

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

FIFTEENTH CONGRESS
First Regular Session
House Bill No. 1601

Introduced by Honorable Rex Gatchalian

EXPLANATORY NOTE

Over the years, policy shift towards air service liberalization (or open skies) has replaced the restrictive and arcane features of many air services agreements (ASA's) that continue to govern airline links between territories. Experiences of many countries around the world that adopted an "open skies" policy have noted enormous economic benefits brought about by increased tourists traffic and expansion of tourism-related industries. The tourism-propelled development ushered phenomenal jobs and economic growth.

A case in point is Cambodia, when it unilaterally granted unlimited air access to foreign airlines in the country in 1999. The open skies policy allowed regional airlines to fly direct to Siem Reap, home of the famous Angkor Temples. Liberalization of Cambodia's air services led to a significant increase in tourist arrivals in the country from 24,000 in 1999 to 1.5 million in 2006.

The Philippines likewise shared the benefits of a liberalized air transport sector when it granted unilateral air rights to foreign carriers to operate in the Diosdado Macapagal International Airport (DMIA) in Pampanga and the Subic Bay International Airport (SBIA) in Zambales through Executive Order No. 500. The change in air policies revived the once dormant and underused international airports, and reinvigorated the lethargic business activity in Clark and Subic. In Clark alone, economic benefits include among others a spectacular passenger traffic growth averaging 331% annually from 7,880 in 2003 to 471,000 in 2006; a six-fold growth in foreign tourist arrival from 16,164 in 2002 to 106,354 in 2006; a seven-fold growth in investments from P747.4 million to P5.1 billion; a 39% annual average growth in exports by air, from \$339 million to \$1.2 billion; and 80% direct employment growth from 26,306 employed in 2003 to 47,481 in 2006. Furthermore, the low airfare regime influenced by the budget airlines operating in Clark has benefited likewise the OFW's working in the East Asian region.

This bill aims to institutionalize a pocket open skies policy in the Philippines by fully opening the country's secondary gateways (excluding the NAIA) to foreign airline operations. It seeks to replicate the economic gains in terms of tourism, exports, investments and jobs growth across the country. With 98 percent of the country's visitor arrivals and 70 percent of the country's exports are moved by air, a rational air transport liberalization strategy would support the vision of the government to promote the country as a tourism, investments and logistics hub.

This proposed legislation underscores the underpinning of the country's aviation policies, which is anchored on its impact on national interest. This is clearly provided in Executive Order 219, Section 1.2, which states that: *"The exchange of traffic rights and routes with other countries shall be based on (a) National interest, which shall include the value for the Philippines in terms of promoting international trade, foreign investments and tourism, among others; and on (b) Reciprocity shall be interpreted to mean exchange of rights, freedoms, opportunities of equal or equivalent value. The Civil Aviation Board shall determine "national interest" taking consideration the larger interest of the country, especially the users of air services."*

Furthermore, other substantial factors that make it imperative for the Philippines to legislate, at least, a pocket open skies policy in the country's secondary gateways include the following:

- ✓ **The ASEAN Roadmap.** ASEAN member countries are now pressured to adopt the so-called roadmap for the ASEAN's Competitive Air Services Policy, an initiative geared toward the vision of Open Skies in the ASEAN region. It is important for the Philippines to take a head start and prepare for full liberalization of the ASEAN aviation market in 2015. In 2008, there will be unlimited 3rd and 4th freedom for passenger traffic for ASEAN capital cities; unlimited 5th freedom traffic rights for at least two (2) designated points in each country between the ASEAN sub region; and full liberalization of airfreight services. In 2010, there will be an ASEAN-wide liberalization of scheduled passengers services; and unlimited 5th freedom for ASEAN capital cities.

In fact, pursuant to a sub-regional agreement between the countries of Brunei, Indonesia, Malaysia and the Philippines East Asean Growth Area (BIMP-EAGA) the Philippines have opened the designated routes of Palawan, Zamboanga and General Santos for air linkages between and among these participating countries as of November 26, 2007.

