

114TH CONGRESS }
1st Session }

SENATE

{ REPORT
114-198

PILOT'S BILL OF RIGHTS 2

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 571

together with

ADDITIONAL VIEWS



DECEMBER 18, 2015.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

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DECEMBER 18, 2015.—Ordered to be printed

Mr. THUNE, from the Committee on Commerce, Science, and
Transportation, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany S. 571]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 571) to amend the Pilot's Bill of Rights to facilitate appeals and to apply to other certificates issued by the Federal Aviation Administration, to require the revision of the third class medical certification regulations issued by the Federal Aviation Administration, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of S. 571, as reported, is to amend various Federal statutes, regulations, and Federal Aviation Administration (FAA) processes that have a direct impact on the general aviation (GA) community, particularly medical certification requirements for recreational pilots and the appeals process for FAA enforcement actions.

BACKGROUND AND NEEDS

The GA community continues to play an important role in United States aviation. It is a community that includes private pilots who fly small aircraft, gliders, hot air balloons, experimental homebuilt aircraft, as well as more sophisticated turbo-prop and jet aircraft. GA also includes corporate flight departments that operate business aircraft. According to the report FAA Aerospace Forecasts FY

2015–2035, there are currently 198,780 GA aircraft based in the United States, the largest number of which are piston, single-engine aircraft.¹

According to the Aircraft Owners and Pilots Association, GA has been losing an average of 6,000 pilots per year over the last 10 years. Many in the GA community believe that the current medical certification system for pilots has become an onerous and costly deterrent for many individuals to remain or become pilots.

The Pilot's Bill of Rights (P.L. 112–153), the original legislative effort on these issues, was enacted on August 3, 2012. The bill established legal protections and process improvements for pilots that face enforcement proceedings by the FAA and provided new options for the appeals process. The bill also required improvements to FAA's Notices to Airman (NOTAM) program, a Government Accountability Office review of the FAA's medical certification process, and within a year of that report, an FAA response to the recommendations of that report.

SUMMARY OF PROVISIONS

As reported, S. 571 would require the FAA to amend its requirements related to medical certificates for recreational pilots. The bill also would amend the appeals process for certain FAA orders and actions affecting airman certificates and place limits on reexaminations of GA pilots by the FAA. The FAA is directed to take several steps to improve the Notices to Airmen (NOTAM) system. The bill also would improve access to certain flight data for individuals who are the subject of an FAA investigation.

LEGISLATIVE HISTORY

S. 571 was introduced on February 25, 2015, by Senator Inhofe, along with 12 original co-sponsors, and referred to the Committee on Commerce, Science, and Transportation of the Senate. As of December 11, 2015, the bill had a total of 70 co-sponsors. An identical bill, H.R. 1062, was introduced in the House of Representatives, on the same day as S. 571, by Rep. Sam Graves. H.R. 1062 was referred to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on the Judiciary of the House of Representatives.

The Committee held a hearing on April 28, 2015, entitled "FAA Reauthorization: Aviation Safety and General Aviation," at which the issue of medical certification requirements for recreational GA pilots was discussed in written and oral testimony.

On November 18, 2015, the Committee met in open Executive Session to consider legislative measures and nominations, including S. 571. Senator Manchin offered an amendment in the nature of a substitute, making several changes to the bill. The substitute was approved by the Committee by voice vote to serve as the underlying text for consideration. Two first degree amendments offered by Senator Nelson, one related to standards for routine medical examinations of pilots and one related to liability for individuals acting as designees of the FAA, were the subject of roll call votes and not adopted (both defeated by 11 yays to 13 nays).

¹ Piston Single-Engine – 122,435; Piston Multi-Engine – 13,175; Turbo-prop – 9,390; Turbo-jet – 11,915; Rotor-craft – 10,440; Experimental – 24,880.

Further consideration of the bill was deferred at the close of that markup.

On December 9, 2015, the Committee met again in open Executive Session to consider legislative measures and nominations, including S. 571. A new amendment in the nature of a substitute was offered by Senator Manchin and adopted by voice vote. The bill, as amended, was ordered to be reported to the Senate favorably by voice vote.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

S. 571—Pilot’s Bill of Rights 2

The Federal Aviation Administration (FAA), which regulates civil aviation, is responsible for issuing certain credentials that pilots must obtain in order to operate aircraft. S. 571 would direct the FAA to revise a variety of requirements, particularly related to medical certifications for recreational pilots. The bill also would specify certain changes to the agency’s administrative procedures and require various reports related to pilot certification.

Based on information from the FAA, CBO estimates that enacting S. 571 would not significantly affect the federal budget. We estimate that any increase in the agency’s administrative costs under the bill, which would be subject to appropriation, would not exceed \$500,000 annually.

Enacting S. 571 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting S. 571 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2026.

S. 571 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Megan Carroll. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

S. 571 would primarily affect the FAA, the National Transportation Safety Board (NTSB), Federal courts, and persons already subject to FAA regulations, all of which are currently covered under relevant laws amended in this bill. Therefore, the number of persons covered should be consistent with the current levels of persons impacted under the provisions that are addressed in the bill. With regard to new persons covered, new recreational pilots would be subject to fewer medical regulatory requirements.

ECONOMIC IMPACT

The bill would not authorize new spending by the Federal Government and is not expected to have an adverse impact on the Nation's economy. Additional costs to the Federal Government will vary based upon the number of pilots who choose to avail themselves of the new right to a de novo trial in U.S. District Court after appealing an FAA enforcement to the NTSB. The Federal Government will be responsible for the additional costs incurred to argue each case for a second time at a de novo trial before the U.S. District Court, including the costs to reintroduce all evidence and expert witness testimony, and staff resources from the U.S. Attorney's Office within the Department of Justice. There could, however, be positive economic impacts, especially for the aviation community, if the reduction in medical certification burdens encourages more individuals to remain or become pilots.

PRIVACY

The bill would have little, if any, impact on the personal privacy of individuals.

