

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

**SIXTEENTH CONGRESS**  
First Regular Session

**HOUSE BILL NO. 451**



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**INTRODUCED BY REP. MARCELINO "MARCY" R. TEODORO**

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**EXPLANATORY NOTE**

Tourism propelled the development of many countries in the recent years. Contributory to this is the policy deflection towards air service liberalization or what is commonly known as the "open skies" policy substituting the restrictive and arcane features of many air services agreements (ASAs) that continue to govern airline links between territories.

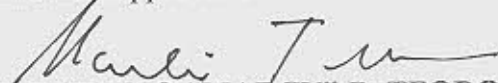
The Philippines benefited from a liberalized air transport arrangement when it granted unilateral air rights to foreign carriers to operate in the Diosdado Macapagal International Airport (DMIA) in Pampanga and the Subic Bay International Airport (SBIA) in Zambales through Executive Order No. 500. The shift in air policies brought back to life the sluggish business activity in Clark and Subic. In Clark alone, a sharp increase in passenger traffic and foreign tourist arrival were observed; the same trend was manifested in the growth in investments, exports by air and direct employment growth. Moreover, the low budget airlines operating in Clark benefited much the OFWs 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. A rational air transport liberalization strategy would support the vision of the government to promote the country as a tourism, investments and logistics hub.

The proposed measure also underscores the foundation 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, xxxx and on (b) reciprocity. The Civil Aviation Board (CAB) shall determine "national interest" with consideration of the larger interest of the country, especially the users of air services.

It is very significant to provide a 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 aforementioned, the immediate approval of this bill is earnestly sought.

  
**MARCELINO "MARCY" R. TEODORO**  
Representative  
1st District, City of Marikina

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**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 House of Representatives of the Philippines in Congress assembled:*

**SECTION 1. *Short Title.*** – This Act shall be known as the “Civil Aviation Liberalization Act of 2013.”

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

It is therefore declared the policy of the State to:

- a) Develop and maintain a sound regulatory system that is responsive to the needs of the public, especially the users of air services;
- b) Develop maximum air access to all secondary gateways, with the exception of cabotage traffic rights;
- c) Ensure that the exchange of traffic rights shall uphold national interest and promote international trade, foreign investments and tourism, among others;
- d) Encourage entry into the air transportation market of new air carriers and promote fair competition and equal opportunity among existing players;
- e) Afford the public viable alternatives for adequate, affordable, safe and efficient air transportation services.

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

- (a) *Air carrier* – refers to an enterprise that engages in the provision of transportation services by aircraft for remuneration or hire;
- (b) *Air Service Agreement* – refers to an agreement entered into between and amongst states to govern their international air services relations. It includes other similar arrangements such as, but 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 matters and issues:

- 1) The implementation of certain provisions of the air service agreement;
  - 2) The amendment of certain provisions of the air service agreement;
  - 3) Elaboration or clarification of certain provisions of the air service agreement;
  - 4) The establishment and operation of air transportation and related services pending the conclusion or execution of an air service agreement;
  - 5) Any matter relating to the civil aviation relationship of two or more States or their respective authorized agencies.
- (c) *Cabotage Traffic Right* – refers to a privilege granted by a State to an airline of another State to take on in the territory of the former state, passengers, mail and cargo carried for remuneration or hire and destined for another point within its territory;
- (d) *Designated Carrier* – refers to an air carrier which is authorized to operate air transport services under the provisions of an Air Service Agreement or other similar agreements;
- (e) *Gateway* – refers to any point of entry into the Philippines by air transportation;
- (f) *National Interest* – shall include value for the Philippines in terms of promoting international trade, foreign investments and tourism, among others. The term national interest should be interpreted to prioritize and promote trade, foreign investments and tourism;
- (g) *Reciprocity* – refers to the exchange of rights, freedoms and opportunities of comparable value with consideration of national interest;
- (h) *Secondary Gateway* – refers to any gateway other than the Ninoy Aquino International Airport
- (i) *Traffic* – refers to the quantity of air transportation, including passenger and cargo transported by an aircraft;
- (j) *Traffic Right* – refers to the 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 under a particular ASA;
- (k) *1<sup>st</sup> Freedom* – refers to the right or privilege, in respect of scheduled international air services, granted by one State to another State or States to fly across its territory without landing;
- (l) *2<sup>nd</sup> Freedom* – refers to the right or privilege, in respect of scheduled international air services, granted by one State to another State or States to land in its territory for non-traffic purposes;
- (m) *3<sup>rd</sup> Freedom* – refers to the right or privilege, in respect of scheduled international air services, granted by one State to another State to put down, in the territory of the first State, traffic coming from the Home State of the carrier;

- (n) *4<sup>th</sup> Freedom* – refers to the right or privilege, in respect of scheduled international air services, granted by one State to another State to take on, in the territory of the first State, traffic destined for the Home State of the carrier;
- (o) *5<sup>th</sup> Freedom* – refers to the right or privilege, in respect of scheduled international air services, granted by one State to another State, to put down and taken on in the territory of the first State, traffic coming from or destined to a third State.

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

- a) An air transportation system exists primarily for the benefit of its consumers;
- b) 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.
- c) Economic gain for the Philippines shall be the principle 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 those of overseas Filipino workers shall always be considered in assessing the nature and extent of economic gain for the Philippines;
- d) 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;
- e) All air 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 unreasonable discrimination, unfair or deceptive practices or predatory pricing in providing such services;
- f) The authority to operate air transport services, whether scheduled or non-scheduled, to or from any secondary gateway may be granted over and above capacity entitlements under an existing ASA. Said authority may be granted 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 and technical capability to operate such services: *Provided, That*, where an ASA or another similar arrangement provides for limited designation, an official letter endorsement by its Home State that such is an existing and legitimate carrier, shall suffice in lieu of a designation. Any applicant who has been engaged in air commerce for at least eighteen (18) 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 grant by the CAB 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 an ASA or other similar arrangements on the applicant's right to operate air transport services to or from any secondary gateway;

- 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 the CAB an application for designation. An air carrier applying for a designation must be a holder of a valid and existing legislative franchise before a Certificate of Public Convenience and Necessity (CPCN) can be 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.

**SEC. 6. *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.

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

**SEC. 8. *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.

**SEC. 9. *Repealing Clause.*** – Any provision of Republic Act No. 776, Presidential Decree No. 1462, a decree entitled: “Amending Certain Sections of Republic Act 776,” Executive Order No. 219, entitled: “Establishing the Domestic and International Civil Aviation Liberalization Policy,” Executive Order No. 28, entitled: “Reorganizing the

Philippine Air Negotiating Panel and the Philippine Air Consultation Panel,” and Executive Order No. 29, entitled: “Authorizing the Civil Aeronautics Board and the Philippine Air Panels to Pursue More Aggressively the International Civil Aviation Liberalization Policy,” and other rules and regulations or parts thereof, inconsistent with any provision of this Act are hereby repealed, amended or modified accordingly.

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

Approved,