

**Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City**

**15th CONGRESS
First Regular Session**

HOUSE BILL NO. 1352

Introduced by: Hon. Aurora Enerio-Cerilles

EXPLANATORY NOTE

While the technical aspect of commercial aviation has been duly provided for with appropriate legislation through the passage of Republic Act No. 9497 to ensure the efficiency and safety of commercial aviation operation in the country, there remains a dire need to address the commercial and aeropolitical aspects of the same considering the following:

1. The Philippines has deteriorated from being the leading tourism country up until the 1960s to being the laggard today in Southeast Asia with only some three million tourist arrival a year when most of the neighboring countries have achieved tens of millions per year e.g. Malaysia, Thailand, Singapore and even late comer in the industry like Vietnam and Cambodia overtaking the Philippines already;
2. The continuing clamor for liberalization of commercial aviation to sufficiently address, not only the needs of tourists but also of the millions of Overseas Filipino Workers, the preponderance of the land-based workers of which are destined to the Middle East and a combination of sea- and land-based workers to Europe particularly the Filipino seamen who man most of the ocean-going vessels of the world; noting further that no Filipino carrier operates to any part of the Middle East and Europe, not to mention the Eastern seaboard of the United States where many Filipino seamen fly to catch up with their ocean-going vessels in New York City and Miami;
3. Most of the world-class tourism destinations of the country are located outside Metro Manila and there is a felt need to facilitate the travel of tourists from their true origins to the final tourism destinations and thus the need to improve the tourist facilities in the major airports of the Luzon, Visayas and Mindanao and at the same time decongest the Ninoy Aquino International Airport which cannot cope up with the desired influx of arrivals for lack of facilities and expansion of the same being in a highly populated and urbanized area.

Encompassing all of the above is the recognition that tourism has become the world's biggest industry and its greatest job provider with opportunities opened to, ranging from the non-educated to the most educated citizens of the country, with great multiplier impact in the economy of the country.

In light of the foregoing, the approval of this bill is earnestly requested.


AURORA ENERIO-CERILLES

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**AN ACT PROVIDING FOR THE GREATER LIBERALIZATION OF THE COMMERCIAL
AVIATION INDUSTRY OF THE PHILIPPINES BY ALIGNING EXISTING RULES AND
REGULATIONS TO ENCOURAGE GROWTH AND DEVELOPMENT OF AIR TRAVEL
AND TOURISM IN, OUT AND WITHIN THE PHILIPPINE ARCHIPELAGO**

*Be it enacted by the Senate and the House of Representatives of the Philippines in
Congress assembled:*

Section 1. Title. - This Act shall be known as the "**Civil Aviation Liberalization
Act of 2010**".

Section 2. Declaration of Policies. - The purpose of this Act is to liberalize
Philippine commercial civil aviation in order to address the needs of the passengers,
other end-users and the country, to ensure that the country's civil aviation policies and
regulations sufficiently address the country's need for development of tourism, trade and
investments and to eliminate obstacles that impede the growth and development of the
Philippine civil aviation industry and other industries reliant on air travel.

Section 3. Definition of Terms. -

(a) **Air Carrier** also used in this Act as "Carrier" means a person or entity who
undertakes, whether directly or indirectly, or by a lease or any other arrangements, to
engage in air transportation or in air commerce.

(b) **CAB** refers to the Civil Aeronautics Board of the Philippines under Republic Act No.
776.

(c) **CAAP** refers to the Civil Aviation Authority of the Philippine under Republic Act No.
9497.

(d) **Pioneering Routes** means the liberalized 3rd, 4th and 5th freedom routes as defined
and used in this Act.

(e) **Traffic** means the quantity of air transportation, including both passenger and cargo
that has been sold and transported.

(f) **Traffic rights** is a market access right expressed as an agreed physical or
geographic specification, or combination of specification of who or what may be
transported over an authorized route or parts thereof in the aircraft authorized.

(g) **Third freedom traffic right** is as defined in the Chicago Convention of 1944 of
which the Philippines is a treaty partner which essentially provides for the carriage of
traffic by a carrier from the territory of its home country to the territory of a treaty partner.