PAPERWORK

The bill would not significantly increase paperwork requirements for private individuals or businesses. Section 2 of the bill would require the FAA to revise rules related to medical certification requirements and operational regulations for certain recreational pilots, and therefore, the agency would be required to publish at least one rulemaking in the Federal Register. That section would require the FAA to develop a form containing a checklist to be used during comprehensive medical examinations of pilots every four years. Current FAA regulations require medical examinations every 2 years for pilots over the age of 40, so there would be a significant reduction in paperwork due to the decreased frequency in medical examinations.

That section would also require the development of an online medical education course and require pilots to submit a series of forms to the FAA upon completion of that course. Pilots also would be required to keep various records related to the online medical education course and comprehensive physical medical examinations, but these are not substantially greater than existing paperwork requirements related to medical certifications and logbooks. The bill would require the FAA to produce three reports to Congress, one in coordination with the NTSB on the impact of the changes to medical certification requirements, one on streamlining the process for obtaining an Authorization for Special Issuance, and one on medical conditions that have been added to the Conditions AMEs (Aviation Medical Examiners) Can Issue (CACI) program. Section 6 of the bill would require the FAA to promulgate regulations or guidance to ensure compliance with the new requirements of that section, but the extent and nature of such action should not be great considering the relatively limited scope of the provision.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title.

This section would designate the short title of the bill as the, “Pilot’s Bill of Rights 2.”

Section 2. Medical certification of certain small aircraft pilots.

This section would create an exemption, under specified circumstances, to the FAA’s current third-class airman medical certification requirements for GA pilots.² This section would direct the FAA to issue or revise regulations to ensure that an individual may operate as a pilot of a “covered aircraft”, if certain conditions are met. In particular, the flight must be operated at an altitude of 18,000 feet or below and at an indicated airspeed of not more than 250 knots, and the individual must possess a valid State driver’s license, comply with applicable medical requirements associated with that license, comply with applicable health requirements described below, be transporting five or fewer passengers (not including the pilot), and be operating under visual or instrument flight rules. A pilot may not operate a flight under this exemption for compensation or hire.

A “covered aircraft” would be one that is authorized under Federal law to carry not more than 6 occupants, and has a maximum certificated takeoff weight of no more than 6,000 pounds.

A pilot seeking to operate an aircraft under the revised medical requirements would be required to have had “one-touch” with the FAA. Specifically, an individual would be required to have held an FAA medical certificate in the 10 years before enactment of the section or at some point thereafter. A pilot who obtained such a certificate would not be required to return to the FAA to renew or otherwise obtain a medical certificate except as otherwise set forth in this section.

Every two years, an individual would be required to complete an online airman medical education course that meets the following requirements: available on the Internet free of charge; developed and periodically updated in coordination with representatives of relevant GA stakeholder groups; educates pilots on conducting medical self-assessments; advises pilots on how to identify warning signs of potential serious medical conditions; outlines risk mitigation strategies for medical conditions; increases awareness of potentially impairing medications; encourages regular medical exams and consultations with primary care physicians; and informs pilots of the regulations pertaining to the prohibition on flying during a medical deficiency.

²There are three classes of pilot medical certifications: the third-class airman medical certificate, needed for a private pilot license; the second-class airman medical certificate, needed for a commercial pilot license; and the first-class airman medical certificate, needed for an Airline Transport Pilot license.

The medical education course may be developed by the FAA, or the agency could utilize a suitable one developed by a nonprofit or not-for-profit GA organization. The FAA shall coordinate with GA stakeholder groups promptly to ensure that the online course is provided in a timely manner through the FAA website or other means. If any entity other than the FAA creates an online medical course intended to satisfy the requirements of this legislation, that entity must coordinate with the FAA to ensure that it meets all FAA standards.

This section would provide that an individual may not qualify for the exemption if the most recent application for airman medical certification the individual submitted to the FAA was completed and the FAA denied the application. In some instances, when an individual is referred to the FAA to be considered for an Authorization for Special Issuance, the individual or the individual's physician does not provide all of the information or documentation required under that process and the application is closed for inactivity or failure to provide information. In such instances, the applications would not be considered complete for the purposes of this section. While individuals who are ultimately denied issuance of an airman medical certificate would not qualify for the exemption, nothing should be construed as precluding an individual from attempting to obtain a medical certification in the future, and thereafter qualifying for the exemption once the initial medical certification requirement is met, as well as all other relevant requirements under this section.

At the conclusion of the medical education course, a series of forms would be generated for the pilot to complete and submit to the FAA. One of the forms that would be provided to the pilot is the medical examination checklist described below.

A pilot would also be required to have a comprehensive medical examination every four years. The examination must include a review of a checklist of medical items and conditions, as specified in the bill, similar to one currently used by AMEs.³ The FAA would be required to develop this checklist within 180 days of the date of enactment of the bill, and the Committee fully expects the agency to comply with this stringent deadline.

The pilot also would be required to provide a comprehensive medical history and a list of drugs (prescription and non-prescription) he or she takes, which the physician would be required to review with the pilot during the examination. The physician performing the examination must also follow the checklist of items to be evaluated, aimed at identifying conditions that could interfere with the safe operation of an aircraft. The physician would be instructed to address, as medically appropriate, any medical conditions identified and any drugs the pilot is taking. In some instances, a simple discussion of the condition or drugs may be adequate. In other cases, a referral to a specialist or further tests may be required. The pilot's physician would be required to certify that all items on the checklist were discussed during the exam, including any drugs the pilot is taking, and that the examination included all items on that checklist.

³An AME is a private physician who has been designated by the FAA and given the authority to perform flight physical examinations and issue aviation medical certificates.

Pilots would be required to retain certificates and forms demonstrating an understanding of applicable medical requirements and compliance with the new requirements in the bill. Among other things, all pilots would be required to certify that they understand that they may not fly during a period of medical deficiency.

