

Cantwell Substitute\_as modified



AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: In the nature of a substitute.

**IN THE SENATE OF THE UNITED STATES—119th Cong., 2d Sess.****S. 3700**

To establish an expert review panel to make recommendations for a comprehensive agency-wide safety management system at the FAA.

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended  
to be proposed by Ms. CANTWELL

Viz:

1 Strike all after the enacting clause and insert the fol-  
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “FAA SMS Compliance  
5 Review Act of 2026”.

6 **SEC. 2. EXPERT COMPLIANCE REVIEW OF FAA SAFETY**  
7 **MANAGEMENT SYSTEM.**

8 (a) EXPERT COMPLIANCE REVIEW.—

9 (1) ESTABLISHMENT.—

10 (A) IN GENERAL.—Not later than 60 days  
11 after the date of enactment of this section, the

1 Administrator shall convene an independent ex-  
2 pert panel (in this section referred to as the  
3 “review panel”) to review and make findings  
4 and recommendations on the matters listed in  
5 paragraph (2).

6 (B) PURPOSE.—

7 (i) IN GENERAL.—The purpose of the  
8 review panel is to review and evaluate FAA  
9 orders and policies to inform the FAA’s  
10 implementation of a comprehensive and in-  
11 tegrated SMS within the FAA.

12 (ii) REQUIREMENT.—The review panel  
13 shall also take into account the United  
14 States’ obligations as a contracting State  
15 under the Convention on International  
16 Civil Aviation, including Article 37 (Adop-  
17 tion of International Standards and Proce-  
18 dures) and Article 38 (Notification of Dif-  
19 ferences), and shall consider compliance  
20 with ICAO Annex 19, including any dif-  
21 ferences formally filed by the United  
22 States.

23 (2) CONTENTS OF REVIEW.—The review panel  
24 shall review and evaluate the following:

1 (A) The extent to which the FAA's SMS  
2 complies with relevant FAA orders and policies.

3 (B) The actual and projected safety en-  
4 hancements achieved through the FAA's prior  
5 implementation of SMS, including as required  
6 by FAA Order 8000.369 and successor orders  
7 through FAA Order 8000.369c.

8 (C) The effectiveness of FAA's SMS, in-  
9 cluding with respect to the implementation of  
10 the following 4 components:

11 (i) Safety policy.

12 (ii) Safety risk management.

13 (iii) Safety assurance.

14 (iv) Safety promotion.

15 (D) The extent to which the FAA's safety  
16 culture promotes or fosters the SMS consistent  
17 with the principles of the ICAO's Safety Man-  
18 agement Manual (Doc. 9859) or any similar  
19 successor document.

20 (E) The effectiveness of FAA's internal  
21 audit processes to determine, at minimum, the  
22 performance of FAA's SMS.

23 (F) The extent to which SMS and each of  
24 the 4 components described in subparagraph

1 (C) are integrated appropriately among and  
2 across applicable lines of business of the FAA.

3 (G) The extent to which SMS and each of  
4 the 4 components described in subparagraph  
5 (C) are understood by, communicated to, and  
6 included in training for, personnel at the FAA.

7 (H) The efficacy of existing SMS in place  
8 at applicable lines of business of the FAA prior  
9 to January 1, 2026, including, but not limited  
10 to, the Air Traffic Organization, the Aviation  
11 Safety Organization, and the Office of Airports.

12 (I) The efficacy of the FAA's Voluntary  
13 Safety Reporting Programs as part of SMS, in-  
14 cluding the efficacy of specific voluntary safety  
15 reporting programs at applicable lines of busi-  
16 ness, and any actions taken by the FAA in re-  
17 sponse to reports filed under such programs.

18 (J) Whether the Federal Government  
19 should advocate for changes to Annex 19—Safe-  
20 ty Management of the ICAO to ensure appro-  
21 priate updates to the State Safety Program  
22 standards and recommended practices, includ-  
23 ing—

1 (i) a systems-level approach to evalu-  
2 ating and improving SMS for air naviga-  
3 tion service providers; and

4 (ii) the implementation of SMS for  
5 civil aviation regulators and whether there  
6 is a need for globally consistent approaches  
7 to State Safety Program implementation  
8 and SMS framework across ICAO con-  
9 tracting States.

10 (K) Any other matter determined by the  
11 Administrator for which review by the review  
12 panel would be consistent with the public inter-  
13 est in aviation safety.

14 (3) COMPOSITION OF REVIEW PANEL.—

15 (A) APPOINTED MEMBERS.—The review  
16 panel shall consist of the following members ap-  
17 pointed by the Administrator:

18 (i) Two representatives of the Na-  
19 tional Aeronautics and Space Administra-  
20 tion with expertise in SMSs.

