



Information Alert

State-Federal Relations Division

Congress Passes 2018 FAA Reauthorization Act and Disaster Recovery Reform Act

Oct. 3, 2018

On Oct. 3, Congress passed the [Federal Aviation Administration \(FAA\) Reauthorization Act of 2018 and the Disaster Recovery Reform Act](#) as one bill (H.R. 302). The president is expected to sign the package by the end of the week. Below are summaries of each. If you have any further questions on the FAA Reauthorization Act, please contact Ben Husch (ben.husch@ncsl.org, 202-624-7779). For questions on the Disaster Recovery Reform Act, please contact Lucia Bragg (lucia.bragg@ncsl.org, 202-624-3576).

FAA Reauthorization Act of 2018

The bill would reauthorize the FAA for five years, FY 2019-2023, at a cost of \$97 billion. This is the longest funding authorization period for FAA programs since 1982. Of the \$97 billion authorized, only \$16.8 billion for the Airport Improvement Program is funded in the form of airport grants drawn on the Airport and Airway Trust Fund. The remaining \$80 billion, primarily for FAA operations, equipment and facilities, would need to be appropriated in annual appropriations bills over five years.

Airport Improvement Program

The Airport Improvement Program (AIP) is funded at \$3.35 billion in mandatory funding for all five years. This continues AIP funding at the same level since 2012, when Congress last passed a FAA reauthorization. However, separate from this bill, Congress included \$1 billion in additional AIP funding for 2018 as part of the [FY 2018 Omnibus Appropriations Act](#), with the expectation that a similar supplemental appropriation will be made in FY 2019. To better define how this additional funding is allocated, the FAA Reauthorization Act creates a new airport infrastructure program, authorizing discretionary grants of more than \$1 billion to small or medium-sized airports located outside of metropolitan areas. The federal share would be capped at 80 percent, a slight reduction from the 100 percent included in the FY2018 Omnibus Appropriations Act.

State Block Grant Program

Section 139 increases the cap on the number of states allowed to participate in the State Block Grant Program (SBGP) from 10 to 20. States that participate in SBGP assume responsibility for

administering AIP grants at airports classified as "other than primary" airports—that is, nonprimary commercial service, reliever, and general aviation airports. Each state is responsible for determining which locations will receive funds for ongoing project administration.

Passenger Facility Charge

The Passenger Facility Charge (PFC) is an existing fee on passengers at commercial airports controlled by public agencies—it has been capped at \$4.50 per flight segment with a maximum of two PFCs charged on a one-way trip or four PFCs on a round trip, for a maximum of \$18 total since FY 2000. Airports can use these fees to fund FAA-approved projects that enhance safety, security, or capacity, reduce noise, or increase air carrier competition. Although the bill does not include an increase to the PFC, certain provisions aim to make it easier for non-hub airports to gain access to these funds, in addition to expanding the applicable uses of PFC funds, reducing the FAA review process from 120 days to 30 days and requiring a study on the future infrastructure needs of airports, which is likely to be used to justify a future increase in the PFC.

State Taxing Authority

Section 159 would limit, from this point forward, a state or local government's ability to levy or collect a tax, fee, or charge upon any commercial service airport that is not generally imposed by the state or local government, unless the revenue is exclusively used for airport purposes.

Unmanned Aerial Systems

The bill contains a significant section on Unmanned Aerial Systems (UAS), commonly known as drones, with several provisions significantly impacting states. Section 348 directs the FAA to develop, within one year, a rule allowing the carriage of property by small UAS for compensation or hire—more commonly known as drone package delivery. The potential for significant effect comes from the bill's requirement that these drones be considered "air carriers." States are currently pre-empted from regulating the "route" of an "air carrier," meaning they would have limited, if any, ability to prevent drones from operating in certain areas or at specific times of day. While the bill does require that any final rule for drone package delivery "address the views of state, local, and tribal officials related to potential impacts of the carriage of property by operators of small unmanned aircraft systems for compensation or hire within the communities to be served," it is unclear how the FAA will balance state views with the existing pre-emption for air carriers.