If diagnosed with any medical condition that may impact the ability to fly, an individual would be required to be under the care and treatment of a physician in order to fly. Individuals who are diagnosed with certain mental health and neurological disorders would be required to have or obtain an Authorization for Special Issuance of a Medical Certificate, which is the current standard process.⁴ Individuals diagnosed with certain cardiovascular conditions would be required to go through the Special Issuance process (as modified by the bill) one time for each diagnosed condition. For such individuals, the requirements for obtaining a Special Issuance may be satisfied with the successful completion of an appropriate clinical evaluation without an FAA-imposed mandatory wait period, during which a pilot may not fly. Other than the foregoing specified mental, neurological, or cardiovascular conditions or disorders, the bill would not require a pilot operating under the exemption in this section to go through the Special Issuance process for any other medical conditions or disorders.

The medical certificate exemption established in this section would not be available for individuals with clinically diagnosed mental health or neurological conditions if the individual's medical specialist determines such conditions render the individual unable (or reasonably expected to make him or her unable) to fly under the operational flight parameters in this section.

The FAA would be required to identify medical conditions that could be added to an existing agency program, known as CACI, that allows AMEs to issue medical certificates for individuals with certain conditions that are known to be treatable (reducing the aviation safety risk) without requiring the individuals to go through the Authorization for Special Issuance of a Medical Certificate process. The FAA must consult with aviation, medical, and union stakeholders to identify conditions that should be reviewed by aviation medical experts, using the best available scientific evidence, to determine whether they can be added to the CACI process.

The FAA also would be required to implement procedures to streamline the process for obtaining an Authorization for Special Issuance of a Medical Certificate and similar consultations would be required.

Five years after the date of enactment, the FAA, in coordination with the NTSB, must report to Congress on the effects of the changes made by this section.

This section would prohibit the FAA from taking enforcement action against a pilot of a covered aircraft for not holding a valid third-class airman medical certificate if the pilot and the flight meet the requirements, through a good faith effort, under sub-

⁴The FAA may issue an Authorization for Special Issuance of a Medical Certificate, with a specified validity period, to an applicant who does not meet the established medical standards (i.e., has a disqualifying medical condition). The applicant must demonstrate to the FAA that the duties authorized by the class of medical certificate applied for can be performed without endangering public safety.

section (a) of this section (except for the medical education course required under subsection (a)(5)), unless the FAA has published final regulations implementing the requirements of this section. The exception for subsection (a)(5) is to ensure that the FAA cannot circumvent the enforcement prohibition if the development of the medical course is delayed. The limitation on enforcement would come into effect one year after enactment of the provision.

Section 3. Expansion of Pilot's Bill of Rights.

This section would make several amendments to the Pilot's Bill of Rights, which allows individuals denied an airman certificate to appeal that denial to U.S. District Court after it has been upheld under the normal NTSB appeals process. This section would expand the scope of that provision to allow individuals who have had their airman certificates suspended or revoked to avail themselves of the same appeals process, and would modify the standard of review for appeals in U.S. District Court.

A key change to current law, under this bill, is the availability of a U.S. District Court review on a de novo basis once the current administrative remedies have been exhausted (including an appeal to the full NTSB). Under a de novo review, the District Court would try the matter. In such a court case, any element of the record of administrative review could be presented as evidence, but the court would not be compelled to give deference to administrative decisions. Also in such court cases, the FAA would bear the burden of proof under any appeal related to suspended or revoked certificates while the airman would bear the burden for the appeal of a denied certificate. The intent is that the FAA would bear the burden of proof in instances where the agency is accusing a pilot of an infraction against rules, however the pilot would bear the burden of proof when he or she is required to demonstrate proficiency or sufficient qualifications.

This section would impose new requirements for notifications with respect to FAA investigations relating to airman certificates.

This section would set out requirements for the FAA to provide a copy of the releasable portion of the investigative report to the holder of an airman certificate who is the subject of certain enforcement actions. If the FAA fails to adhere to the requirements of this section, the certificate holder may move to dismiss the complaint before an administrative law judge (ALJ). The ALJ may order appropriate relief, if the FAA fails to establish good cause for failure to comply with this section. This section would also define the portions of an investigative report considered releasable.

Section 4. Limitations on reexamination of certificate holders.

This section would only apply to reexaminations that are ordered due to the fault of the FAA. It would prohibit the FAA from reexamining a GA pilot holding a student, sport, recreational, or private pilot airman certificate unless the agency has reasonable grounds to: (1) establish a lack of qualification on the part of the pilot; or (2) demonstrate that the certificate was obtained through fraud or an exam that was inadequate. Before taking action to reexamine a pilot, the FAA would be required to provide a GA pilot the reasonable basis for the reexamination and relevant information that formed that basis.

This section would prohibit the FAA from ordering certain certificate actions against a GA pilot, after a reexamination, unless the FAA determines that the pilot lacks the technical skills and competency, or care, judgment, and responsibility, necessary to hold and safely exercise the privileges of the certificate, or fraudulently obtained it. This section also would set forth the standard of review for any such certificate actions.

Section 5. Expediting updates to NOTAM program.

This section would amend the Pilot's Bill of Rights to require the NOTAM Improvement Program to be maintained in a public repository that is accessible on the Internet, machine readable, and searchable. It also would require the FAA to include temporary flight restrictions within the NOTAM Improvement Program; direct the FAA to consider the repository of NOTAMs created to be the sole source location for pilots to check for NOTAMs; determine that NOTAMs are announced and published when included in the repository; and, after the FAA completes the NOTAM Improvement Program, prohibit the enforcement of a NOTAM violation if the NOTAM was not included in the repository before the flight commenced. The FAA also would be prohibited from enforcing NOTAM violations, within 180 days after the date of enactment of this bill, until the FAA certifies to Congress that it has implemented the changes to the NOTAM system required by this section; however, an exception for national security is provided.

Section 6. Accessibility of certain flight data.

This section would impose requirements on the FAA with regard to certain records related to certificate actions. Specifically, when the FAA receives a written request for a flight record (as defined in the Pilot's Bill of Rights) from an individual who is the subject of an investigation initiated by the FAA, and the covered flight record is not in the possession of the FAA, the Administrator would be required to request the relevant record from the contract tower or other contractor of the FAA that possesses such flight record. These records would be required to be provided to the FAA by such entities.

