

THIRTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
Third Regular Session)

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S E N A T E

S. No 235

Introduced by Senator S.R. Osmeña III

EXPLANATORY NOTE

The Executive Department has been granted the authority to direct the foreign or international relations of our country. This notwithstanding, it has come to the knowledge of the Senate that there may have been abuses of discretion on the part of certain line Departments of the Executive branch, particularly those offices or agencies dealing with the negotiations with foreign countries leading to the conclusion of the so-called Air Services Agreements or Air Transport Agreements.

There are existing Air Services Agreements or Air Transport Agreements that have been entered into with foreign countries by the different line departments of the Executive branch involving political issues or changes of national policy and those involving international arrangements of a permanent character, matters which are truly subject of the plenary legislative powers of Congress. Under the Constitution, the mechanism to check the exercise by the Executive of its treaty-making powers is to subject the same to the treaty-concurring powers of the Congress through a 2/3 vote of the members of the Senate. Unfortunately, it now appears that all of the Air Services Agreements or Air Transport Agreements have been classified unilaterally by the different line Departments of the Executive branch as mere bilateral executive agreements and declaring the same as solely within the jurisdiction or discretion of the Executive Department thus bypassing the Senate

Further, it has likewise been reported that there may be Air Services Agreements or Air Transport Agreements which contain inequitable provisions by providing for better opportunities to foreign air carriers without corresponding opportunities for Philippine air carriers.

Such is the case of the existing Air Transport Agreement between the Governments of the Philippines and the United States, which was signed in 1980. Based on a review of this agreement, the same contains iniquitous provisions which retards the growth of operations of the Philippine carriers. More importantly, the RP-US ATA effects a change in national policy, which is permanent in character considering that the agreement adopts the so-called Open Skies policy. It should be stressed that under an Open Skies policy, the designated air carriers of the United States are placed on equal footing with Philippine carriers because they are granted unrestricted or unlimited access to the aerial domain of the Philippines in terms of volume of traffic, frequency or

regularity of services or the aircraft type used. The aerial domain of the Philippines is an integral part of the country's natural resources and under the Philippine Constitution, unrestricted or unlimited access and enjoyment thereof is exclusively reserved to the Filipino people.

In addition thereto, the granting of unrestricted or unlimited access to US foreign air carriers to the country's aerial domain effectively diminishes, if not absolutely render ineffective, the regulatory measures passed by Congress such as Republic Act No. 776, which created the Civil Aeronautics Board for the purpose of regulating the operation of all air carriers operating into and out of the Philippine territory.

In view of the foregoing, there is now an urgent need to pass a law that shall provide for the establishment of a commission that shall represent the country in all negotiations with foreign countries leading to the conclusion of air agreements that shall be mandated to strictly comply with policy guidelines to be formulated by Congress. Such policy guidelines will have for its purpose the promotion and protection of the Philippine aviation industry in general, the Philippine designated air carriers in particular, and the promotion of trade, commerce and tourism through the conclusion of beneficial or advantageous air agreements.

Premises considered, approval of this bill is therefore, earnestly requested.


SERGIO OSMEÑA III
Senator

THIRTEENTH CONGRESS OF THE REPUBLIC)
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SENATE

S. No 235

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AN ACT
INSTITUTIONALIZING THE AIR NEGOTIATING COMMISSION OF THE
REPUBLIC OF THE PHILIPPINES AND DEFINING ITS POWERS AND
RESPONSIBILITIES

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

1 **CHAPTER I. – Title and Purpose**

2 SECTION 1. *Title.* – This act shall be known as the “**Philippine Air**
3 **Negotiating Commission Act of 2004.**”

4 SEC. 2. *Purpose.* – The general purpose of this Act is to institutionalize
5 the Air Negotiation Commission of the Republic of the Philippines and to define
6 its powers, duties and responsibilities.

7 **CHAPTER II. – General Provisions**

8 SEC. 3. *Definitions.* – The following definition shall control in the
9 application and construction of this Act:

10 (a) *Air Services Agreement or Air Transport Agreement* means any treaty
11 or international agreement, whether bilateral or multilateral negotiated
12 by and entered into by the Republic of the Philippines through the
13 Commission with a foreign country or countries.

14 (b) *Commission* means the Philippine Air Negotiating Commission.

1 (c) *Foreign Civil Aeronautical Authorities* means the counterpart of the
2 Commission in a foreign country with whom the Commission is
3 negotiating.

4 (d) *Philippine designated carrier(s)* means the duly designated and
5 recognized flag carrier(s) of the Republic of the Philippines.

6 SEC. 4. *Declaration of Principles.* – The State shall pursue an
7 independent foreign policy. In its relations with other states, the paramount
8 considerations shall be national sovereignty, territorial integrity, national interest,
9 and the right of self determination. Thus, to achieve this end, it shall be the policy
10 of the State:

11 (a) To formulate policy guidelines to ensure the improvement and
12 expansion of the development requirements of the Philippine aviation
13 industry through the conclusion of Air Services Agreement of Air
14 Transport Agreements with foreign countries;

15 (b) To develop and maximize the utilization of the potential of the
16 Philippine aviation industry;

17 (c) To encourage and promote competitiveness in a level playing field by
18 securing reciprocal rights, freedoms and equal opportunities for the
19 Philippine designated carriers;

20 (d) To protect the Philippine aviation industry in general and the Philippine
21 designated carriers in particular from unfair competition and practices;

22 (e) To improve air service availability, quality and efficiency through the
23 adoption of a progressive liberalization policy in the Philippine aviation
24 industry.