21 (ii) Five appropriately qualified rep-  
22 resentatives of aviation labor organizations  
23 (designated by the applicable represented  
24 organization), including—

1 (I) organizations representing  
2 certified collective bargaining rep-  
3 resentatives of airline pilots;

4 (II) the exclusive collective bar-  
5 gaining representatives of FAA air  
6 traffic controllers certified under sec-  
7 tion 7111 of title 5, United States  
8 Code; and

9 (III) the exclusive collective bar-  
10 gaining representative for aviation  
11 safety inspectors certified under sec-  
12 tion 7111 of title 5, United States  
13 Code

14 (iii) Not less than 5 independent sub-  
15 ject matter experts in safety management  
16 systems who—

17 (I) have not served as a political  
18 appointee in the FAA; and

19 (II) have a minimum of 10 years  
20 of relevant applied experience.

21 (iv) Three air carrier employees whose  
22 job responsibilities include administration  
23 of a SMS.

24 (v) Two individuals representing hold-  
25 ers of a certificate issued under part 21 of

1 title 14, Code of Federal Regulations,  
2 whose job responsibilities include adminis-  
3 tration of a SMS.

4 (vi) One representative from the aero-  
5 space industry who does not meet the cri-  
6 teria described in clauses (iv) through (v)  
7 and has expertise in SMS or whose job re-  
8 sponsibilities include administration of a  
9 SMS.

10 (vii) A representative of the United  
11 States Mission to the ICAO, as a non-vot-  
12 ing member.

13 (viii) A representative from the Na-  
14 tional Transportation Safety Board, as a  
15 non-voting member.

16 (B) ADVISORY MEMBERS.—

17 (i) IN GENERAL.—In addition to the  
18 appointed members described in subpara-  
19 graph (A), the review panel shall be ad-  
20 vised by up to 5 employees of the FAA, at  
21 least 3 of whom shall be subject matter ex-  
22 perts in implementing SMS at the FAA.

23 (ii) DUTIES.—The advisory members  
24 may take part in deliberations of the re-  
25 view panel and provide subject matter ex-

1                   pertise with respect to the review panel's  
2                   work.

3           (4) RECOMMENDATIONS.—The review panel  
4           shall issue recommendations to the Administrator  
5           based on the review of the matters listed in para-  
6           graph (2) in order to inform the FAA's implementa-  
7           tion of a comprehensive and integrated SMS for  
8           lines of business within the FAA.

9           (5) REPORT.—

10           (A) SUBMISSION.—Not later than 180  
11           days after the date of the first meeting of the  
12           review panel, the review panel shall submit to  
13           the Administrator and the appropriate commit-  
14           tees of Congress a report containing the find-  
15           ings and recommendations regarding the mat-  
16           ters listed in paragraph (2) that are endorsed  
17           by at least  $\frac{2}{3}$  of the appointed members of the  
18           review panel.

19           (B) DISSENTING VIEWS.—In submitting  
20           the report under subparagraph (A), the review  
21           panel shall append to such report the dissenting  
22           views of any individual appointed member or  
23           group of appointed members of the review panel  
24           regarding the findings or recommendations of  
25           the review panel.



1 (C) PUBLICATION.—Not later than 5 days  
2 after receiving the report under subparagraph  
3 (A), the Administrator shall publish such re-  
4 port, including any dissenting views appended  
5 to the report, on the website of the FAA.

6 (D) TERMINATION.—The review panel  
7 shall terminate upon the submission of the re-  
8 port under subparagraph (A).

9 (6) ADMINISTRATIVE PROVISIONS.—

10 (A) ACCESS TO INFORMATION.—

11 (i) IN GENERAL.—The review panel  
12 shall have the authority to perform the fol-  
13 lowing actions if a majority of the ap-  
14 pointed members of the review panel con-  
15 sider each action necessary and appro-  
16 priate:

17 (I) Entering onto the premises of  
18 the FAA for access to and inspection  
19 of records.

20 (II) Notwithstanding any other  
21 provision of law, except as provided in  
22 clause (ii), accessing and inspecting  
23 de-identified, but otherwise  
24 unredacted, records directly necessary  
25 for the completion of the review pan-

1 el's work under this section that are  
2 records and information created by  
3 the FAA.

4 (III) Notwithstanding any other  
5 provision of law, and with the ap-  
6 proval of the Administrator, inter-  
7 viewing employees of the FAA as nec-  
8 essary for the review panel to com-  
9 plete its work.