If the Administrator has issued, or subsequently issues, a Notice of Proposed Certificate Action relying on evidence contained in a flight record, and the individual who is the subject of an investigation has requested the record, the FAA would be required to promptly produce the record and extend the time the individual has to respond to the Notice of Proposed Certificate Action until the covered flight record is provided.

The FAA would have 180 days after the date of enactment to promulgate regulations or guidance to ensure compliance with this section.

Any contract or agreement entered into or renewed after enactment of the bill, between the FAA and a covered entity, must contain material terms to ensure compliance with the requirements of this section. Relevant contracts that are in effect on the date of enactment need not have such material terms unless the contract or agreement is renegotiated, renewed, or modified after that date.

Section 7. Authority for legal counsel to issue certain notices.

This section would require the FAA to revise its regulations to authorize legal counsel to close certain enforcement actions with a warning notice, letter of corrections, or other administrative action.

VOTES IN COMMITTEE

Senator Nelson offered an amendment, to the original amendment (in the nature of a substitute) offered by Senator Manchin, to require an independent panel of aerospace medical experts to set standards for the comprehensive medical examination in subsection (a)(6) of section 2 of the bill, and to require that the examination follows a checklist of medical conditions that impair flight, which the pilot completes and signs, and the physician verifies. By a roll-call vote of 11 yeas and 13 nays as follows, the amendment was defeated:

YEAS—11	NAYS—13
Mr. Nelson	Mr. Wicker ¹
Ms. Cantwell	Mr. Blunt ¹
Ms. McCaskill	Mr. Rubio ¹
Ms. Klobuchar ¹	Ms. Ayotte
Mr. Blumenthal	Mr. Cruz ¹
Mr. Schatz	Ms. Fischer ¹
Mr. Markey ¹	Mr. Moran
Mr. Booker ¹	Mr. Sullivan
Mr. Udall ¹	Mr. Johnson ¹
Mr. Manchin	Mr. Heller
Mr. Peters	Mr. Gardner ¹
	Mr. Daines
	Mr. Thune

¹By proxy

Senator Nelson offered an amendment, to the original amendment (in the nature of a substitute) offered by Senator Manchin, to limit Federal liability protection to Federal employees. By a roll-call vote of 11 yeas and 13 nays as follows, the amendment was defeated:

YEAS—11	NAYS—13
Mr. Nelson	Mr. Wicker ¹
Ms. Cantwell	Mr. Blunt ¹
Ms. McCaskill	Mr. Rubio ¹
Ms. Klobuchar ¹	Ms. Ayotte
Mr. Blumenthal	Mr. Cruz ¹
Mr. Schatz	Ms. Fischer ¹
Mr. Markey ¹	Mr. Moran
Mr. Booker ¹	Mr. Sullivan
Mr. Udall ¹	Mr. Johnson ¹
Mr. Manchin	Mr. Heller
Mr. Peters	Mr. Gardner ¹
	Mr. Daines
	Mr. Thune

¹By proxy

ADDITIONAL VIEWS OF SENATOR NELSON

I write separately to provide my views on S. 571, Pilot's Bill of Rights 2. I appreciate the work that Senators Manchin, Inhofe, and Thune have done to address safety concerns with the original bill. That progress is reflected in the substitute amendment offered by Senator Manchin and adopted at the Committee's Executive Session on December 9, 2015.

The public, both in the air and on the ground, relies on the safety of our aviation system. As I noted in my remarks at the Executive Session of this Committee on November 18, 2015, we have the safest aviation system in the world, and we must ensure our ability to uphold that standard. That is the trust the public has put in us.

Senator Manchin's December 9, 2015, substitute amendment included several important improvements based on the amendments that I filed to this bill for the Executive Session of this Committee on November 18, 2015. Though my amendments were not adopted at that time, the bill that was passed by this Committee on December 9, 2015, as amended by Senator Manchin's substitute, reflects their intent, to preserve safety in the context of this bill wherever possible.

One area of improvement in the December 9, 2015, substitute amendment is the removal of a provision that would have insulated roughly 7,000 individuals operating in the aviation safety area from liability if they failed to carry out their duties responsibly. This liability exemption would have included Aviation Medical Examiners, Pilot Examiners, and Designated Airworthiness Representatives who conduct the testing and inspections for aviation manufacturing and maintenance. Designing and maintaining passenger aircraft, and certifying the commercial pilots who fly those aircraft, are safety critical responsibilities, and should not be shielded from accountability. That section of the bill has been removed.

Several other sections have been modified, including provisions addressing the Federal Aviation Administration (FAA) reexamination of pilots, Notices to Airmen (NOTAM), and the process for appeals from FAA certificate actions. We have endeavored to strike the appropriate balance with procedural rights for airmen that facilitate transparency and allow access to U.S. District Court, while not limiting the FAA's ability to take action when there is evidence that a pilot is not safe or competent to fly.

Perhaps the most important safety measure that has been adopted in the revised bill is the inclusion of a comprehensive checklist for medical examinations. If we are going to move from a system that involves Aviation Medical Examiners to a system that allows pilots to self-certify and see their own personal physicians, we must set standards for pilots and doctors to follow. The legislation now requires the FAA to develop a checklist for pilots to complete and

for physicians to follow during the comprehensive medical examination that a pilot must certify to every four years. Pilots must also confirm that they do not know of any medical condition that would render them unsafe to fly. That requires ongoing monitoring on their part. Taken together, these provisions will help to ensure that pilots are medically fit to fly when they enter the national airspace and that the safety of our system is preserved.

While I believe the bill has been improved, I continue to have reservations about the legislation. The two dozen amendments that I filed for the Executive Session on November 18, 2015, contain many additional improvements to the bill that I hope my colleagues will consider adopting as this bill moves forward.

On the operational side, this includes reducing the maximum altitude of the medical exemption in this bill to 10,000 feet, where pressurized cabins are not required and well below the cruising altitude of commercial aircraft, and limiting the number of passengers to one instead of five. I also filed an amendment to ensure an FAA-certified Aviation Medical Examiner has cleared pilots who wish to fly under this medical exemption within the past five years, not within the last decade.

