

Laws, sausages and air traffic control

By Lawrence J. Spiwak, contributor to TheHill.com | February 10, 2016

One of the pet peeves of conservatives over the last several years has been the lack of "regular order" in the House of Representatives — that is, major legislation was negotiated by leadership and presented to members for a vote as a fait accompli, rather than moved organically through subcommittees to full committees and then through the full house. To his credit, newly-minted Speaker Paul Ryan (R-Wis.) promised to restore regular order as a touchstone of his Speakership. Of course, with such power comes great responsibility, and regular order demands that committee chairmen fully vet proposed legislation before moving it up the chain. Unfortunately, in a crucial first test of this reestablished regular order, the House Transportation Committee under Chairman Bill Shuster (R-Pa.) and its Aviation Subcommittee under Chairman Frank LoBiondo (R-N.J.) have failed miserably.



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At issue is their just-released [Aviation Innovation Reform and Reauthorization \(AIRR\) Act](#). Under this bill, our nation's air traffic control (ATC) operations would be spun out of the Federal Aviation Administration (FAA) into an independent, not-for-profit corporation outside of the federal government. Given the magnitude of such a proposal, you would think that perhaps the committee would have held a variety of hearings to flush out the various implications of this plan.

Sadly, you would be wrong.

While both the sub- and full committee may have held hearings on the FAA's generic problems, the implications (good and bad) of a separate ATC Corporation has never been formally explored. Instead, Shuster and LoBiondo are holding a single hearing today on the proposed ATC Corporation solution before they attempt to ram the AIRR Act through their committee in the coming days and then through the full House by the end of February.

Although I readily concede that the FAA is a mess and needs reform, this lack of transparency and rush to judgment is sausage-making at its finest. Thus, before we send the AIRR Act to the president's desk, I think the American public deserves answers to several basic questions about how the proposed ATC Corporation will actually work. Let's take them in no particular order.

Question No. 1: Will an independent corporation really be more efficient than the current system?

Normally, private entities have the incentive to act efficiently and reduce costs because of competitive forces. However, the contemplated new ATC Corporation would face no such competitive pressures because it will be a state-sanctioned monopoly. This proposed ATC Corporation stands in stark contrast to other federally chartered corporations such as Amtrak, PBS and the Post Office, which at least face a modicum of intermodal competition. And, [given](#)

[strong labor union support of the measure](#),¹ it is reasonable to conclude that the proposed ATC Corporation won't have a lot of incentive to reduce employment. Thus, we should ask ourselves: **Does the AIRR Act simply trade one bloated bureaucracy for another (except with weaker congressional oversight)?** And can better incentives can be put in place to encourage efficient, effective operations?

Question No. 2: Will the new ATC Corporation have sufficient revenue to carry out operations?

Under the AIRR Act, the new nonprofit ATC Corporation would cover its costs via charges and fees for air traffic services. According to the bill, these charges and fees shall be set by the company's board and "shall be consistent with the International Civil Aviation Organization's Policies on Charges for Air Navigation Services, Ninth Edition." However, with projected air traffic control modernization costs estimated to top \$30 billion, the unknown question is whether the ATC Corporation's board will hike rates. Assuming the answer is "yes," then we need to recognize that those higher fees will raise ticket prices for the American consumer, which will not be favored by the industry-heavy board. This leads to the next question.

Question No. 3: What if fee hikes are still insufficient to cover costs?

As the old saying goes, hope for the best but plan for the worst. While "privatization" sounds like a great a concept, the devil is in the details. **In the U.S., the financial record of "independent" corporations responsible for key government functions has a checkered past. Indeed, allegedly "self-funding" experiments ranging from Amtrak to PBS to Fannie Mae and Freddie Mac all show that government subsidies and bailouts are a constant theme.**

Unfortunately, history has proved that efforts to "privatize" ATC operations are no exception. In the two major experiments to privatize air traffic control operations we have seen to date (in Canada and the United Kingdom), massive bailouts were required to keep operations solvent. Given that the Canadian and British systems handle but a fraction of the U.S. system, you will excuse my lack of optimism that the U.S. experiment will fare any better, especially since the bailed-out Canadian and British systems are being held out as exemplary by reform advocates. Indeed, although the AIRR Act specifically states that the proposed ATC Corporation "shall not have an implied or explicit Federal guarantee" for any debt it may incur, given the core public function the ATC Corporation is supposed to provide — just like Fannie Mae and Freddie Mac or Amtrak — the ATC Corporation may be "too big to fail."

Question No. 4: Does the ATC Corporation's corporate structure let the fox run the henhouse?

According to the press fact-sheet of the AIRR Act, the ATC Corporation will be "governed by a board representing the system's users and the public interest." However, let's look a little deeper at that claim. **Under the plain language of the AIRR Act, of the 11-person board to be established for the ATC Company, the major airlines have four seats on the board and the labor unions have two.** Despite the public-safety issues, the secretary of Transportation appoints only two directors

¹ [aiR footnote]: The phrasing 'strong union support' is misleading. It refers only to one union, NATCA, the ATC union, but the other unions are strongly opposed. NATCA support is myopic and self-serving, and the actual NATCA motivations will become clear in coming weeks.

to the board, thus being thoroughly outnumbered. While both the airline industry and the unions have a strong interest in safety and efficiency and should be well-represented on the board, there is at least a debate to have about the balance of public and private interests.

Question No. 5: What about residual congressional oversight?

Although congressional oversight can often seem imperfect, under the present arrangement lawmakers have direct oversight over ATC operations and can use their "power of the purse" to affect change. By placing air traffic operations into a separate corporation funded by user fees rather than general government revenue, however, that key constitutional oversight safety-valve goes away. Under the terms of the AIRR Act, the ATC Corporation will not be a "department, agency or instrumentality of the United States Government." Given the key public service the ATC Corporation is supposed to provide (i.e., safeguarding our nation's air traffic), what leverage does Congress have (other than to perhaps revoke the ATC Corporation's charter) to guard against waste and mismanagement resulting from hastily designed scheme?

In sum, transferring ATC operations into an independent, nonprofit entity may turn out to be the best solution to fix a dysfunctional bureaucracy. That said, experience has taught us that government deregulates with as much skill as it regulates, resulting in as much or more harm than the status quo (see, e.g., the poorly handled financial deregulation of the mid-1990s during the Clinton administration). Rather than ram through the AIRR Act as Chairmen Shuster and LoBiondo seek to do, perhaps we should take a pregnant pause and examine carefully the impact of the AIRR Act before we turn over air traffic control — an imperfect yet nonetheless functioning system — to a model that experience has thus far proven difficult to implement properly.

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