1 (h) **Fourth freedom traffic right** is as defined in the Chicago Convention of 1944 of
2 which the Philippines is a treaty partner which essentially provides for the carriage of
3 traffic by a carrier from the territory of a treaty partner to the territory of its home country.
4

5 (i) **Fifth freedom traffic right** is as defined in the Chicago Convention of 1944 of which
6 the Philippines is a treaty partner which essentially provides for the carriage of traffic by
7 a carrier from the territory of a treaty partner to the territory of another treaty partner on
8 its flight that either originates or terminates in its home country.
9

10 **Section 4. - Full Liberalization of Third, Fourth and Fifth Freedom Traffic**
11 **Rights.**
12

13 (a) In order to encourage movement of air travelers in, out and within the
14 country, particularly foreign tourists, it shall be the policy of the State to promote and fully
15 liberalize the carriage of unlimited 3rd, 4th and 5th freedom traffic from any point in any
16 foreign country to any point in the Philippines with the exception of Metro Manila, and
17 vice versa, subject to the conditions and restrictions set forth herein. For brevity, these
18 liberalized 3rd, 4th and 5th freedom routes shall hereinafter be referred to as the
19 "pioneering routes".
20

21 (b) Any air carrier of any State, duly issued operating permits by its State of
22 origin or registration, with or without designation by its State of origin or registration, may
23 apply to operate any pioneering route with the CAB. The CAB in coordination with the
24 CAAP, prior to granting a permit to operate with unlimited right to any pioneering route,
25 shall determine whether the applicant carrier possesses the requisite operational
26 capability such as, aircraft, crew, operating permit issued by its State, competence,
27 insurance coverage, including passenger and/or cargo liability, hull, third party and war
28 risk insurance, and basic support systems to carry out a safe and secure operation for a
29 continuous period of at least three (3) months, operating at least two (2) frequencies per
30 week. The CAB, upon receipt of such application, shall give notice to all interested
31 parties and all existing Philippine carriers of such application for the purpose of
32 determining which Philippine carriers or parties are interested to operate reciprocal
33 service as that of the applicant.
34

35 (c) After the CAB has furnished the requisite notice under the preceding Section,
36 any number of Philippine carriers interested to operate a reciprocal service shall file the
37 corresponding application with the CAB. The CAB in coordination with the CAAP shall
38 then determine whether the applicant Philippine carrier possesses the requisite
39 operational competence as stated in Section 4.b. hereof, prior to granting the permit to
40 operate with unlimited right on the pioneering route, such as, any city pair applied for by
41 the foreign carrier. If an applicant Philippine carrier does not possess a certificate of
42 public convenience and necessity to operate the international route applied for, the CAB
43 upon the determination of existence of the required capabilities specified herein, shall
44 grant the applicant carrier the corresponding certificate of public convenience and
45 necessity.
46

47 (d) The CAB shall accordingly communicate the intention of the Philippine
48 carriers to operate reciprocal service to the State of the foreign carrier for concurrence.
49 Should concurrence be given, the same shall by virtue hereof be deemed a conclusion
50 of a bilateral air services agreement between the Philippines and the pertinent foreign
51 State if no air services agreement is existing yet; or shall be deemed an addendum to an
52 existing air services agreement between the pertinent State involved. If concurrence by
53 the foreign State is denied, the application of the foreign carrier shall be disapproved,
54 and in case the foreign carrier is already in operation as when the intention of the
55 Philippine carrier was belatedly received, the foreign carrier shall only be allowed to
56 operate the remaining period of the permit granted by the CAB without any extension.
57

58 (e) Upon issuance of a permit to operate a pioneering route, the carrier, local or
59 foreign, shall have a period of six (6) months therefrom to commence operation and
60 failure in which the permit shall be revoked. In the event that none of the carriers, local
61 or foreign, is able to operate in accordance with the permit granted, the concluded air
62 services agreement shall continue to remain in force and effect to provide opportunity for
63 any other carrier of the States involved to operate the same.
64

(f) In the event that no Philippine carrier manifested intention to operate the pioneering route applied for by the foreign carrier, the latter shall be allowed to operate unlimited flight frequency and capacity on the pioneering route for a period of no less than two (2) years, subject to further extension upon application for renewal. If any Philippine carrier shall manifest intention to introduce reciprocal service on the pioneering route on a later date, the CAB shall treat such application in accordance with the provisions hereof.

Section 5. Airport Improvements. - In order to carry out the objectives set forth in this Act and to effectively promote and enhance tourism and air travel through the pioneering routes, the State shall develop Philippine airports based on the following priorities:

Priority 1 - Completion of Diosdado Macapagal International Airport (DMIA) to full capacity as the new gateway of the Philippines for international travel by constructing a full capacity international terminal capable of handling a two-deck wide body aircraft, a combined domestic and a low-cost/budget terminal with capability for international low-cost/budget operation and a third runway that could accommodate wide body aircraft, particularly but not limited to, the Airbus A380 aircraft or its equivalent, taking into consideration the need for sufficient separation between the runway and taxiway to address the identified problem due to the wing span of that aircraft. Corollary to this, it shall be the policy of the State to pursue continuing development of access between Metro Manila and Clark Freeport Zone with high speed railways and highways.

