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(Original Signature of Member)

109TH CONGRESS
1ST SESSION

H. R. _____

To direct the Secretary of Transportation to report to Congress concerning proposed changes to long-standing policies that prohibit foreign interests from exercising actual control over the economic, competitive, safety, and security decisions of United States airlines, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. OBERSTAR (for himself, Mr. YOUNG of Alaska, and [see attached list of cosponsors]) introduced the following bill; which was referred to the Committee on _____

A BILL

To direct the Secretary of Transportation to report to Congress concerning proposed changes to long-standing policies that prohibit foreign interests from exercising actual control over the economic, competitive, safety, and security decisions of United States airlines, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*



1 **SECTION 1. FINDINGS.**

2 Congress finds the following:

3 (1) Under current law (49 U.S.C.
4 40102(a)(15)), only an airline that qualifies as “a
5 citizen of the United States” (commonly referred to
6 as a United States airline) may provide service be-
7 tween cities in the United States or on international
8 routes obtained by the United States through inter-
9 national agreements. The law further provides that
10 an airline will qualify as a citizen of the United
11 States only if the airline is “a corporation or asso-
12 ciation . . . which is under the actual control of citi-
13 zens of the United States”.

14 (2) Throughout its 47-year history (1938–
15 1985), the Civil Aeronautics Board interpreted the
16 governing law as requiring that United States inter-
17 ests be in “actual control” of all operations of the
18 airline. The Department of Transportation contin-
19 ued these policies when it took over the responsibil-
20 ities of the Civil Aeronautics Board in 1985.

21 (3) To ensure that these long-standing policies
22 remained in effect, Congress in 2003 passed an
23 amendment specifically adding to the definition of
24 “citizen of the United States” a requirement that
25 the airline be “under the actual control of citizens
26 of the United States”. When this “actual control”



1 test was specifically added to the law, it clearly was
2 intended to codify the policy developed by the Civil
3 Aeronautics Board and the Department, which re-
4 quired that United States interests control economic
5 and competitive decisions of the airline, as well as
6 safety and security decisions.

7 (4) Congress has repeatedly refused the Depart-
8 ment's requests to pass legislation to allow foreign
9 interests to gain increased control of United States
10 airlines by changing the statutory requirements that
11 United States citizens must own 75 percent of the
12 voting stock of United States airlines. The Depart-
13 ment now seeks to accomplish increased foreign con-
14 trol by other means.

15 (5) On November 7, 2005, the Department
16 issued a Notice of Proposed Rulemaking (70 Fed.
17 Reg. 67389) that proposes to change the Depart-
18 ment's long-standing interpretation of "actual con-
19 trol". Under the proposed rules, United States citi-
20 zens would be required to control decisions of a
21 United States airline concerning commitments to the
22 Civil Reserve Air Fleet, transportation security, safe-
23 ty, and organizational documents. However, United
24 States citizens would not be required to control the
25 airline's basic economic and competitive decisions,



1 such as the cities to be served, the fares to be
2 charged, the aircraft to be purchased, and the na-
3 ture and size of the aircraft fleet.

4 (6) The proposed new interpretation that “ac-
5 tual control” does not require control of significant
6 portions of an airline’s operation is contrary to the
7 plain language of the statute.

8 (7) The proposed new interpretation would
9 change long-standing policies and legal interpreta-
10 tions that “actual control” means control over all
11 operations of the airline, not only decisions con-
12 cerning security, safety, the Civil Reserve Air Fleet
13 program, and organizational documents.

14 (8) The proposed new interpretation could lead
15 to fundamental changes in the Nation’s aviation sys-
16 tem.

17 (9) The Department’s rulemaking is a major
18 impairment of the policies and legal interpretation
19 that Congress specifically required by statute in
20 2003, and that have been followed for over 60 years.
21 Any major change in the definition of “actual con-
22 trol” should only be accomplished through the legis-
23 lative process and should not be unilaterally imposed
24 by the executive branch.



1 **SEC. 2. LIMITATION ON CERTAIN ACTIONS.**

2 (a) IN GENERAL.—For a period of one year after the
3 date of enactment of this Act, the Secretary of Transpor-
4 tation shall not issue a decision on the notice of proposed
5 rulemaking referred to in section 1(a)(5), issue any final
6 rule, or make any fitness determination under section
7 41102 of title 49, United States Code, that would change
8 the Department of Transportation’s long-standing inter-
9 pretation concerning what constitutes “actual control” of
10 an airline for purposes of section 40102(a)(15) of such
11 title.

12 (b) CONGRESSIONAL REVIEW.—Any final rule de-
13 scribed in subsection (a) issued by the Secretary shall be
14 treated as a major rule for purposes of chapter 8 of title
15 5, United States Code.

16 (c) REPORT.—Not later than 90 days after the date
17 of enactment of this Act, the Secretary shall submit to
18 Congress a report that assesses the impact of the proposed
19 rules referred to in section 1(a)(5). At a minimum, the
20 report shall include the following:

21 (1) An assessment of the consequences of per-
22 mitting greater participation of foreign interests in
23 the direct operations of United States airlines, in-
24 cluding the impact on national defense, competition
25 between foreign and United States airlines, the
26 growth of international air services performed by



1 United States airlines, and access of United States
2 citizens, especially those living in rural communities,
3 to aviation service.

4 (2) If the Department interprets the proposed
5 rules as allowing foreign owners of 25 percent or
6 less of a United States airline's stock to gain control
7 of the airline through supermajority voting require-
8 ments, or as allowing agreements under which
9 United States shareholders will vote their shares the
10 same way as minority foreign shareholders, a discus-
11 sion of the potential effects of such supermajority
12 voting requirements or agreements on—

13 (A) national defense;

14 (B) competition between foreign and
15 United States airlines;

16 (C) access to domestic aviation services;
17 and

18 (D) whether such agreements would be
19 consistent with the statutory requirement that
20 permits an airline to qualify as a citizen of the
21 United States only if at least 75 percent of the
22 voting interest in the airline is owned or con-
23 trolled by persons that are citizens of the
24 United States.



1 (3) A discussion of how the Department will en-
2 sure that United States citizens maintain control
3 over matters having an impact on issues concerning
4 Civil Reserve Air Fleet participation, safety, and se-
5 curity if foreign interests are allowed to exercise con-
6 trol over issues concerning a United States airline's
7 day-to-day operations, market strategy, and fleet
8 management.

9 (4) A discussion of the portion of the proposed
10 rules that provides that the new interpretation of
11 “actual control” would apply only in cases in which
12 a foreign country grants United States interests “re-
13 ciprocal access to investments in their carriers”, and
14 a discussion of—

15 (A) how the Department can adopt an in-
16 terpretation that will permit a definition of “ac-
17 tual control” to vary depending on policies fol-
18 lowed by a foreign country;

19 (B) how the Department would define “re-
20 ciprocal access”;

21 (C) how the Department would determine
22 that the home country of a foreign airline does
23 not deny United States citizens reciprocal ac-
24 cess to investments in its own airlines; and



1 (D) whether, as part of “reciprocal ac-
2 cess”, the Department would require control by
3 United States interests over economic decisions
4 by a foreign airline.

5 (5) A discussion of the effects the proposed
6 rules would have on the wages, working conditions,
7 and opportunities of United States airline employees,
8 including job opportunities in international air
9 transportation.

10 (6) A discussion of whether under the proposed
11 rules interested parties would be notified of and have
12 an opportunity to comment on an application sub-
13 mitted to the Department under which a foreign in-
14 terest could gain control of a United States airline.