- ✓ **Economic Renaissance of East Asia.** The Philippines should take advantage of the unfolding economic renaissance of East Asia by advancing aviation policies that will tap the rich tourism market in the growth areas. Comprising at least one-fourth of the world economic output, 50 percent of the intra-regional trade, and more than two

billion potential consumers, East Asia and the Pacific is a prime market to develop and support a robust growth for Philippine aviation and tourism industries.

It is important however to provide safety net in this proposed legislation that will limit foreign airlines only to international operations. Cabotage rights or the right of an airline to operate flights between points within the territory of another country should not be allowed in order to protect the interest of the local aviation industry in the domestic operations.

With the foregoing reasons, the immediate approval of this bill is earnestly sought.



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

**AN ACT TO PROMOTE A POCKET OPEN-SKIES POLICY
OF THE PHILIPPINES**

Section 1. Title – This Act shall be known as the Pocket Open-Skies Policy of the Philippines.

Section 2. Declaration of Policies – The development, promotion and liberalization of the secondary gateways of the Philippines to foreign and domestic airline operations shall be pursued. The State shall therefore:

- a. Develop maximum air access to all secondary gateways, whether domestic or foreign, provided however that cabotage rights is not allowed;
- b. Ensure that the exchange of traffic rights shall uphold national interest and promote international trade, foreign investments and tourism, among others;
- c. Encourage entry into the air transportation market of new air carriers;

- d. Develop and maintain a sound regulatory system that is responsive to the needs of the public, especially the users of air services;
- e. Prevent industry concentration on a few market players, excessive market domination, monopoly powers and other conditions that would tend to allow any air carrier to unreasonably increase prices, reduce services or exclude competition in air transportation;
- f. Afford the public viable alternatives for adequate, affordable, safe and efficient air transportation services.

Section 3. Definition of Terms. The following terms shall be understood in this Act to mean:

- a. Gateway – any point of entry into the Philippines by air transportation.
- b. Secondary Gateway – any gateway other than the Ninoy Aquino International Airport.
- c. Air carrier/air services – a person who undertakes, whether directly or indirectly, or by a lease or any other arrangements, to engage in air transportation or air commerce.
- d. Cabotage traffic rights – the right of an airline to carry traffic between two points within the territory of the Philippines on a route that does not originate, make a stopover or terminate outside the said territory.
- e. Point – a destination, specified or unspecified on a route.
- f. Designated carrier – one which is authorized to operate air transport services under the provisions of an Air Services Agreement or other similar arrangements.
- g. Air Service Agreement (ASA) – governs the civil aviation relationship between parties, commonly referred to as a bilateral. Other similar arrangements include but are not limited to exchange of notes, Exchange of Letters, Agreed Minutes, Memorandum of Understanding, Memorandum of Consultations or other documents that govern or relate to any of, but not limited to, the following:
 - 1. implementation of certain provisions of the bilateral
 - 2. amendment of certain provisions of the bilateral

3. elaboration or clarification of certain provisions of the bilateral
4. establishment and operation of air transportation and related services pending the conclusion or execution of a bilateral
5. any matter relating to the civil aviation relationship of two or more States or their respective authorized agencies.
- h. 1st Freedom – the right of an airline of one country to fly over the territory of another country without landing.
- i. 2nd Freedom – the right of an airline of one country to land in another country for purposes of refueling and maintenance while en route to another country but not to pick up or disembark traffic (passenger, cargo or mail).
- j. 3rd Freedom – the right of an airline of one country to carry traffic from its country to another country.
- k. 4th Freedom – the right of an airline of one country to carry traffic from another country to its own country.
- l. 5th Freedom – the right of an airline of one country to carry traffic between two countries outside of its own country as long as the flight originates or terminates in its own country.