Priority 2 - Completion and conversion of Ninoy Aquino International Airport (NAIA) Terminal 3 for domestic operation to align it with the adjacent domestic runway and preventing the latter being rendered useless should Terminal 3 be used for international operation instead; and consistent with the objective of developing DMIA as the country's principal international gateway. This priority is in line with statistics showing greater domestic air traffic both in terms of passengers and cargo than international as well as the fact that many foreign tourists fly the domestic routes.

Priority 3 - Completion of approved airport development projects in identified major tourism destinations such as Panglao in Bohol, Laquindingan in Cagayan de Oro, Misamis Oriental capable of accommodating wide body aircraft, such as the Airbus A330 and A350 and Boeing B787 aircraft or their equivalent to allow for direct access from true origins and true destinations between the Philippines and other countries.

Priority 4 - Construction of airports capable of accommodating narrow and wide body aircraft, such as the Airbus A320 or Boeing B737 aircraft, and their equivalent, in or close to the identified top tourism destinations of the country such as Basco, Batanes; Caticlan, Malay, Aklan; Busuanga, Palawan; El Nido, Palawan; Baguio, Benguet.

Priority 5 - Renovation of airports currently classified as international airports which include Manila, Clark, Cebu/Mactan, Davao, Laoag, Puerto Princesa, Iloilo, Tacloban, Cagayan de Oro, Davao, General Santos, and Zamboanga, in order to provide them with the capability to handle wide body and long range aircraft, such as the Airbus A380 and the Boeing B747 aircraft.

Section 6. Rules on Codesharing. -

(a) Codesharing is a written agreement or commercial arrangement between two or more carriers, providing for airlines to place or allocate the flight numbers of one contracting carrier on the aircraft and/or flights of another contracting carrier. The same is a method of expanding the product and/or service distribution of the contracting carriers involved in the codesharing.

(b) Codesharing shall be a permissible commercial arrangement, **provided**, that all carriers involved therein actually operate at least one (1) aircraft on the route involved in the codesharing agreement for the entire period of the agreement or arrangement

1 and, **provided further**, that the same is bilateral wherein the carriers of two treaty
2 partner countries operate and codeshare the same level of capacity in terms of seat
3 and/or cargo space to balance the field of opportunity. The foregoing shall be continuing
4 requirements for validity of the codesharing agreement or arrangement.
5

6 (c) It is hereby declared unlawful for carriers to codeshare absent the
7 requirements of the immediately preceding paragraph and/or to codeshare in the
8 international or domestic network that will in any manner circumvent the requirements of
9 the preceding paragraph or in any manner tantamount to renting or selling the traffic
10 rights of the State to foreign air carriers. Codesharing without all carriers actually
11 operating on the route involved in the codesharing agreement or suspension of
12 operation by one of the carriers involved in the codeshared route for more than three (3)
13 months shall be presumed as illegal codesharing unless otherwise proven.
14

15 (d) The CAB shall, *mutuo proprio* or upon complaint, investigate any violation of
16 this Section and shall after due hearing, revoke the designation and corresponding
17 entitlements of the carriers involved in the violation in addition to other applicable
18 penalties under the provisions of R.A. 776 otherwise known as "The Civil Aeronautics
19 Act" and existing laws, rules and regulations.
20

21 **Section 7. Rules on Airline Designation. –**

22

23 (a) In order to abolish the current practice of undue preference and partiality to
24 major Philippine carriers in terms of designations as official international air carriers and
25 entitlements to air traffic rights owned by the State, this Act hereby requires that all
26 designations for official international air carriers henceforth shall be established and shall
27 be based on the intention and utilization of interested Philippine carriers.
28

29 (b) The following rules shall govern the designation of official international air
30 carriers of the Philippines and the allocation of air traffic rights under air services
31 agreements:
32

33 (i) After conclusion of negotiation of air traffic rights or air services
34 agreement with any foreign State, the CAB shall notify all interested parties and
35 all Philippine carriers of the results of the concluded negotiations to provide equal
36 opportunity for all carriers and to be informed of the air traffic rights available to
37 the Philippine carriers for utilization. Carriers interested to operate in the routes
38 involved in the air services agreement shall file their written intention to be
39 designated as official international air carrier of the Philippines with the CAB.
40

41 (ii) Upon receipt of the written intention by the interested carriers, the CAB
42 shall immediately allocate the traffic rights equally among the applicants for
43 designation with a condition that the designated carriers must operate scheduled
44 operations to the route within six (6) months from date of such designation.
45 Failure on the part of any designated carrier to comply with the said condition
46 shall result in the automatic revocation of the designation.
47

48 (iii) Upon revocation of the designation of the erring carrier, the available
49 designation shall be then awarded to new carrier applicant or to the carrier which
50 has been able to use all of its entitlement. Should there be more than one
51 qualified carrier entitled to the available traffic rights, the allocation of the
52 available traffic rights shall be equal among them. The same process shall apply
53 in the event that any designated carrier ceases to operate the entitlement
54 previously granted or for revocation of designations and corresponding
55 entitlements for violations of the provisions of Section 6 of this Act.
56

