



Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

Fifteenth Congress
Second Regular Session

COMMITTEE REPORT NO. 1756

Submitted by the Committee on Transportation on 25 JAN 2012

Re: House Bill No. 5745

Recommending its approval in substitution of HB No. 1352, HB No. 1601, and pursuant to HR No. 1143

Sponsors: Representatives Roger G. Mercado, Rex Gatchalian, Aurora Enerio-Cerilles and Winston Castelo

Mr. Speaker:

The Committee on Transportation to which were referred House Bill No. 1352, introduced by Representative Aurora Enerio-Cerilles, entitled:

"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";

House Bill No. 1601 introduced by Representative Rex Gatchalian, entitled:

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

House Resolution No. 1143 introduced by Representatives Winston T. Castelo, Edwin L. Olivarez, Emi G. Calixto-Rubiano, Arnel M. Cerafica, Ma. Carmen Zamora-Apsay, Jim Huaman-Salliman, Peter M. Unabia, Mylene Garcia-Albano, Bernadette Herrera-Dy and Benjamin Asilo, entitled:

"RESOLUTION DIRECTING THE COMMITTEE ON TRANSPORTATION TO CONDUCT AN INVESTIGATION IN AID OF LEGISLATION ON THE IMPLEMENTATION OF THE DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS (DOTC), DEPARTMENT OF TOURISM (DOT) AND OTHER CONCERNED AGENCIES OF A "POCKET OPEN SKIES POLICY AND ITS REPERCUSSIONS ON THE VARIOUS SECTORS PARTICULARLY ON AVIATION, TOURISM AND THE GENERAL ECONOMY"

has considered the same and recommends that the attached House Bill No. **5745** entitled:

**"AN ACT FURTHER LIBERALIZING THE COMMERCIAL AVIATION
INDUSTRY OF THE PHILIPPINES BY ALIGNING EXISTING POLICIES,
RULES AND REGULATIONS"**

be approved in substitution of HB No. 1352, HB No. 1601 and pursuant to HR No. 1143 with Representatives Aurora Enerio-Cerilles, Rex Gatchalian, Winston T. Castelo, Edwin E. Olivarez, Emi G. Calixto-Rubiano, Arnel M. Cerafica, Ma. Carmen Zamora-Apsay, Jim Hataman-Salliman, Peter M. Unabia, Mylene Garcia-Albano, Bernadette Herrera-Dy and Benjamin Asilo and Roger G. Mercado as authors thereof.

Respectfully submitted,



HON. ROGER G. MERCADO

Chairman

Committee on Transportation

THE HONORABLE
The Speaker
House of Representatives

**Republic of the Philippines
HOUSE OF REPRESENTATIVES**

**Quezon City
FIFTEENTH CONGRESS
Second Regular Session**

House Bill No. 5745

(In substitution of HB No. 1601, HB No. 1352 and pursuant to HR No. 1143)

Introduced by Hon. Rex Gatchalian, Aurora Enerio-Cerilles, Winston Castelo, Jim Hataman-Salliman, Peter Unabia, Arnel Cerafica, Benjamin Asilo, Edwin Olivares, Maria Carmen Zamora-Apsay, Emi Calixto-Rubiano, Bernadette Herrera-Dy, Mylene Garcia-Albano and Roger G. Mercado

**AN ACT
FURTHER LIBERALIZING THE COMMERCIAL AVIATION INDUSTRY
OF THE PHILIPPINES BY ALIGNING EXISTING POLICIES, RULES AND
REGULATIONS**

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

1 **SECTION 1. Title.** – This Act shall be known as the “Civil Aviation
2 Liberalization Act of 2012”

3 **SEC. 2. Declaration of Policies.** – The State recognizes the indispensable role
4 of a liberalized commercial civil aviation industry as a catalyst for growth to truly
5 address public need, promote the development of tourism, trade and investments and
6 remove impediments to the growth and development of other industries reliant on air
7 travel.