Furthermore, while I appreciate the inclusion of a checklist for pilots' medical exams and the additional attestation required for pilots with serious mental or neurological conditions, additional amendments I proposed to strengthen the medical standards were not adopted. These include amendments to require physicians to certify that they had treated medical conditions that might impact a pilot's ability to fly, to expand the list of medical conditions that would require additional review beyond those listed in this bill to include any condition that could interfere with the ability to operate an aircraft, to allow physicians to alert the FAA if a pilot has a mental or neurological condition that may render them unable to safely fly, and to permit FAA physicians to review a pilot's cardiovascular condition and treatment before allowing them to get back in the cockpit.

Furthermore, I proposed that this exemption sunset in five years, just after the release of a National Transportation Safety Board (NTSB) study of the safety effects of this medical exemption required under this bill, so that Congress can evaluate any adverse impacts and determine whether to extend the exemption. It is our responsibility to understand the safety implications of decisions regarding the national airspace system and the airmen and aircraft operating in that system.

I appreciate the willingness of Chairman Thune and the bill's lead sponsors, Senators Inhofe and Manchin, to engage in an ongoing dialogue and meaningful negotiations that led to these improvements. I look forward to continue working with them to perfect the legislation, which should be included in and considered as part of a comprehensive FAA Reauthorization bill. The FAA's current authorization expires on March 31, 2016, and we must continue working together in a bipartisan fashion to ensure that all issues related to aviation safety are addressed in a comprehensive, long-term authorization bill.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 49. TRANSPORTATION

SUBTITLE VII. AVIATION PROGRAMS

PART A. AIR COMMERCE AND SAFETY

SUBPART III. SAFETY

CHAPTER 447. SAFETY REGULATION

§ 44709. Amendments, modifications, suspensions, and revocations of certificates

(a) REINSPECTION AND REEXAMINATION.—**[The Administrator]**

(1) *IN GENERAL.*—*The Administrator of the Federal Aviation Administration may reinspect at any time a civil aircraft, aircraft engine, propeller, appliance, design organization, production certificate holder, air navigation facility, or air agency, or [reexamine], except as provided in paragraph (2), reexamine an airman holding a certificate issued under section 44703 of this title.*

(2) *LIMITATION ON THE REEXAMINATION OF AIRMAN CERTIFICATES.*—

(A) *IN GENERAL.*—*The Administrator may not reexamine an airman holding a student, sport, recreational, or private pilot certificate issued under section 44703 of this title if the reexamination is ordered as a result of an event involving the fault of the Federal Aviation Administration or its designee, unless the Administrator has reasonable grounds—*

(i) *to establish that the airman may not be qualified to exercise the privileges of a particular certificate or rating, based upon an act or omission committed by the airman while exercising those privileges, after the certificate or rating was issued by the Federal Aviation Administration or its designee; or*

(ii) *to demonstrate that the airman obtained the certificate or the rating through fraudulent means or through an examination that was substantially and demonstrably inadequate to establish the airman's qualifications.*

(B) *NOTIFICATION REQUIREMENTS.*—*Before taking any action to reexamine an airman under subparagraph (A), the Administrator shall provide to the airman—*

(i) *a reasonable basis, described in detail, for requesting the reexamination; and*

(ii) *any information gathered by the Federal Aviation Administration, that the Administrator determines is appropriate to provide, such as the scope and nature of*

the requested reexamination, that formed the basis for that justification.

(b) ACTIONS OF THE ADMINISTRATOR.—**[The Administrator]**

(1) *IN GENERAL.*—*Except as provided in paragraph (2), the Administrator may issue an order amending, modifying, suspending, or revoking—*

[(1)](A) any part of a certificate issued under this chapter if—

[(A)](i) the Administrator decides after conducting a reinspection, reexamination, or other investigation that safety in air commerce or air transportation and the public interest require that action; or

[(B)](i) the holder of the certificate has violated an aircraft noise or sonic boom standard or regulation prescribed under section 44715(a) of this title; and

[(2)](B) an airman certificate when the holder of the certificate is convicted of violating section 13(a) of the Fish and Wildlife Act of 1956 (16 U.S.C. 742j-1(a)).

(2) *AMENDMENTS, MODIFICATIONS, SUSPENSIONS, AND REVOCATIONS OF AIRMAN CERTIFICATES AFTER REEXAMINATION.*—

(A) *IN GENERAL.*—*The Administrator may not issue an order to amend, modify, suspend, or revoke an airman certificate held by a student, sport, recreational, or private pilot and issued under section 44703 of this title after a reexamination of the airman holding the certificate unless the Administrator determines that the airman—*

(i) lacks the technical skills and competency, or care, judgment, and responsibility, necessary to hold and safely exercise the privileges of the certificate; or

(ii) materially contributed to the issuance of the certificate by fraudulent means.

(B) *STANDARD OF REVIEW.*—*Any order of the Administrator under this paragraph shall be subject to the standard of review provided for under section 2 of the Pilot's Bill of Rights (49 U.S.C. 44703 note).*

(c) *ADVICE TO CERTIFICATE HOLDERS AND OPPORTUNITY TO ANSWER.*—*Before acting under subsection (b) of this section, the Administrator shall advise the holder of the certificate of the charges or other reasons on which the Administrator relies for the proposed action. Except in an emergency, the Administrator shall provide the holder an opportunity to answer the charges and be heard why the certificate should not be amended, modified, suspended, or revoked.*

(d) *APPEALS.*—

(1) A person adversely affected by an order of the Administrator under this section may appeal the order to the National Transportation Safety Board. After notice and an opportunity for a hearing, the Board may amend, modify, or reverse the order when the Board finds—

(A) if the order was issued under **[subsection (b)(1)(A)] subsection (b)(1)(A)(i)** of this section, that safety in air commerce or air transportation and the public interest do not require affirmation of the order; or

(B) if the order was issued under [subsection (b)(1)(B)] subsection (b)(1)(A)(ii) of this section—

(i) that control or abatement of aircraft noise or sonic boom and the public health and welfare do not require affirmation of the order; or

(ii) the order, as it is related to a violation of aircraft noise or sonic boom standards and regulations, is not consistent with safety in air commerce or air transportation.