10 (ii) NON-FEDERAL GOVERNMENT  
11 MEMBERS.—Members of the review panel  
12 who are not officers or employees of the  
13 Federal Government shall only have access  
14 to, and be allowed to inspect, information  
15 provided to the FAA pursuant to section  
16 40123 of title 49, United States Code, and  
17 part 193 of title 14, Code of Federal Regu-  
18 lations, in a de-identified form.

19 (iii) ACCESS TO CLASSIFIED INFORMA-  
20 TION.—Nothing in this Act shall be con-  
21 strued as authorizing access to classified  
22 information by any member of the review  
23 panel who does not possess the appropriate  
24 level of security clearance, have a need-to-

1 know, or meet all other applicable access  
2 requirements.

3 (B) NONDISCLOSURE OF NON-PUBLIC IN-  
4 FORMATION.—

5 (i) NONDISCLOSURE FOR NON-FED-  
6 ERAL GOVERNMENT MEMBERS.—

7 (I) NON-FEDERAL GOVERNMENT  
8 PARTICIPANTS.—Prior to partici-  
9 pating on the review panel, each indi-  
10 vidual serving on the review panel rep-  
11 resenting a non-Federal entity shall  
12 execute an agreement with the Admin-  
13 istrator in which the individual shall  
14 be prohibited from disclosing at any  
15 time, except as required by applicable  
16 Federal law, to any person, foreign or  
17 domestic, any non-public information  
18 made available to the panel under  
19 subparagraph (A).

20 (II) FEDERAL GOVERNMENT  
21 PARTICIPANTS.—Federal officers or  
22 employees serving on the review panel  
23 as representatives of the Federal Gov-  
24 ernment and subject to the require-  
25 ment to protect confidential informa-

1                   tion (including proprietary informa-  
2                   tion and trade secrets under section  
3                   1905 of title 18, United States Code)  
4                   shall not be required to execute agree-  
5                   ments under this clause.

6                   (ii) PROTECTION OF INFORMATION.—  
7                   Information that is obtained or reviewed  
8                   by the review panel shall not constitute a  
9                   waiver of the protections applicable to the  
10                  information under section 552 of title 5,  
11                  United States Code (commonly referred to  
12                  as the “Freedom of Information Act”).  
13                  Members of the review panel shall protect  
14                  such information to the extent required  
15                  under applicable Federal law.

16                  (iii) PROTECTION OF PROPRIETARY  
17                  INFORMATION AND TRADE SECRETS.—  
18                  Members of the review panel shall protect  
19                  proprietary information, trade secrets, and  
20                  other information otherwise exempt under  
21                  section 552 of title 5, United States Code,  
22                  to the extent permitted under applicable  
23                  Federal law.

24                  (7) INAPPLICABILITY OF FACA.—The review  
25                  panel shall not be subject to chapter 10 of title 5,

1 United States Code (commonly referred to as the  
2 “Federal Advisory Committee Act”).

3 (8) CONGRESSIONAL BRIEFINGS.—Not later  
4 than 180 days after the submission of the report  
5 under paragraph (5), and every 90 days thereafter,  
6 the Administrator shall report to the appropriate  
7 committees of Congress on the status of any ongoing  
8 actions in response to such recommendations, includ-  
9 ing the status of implementation of each of the rec-  
10 ommendations of the review panel, if any, with  
11 which the Administrator concurs. The briefing re-  
12 quirement shall cease to be effective 2 years after  
13 the date of the submission of the report under para-  
14 graph (5).

15 (b) NON-CONCURRENCE WITH RECOMMENDA-  
16 TIONS.—Not later than 6 months after submission of the  
17 recommendations under subsection (a)(4), with respect to  
18 each recommendation of the review panel with which the  
19 Administrator does not concur, if any, the Administrator  
20 shall publish on the website of the FAA and submit to  
21 the appropriate committees of Congress a detailed expla-  
22 nation for such determination.

23 (c) DEFINITIONS.—In this section:

1           (1) ADMINISTRATOR.—The term “Adminis-  
2           trator” means the Administrator of the Federal  
3           Aviation Administration.

4           (2) APPROPRIATE COMMITTEES OF CON-  
5           GRESS.—The term “appropriate committees of Con-  
6           gress” means the Committee on Commerce, Science,  
7           and Transportation of the Senate and the Com-  
8           mittee on Transportation and Infrastructure of the  
9           House of Representatives.

10          (3) FAA.—The term “FAA” means the Fed-  
11          eral Aviation Administration.

12          (4) ICAO.—The term “ICAO” means the  
13          International Civil Aviation Organization.

14          (5) SMS.—The term “SMS” means a safety  
15          management system.