

103^D CONGRESS
2^D SESSION

H. R. 5209

To establish a wholly owned Government corporation for the operation of the air traffic control system, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 6, 1994

Mr. BARTON of Texas introduced the following bill; which was referred to the Committee on Public Works and Transportation

A BILL

To establish a wholly owned Government corporation for the operation of the air traffic control system, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Air Traffic Control
5 Service Improvement Act of 1994”.

1 **TITLE I—UNITED STATES AIR**
2 **TRAFFIC SERVICE CORPORA-**
3 **TION**

4 **SEC. 101. ESTABLISHMENT OF CORPORATION.**

5 (a) IN GENERAL.—There is established a wholly
6 owned Government corporation, to be known as the “Unit-
7 ed States Air Traffic Service Corporation”, to operate the
8 air traffic control system of the United States after the
9 completion of transfers of air traffic control facilities and
10 equipment under section 201.

11 (b) LIMITATIONS.—The Corporation—

12 (1) except as provided in subsection (c), shall
13 not be an agency or establishment of the United
14 States Government;

15 (2) shall have its principal office in the District
16 of Columbia and is deemed to be a resident thereof;

17 (3) to the extent consistent with this Act, shall
18 be subject to the District of Columbia Business Cor-
19 poration Act (D.C. Code, Sec. 29–301 et seq.);

20 (4) shall be subject to safety regulatory over-
21 sight of the Federal Aviation Administration; and

22 (5) shall be self-sufficient through revenues
23 earned by charging fees to users of the air traffic
24 control system.

25 (c) WAR OR NATIONAL EMERGENCY.—

1 (1) TRANSFER OF FUNCTIONS.—In the event of
2 a declared war or national emergency, the President
3 may by Executive order transfer any functions, per-
4 sonnel, property, records, funds, and other matters
5 relating to the Corporation to the Department of
6 Defense.

7 (2) DEVELOPMENT OF PLANS.—The Board, in
8 consultation with the Secretary of Defense, shall de-
9 velop plans for the effective discharge of the func-
10 tions of the Corporation in the event of a declared
11 war or national emergency.

12 **SEC. 102. CORPORATION.**

13 (a) CHIEF EXECUTIVE OFFICER.—Within 30 days
14 after the date of the enactment of this Act, the President
15 shall appoint an interim chief executive officer of the Cor-
16 poration to handle the preliminary development of the
17 Corporation before the appointment of the board of direc-
18 tors. The interim chief executive officer shall serve as a
19 member of the board until the board elects a permanent
20 chief executive officer. The chief executive officer (other
21 than the interim chief executive officer) shall be selected
22 by the board. The first executive officer to be selected shall
23 be selected not later than the 180th day following the date
24 of the first meeting of the board.

1 (b) APPOINTMENT OF TRANSITION TEAM.—The in-
2 terim chief executive officer shall appoint a 6-member
3 transition team which shall be responsible for getting the
4 Corporation operational and shall serve until the Corpora-
5 tion is operational.

6 (c) FUNCTIONS OF TRANSITION TEAM.—The transi-
7 tion team appointed under this section shall—

8 (1) subject to approval by the President, draft
9 and file articles of incorporation for the Corporation,
10 draft the initial bylaws of the Corporation, and take
11 any other actions necessary for the establishment
12 and initial operation of the corporation; and

13 (2) after appointment of the board, the transi-
14 tion team shall work under the board until the Cor-
15 poration is operational.

16 (d) ARTICLES OF INCORPORATION.—The articles of
17 incorporation filed by the transition team in accordance
18 with subsection (c)—

19 (1) shall provide for cumulative voting under
20 section 27(d) of the District of Columbia Business
21 Corporation Act (D.C. Code, Sec. 29–327(d)); and

22 (2) may be amended, altered, changed, or re-
23 pealed by a vote of not less than $\frac{2}{3}$ of the members
24 of the board.

1 (e) BUDGET.—The Corporation shall be subject to
2 provisions of the Government Corporation Control Act,
3 shall submit an annual business-type budget to Congress,
4 and shall have an annual financial audit performed by an
5 independent public accountant.