(2) The Board may modify a suspension or revocation of a certificate to imposition of a civil penalty.

(3) When conducting a hearing under this subsection, the Board is not bound by findings of fact of the Administrator.

(e) EFFECTIVENESS OF ORDERS PENDING APPEAL.—

(1) IN GENERAL.—When a person files an appeal with the Board under subsection (d), the order of the Administrator is stayed.

(2) EXCEPTION.—Notwithstanding paragraph (1), the order of the Administrator is effective immediately if the Administrator advises the Board that an emergency exists and safety in air commerce or air transportation requires the order to be effective immediately.

(3) REVIEW OF EMERGENCY ORDER.—A person affected by the immediate effectiveness of the Administrator's order under paragraph (2) may petition for a review by the Board, under procedures promulgated by the Board, of the Administrator's determination that an emergency exists. Any such review shall be requested not later than 48 hours after the order is received by the person. If the Board finds that an emergency does not exist that requires the immediate application of the order in the interest of safety in air commerce or air transportation, the order shall be stayed, notwithstanding paragraph (2). The Board shall dispose of a review request under this paragraph not later than 5 days after the date on which the request is filed.

(4) FINAL DISPOSITION.—The Board shall make a final disposition of an appeal under subsection (d) not later than 60 days after the date on which the appeal is filed.

(f) JUDICIAL REVIEW.—A person substantially affected by an order of the Board under this section, or the Administrator when the Administrator decides that an order of the Board under this section will have a significant adverse impact on carrying out this part, may obtain judicial review of the order under section 46110 of this title. The Administrator shall be made a party to the judicial review proceedings. Findings of fact of the Board are conclusive if supported by substantial evidence.

PART B. AIRPORT DEVELOPMENT AND NOISE

CHAPTER 471. AIRPORT DEVELOPMENT

SUBCHAPTER I. AIRPORT IMPROVEMENT

§47124a. Accessibility of certain flight data

(a) DEFINITIONS.—In this section:

(1) *ADMINISTRATION.*—The term “Administration” means the Federal Aviation Administration.

(2) *ADMINISTRATOR.*—The term “Administrator” means the Administrator of the Federal Aviation Administration.

(3) *APPLICABLE INDIVIDUAL.*—The term “applicable individual” means an individual who is the subject of an investigation initiated by the Administrator related to a covered flight record.

(4) *CONTRACT TOWER.*—The term “contract tower” means an air traffic control tower providing air traffic control services pursuant to a contract with the Administration under the contract air traffic control tower program under section 47124(b)(3).

(5) *COVERED FLIGHT RECORD.*—The term “covered flight record” means any air traffic data (as defined in section 2(b)(4)(B) of the Pilot’s Bill of Rights (49 U.S.C. 44703 note)), created, maintained, or controlled by any program of the Administration, including any program of the Administration carried out by employees or contractors of the Administration, such as contract towers, flight service stations, and controller training programs.

(b) *PROVISION OF COVERED FLIGHT RECORD TO ADMINISTRATION.*—

(1) *REQUESTS.*—Whenever the Administration receives a written request for a covered flight record from an applicable individual and the covered flight record is not in the possession of the Administration, the Administrator shall request the covered flight record from the contract tower or other contractor of the Administration in possession of the covered flight record.

(2) *PROVISION OF RECORDS.*—Any covered flight record created, maintained, or controlled by a contract tower or another contractor of the Administration that maintains covered flight records shall be provided to the Administration if the Administration requests the record pursuant to paragraph (1).

(3) *NOTICE OF PROPOSED CERTIFICATE ACTION.*—If the Administrator has issued, or subsequently issues, a Notice of Proposed Certificate Action relying on evidence contained in the covered flight record and the individual who is the subject of an investigation has requested the record, the Administrator shall promptly produce the record and extend the time the individual has to respond to the Notice of Proposed Certificate Action until the covered flight record is provided.

(c) *IMPLEMENTATION.*—

(1) *IN GENERAL.*—Not later than 180 days after the date of enactment of the Pilot’s Bill of Rights 2, the Administrator shall promulgate regulations or guidance to ensure compliance with this section.

(2) *COMPLIANCE BY CONTRACTORS.*—

(A) Compliance with this section by a contract tower or other contractor of the Administration that maintains covered flight records shall be included as a material term in any contract between the Administration and the contract tower or contractor entered into or renewed on or after the date of enactment of the Pilot’s Bill of Rights 2.

(B) Subparagraph (A) shall not apply to any contract or agreement in effect on the date of enactment of the Pilot's Bill of Rights 2 unless the contract or agreement is renegotiated, renewed, or modified after that date.

PILOT'S BILL OF RIGHTS

[Public Law 112-153; 126 Stat. 1159]

SEC. 2. FEDERAL AVIATION ADMINISTRATION ENFORCEMENT PROCEEDINGS AND ELIMINATION OF DEFERENCE.

[49 U.S.C. 44703 note]

(a) **IN GENERAL.**—Any proceeding conducted under subpart C, D, or F of part 821 of title 49, Code of Federal Regulations, relating to denial, amendment, modification, suspension, or revocation of an airman certificate, shall be conducted, to the extent practicable, in accordance with the Federal Rules of Civil Procedure and the Federal Rules of Evidence.

(b) **ACCESS TO INFORMATION.**—

(1) **IN GENERAL.**—Except as provided under paragraph (3), the Administrator of the Federal Aviation Administration (referred to in this section as the “Administrator”) shall provide timely, written notification to an individual who is the subject of an investigation relating to the approval, denial, suspension, modification, or revocation of an airman certificate under chapter 447 of title 49, United States Code.