Section 4. Policy Directions and Guidelines – The Civil Aeronautics Board (CAB) in the exercise of its powers and functions under Republic Act 776 and other relevant statutes, is hereby directed to process all applications for air transportation involving any secondary gateway. In the exercise of its functions, the Board shall likewise consider the following guidelines, as being in the interest of the public and consistent with public convenience and necessity:

- a. An air transportation system exists primarily for the benefit of its consumers;
- b. The promotion of tourism, trade and investments, jobs growth and the enhancement of opportunities for the same are the primary economic advocacy of civil aviation policy in the Philippines;
- c. All air carriers subject to regulation by the Board shall be flexible and innovative in providing adequate, dependable, efficient, comfortable and safe transport at prices that correspond to the demands of the consumers provided such air carriers do not engage in unreasonable discrimination, unfair or deceptive practices or predatory pricing in providing such services;

- d. The authority to operate air transport services, whether scheduled or non-scheduled, to or from any secondary gateway shall be granted unilaterally without restrictions on capacity, frequency, type of aircraft and non-cabotage traffic rights other than those that may be required by security and safety considerations, to any applicant with the financial capacity to operate such services. Any applicant who has been engaged in air commerce for at least six months prior to the filing of its application shall be deemed *prima facie* as financially capable of operating the services subject of the application. The applicant need not be designated under any service agreement or similar arrangement.

The period for the grant of authority to operate should be reasonable, i.e., sufficient time is granted for the applicant to mobilize its resources and to establish and maintain as a viable operation the services subject of its application. An authority to operate which expires in less than eighteen (18) months from the grant is deemed to be unreasonable.

The grant by the Board of the authority to operate shall serve as a waiver of any restriction on capacity, frequency, type of aircraft or non-cabotage rights imposed by any Air Service Agreements or other similar arrangements on the applicant's right to operate air transport services to or from any secondary gateway;

- e. Operational and marketing restrictions on air transport and related service shall be eliminated to the greatest extent possible;
- f. All air service agreements or similar arrangements granting traffic rights and routes to which the Philippines is a party should, as far as practicable, provide for multiple designation of Philippine carriers for any route which under the terms of the agreement shall be operated from the Philippines;
- g. Any domestic route within the territory of the Philippines may, as far as practicable, be operated by at least two (2) domestic air carriers offering scheduled services. The CAB may authorize chartered flights and non-scheduled services to promote the expansion of domestic air traffic;
- h. All Philippine air carriers designated under an air service agreement or similar arrangement shall utilize in toto the capacity and/or frequency entitlements allocated to them within the period prescribed.

Should any designated Philippine air carrier fail to utilize its total entitlements within the said period, it shall forfeit the unutilized portion and the same shall be allocated to another designated Philippine air carrier within the period prescribed by the Board.

Under no circumstance shall the Board allow a designated Philippine air carrier to assign the unutilized portion of its entitlement to any other carrier for any consideration whatsoever.

In the absence of any designated Philippine air carrier that can utilize the entitlement or any portion thereof for such air carrier, the Board may allow a non-Philippine air carrier to utilize such entitlement for a valuable consideration, provided that such consideration shall inure to the benefit of the Philippine government;

- i. The government shall create an environment conducive to open and fair market competition among air carriers operating in the Philippines. Subsidies, VAT exemptions, and other privileges should equally be granted or availed of by all major players in the industry;
- j. Economic gain for the Philippines shall be the principal criterion for determining whether the exchange of rights, freedoms and opportunities under an air service agreement or similar arrangement shall promote the larger interest of the country. The interests of the various sectors affected by civil aviation including but not limited to tourism, trade, investments and overseas Filipino workers shall always be considered in assessing the nature and extent of economic gain for the Philippines.

Section 5. Implementing Rules and Regulations. - The Civil Aeronautics Board shall promulgate the Implementing Rules and Regulations (IRR) of this Act within sixty (60) days from its effectivity. Failure to promulgate such IRR within the said period shall subject the members of the Board to administrative sanctions.

Section 6. Supplementary Clause. - In case of insufficiency of a provision of this Act, the rules and regulations implemented by the CAB, its resolutions, shall apply in a suppletory manner to the provisions of this Act.

Section 7. Separability Clause. - If for any reason, any section or provision of this Act shall be held to be unconstitutional or invalid, the other sections or provisions shall not be affected thereby.

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Section 8. Repealing Clause. - Republic Act No. 776, Presidential Decree No. 1462, Executive Order No. 219 and other rules and regulations or parts thereof including any issuances, inconsistent with any provision of this Act are hereby repealed, amended or modified accordingly.

Section 9. Effectivity. - This Act shall take effect fifteen (15) days following its publication in two (2) newspapers of general circulation.

Approved,