

106TH CONGRESS
1ST SESSION

S. 306

To regulate commercial air tours overflying the Great Smoky Mountains National Park, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 25, 1999

Mr. FRIST introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To regulate commercial air tours overflying the Great Smoky Mountains National Park, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Great Smoky Moun-
5 tains National Park Overflights Act”.

6 **SEC. 2. AIR TOUR MANAGEMENT PLANS FOR NATIONAL**
7 **PARKS.**

8 (a) IN GENERAL.—Chapter 401 of title 49, United
9 States Code, is amended by adding at the end the follow-
10 ing:

1 **“§ 40125. Overflights of certain national parks**

2 “(a) IN GENERAL.—

3 “(1) GENERAL REQUIREMENTS.—A commercial
4 air tour operator may not conduct commercial air
5 tour operations over the Great Smoky Mountains
6 National Park or tribal lands adjacent thereto
7 except—

8 “(A) in accordance with this section;

9 “(B) in accordance with conditions and
10 limitations prescribed for that operator by the
11 Administrator; and

12 “(C) in accordance with any effective air
13 tour management plan for that park or those
14 tribal lands.

15 “(2) APPLICATION FOR OPERATING AUTHOR-
16 ITY.—

17 “(A) APPLICATION REQUIRED.—Before
18 commencing commercial air tour operations
19 over the Great Smoky Mountains National Park
20 or tribal lands adjacent thereto, a commercial
21 air tour operator shall apply to the Adminis-
22 trator for authority to conduct the operations
23 over that park or those tribal lands.

24 “(B) COMPETITIVE BIDDING FOR LIMITED
25 CAPACITY PARKS.—Whenever a commercial air
26 tour management plan limits the number of

1 commercial air tour flights over the Great
2 Smoky Mountains National Park or tribal lands
3 adjacent thereto during a specified time frame,
4 the Administrator, in cooperation with the Di-
5 rector, shall authorize commercial air tour oper-
6 ators to provide such service. The authorization
7 shall specify such terms and conditions as the
8 Administrator and the Director find necessary
9 for management of commercial air tour oper-
10 ations over the Great Smoky Mountains Na-
11 tional Park or tribal lands adjacent thereto.
12 The Administrator, in cooperation with the Di-
13 rector, shall develop an open competitive proc-
14 ess for evaluating proposals from persons inter-
15 ested in providing commercial air tour services
16 over the Great Smoky Mountains National Park
17 or tribal lands adjacent thereto. In making a
18 selection from among various proposals submit-
19 ted, the Administrator, in cooperation with the
20 Director, shall consider relevant factors,
21 including—

22 “(i) the safety record of the company
23 or pilots;

24 “(ii) any quiet aircraft technology pro-
25 posed for use;

1 “(iii) the experience in commercial air
2 tour operations over other national parks
3 or scenic areas;

4 “(iv) the financial capability of the
5 company;

6 “(v) any training programs for pilots;
7 and

8 “(vi) responsiveness to any criteria de-
9 veloped by the National Park Service or
10 the Great Smoky Mountains National
11 Park.

12 “(C) NUMBER OF OPERATIONS AUTHOR-
13 IZED.—In determining the number of author-
14 izations to issue to provide commercial air tour
15 service over the Great Smoky Mountains Na-
16 tional Park or tribal lands adjacent thereto, the
17 Administrator, in cooperation with the Director,
18 shall take into consideration the provisions of
19 the air tour management plan, the number of
20 existing commercial air tour operators and cur-
21 rent level of service and equipment provided by
22 any such companies, and the financial viability
23 of each commercial air tour operation.

24 “(D) COOPERATION WITH NPS.—Before
25 granting an application under this paragraph,

1 the Administrator shall, in cooperation with the
2 Director, develop an air tour management plan
3 in accordance with subsection (b) and imple-
4 ment such plan.

5 “(E) TIME LIMIT ON RESPONSE TO ATMP
6 APPLICATIONS.—The Administrator shall act on
7 any such application and issue a decision on the
8 application not later than 24 months after it is
9 received or amended.