(2) **INFORMATION REQUIRED.**—The notification required under paragraph (1) shall inform the individual—

(A) of the nature of the investigation *and the specific activity on which the investigation is based*;

(B) that an oral or written response to a Letter of Investigation from the Administrator is not required;

(C) that no action or adverse inference can be taken against the individual for declining to respond to a Letter of Investigation from the Administrator;

(D) that any response to a Letter of Investigation from the Administrator or to an inquiry made by a representative of the Administrator by the individual may be used as evidence against the individual;

(E) that the releasable portions of the Administrator’s investigative report will be available to the individual; and

(F) that the individual is entitled to access or otherwise obtain air traffic data described in paragraph (4).

(3) **EXCEPTION.**—The Administrator may delay **[timely]** notification under paragraph (1) if the Administrator determines that such notification may threaten the integrity of the investigation.

(4) **ACCESS TO AIR TRAFFIC DATA.**—

(A) **FAA AIR TRAFFIC DATA.**—The Administrator shall provide an individual described in paragraph (1) with timely access to any air traffic data in the possession of the Federal Aviation Administration that would facilitate the individual’s ability to productively participate in a proceeding relating to an investigation described in such paragraph.

(B) AIR TRAFFIC DATA DEFINED.—As used in subparagraph (A), the term “air traffic data” includes—

- (i) relevant air traffic communication tapes;
- (ii) radar information;
- (iii) air traffic controller statements;
- (iv) flight data;
- (v) investigative reports; and
- (vi) any other air traffic or flight data in the Federal Aviation Administration’s possession that would facilitate the individual’s ability to productively participate in the proceeding.

(C) GOVERNMENT CONTRACTOR AIR TRAFFIC DATA.—

(i) IN GENERAL.—Any individual described in paragraph (1) is entitled to obtain any air traffic data that would facilitate the individual’s ability to productively participate in a proceeding relating to an investigation described in such paragraph from a government contractor that provides operational services to the Federal Aviation Administration, including control towers and flight service stations.

(ii) REQUIRED INFORMATION FROM INDIVIDUAL.—The individual may obtain the information described in clause (i) by submitting a request to the Administrator that—

(I) describes the facility at which such information is located; and

(II) identifies the date on which such information was generated.

(iii) PROVISION OF INFORMATION TO INDIVIDUAL.—If the Administrator receives a request under this subparagraph, the Administrator shall—

(I) request the contractor to provide the requested information; and

(II) upon receiving such information, transmitting the information to the requesting individual in a timely manner.

(5) TIMING.—Except when the Administrator determines that an emergency exists under section **[44709(c)(2)]** *section 44709(e)(2)* or 46105(c), the Administrator may not proceed against an individual that is the subject of an investigation described in paragraph (1) during the 30-day period beginning on the date on which the air traffic data required under paragraph (4) is made available to the individual.

(c) [Omitted]

(d) APPEAL FROM CERTIFICATE ACTIONS.—

(1) IN GENERAL.—Upon a decision by the National Transportation Safety Board upholding an order or a final decision by the Administrator denying an airman certificate under section 44703(d) of title 49, United States Code, **[or imposing a punitive civil action or an emergency order of revocation under subsections (d) and (e) of section 44709 of such title]** *suspending or revoking an airman certificate under section 44709(d) of such title, or imposing an emergency order of revocation under subsections (d) and (e) of section 44709 of such title*, an indi-

vidual substantially affected by an order of the Board may, at the individual's election, file an appeal in the United States district court in which the individual resides or in which the action in question occurred, or in the United States District Court for the District of Columbia. If the individual substantially affected by an order of the Board elects not to file an appeal in a United States district court, the individual may file an appeal in an appropriate United States court of appeals.

(2) EMERGENCY ORDER PENDING JUDICIAL REVIEW.—Subsequent to a decision by the Board to uphold an Administrator's emergency order under section 44709(e)(2) of title 49, United States Code, and absent a stay of the enforcement of that order by the Board, the emergency order of amendment, modification, suspension, or revocation of a certificate shall remain in effect, pending the exhaustion of an appeal to a Federal district court as provided in this Act.

(e) STANDARD OF REVIEW.—

[(1) IN GENERAL.—In an appeal filed under subsection (d) in a United States district court, the district court shall give full independent review of a denial, suspension, or revocation ordered by the Administrator, including substantive independent and expedited review of any decision by the Administrator to make such order effective immediately.]

(1) *IN GENERAL.—In an appeal filed under subsection (d) in a United States district court with respect to a denial, suspension, or revocation of an airman certificate by the Administrator—*

(A) *the district court shall review the denial, suspension, or revocation de novo, including by—*

(i) *conducting a full independent review of the complete administrative record of the denial, suspension, or revocation;*

(ii) *permitting additional discovery and the taking of additional evidence; and*

(iii) *making the findings of fact and conclusions of law required by Rule 52 of the Federal Rules of Civil Procedure without being bound to any findings of fact of the Administrator or the National Transportation Safety Board.*

(2) *BURDEN OF PROOF.—In an appeal filed under subsection (d) in a United States district court after an exhaustion of administrative remedies, the burden of proof shall be as follows:*

(A) *In an appeal of the denial of an application for the issuance or renewal of an airman certificate under section 44703 of title 49, United States Code, the burden of proof shall be upon the applicant denied an airman certificate by the Administrator.*

(B) *In an appeal of an order issued by the Administrator under section 44709 of title 49, United States Code, the burden of proof shall be upon the Administrator.*

[(2)](3) EVIDENCE.—A United States district court's review under paragraph (1) shall include in evidence any record of the proceeding before the Administrator and any record of the proceeding before the National Transportation Safety Board, in-

cluding hearing testimony, transcripts, exhibits, decisions, and briefs submitted by the parties.

(4) *APPLICABILITY OF ADMINISTRATIVE PROCEDURE ACT.*—Notwithstanding paragraph (1)(A) of this subsection or subsection (a)(1) of section 554 of title 5, United States Code, section 554 of such title shall apply to adjudications of the Administrator and the National Transportation Safety Board to the same extent as that section applied to such adjudications before the date of enactment of the Pilot's Bill of Rights 2.