The bill also addresses the issue of state and federal drone responsibilities in section 373, which requires the comptroller general (head of the Government Accountability Office) to study and report to Congress on the regulation of low-altitude operations of small unmanned aircraft and the appropriate roles and responsibilities of federal, state, local, and tribal governments in regulating such activity. The report is required to address several issues including, "the scope of various jurisdictions, gaps among them, and the level of regulatory consistency needed to foster a financially viable unmanned aircraft industry."

Additionally, section 351 codifies the existing unmanned aircraft integration pilot program (IPP) created by the Department of Transportation (DOT) last year. The pilot program intends to accelerate the safe integration of unmanned aircraft and address various policy and technical

questions of stakeholders, including state and local governments, related to the integration of unmanned aircraft.

Two other sections impacting how states and drones interact are sections 346 and 379. Section 346 codifies existing DOT authority to authorize public aircraft operations and provides guidance and support for government agencies seeking to operate unmanned aircraft. Section 379 requires the FAA to make available to the public, through a database, information regarding government and commercial operators authorized to operate UAS in the national airspace. The information includes where UAS are registered, summary descriptions of operations, and information on UAS that will collect personally identifiable information. This section includes a sunset provision.

Although not specifically aimed at states, section 349 redefines the rules for the operation of recreational drones by repealing section 336 of the 2012 FAA Reauthorization Act, which had severely limited the FAA's authority to regulate recreational drones. The new rules for operation would require passage of an aeronautical safety and knowledge test, registration and marking of the recreational drone, as well as operating under a community-based organization's set of safety guidelines that are developed in coordination with the FAA. Additionally, section 376 requires the FAA to establish a pilot program to begin more thoroughly utilizing remote detection and identification of drones, which includes a mechanism for state law enforcement officials to report suspected operation of unmanned aircraft in violation of applicable federal laws and regulations. Similarly, section 376 requires FAA to begin to plan for full operational capability of unmanned aircraft systems traffic management (UTM) by creating a comprehensive plan for implementing UTM safety standards, among other matters, and delineate the roles and responsibility of public and private actors.

Counter-drone Authorities

The bill also includes the Preventing Emerging Threats Act of 2018 (Division H), which gives the secretary of Homeland Security and attorney general of the Department of Justice the authority to destroy or overtake a drone that has violated protected airspace or is otherwise posing a threat to the safety or security of the United States. Similarly, section 366 also requires the FAA to develop a comprehensive strategy to provide outreach to state and local governments, and provide guidance for local law enforcement agencies and first responders with respect to how to identify and respond to public safety, threats posed by UAS and how to identify and take advantage of opportunities to use UAS to enhance the effectiveness of local law enforcement agencies and first responders.

Air Ambulances

Section 418 establishes an advisory committee aimed at improving transparency for air ambulances and requires the committee to produce recommendations addressing the effects to all stakeholders on distinguishing the charges for air transportation services from charges for non-air transportation services in bills and invoices, developing cost-allocation methodologies to separate charges for air transportation services from charges for non-air transportation services and steps that can be taken by state legislatures, state insurance regulators, state attorneys general, and other state officials as appropriate, consistent with current legal authorities regarding consumer protection. The secretaries of DOT and the Department of Health and

Human Services, upon receipt of this advisory committee report, would then be able to issue formal rulemakings based on the recommendations as necessary. Additionally, section 419 amends existing law to include air ambulance operators in the scope of certain consumer protection laws and to enable consumers to report alleged unfair and deceptive practices by air ambulances to the DOT.

Aircraft Noise

The bill includes several sections aimed at addressing the growing issue of aircraft noise. While the bill does not impose any new requirements on the FAA to reduce noise, the bill does require the FAA to undertake several new studies that will explore the impact to communities of airplane noise, the economic and health impacts on individuals as well as methods for alleviating airplane noise. Such studies could be the basis for additional regulation in the future.

Essential Air Service

Section 451 reauthorizes the Essential Air Service Program for five years at a total cost of \$824 million.

Airplane Passenger Protections

Finally, although of little direct impact to states, the bill contains several provisions impacting airline passengers. FAA would be required to issue a rule that would set minimum standards for airline seat size and legroom while simultaneously ordering a study of plane evacuations, including the effect seat size and legroom have on evacuations. The bill would prohibit airlines from involuntarily removing a passenger, commonly referred to as “bumping,” who has already boarded, unless there is a safety or security concern, while also prohibiting the use of cell phones for voice calls during flight. It would also expand the current in-cabin smoking ban to include e-cigarettes and mandates a new rule that would set standards for service animals allowed on board.