6 **SEC. 103. BOARD OF DIRECTORS AND OFFICERS.**

7 (a) BOARD OF DIRECTORS.—

8 (1) MEMBERSHIP.—The Corporation shall be
9 governed by a board of directors with 11 members.
10 The board shall be comprised of the chief executive
11 officer of the Corporation, the Secretary of Trans-
12 portation, and the Secretary of Defense (or their
13 designees), and 8 members appointed by the Presi-
14 dent with the advice and consent of the Senate.

15 (2) APPOINTED MEMBERS.—The President
16 shall appoint the initial 8 appointed members of the
17 board so that thereafter the appointed members will
18 serve on the board for 5-year staggered terms. The
19 8 members of the board appointed by the President
20 shall be as follows:

21 (A) 3 members from among persons who
22 represent the views of commercial aviation
23 interests.

24 (B) 1 member from among persons who
25 represent the views of airports.

1 (C) 1 member from among persons who
2 represent the views of employees of the Federal
3 Aviation Administration and the Corporation
4 who belong to a union.

5 (D) 1 member from among persons who
6 represent the views of general business inter-
7 ests.

8 (E) 2 members from among persons who
9 represent the views of noncommercial aviation
10 interests.

11 (3) CHAIRPERSON.—The board shall elect one
12 of its members annually to serve as Chairperson.

13 (4) COMPENSATION AND EXPENSES.—Members
14 of the board may receive compensation in accordance
15 with rules established by the board.

16 (5) FUNCTIONS OF THE BOARD.—The board
17 shall meet at least quarterly and shall be responsible
18 for strategic planning and approving major financial
19 decisions of the Corporation, the annual budget, and
20 the level of user fees. The board shall provide for
21 public notice and comment on its fee proposals. The
22 board shall have authority over decisions about con-
23 tracting for air traffic control facilities, including
24 Level I towers and navigational facilities and equip-
25 ment.

1 (6) FUNCTION OF THE SECRETARY OF TRANS-
2 PORTATION.—

3 (A) USER FEES.—In consultation with the
4 Attorney General, the Secretary of Transpor-
5 tation shall have the authority to disapprove the
6 kind and level of user fees established by the
7 board if such fees are not reasonable as deter-
8 mined by the Secretary under criteria estab-
9 lished by the Secretary. Not later than 180
10 days after the date of the enactment of this
11 Act, the Secretary shall issue regulations estab-
12 lishing such criteria. In determining if fees are
13 reasonable under this paragraph, the Secretary
14 shall consider if the fees will harm new entrant
15 air carriers, diminish competition among users
16 of the air traffic control system, or lead to ex-
17 cessive charges for air service.

18 (B) BORROWING.—The Secretary of
19 Transportation shall have the authority to dis-
20 approve borrowing by the Corporation under
21 the following circumstances:

22 (i) If the Corporation seeks to borrow
23 funds at levels which exceed a reasonable
24 prospect for repayment as determined by
25 the Secretary.

1 (ii) If the Corporation seeks to borrow
2 funds for inappropriate, wasteful, or un-
3 reasonably speculative activities as deter-
4 mined by the Secretary.

5 (C) INTERMODAL ISSUES.—The Secretary
6 of Transportation shall have the authority to
7 address intermodal issues affecting the Cor-
8 poration.

9 (7) FUNCTION OF THE SECRETARY OF DE-
10 FENSE.—The Secretary of Defense shall address na-
11 tional security concerns as they relate to the Cor-
12 poration.

13 (b) SAFETY COMMITTEE.—

14 (1) APPOINTMENT.—The board shall establish
15 a 3-member permanent safety committee from
16 among persons who are citizens of the United States
17 to review the operations of the Corporation to ensure
18 the highest level of aviation safety. Persons ap-
19 pointed under this paragraph shall serve at the
20 pleasure of the board.

21 (2) COMPENSATION.—Individuals appointed
22 under paragraph (1) shall be compensated at rates
23 fixed by the board.

24 (c) CEO.—The Corporation shall have a chief execu-
25 tive officer who is elected by the board and who shall serve

1 at the discretion of the board. The board shall fix the term
2 of employment and compensation of the chief executive
3 officer.

4 (d) RESTRICTION ON RECEIPT OF OTHER SALARY.—
5 An officer of the Corporation shall not receive any salary
6 from any source other than the Corporation during the
7 period of the officer's employment by the Corporation.