(f) *RELEASE OF INVESTIGATIVE REPORTS.*—

(1) *IN GENERAL.*—

(A) *EMERGENCY ORDERS.*—In any proceeding conducted under part 821 of title 49, Code of Federal Regulations, relating to the amendment, modification, suspension, or revocation of an airman certificate, in which the Administrator issues an emergency order under subsections (d) and (e) of section 44709, section 44710, or section 46105(c) of title 49, United States Code, or another order that takes effect immediately, the Administrator shall provide to the individual holding the airman certificate the releasable portion of the investigative report at the time the Administrator issues the order. If the complete Report of Investigation is not available at the time the Emergency Order is issued, the Administrator shall issue all portions of the report that are available at the time and shall provide the full report within 5 days of its completion.

(B) *OTHER ORDERS.*—In any non-emergency proceeding conducted under part 821 of title 49, Code of Federal Regulations, relating to the amendment, modification, suspension, or revocation of an airman certificate, in which the Administrator notifies the certificate holder of a proposed certificate action under subsections (b) and (c) of section 44709 or section 44710 of title 49, United States Code, the Administrator shall, upon the written request of the covered certificate holder and at any time after that notification, provide to the covered certificate holder the releasable portion of the investigative report.

(2) *MOTION FOR DISMISSAL.*—If the Administrator does not provide the releasable portions of the investigative report to the individual holding the airman certificate subject to the proceeding referred to in paragraph (1) by the time required by that paragraph, the individual may move to dismiss the complaint of the Administrator or for other relief and, unless the Administrator establishes good cause for the failure to provide the investigative report or for a lack of timeliness, the administrative law judge shall order such relief as the judge considers appropriate.

(3) *RELEASABLE PORTION OF INVESTIGATIVE REPORT.*—For purposes of paragraph (1), the releasable portion of an investigative report is all information in the report, except for the following:

(A) Information that is privileged.

(B) Information that constitutes work product or reflects internal deliberative process.

(C) Information that would disclose the identity of a confidential source.

(D) Information the disclosure of which is prohibited by any other provision of law.

(E) Information that is not relevant to the subject matter of the proceeding.

(F) Information the Administrator can demonstrate is withheld for good cause.

(G) Sensitive security information, as defined in section 15.5 of title 49, Code of Federal Regulations (or any corresponding similar ruling or regulation).

(4) **RULE OF CONSTRUCTION.**—Nothing in this subsection shall be construed to prevent the Administrator from releasing to an individual subject to an investigation described in subsection (b)(1)—

(A) information in addition to the information included in the releasable portion of the investigative report; or

(B) a copy of the investigative report before the Administrator issues a complaint.

SEC. 3. NOTICES TO AIRMEN.

[49 U.S.C. 44701 note]

(a) **IN GENERAL.**—

(1) **DEFINITION.**—In this section, the term “NOTAM” means Notices to Airmen.

(2) **IMPROVEMENTS.**—Not later than 180 days after the date of the enactment of **[this Act]** *the Pilot’s Bill of Rights 2*, the Administrator of the Federal Aviation Administration shall **[begin]** *complete the implementation of a Notice to Airmen Improvement Program (in this section referred to as the “NOTAM Improvement Program”)*—

(A) to improve the system of providing airmen with pertinent and timely information regarding the national airspace system;

[(B) to archive, in a public central location, all NOTAMs, including the original content and form of the notices, the original date of publication, and any amendments to such notices with the date of each amendment; and**]**

(B) to continue developing and modernizing the NOTAM repository, in a public central location, to maintain and archive all NOTAMs, including the original content and form of the notices, the original date of publication, and any amendments to such notices with the date of each amendment, in a manner that is Internet-accessible, machine-readable, and searchable;

(C) to apply filters so that pilots can prioritize critical flight safety information from other airspace system information**[.];**

(D) to specify the times during which temporary flight restrictions are in effect and the duration of a designation of special use airspace in a specific area.

(b) **GOALS OF PROGRAM.**—The goals of the NOTAM Improvement Program are—

(1) to decrease the overwhelming volume of NOTAMs an airman receives when retrieving airman information prior to a flight in the national airspace system;

(2) make the NOTAMs more specific and relevant to the airman's route and in a format that is more useable to the airman;

(3) to provide a full set of NOTAM results in addition to specific information requested by airmen;

(4) to provide a document that is easily searchable; and

(5) to provide a filtering mechanism similar to that provided by the Department of Defense Notices to Airmen.

(c) **ADVICE FROM PRIVATE SECTOR GROUPS.**—The Administrator shall establish a NOTAM Improvement Panel, which shall be comprised of representatives of relevant nonprofit and not-for-profit general aviation pilot groups, to advise the Administrator in carrying out the goals of the NOTAM Improvement Program under this section.

[(d) **PHASE-IN AND COMPLETION.**—The improvements required by this section shall be phased in as quickly as practicable and shall be completed not later than the date that is 1 year after the date of the enactment of this Act.]

(d) **DESIGNATION OF REPOSITORY AS SOLE SOURCE FOR NOTAMS.**—

(1) **IN GENERAL.**—*The Administrator—*

(A) shall consider the repository for NOTAMs under subsection (a)(2)(B) to be the sole location for airmen to check for NOTAMs; and

(B) may not consider a NOTAM to be announced or published until the NOTAM is included in the repository for NOTAMs under subsection (a)(2)(B).

(2) **PROHIBITION ON TAKING ACTION FOR VIOLATIONS OF NOTAMS NOT IN REPOSITORY.**—

(A) IN GENERAL.—*Except as provided in subparagraph (B), beginning on the date that the repository under subsection (a)(2)(B) is final and published, the Administrator may not take any enforcement action against an airman for a violation of a NOTAM during a flight if—*

(i) that NOTAM is not available through the repository before the commencement of the flight; and

(ii) that NOTAM is not reasonably accessible and identifiable to the airman.

(B) EXCEPTION FOR NATIONAL SECURITY.—*Subparagraph (A) shall not apply in the case of an enforcement action for a violation of a NOTAM that directly relates to national security.*