



The House Committee on Transportation & Infrastructure

Chairman Peter A. DeFazio

H.R. 3095

Fair and Open Skies Act

**Introduced by T&I Committee Chair Peter DeFazio (D-OR),
Aviation Subcommittee Chair Rick Larsen (D-WA), T&I Committee Vice Chair Sharice
Davids (D-KS), Aviation Subcommittee Vice Chair Conor Lamb (D-PA),
Representative Kai Kahele (D-HI), Highways and Transit Subcommittee Ranking Member
Rodney Davis (R-IL), Representative Drew Ferguson (R-GA), Representative Bill Johnson
(R-OH), Representative Don Bacon (R-NE), and Representative Jack Bergman (R-MI)**

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EXECUTIVE SUMMARY

A bipartisan bill, H.R. 3095 requires that when issuing a permit to a foreign airline to operate to and from the United States, the U.S. Department of Transportation (DOT) must determine that the permit would be in the public interest, which includes considering whether the airline is exploiting a “flag of convenience” by establishing itself in a country other than the country of its majority owner to avoid regulations or is otherwise undermining labor standards. The bill also requires DOT to ensure that any new foreign air carrier permit issued to a foreign airline that will fly between the United States and Europe under the U.S.-E.U.-Norway-Iceland Air Transport Agreement is consistent with the fair labor standards and fair competition requirements contained in that agreement.

DANGEROUS PRECEDENT

On December 2, 2016, contrary to a bipartisan House bill (H.R. 5090) cosponsored by 176 Members of Congress and over the unanimous objection of aviation labor stakeholders, DOT issued a foreign air carrier permit to Norwegian Air International (NAI). NAI was “Norwegian” in name only, having established itself in Ireland to avoid Norway’s strong labor protections and employing crews on cheap, short-term contracts governed under Singapore law. NAI was a subsidiary of the Norwegian airline Norwegian Air Shuttle.

Due to mounting debt and the significant drop in passenger demand during the COVID-19 pandemic, NAI has since shuttered its long-haul transatlantic service to the United States. However, DOT’s controversial decision to grant NAI a permit only encourages future opportunistic airlines to continue this race to the bottom in international civil aviation. One newly formed European venture, for example, has reportedly started structuring itself in a manner resembling NAI. These business models threaten U.S. air carriers’ ability to compete in critical international markets and have had devastating effects on the U.S. maritime industry.

Meanwhile, other airlines abroad have similarly ventured into atypical employment models in recent years, employing pilots and crew members under individual or temporary contracts. These models remove the direct relationship between the airline and crew and undermine labor standards by allowing an airline to exploit employees through a third party when negotiating employment terms, salary, and benefits, or to fire them for little or no reason at all.

H.R. 3095, THE FAIR AND OPEN SKIES ACT

To preclude future foreign airlines seeking to operate to and from the United States from exploiting flags of convenience or undermining important labor standards, H.R. 3095, the “Fair and Open Skies Act”:

- Precludes DOT from issuing a new foreign air carrier permit to a foreign airline under the U.S.-E.U.-Norway-Iceland Air Transport Agreement unless the permit is consistent with the agreement’s intent and requirements regarding fair labor standards and fair competition; and
- Establishes that preventing entry into U.S. markets by foreign airlines exploiting flags of convenience or undermining labor standards is in the U.S. public interest, which DOT will be required to consider before granting future foreign air carrier permits.

Supporters of the bipartisan bill include the following stakeholder groups:

- AFL-CIO;
- Air Line Pilots Association;
- Allied Pilots Association;
- Aircraft Mechanics Fraternal Association;
- Association of Flight Attendants-CWA;
- Association of Professional Flight Attendants;
- Coalition of Airline Pilots Associations;
- Communications Workers of America;
- International Association of Machinists and Aerospace Workers;
- International Brotherhood of Teamsters;
- International Organization of Masters, Mates & Pilots;
- NetJets Association of Shared Aircraft Pilots;
- Southwest Airlines Pilots Association;
- Transportation Trades Department, AFL-CIO;
- Transport Workers Union; and
- UNITE HERE.