8 **SEC. 104. POWERS OF CORPORATION.**

9 The Corporation may—

10 (1) plan, initiate, construct, own, manage, and
11 operate, by itself or in cooperation with other enti-
12 ties, an air traffic control system;

13 (2) furnish, for hire, air traffic control services
14 to air transportation common carriers, and other op-
15 erators of civil aircraft;

16 (3) establish reasonable nondiscriminatory fees
17 for the provision of air traffic control services;

18 (4) enter into contracts under which other enti-
19 ties may operate individual air traffic control facili-
20 ties on behalf of the Corporation;

21 (5) acquire, by construction, purchase, or gift,
22 physical facilities, equipment, and devices necessary
23 to the operations of the Corporation, including air
24 traffic control and associated equipment and facili-
25 ties; and

1 (6) conduct or contract for the conduct of re-
2 search and development related to the operations of
3 the Corporation and establish technical specifications
4 of all elements of the air traffic control system.

5 **SEC. 105. FOREIGN BUSINESS NEGOTIATIONS OF CORPORA-**
6 **TION.**

7 (a) NEGOTIATIONS OF CORPORATION.—Whenever
8 the Corporation enters into negotiations with any foreign
9 entity with respect to facilities, operations, and services
10 authorized by this Act to be conducted by the Corpora-
11 tion—

12 (1) the Corporation shall notify the Secretary of
13 State regarding the initiation, conduct, and foreign
14 policy implications of such negotiations; and

15 (2) the Secretary of State shall advise the Cor-
16 poration of relevant foreign policy considerations
17 and, upon request of the Corporation, shall render
18 such assistance as may be appropriate.

19 (b) NEGOTIATIONS OF SECRETARY OF STATE.—The
20 Secretary of State shall consult with the Corporation with
21 respect to all negotiations conducted by the Secretary re-
22 garding matters which relate to air traffic control.

23 **SEC. 106. SANCTIONS.**

24 (a) PETITION FOR RELIEF.—Except as otherwise
25 prohibited by law—

1 (1) if the Corporation engages in any activity,
2 or takes any action in furtherance of any policy,
3 which is inconsistent with the policy and purposes of
4 this Act; or

5 (2) if any other person—

6 (A) violates any provision of this Act;

7 (B) obstructs or interferes with any activ-
8 ity authorized by this Act;

9 (C) refuses, fails, or neglects to discharge
10 any duty or responsibility under this Act; or

11 (D) threatens any such violation, obstruc-
12 tion, interference, refusal, failure, or neglect;

13 the district court of the United States for any dis-
14 trict in which such Corporation or other person re-
15 sides or may be found shall have jurisdiction, upon
16 petition of the Attorney General of the United
17 States, to grant such equitable relief as may be nec-
18 essary or appropriate to prevent or terminate such
19 activity.

20 (b) PUNISHMENT, LIABILITY, OR SANCTION UNDER
21 OTHER PROVISIONS.—Nothing contained in this section
22 shall be considered to relieve any person of any liability,
23 punishment, or sanction under any other law.

1 **SEC. 107. REPORT.**

2 (a) CORPORATION.—The Corporation shall transmit
3 to the President and Congress, annually and at such other
4 times as it considers appropriate, a comprehensive and de-
5 tailed report of its operations, activities, and accomplish-
6 ments under this Act.

7 (b) ADMINISTRATOR.—The Administrator shall
8 transmit to the Congress, annually and at such other
9 times as the Administrator considers appropriate, an eval-
10 uation of the capital structure of the Corporation so as
11 to assure the Congress that such structure is consistent
12 with the most efficient and economical operation of the
13 Corporation.

14 **TITLE II—MISCELLANEOUS**

15 **SEC. 201. TRANSFER OF FACILITIES AND EQUIPMENT TO**
16 **CORPORATION.**

17 (a) IN GENERAL.—Not later than 1 year after the
18 date the Senate approves the appointments of the Presi-
19 dent under section 102(a), the Secretary of Transpor-
20 tation shall take such steps as may be necessary—

21 (1) to transfer to the Corporation all right,
22 title, and interest of the United States in, and all
23 control of the United States over, all facilities and
24 equipment under the jurisdiction of the Administra-
25 tion by the operational date of the Corporation,
26 which are part of the air traffic control system in-

1 including the air route traffic centers, terminal radar
2 control centers, VHF omnidirectional radio stations,
3 long-range and terminal radar systems, flight service
4 stations, and related facilities and equipment; and

5 (2) to transfer all right of the United States in
6 airport control towers, landing aids, and landing
7 slots to owners of the airport where such towers and
8 aids are located and to which such landing slots
9 relate.

