

Calendar No. 651

117TH CONGRESS }
2nd Session }

SENATE

{ REPORT
{ 117-260

CONTRACT ACT OF 2021

—
R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 419

TO AMEND TITLE 5, UNITED STATES CODE, TO PROVIDE FOR
A FULL ANNUITY SUPPLEMENT FOR CERTAIN AIR TRAFFIC
CONTROLLERS



DECEMBER 15, 2022.—Ordered to be printed

—
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DECEMBER 15, 2022.—Ordered to be printed

Mr. PETERS, from the Committee on Homeland Security and Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 419]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 419) to amend title 5, United States Code, to provide for a full annuity supplement for certain air traffic controllers, having considered the same, reports favorably without amendment and recommends that the bill do pass.

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I. PURPOSE AND SUMMARY

S. 419, the Continuity for Operators with Necessary Training Required for ATC Contract Towers Act of 2021, or the CONTRACT Act of 2021, amends title 5, United States Code, to prevent certain retired Federal Aviation Administration (FAA) air traffic controllers, who choose to work at federal contract towers, from facing a reduction in their annuity payments.

II. BACKGROUND AND NEED FOR THE LEGISLATION

The Federal Contract Tower Program, established in 1982, allows the FAA to enter into contracts with private entities to carry

out the operation of certain low-activity towers.¹ There are currently 256 federal contract towers across 46 states.² Federal contract towers are an important part of the National Airspace System, as they manage around 28% of total air traffic control operations.³ The contract towers have a strong track record of assisting with disaster relief efforts, emergency medical operations, and national security operations.⁴

Approximately 47% of military operations at civilian airports occur at contract towers.⁵ An April 2020 report issued by the Department of Transportation (DOT) Office of Inspector General concluded that contract towers are cost-effective and maintain similar safety records as non-contract towers.⁶

Air traffic controllers employed by DOT or the Department of Defense, are subject to mandatory retirement at age 56.⁷ Retired air traffic controllers are eligible to receive an annuity supplement until they are eligible to start receiving Social Security payments at age 62.⁸ However, the annuity supplement is reduced if the retired air traffic controller returns to work and earns more than the annual exempt amount under the Social Security earnings test which, for 2021, is \$18,960.⁹

National associations representing airport executives, contract towers, and air traffic controllers, have expressed a deep concern about workforce challenges across the aviation industry, as well as increasing staffing challenges in the Federal Contract Tower Program.¹⁰ These same organizations, reflecting both employer and employee perspectives, have jointly stated that, “contract tower airports have benefited from the experience, expertise, and leadership of retired federal air traffic controllers who have gone on to serve at contract towers.”¹¹

Retired FAA air traffic controllers are allowed to work at federal contract towers, as long as they continue to meet the same qualification and training requirements as FAA air traffic controllers.¹² However, if the air traffic controller is receiving an annuity supplement, it is subject to a reduction or elimination upon returning to

¹ Federal Aviation Administration, *Contract Towers* (May 5, 2019) (www.faa.gov/newsroom/contract-towers).

² Federal Aviation Administration, *FAA Contract Towers* (FCT) (Jan. 2019) (www.faa.gov/sites/faa.gov/files/about/office_org/headquarters_offices/ato/FCT_Map.pdf).

³ Department of Transportation Office of Inspector General, *Contract Towers are More Cost Effective than Comparable FAA Towers and Have Similar Safety Records* (Report No. AV2020028) (Apr. 28, 2020) (www.oig.dot.gov/sites/default/files/FAA%20Contract%20Tower%20Update%20Final%20Report%5E04-28-2020.pdf).

⁴ See, e.g., Coalition of aviation groups included the American Association of Airport Executives and U.S. Contract Tower Association: AAAE/USCTA Lead Coalition in Asking Congress to Fully Fund Contract Towers (Feb. 19, 2020) (aaae.org/AAAE/AAAEMemberResponsive/Press_Releases/2020/AAAE_USCTA021920.aspx).