57 **Section 8. Cost Efficiency in Air Traffic Rights Negotiations. –**

58

59 (a) The designation to the Air Negotiating Panel of the Philippines shall continue
60 to vest on the President of the Republic of the Philippines. However, in order to prevent
61 the promotion of parochial and self-serving interests in negotiating and designation of
62 traffic rights, airport managements shall not be allowed to participate in the negotiation.
63 The designation of members shall be confined to those specified in Executive Order No.
64 32 dated 22 August 2001 subject to the provisions of this Act. There shall be no

1 permanent designation of individuals representing government agencies comprising the
2 panel and no individual representing a government agency shall be designated to the
3 panel for more than three (3) consecutive times. To prevent development of collusion
4 against public interest, the government representatives shall be shuffled intermittently.
5

6 (b) To minimize government expenditures and costs related to air rights
7 negotiations, no air rights negotiations requiring travel shall be undertaken by the Air
8 Negotiating Panel of the Philippines absent any party requesting for negotiation of a new
9 or additional traffic rights with any country. Where a renewal of an expired air services
10 agreement is only for extension of a period without demands for negotiation of additional
11 traffic rights, the same shall be completed by mere exchange of diplomatic notes without
12 incurring any travel expense. Further, in the event that it is the foreign State which is
13 proposing an exchange of traffic rights, the Air Negotiating Panel shall request such
14 foreign country to hold the air rights negotiations within the Philippines in order to
15 minimize related costs and expenditures.
16

17 **Section 9. Definition of National Interest.** - Invariably, air services agreements
18 concluded by the State shall be based on national interest. To give emphasis on the
19 rationale and intention behind the term "national interest" and in order to prevent its
20 circumvention, this Act hereby defines, reaffirms and confirms the definition of the term
21 "national interest" under Executive Order No. 219 which "shall include value for the
22 Philippines in terms of promoting international trade, foreign investments and tourism,
23 among others".
24

25 Considering that the total value of the Philippine economy as well as the valuable
26 contribution of the overseas Filipino workers' remittances to the Philippine economy
27 greatly outweigh that of the Philippine carriers combined, the term national interest
28 should therefore be interpreted to prioritize and promote trade, foreign investments,
29 tourism, above other interests and of the Philippine carriers. It shall be the policy of
30 State to use the airlines as a catalyst of economic development as all transport systems
31 are rather than the object of State protection over and above the national economy.
32

33 **Section 10. Definition of Reciprocity.** - Invariably, air services agreements
34 concluded by the State shall be based on reciprocity. To give emphasis on the rationale
35 and the intention behind the term "reciprocity" and in order to prevent its circumvention,
36 this Act hereby defines, reaffirms and confirms the definition of the term "reciprocity"
37 under Executive Order No. 219 which shall "mean the exchange of rights, freedoms and
38 opportunities of equal or equivalent value".
39

40 This Act hereby declares that reciprocity shall not be qualified on the basis of
41 level of traffic rights, frequencies, freedoms and opportunities that the Philippine carriers
42 can afford to operate. Reciprocity shall be solely based on market demands in order to
43 preserve and promote public interest. "Market demand" as used in this Act shall mean as
44 the combined demands at both ends of the air sector or negotiating countries involved in
45 the air services negotiations and agreements.
46

47 **Section 11. Commitment to the BIMP EAGA Open Skies.** - Consistent with
48 the Philippines' commitment to the Open Skies agenda of the Brunei-Indonesia-
49 Malaysia-Philippines East Asia Growth Area, the State shall support and promote the
50 BIMP EAGA Open Skies and mandates the liberalization and promotion of 5th freedom in
51 addition to 3rd and 4th freedoms within the geographic area which has been defined for
52 BIMP-EAGA. To help achieve viability of any operator in the BIMP-EAGA, the local
53 aviation agencies and authorities are hereby given the discretion to provide discounts
54 deemed appropriate in terms of aeronautical charges, terminal rentals, and customs,
55 immigration and quarantine services.
56

57 **Section 12. Commitment to the ASEAN Open Skies.** - Consistent with the
58 Philippines' commitment to the Open Skies agenda of the Association of Southeast
59 Asian Nations which shall take effect in December 2008 particularly in terms of unlimited
60 exchange of 3rd, 4th and 5th freedom traffic rights, the State shall support and promote the
61 ASEAN Open Skies, provided, however, that the grant of traffic rights thereunder shall
62 be confined within the geographic limits of the ASEAN. All other traffic rights on routes
63 beyond the ASEAN shall be governed by the relevant bilateral or multilateral agreements
64 applicable under the circumstances