Not Included

The bill contains none of the changes passed by the House Transportation and Infrastructure Committee in 2017 that would have significantly altered the structure of the FAA by splitting the agency’s dual role of aircraft safety and air-traffic management. Additionally, the final bill does not include a provision, previously passed by the full House, which would have pre-empted state law on intrastate trucking regulations.

Disaster Recovery Reform

The bill also includes what’s [considered](#) the most comprehensive disaster recovery reform package since Hurricane Katrina. The Disaster Recovery Reform Act (DRRA), as it was previously known as a standalone bill, passed by an overwhelming majority in the House in April 2018, and subsequently was deliberated on and revised by both the House and Senate. DRRA in part increases the federal investment in pre-disaster mitigation, increases reimbursement caps for state and local governments on a range of disaster costs and allows state and local governments to administer housing assistance grants.

Consultation with State and Local Governments

In Section 1239, the bill directs the administrator of the Federal Emergency Management Association (FEMA) to revise and update the factors considered when evaluating a governor's request for a major disaster declaration, including the way FEMA estimates the cost of major disaster assistance and the capacity of a jurisdiction to respond to disasters.

NCSL-drafted language that requires consultation with state and local governments was included in this section of the final bill. It reads:

“In determining the capacity of a jurisdiction to respond to disasters, and prior to the issuance of such a rule, the Administrator shall engage in meaningful consultation with relevant representatives of State, regional, local, and Indian tribal government stakeholders.”

NCSL, in making its case for the inclusion of the language, asserted that no entity can know a state's capacity to respond to a disaster better than state governments themselves. The inclusion of this language ensures that FEMA consider this important perspective before making changes to the way disaster assistance is calculated, based on such capacity. This language reflects NCSL's [Homeland Security and Emergency Management policy](#), revised and passed by legislators on the Law, Criminal Justice, and Public Safety Committee at the 2018 NCSL Legislative Summit. NCSL issued a [letter](#) to the full Senate in July highlighting certain components of the legislation and advocating for its passage.

Other Provisions

Additional sections of note within the bill, that address disaster recovery reform, would:

- Allow states to use federal disaster assistance to directly administer temporary and permanent housing assistance for disaster victims. This ensures such funding is managed by state officials that are much closer to disaster-affected communities and more familiar with their state's unique risk profile, infrastructure, and grant recipients. (Section 1211)
- Amend the [Stafford Act](#) to establish increased and fixed reimbursement rates to state and local governments for direct and indirect administrative costs associated with disaster recovery efforts. This includes no more than 15 percent for hazard mitigation and 12 percent for essential assistance, repair, restoration and replacement, debris removal and transportation assistance. (Section 1215).
- Reauthorize federal funding for Emergency Management Planning Grants (EMPG) and the Emergency Management Assistance Compact (EMAC). (Section 1217)
- Allow the FEMA administrator to develop incentives and penalties to encourage state and local governments to expedite the timely closeout of recovery-related expenditures and activities. (Section 1221)

- Require the FEMA administrator to develop a plan to streamline information collection processes for grant applications and make the process less burdensome and time-consuming. (Section 1223)
- Direct FEMA to increase consideration of severe local impact when evaluating whether to recommend a major disaster declaration. (Section 1232)
- Establish the National Public Infrastructure Pre-Disaster Mitigation Assistance Program, which would commit certain funding from the Disaster Relief Fund to pre-disaster mitigation efforts. It would allocate 6 percent of the combined obligations estimated following a major disaster (unemployment assistance, assistance to low-income migrant and seasonal farmworkers and crisis counseling assistance and training) to mitigation assistance (Section 1234). Mitigation funding would also be provided for wildfire prevention (Section 1204).
- Require FEMA to coordinate emergency response plans with state, tribal and local governments. (Section 1236)

Key Documents

[2018 FAA Reauthorization Act and Disaster Recovery Reform Act](#)

[Section by Section Summary](#)

[NCSL Letter on FAA Priorities](#)

[NCSL Letter on Air Carrier Pre-emption](#)

[NCSL Letter on Disaster Recovery Reform Act](#)