25 (f) To improve investment, trade and tourism in the country through the
26 expansion and strengthening of the Philippine aviation industry.

27 **CHAPTER III. – PHILIPPINE AIR NEGOTIATION COMMISSION**

28 Section 5. *Philippine Air Negotiating Commission.* – (a) There is hereby
29 created a Philippine Air Negotiating Commission, hereinafter referred to as the

1 Commission, which shall represent the Republic of the Philippines in all
2 negotiations or consultation talks with Foreign Civil Aeronautical Authorities
3 leading to the conclusion of Air Services Agreements or Air Transportation
4 Agreements and succeeding negotiations or consultation talks regarding the re-
5 negotiation, renewal or extension of these Air Services Agreements or Air
6 Transport Agreements.

7 (b) The Commission shall be composed of the Secretary of the
8 Department of Foreign Affairs as *ex officio* Chairman; the Secretary of the
9 Department of Transportation and Communications as *ex officio* Vice-Chairman;
10 the Secretary of Department of Tourism and the Secretary of the Department of
11 Trade and Industry as *ex officio* members; a representative of the Civil
12 Aeronautics Board as *ex officio* members; and representatives from the three
13 largest Philippine designated carrier(s) as members.

14 Section. 6. *Policy Guidelines for Negotiations or Consultation Talks.* - In
15 negotiating or consulting with foreign Civil Aeronautical Authorities with the end in
16 view of concluding an Air Service Agreement or Air Transport Agreement, the
17 Commission shall take into consideration the following policy guidelines:

18 (a) Air Services Agreements or Air Transport Agreements should be in
19 consonance with the rights of the Republic of the Philippines as a
20 sovereign state to exercise its political prerogatives.

21 (b) The Air Services Agreement or Air Transport Agreements should
22 provide for reciprocal rights, freedoms and privileges. Reciprocity
23 should not be strictly interpreted to mean the exchange of air traffic
24 rights on a one-to-one basis. Rather, reciprocity shall be interpreted to
25 mean the exchange of equivalent rights, privileges and freedoms with
26 the end in view of providing equality of opportunities particularly for
27 both the Philippine designated carriers and foreign designated
28 carriers.

1 (c) The national interest in general shall be taken into consideration which
2 includes value for the Philippines in terms of promoting trade, foreign
3 investments and tourism; *Provided*, however, that the negotiations or
4 consultations talks leading to the conclusion of Air Services
5 Agreements or Air Transport Agreements shall deal only with the
6 exchange of air traffic rights, freedoms and routes.

7 *Section 7. Duties and Responsibilities of the Commission.* – (a) Within a
8 period of six (6) months from the effectivity of this Act, the Commission, in
9 coordination with the Congressional Oversight Committee, shall review all
10 existing Air Services Agreements or Air Transport Agreements concluded by the
11 Republic of the Philippines with foreign countries with the end in view of making
12 them more responsive to the developmental requirements of the Philippine
13 aviation industry.

14 (b) The Commission shall immediately inform the Congressional Oversight
15 Committee of any and all Air Services Agreements or Air Transport Agreements
16 concluded with foreign Civil Aeronautical Authorities.

17 (c) The Commission, in coordination with the Congressional Oversight
18 Committee, shall recommend to the President of the Republic of the Philippines
19 the transmittal to the Philippine Senate of the ratification papers covering Air
20 Services Agreements or Air Transport Agreements involving political issues or
21 changes of national policy and those involving international arrangements of a
22 permanent character for the concurrence of the Senate.

23 *Section 8. Oversight Committee.* – There is hereby created a
24 Congressional Oversight Committee to monitor and oversee the implementation
25 of the provisions of this Act. The Committee shall be composed of ten (10)
26 members with the chairmen of the Committees on Foreign Relations,
27 Committees on Public Services and Committees on Transportation and
28 Communications of the Senate and the House of Representatives and six (6)
29 additional members from each House, to be designated by the Senate President

1 and the Speaker of the House of Representative, respectively. The minority shall
2 be entitled to pro rata representation but shall have at least (2) representatives in
3 the Committee.

4 Section 9. *Separability of Provisions.* – If any provision of this Act or the
5 application of such provision to any person or circumstances is declared
6 unconstitutional, the remainder of the Act or the application of such provision to
7 other persons or circumstances shall not be affected by such declaration.

8 Section 10. *Repealing Clause.* – All laws, decrees, executive orders,
9 proclamations, rules and regulations, and issuances, or parts thereof which are
10 inconsistent with the provisions of this Act, are hereby repealed or modified
11 accordingly.

12 Section 11. *Effectivity.* – This Act shall take effect fifteen (15) days
13 following its publication in the Official Gazette or in two (2) newspapers of
14 general circulation.

Approved,