administrator shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the revised process.
SEC. 7. PERSONNEL REFORM.

(a) Reform of Personnel Management System.—Not later than 1 year after completion of the review required under subsection (b), the Administrator of the Federal Aviation Administration shall make changes to the personnel management system developed under section 40122(g) of title 49, United States Code, to improve the productivity, cost effectiveness, and technical proficiency of that part of the Administration’s workforce that is not represented by an exclusive representative recognized under section 7111 of title 5, United States Code, or eligible to be represented by such a labor organization. The changes required under this subsection shall include new performance incentive policies, including awards for performance, and shall, notwithstanding any other provision of law, include procedures for the Administration to take expedited personnel actions with respect to employees not covered by valid collective bargaining agreements. In no instance may the changes implemented under this subsection alter or otherwise affect the terms and conditions of employment of any employee represented or eligible to be represented by an exclusive representative recognized under section 7111 of title 5, United States Code.

(b) Review.—Not later than 6 months after the date of enactment of this Act, the Administrator shall conduct a comprehensive review of the legal requirements, includ-
ing policies, standards, rules, and orders of the Administra-
tion, pertaining to the Administration’s personnel man-
agement system, except to the extent that such require-
ments may affect or relate to the terms and conditions
of employment or dispute resolution processes governing
employees who are represented or eligible to be rep-
resented by an exclusive bargaining representative recog-
nized under section 7111 of title 5, United States Code.
This review shall identify—

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

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

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

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

(c) REPORT.—Not later than 6 months after comple-
tion of the review required in subsection (b), the Adminis-
tractor shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the results of the review.

(d) Air Traffic Controller Staffing.—

(1) Staffing report.—Section 44506(e) of title 49, United States Code, is amended—

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

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

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

(2) Staffing standard.—Not later than 180 days after the date of enactment of this Act, the Administrator of the Federal Aviation Administration and the exclusive bargaining representative of air traffic controllers certified under section 7111 of title 5, United States Code, shall jointly develop a staffing standard to determine the number of certified professional controllers and trainees needed to operate each air traffic control facility operated by
the Administration. Once developed, this standard shall be used for the staffing report referenced in section 44506(e) of title 49, United States Code.

(e) Airway Transportation System Specialist Staffing Models.—

(1) In general.—Not later than 1 year after the date of enactment of this Act, the Administrator shall implement, after consultation with the National Academy of Sciences, and notwithstanding section 7106(b)(1) of title 5, United States Code, after negotiations with the exclusive bargaining representative of airway transportation system specialists certified under section 7111 of title 5, United States Code, appropriate airway transportation system specialists staffing levels for each of the Administration’s facilities that support the National Airspace System. If the Administrator and the exclusive bargaining representative are unable to reach agreement, they shall use the process set forth in clauses (i) through (v) and (vii) of section 40122(a)(2)(C) of title 49, United States Code, to resolve the dispute.

(2) Airway Transportation System Specialists Placement.—Upon determination of staffing levels under paragraph (1), and notwithstanding section 7106(b)(1) of title 5, United States Code,
Code, the Administrator shall negotiate with the exclusive bargaining representative of airway transportation system specialists certified under section 7111 of title 5, United States Code, to develop and implement measures to place airway transportation system specialists at all relevant facilities of the Administration. If the Administrator and the exclusive bargaining representative are unable to reach agreement, they shall use the process set forth in clauses (i) through (v) and (vii) of section 40122(a)(2)(C) of title 49, United States Code, to resolve the dispute.

(3) AVIATION SAFETY INSPECTORS.—Notwithstanding section 7106(b)(1) of title 5, United States Code, the Administrator shall negotiate with the exclusive bargaining representative of aviation safety inspectors certified under section 7111 of title 5, United States Code, regarding appropriate total staffing levels for aviation inspectors and facilities that support inspection activities of the Administration. If the Administrator and the exclusive bargaining representative are unable to reach agreement, they shall use the process set forth in clauses (i) through (v) and (vii) of section 40122(a)(2)(C) of title 49, United States Code, to resolve the dispute.
Any agreement or award shall include a plan to implement such staffing levels.

SEC. 8. ANTI-SILOS REQUIREMENT.

(a) ORGANIZATIONAL STREAMLINING.—The Administrator shall take appropriate measures, including development of internal policies and procedures, to organize the Administration’s assignments of personnel in a manner that facilitates open communication and collaboration among the Administration’s employees across the Administration’s lines of business and offices. Such measures shall promote the cross-utilization of employees whenever feasible to leverage the employees’ knowledge and skill sets across disciplines.

(b) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Administrator shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the measures required under subsection (a) and the effectiveness of such measures in reducing organizational barriers and stovepipes.

SEC. 9. AIR TRAFFIC EMPLOYEES ASSIGNED TO GUAM.

(a) SERVICES FOR CERTAIN EMPLOYEES.—The Secretary of Defense shall provide military medical treatment
facilities, commissary, and exchange access to employees of the Federal Aviation Administration assigned to Guam, their spouses, and their dependent children through the Defense Enrollment Eligibility Reporting System and the Real Time Automated Personnel Identification System.

(b) Reimbursement for Expenses.—The Administrator of the Federal Aviation Administration shall reimburse the Secretary of Defense for expenses incurred by the Department of Defense for enrollment of Federal Aviation Administration employees, their spouses, and their dependent children for services provided under subsection (a).

SEC. 10. TECHNICAL REVISIONS.

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

(1) in subparagraph (A), by—

(A) striking “(b)” after “2302”; and

(B) inserting “prohibited personnel practices and” before “whistleblower protection”;

(2) in subparagraph (B), by—

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

(B) inserting “3330a, 3330b, 3330c, and 3330d,” before “relating to veterans’ preference;’’;
(3) in subparagraph (I)(iii) by striking “and” at the end;

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

(5) by inserting at the end the following:

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