10 (b) COMPENSATION.—In consideration for property
11 transferred by the United States pursuant to subsection
12 (a), the Corporation shall pay into the General Fund of
13 the Treasury such amount as the Corporation and the Sec-
14 retary of Transportation agree is reasonable and shall re-
15 linquish all rights of the Corporation to amounts in the
16 Airport and Airway Trust Fund.

17 **SEC. 202. AIRPORT FEES.**

18 (a) IN GENERAL.—Notwithstanding any other law,
19 on and after the date of the transfers carried out by the
20 Secretary of Transportation pursuant to section 201(a),
21 an airport may establish and charge fees for use of airport
22 facilities by, and provision of services to, air carriers and
23 air transportation passengers, including—

1 (1) fees which air carriers must pay for landing
2 aircraft at or taking aircraft off from such facilities;
3 and

4 (2) fees which passengers must pay for depart-
5 ing from such facilities.

6 (b) CRITERIA.—Fees established under subsection
7 (a)—

8 (1) shall be in an amount equal to the cost to
9 the airport of providing the particular use or service
10 for which the fee is charged, plus a reasonable prof-
11 it; and

12 (2) may vary according to time of day and de-
13 mand for the facility or service.

14 **SEC. 203. AIRPORT ACCESS.**

15 (a) PROHIBITION.—An owner, operator, or other per-
16 son in charge of a public-use airport shall not deny access
17 to and use of the facilities of such airport by any person
18 operating an aircraft which is in compliance with all laws
19 relating to aviation safety if the person offers to pay all
20 fees which are usually charged for such use.

21 (b) PENALTY.—Any person who violates subsection
22 (a) shall be subject to a civil penalty under section 46301
23 of title 49, United States Code.

1 **SEC. 204. LIABILITY OF CORPORATION.**

2 The Corporation shall be treated as a Federal agency
3 for purposes of chapter 171 of title 28, United States
4 Code; except that judgments, awards, settlements, inter-
5 est, and costs of claims resulting from air traffic control
6 system liability, shall not be paid from amounts available
7 under section 1304 of title 31, United States Code, but
8 shall be paid from amounts otherwise available to the Cor-
9 poration. The Corporation may secure its own insurance
10 for claims resulting from air traffic control system liabil-
11 ity. The Corporation shall be responsible for any legal or
12 administrative costs for air traffic control-related litiga-
13 tion. The Corporation may secure liability insurance for
14 the board of directors. The Corporation may sue or be
15 sued in its corporate name. The Secretary of Transpor-
16 tation shall identify potential environmental liabilities of
17 facilities before their transfer to the Corporation.

18 **SEC. 205. DEFINITIONS.**

19 As used in this Act—

20 (1) the terms “airport” and “public-use air-
21 port”, respectively, have the meaning given such
22 terms by section 47102 of title 49, United States
23 Code;

24 (2) the terms “air carrier”, “aircraft”, “air
25 transportation”, “civil aircraft”, “citizen of the
26 United States”, “person” and “United States”, re-

1 spectively, have the meaning given such terms by
2 section 40102 of title 49, United States Code;

3 (3) the term “board” means the board of direc-
4 tors of the Corporation appointed under section 103;

5 (4) the term “Corporation” means the corpora-
6 tion established by section 101 of this Act;

7 (5) the term “Administration” means the Fed-
8 eral Aviation Administration; and

9 (6) the term “Administrator” means the Ad-
10 ministrator of the Federal Aviation Administration.

11 **SEC. 206. CONFORMING AMENDMENTS.**

12 The Secretary of Transportation shall submit to Con-
13 gress not later than 1 year after the date of the enactment
14 of this Act such conforming amendments as the Secretary
15 of Transportation determines are necessary to fully imple-
16 ment this Act.

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