8 It is therefore declared the policy of the State to:

- 9 a. Develop and maintain a sound regulatory system that is responsive to
10 the needs of the public, especially the users of air services;
- 11 b. Develop maximum air access to all secondary gateways, with the
12 exception of cabotage traffic rights;
- 13 c. Ensure that the exchange of traffic rights shall uphold national interest
14 and promote international trade, foreign investments and tourism, among others;
- 15 d. Encourage entry into the air transportation market of new air carriers
16 and promote fair competition and equal opportunity among existing players;

1 e. Afford the public viable alternatives for adequate, affordable, safe and
2 efficient air transportation services.

3 **SEC. 3. Definition of Terms.** – The following terms as used in this Act shall
4 mean as follows:

5 (a) *Air carrier* – refers to an enterprise that engages in the provision of
6 transportation services by aircraft for remuneration or hire;

7 (b) *Air Service Agreement (ASA)* – refers to an agreement entered into
8 between and amongst states to govern their international air services relations. It
9 includes other similar arrangements such as, but not limited to, Exchange of Notes,
10 Exchange of Letters, Agreed Minutes, Memorandum of Understanding, Memorandum
11 of Consultations or other documents that govern or relate to any of, but not limited to,
12 the following matters and issues:

- 13 1. The implementation of certain provisions of the air service agreement;
- 14 2. The amendment of certain provisions of the air service agreement;
- 15 3. Elaboration or clarification of certain provisions of the air service
16 agreement;
- 17 4. The establishment and operation of air transportation and related
18 services pending the conclusion or execution of an air service agreement;
- 19 5. Any matter relating to the civil aviation relationship of two or more
20 States or their respective authorized agencies.

21 (c) *Cabotage Traffic Right* – refers to a privilege granted by a State to an
22 airline of another State to take on in the territory of the former state, passengers, mail
23 and cargo carried for remuneration or hire and destined for another point within its
24 territory;

25 (d) *Designated Carrier* – refers to an air carrier which is authorized to operate
26 air transport services under the provisions of an Air Service Agreement or other
27 similar arrangements;

28 (e) *Gateway* – refers to any point of entry into the Philippines by air
29 transportation;

30 (f) *National Interest* – shall include value for the Philippines in terms of
31 promoting international trade, foreign investments and tourism, among others. The
32 term national interest should be interpreted to prioritize and promote trade, foreign
33 investments and tourism;

1 (g) *Reciprocity* – refers to the exchange of rights, freedoms and opportunities
2 of comparable value with consideration of national interest;

3 (h) *Secondary Gateway* refers to any gateway other than the Ninoy Aquino
4 International Airport;

5 (i) *Traffic* - refers to the quantity of air transportation, including passenger
6 and cargo transported by an aircraft;

7 (j) *Traffic Right* refers to the market access right expressed as an agreed
8 physical or geographic specification, or combination of specification of who or what
9 may be transported over an authorized route or parts thereof in the aircraft authorized
10 under a particular ASA ;

11 (k) *1st Freedom* – refers to the right or privilege, in respect of scheduled
12 international air services, granted by one State to another State or States to fly across
13 its territory without landing;

14 (l) *2nd Freedom* – refers to the right or privilege, in respect of scheduled
15 international air services, granted by one State to another State or States to land in its
16 territory for non-traffic purposes;

17 (m) *3rd Freedom* – refers to the right or privilege, in respect of scheduled
18 international air services, granted by one State to another State to put down, in the
19 territory of the first State, traffic coming from the Home State of the carrier;

20 (n) *4th Freedom* - refers to the right or privilege, in respect of scheduled
21 international air services, granted by one State to another State to take on, in the
22 territory of the first State, traffic destined for the Home State of the carrier;

23 (o) *5th Freedom* - refers to the right or privilege, in respect of scheduled
24 international air services, granted by one State to another State, to put down and take
25 on in the territory of the first State, traffic coming from or destined to a third State.

26 **SEC. 4. Grant of Rights.** The Civil Aeronautics Board (CAB) in the
27 exercise of its powers and functions under Republic Act No. 776 otherwise known as
28 the "Civil Aeronautics Act of the Philippines", as amended, and other relevant statutes
29 shall, in the interest of the public and consistent with public convenience and
30 necessity, process all applications for air transportation involving any gateway and
31 shall be guided by the following principles:

32 a. An air transportation system exists primarily for the benefit of its
33 consumers;

1 b. Reciprocity shall not be qualified on the basis of level of traffic rights,
2 frequencies, freedoms and opportunities that the Philippine carriers can afford to
3 operate.