⁵ *Id.*

⁶ Department of Transportation Office of Inspector General, *supra* note 3.

⁷ 5 U.S.C. § 8425(a).

⁸ Federal Aviation Administration, Benefits (www.faa.gov/jobs/employment_information/benefits/compensation/#retire) (accessed Dec. 16, 2021).

⁹ Social Security Administration, Exempt Amounts Under the Earnings Test (www.ssa.gov/oact/cola/rtea.html) (accessed Dec. 16, 2021).

¹⁰ Letter from Bradley P. Van Dam, Executive Director of U.S. Contract Tower Association and Senior Vice President of Government Affairs at the American Association of Airport Executives, and Paul Rinaldi, President of the National Air Traffic Controllers Association, to Senators James Inhofe, Patty Murray, and Jerry Moran (Feb. 24, 2021).

¹¹ *Id.*

¹² Federal Aviation Administration, FAA Contract Tower Program (www.faa.gov/about/office_org/headquarters_offices/ato/service_units/mission_support/faa_contract_tower_program) (accessed Dec. 16, 2021).

work at one of these privately run towers, creating a financial disincentive to do so.¹³

The CONTRACT Act of 2021 will establish an exemption to allow retired FAA air traffic controllers who are receiving an annuity supplement to work at a federal contract tower without a reduction to the annuity supplement. A similar exemption already exists for retired FAA air traffic controllers who return to work as instructors.¹⁴ This bill will help address staffing challenges at federal contract towers across the country that provide a critical connection to the air transportation system.

III. LEGISLATIVE HISTORY

Senator James Inhofe (R–OK) introduced S. 419, the CONTRACT Act of 2021, on February 24, 2021, with 42 original cosponsors from both parties. Five Senators subsequently joined as cosponsors.

The bill was referred to the Committee on Homeland Security and Governmental Affairs on February 24, 2021. The Committee considered S. 419 at a business meeting on November 3, 2021. The bill was ordered reported favorably by voice vote *en bloc*, with Senators Peters, Hassan, Sinema, Rosen, Padilla, Ossoff, Portman, Johnson, Lankford, Romney, Scott, and Hawley present.

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1. Short title

This section establishes the short title of the bill as the “Continuity for Operators with Necessary Training Required for ATC Contract Towers Act of 2021” or the “CONTRACT Act of 2021.”

Sec. 2. Annuity supplement

This section amends section 8421a of title 5, United States Code, which requires reductions to retirement annuity supplements if an individual’s annual work earnings exceed a certain threshold amount. This section adds air traffic controllers within the contract tower program to the subsection regarding exemptions from such reductions. It amends the same subsection that includes an exemption for air traffic controllers who return to work as instructors.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office’s statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

¹³Office of Personnel Management, Retirement Services (www.opm.gov/retirement-services/fers-information/types-of-retirement/#url=Annuity-Supplement) (accessed Dec. 16, 2021).

¹⁴5 U.S.C. 8421a(c).

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

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 brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

* * * * *

TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

* * * * *

PART III—EMPLOYEES

* * * * *

Subpart G—Insurance and Annuities

* * * * *

CHAPTER 84—FEDERAL EMPLOYEES' RETIREMENT SYSTEM

* * * * *

Subchapter II—Basic Annuity

* * * * *

SEC. 8421a. REDUCTIONS ON ACCOUNT OF EARNINGS FROM WORK PERFORMED WHILE ENTITLED TO AN ANNUITY SUPPLEMENT

(a) * * *

(b) * * *

(c) This section shall not apply to an individual described in section 8412(e) during any period in which the individual, after separating from the service as described in that section, is employed **[as an air traffic]** *as an—*

(1) *air traffic* control instructor, or supervisor thereof, under contract with the Federal Aviation Administration, including an instructor or supervisor working at an on-site facility (such as an airport)**[.]**; or

(2) *air traffic controller pursuant to a contract made with the Secretary of Transportation under section 47124 of title 49.*

* * * * *