4 c. Economic gain for the Philippines shall be the principal criterion for
5 determining whether the exchange of rights, freedoms and opportunities under an air
6 service agreement or similar arrangement shall promote the larger interest of the
7 country. The interests of the various sectors affected by civil aviation including, but
8 not limited to, tourism, trade, investments and those of overseas Filipino workers shall
9 always be considered in assessing the nature and extent of economic gain for the
10 Philippines.

11 d. The promotion of tourism, trade and investments, jobs growth and the
12 enhancement of opportunities for the same are the primary economic advocacy of
13 civil aviation policy in the Philippines;

14 e. All air carriers subject to regulation by the CAB shall be flexible and
15 innovative in providing adequate, dependable, efficient, comfortable and safe
16 transport at prices that correspond to the demands of the consumers provided such air
17 carriers do not engage in unreasonable discrimination, unfair or deceptive practices or
18 predatory pricing in providing such services;

19 f. The authority to operate air transport services, whether scheduled or
20 non-scheduled, to or from any secondary gateway may be granted over and above
21 capacity entitlements under an existing ASA. Said authority may be granted without
22 restrictions on capacity, frequency, type of aircraft and non-cabotage traffic rights
23 other than those that may be required by security and safety considerations, to any
24 applicant with the financial capacity and technical capability to operate such services:
25 *Provided, That*, where an ASA or another similar arrangement provides for limited
26 designation, an official letter endorsement by its Home State that such is an existing
27 and legitimate carrier, shall suffice in lieu of a designation. Any applicant who has
28 been engaged in air commerce for at least eighteen (18) months prior to the filing of
29 its application shall be deemed *prima facie* as financially capable of operating the
30 services subject of the application. The grant by the CAB of the authority to operate
31 shall serve as a waiver of any restriction on capacity, frequency, type of aircraft or
32 non-cabotage rights imposed by any ASA or other similar arrangements on the
33 applicant's right to operate air transport services to or from any secondary gateway:

1f. g. The CAB may, after due notice and hearing, revoke the authority granted to a foreign carrier, if a Philippine carrier applying for the same rights to operate to or from the Home State of the foreign carrier is not granted equal opportunity to operate the route;

h. Operational and marketing restrictions on air transport and related service shall be eliminated to the greatest extent possible;

i. 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;

j. Any domestic route within the territory of the Philippines shall, 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;

k. All Philippine air carriers designated under an air service agreement or similar arrangement shall strictly utilize the capacity 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, upon application, to another designated Philippine air carrier within the period prescribed by the CAB. Under no circumstance shall the CAB allow a designated Philippine air carrier to assign the unutilized portion of its entitlement to any other carrier for any consideration whatsoever; and

l. The CAB shall encourage and promote operations to secondary and unserved or underserved routes. The CAB and the Civil Aviation Authority of the Philippines (CAAP) shall provide incentive programs to support viability operations to these routes.

SEC. 5. Airline designation. – Philippine carriers intending to operate under the liberalized provisions of this Act shall file with CAB an application for designation. An air carrier applying for a designation must be a holder of a valid and existing Certificate of Public Convenience and Necessity (CPCN) issued by the CAB and shall have been granted an Air Operator Certificate (AOC) by the CAAP. Such air carrier shall have operated domestic operations for a period of not less than eighteen (18) months.

1 **SEC. 6. Implementing Rules and Regulations.** – The Civil Aeronautics
2 Board shall promulgate the Implementing Rules and Regulations (IRR) of this Act
3 within sixty (60) days from its effectivity.

4 **SEC. 7. Supplementary Clause.** – In case of insufficiency of any provision
5 of this Act, the rules and regulations implemented by the CAB and its resolutions,
6 shall apply in a suppletory manner to the provisions of this Act.

7 **SEC. 8. Separability Clause.** – If for any reason, any section or provision of
8 this Act shall be held to be unconstitutional or invalid, the other sections or provisions
9 shall not be affected thereby.

10 **SEC. 9. Repealing Clause.** – Any provision of Republic Act No. 776,
11 Presidential Decree No. 1462, a decree entitled: “Amending Certain Sections of
12 Republic Act 776”, Executive Order No. 219, entitled: “Establishing the Domestic
13 and International Civil Aviation Liberalization Policy”, Executive Order No. 28,
14 entitled: “Reorganizing the Philippine Air Negotiating Panel and the Philippine Air
15 Consultation Panel”, and Executive Order No. 29, entitled: “Authorizing the Civil
16 Aeronautics Board and the Philippine Air Panels to Pursue More Aggressively the
17 International Civil Aviation Liberalization Policy”, and other rules and regulations or
18 parts thereof, inconsistent with any provision of this Act are hereby repealed,
19 amended or modified accordingly.

20 **SEC. 10. Effectivity Clause** – This Act shall take effect fifteen (15) days
21 following its publication in two (2) newspapers of general circulation.

22 Approved,

FACT SHEET

In substitution of House Bill Nos. 1601, 1352, and pursuant to HR. 1143
(As approved on 29 November 2011)

AN ACT FURTHER LIBERALIZING THE COMMERCIAL AVIATION INDUSTRY OF THE PHILIPPINES BY ALIGNING EXISTING POLICIES, RULES AND REGULATIONS

Introduced by: REPS. REX GATCHALIAN, AURORA ENERIO-CERILLES, WINSTON CASTELO, JIM HATAMAN-SALLIMAN, PETER UNABIA, ARNEL CERAFIGA, BENJAMIN ASILO, EDWIN OLIVARES, MARIA CARMEN ZAMORA-APSAY, EMI CALIXTO-RUBIANO, BERNADETTE HERRERA-DY, MYLENE GARCIA-ALBANO AND ROGER G. MERCADO

*Committee Referral: **TRANSPORTATION***

*Committee Chairperson: **Hon. Roger G. Mercado***

OBJECTIVES:

- To provide for a liberalized commercial aviation industry in the country that promotes tourism, trade and investments and remove barriers to growth and development of industries reliant on air travel services.
- To provide a sound and responsive regulatory system for air transportation system.
- To ensure maximum access to all secondary gateways while maintaining reciprocity of traffic rights to protect national interest.
- To encourage competition in the industry.
- To afford the public with viable, safe and affordable air transportation alternatives.

KEY PROVISIONS:

- Directs the Civil Aeronautics Board (CAB) to process all applications for air transportation involving any gateway in consonance with the following guidelines:
 - A consumer-friendly air transportation system shall be established;
 - Reciprocity shall not be qualified on the basis of level of traffic rights, frequencies, freedoms and opportunities that the Philippine carriers can afford to operate;
 - Economic gain for the country shall be the principal consideration in all air service negotiations and other similar exchange of rights;
 - Tourism, trade and investments, jobs growth and enhancement of opportunities are the primary economic advocacies of civil aviation in the Philippines;
 - All carriers subject to regulation by the CAB 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 predatory pricing in providing such services;
 - Applicants with financial capacity and technical capacity shall be given the opportunity to operate without restrictions on capacity, frequency, type of aircraft and non-cabotage traffic rights other than those requiring security and safety considerations;

- Operational and marketing restrictions on air transport and related services shall be eliminated;
 - Multiple designation of Philippine carriers for any route operated from the Philippines shall be provided for;
 - At least two (2) domestic air carriers in any domestic route within the Philippine territory shall be operated;
 - A competitive and fair environment among air carriers operating in the Philippines shall be provided for; and
 - Operations to secondary and unserved or underserved routes shall be encouraged and promoted.
- Mandates that airlines applying for designation must be holders of a valid and existing Certificates of Public Convenience and Necessity (CPCN) issued by CAB and holders of Air Operator Certificates (AOC) issued by CAAP. Carriers must have operated domestically for not less than eighteen (18) months.
 - Provides for incentive programs to support viability of operations to missionary routes.

RELATED LAWS:

RA 9497 – Civil Aviation Authority of the Philippines