10 “(3) EXCEPTION.—Notwithstanding paragraph
11 (1), commercial air tour operators may conduct com-
12 mercial air tour operations over the Great Smoky
13 Mountains National Park or tribal lands adjacent
14 thereto under part 91 of the Federal Aviation Regu-
15 lations (14 CFR 91.1 et seq.) if—

16 “(A) such activity is permitted under part
17 119 (14 CFR 119.1(e)(2));

18 “(B) the operator secures a letter of agree-
19 ment from the Administrator and the national
20 park superintendent for that national park de-
21 scribing the conditions under which the flight
22 operations will be conducted; and

23 “(C) the total number of operations under
24 this exception is limited to not more than 5
25 flights in any 30-day period over the park.

1 “(4) SPECIAL RULE FOR SAFETY REQUIRE-
2 MENTS.—Notwithstanding subsection (c), an exist-
3 ing commercial air tour operator shall, not later
4 than 90 days after the date of enactment of Great
5 Smoky Mountains National Park Overflights Act,
6 apply for operating authority under part 119, 121,
7 or 135 of the Federal Aviation Regulations (14 CFR
8 Pt. 119, 121, or 135). A new entrant commercial air
9 tour operator shall apply for such authority before
10 conducting commercial air tour operations over the
11 Great Smoky Mountains National Park or tribal
12 lands adjacent thereto.

13 “(b) AIR TOUR MANAGEMENT PLANS.—

14 “(1) ESTABLISHMENT OF ATMPs.—

15 “(A) IN GENERAL.—The Administrator
16 shall, in cooperation with the Director, establish
17 an air tour management plan for the Great
18 Smoky Mountains National Park or tribal lands
19 adjacent thereto if such a plan is not already in
20 effect whenever a person applies for authority
21 to operate a commercial air tour over the park.
22 The development of the air tour management
23 plan is to be a cooperative undertaking between
24 the Federal Aviation Administration and the
25 National Park Service. The air tour manage-

1 ment plan shall be developed by means of a
2 public process, and the agencies shall develop
3 information and analysis that explains the con-
4 clusions that the agencies make in the applica-
5 tion of the respective criteria. Such explanations
6 shall be included in the Record of Decision and
7 may be subject to judicial review.

8 “(B) OBJECTIVE.—The objective of the air
9 tour management plan shall be to develop ac-
10 ceptable and effective measures to mitigate or
11 prevent the significant adverse impacts, if any,
12 of commercial air tours upon the natural and
13 cultural resources and visitor experiences and
14 tribal lands.

15 “(2) ENVIRONMENTAL DETERMINATION.—In
16 establishing an air tour management plan under this
17 subsection, the Administrator and the Director shall
18 each sign the environmental decision document re-
19 quired by section 102 of the National Environmental
20 Policy Act of 1969 (42 U.S.C. 4332) which may in-
21 clude a finding of no significant impact, an environ-
22 mental assessment, or an environmental impact
23 statement, and the Record of Decision for the air
24 tour management plan.

1 “(3) CONTENTS.—An air tour management
2 plan for the Great Smoky Mountain National
3 Park—

4 “(A) may prohibit commercial air tour op-
5 erations in whole or in part;

6 “(B) may establish conditions for the con-
7 duct of commercial air tour operations, includ-
8 ing commercial air tour routes, maximum or
9 minimum altitudes, time-of-day restrictions, re-
10 strictions for particular events, maximum num-
11 ber of flights per unit of time, intrusions on pri-
12 vacy on tribal lands, and mitigation of noise,
13 visual, or other impacts;

14 “(C) shall apply to all commercial air tours
15 within ½, mile outside the boundary of that na-
16 tional park;

17 “(D) shall include incentives (such as pre-
18 ferred commercial air tour routes and altitudes,
19 relief from caps and curfews) for the adoption
20 of quiet aircraft technology by commercial air
21 tour operators conducting commercial air tour
22 operations at the park;

23 “(E) shall provide for the initial allocation
24 of opportunities to conduct commercial air
25 tours if the plan includes a limitation on the

1 number of commercial air tour flights for any
2 time period; and

3 “(F) shall justify and document the need
4 for measures taken pursuant to the subpara-
5 graphs (A) through (E).

6 “(4) PROCEDURE.—In establishing a commer-
7 cial air tour management plan for the Great Smoky
8 Mountains National Park or tribal lands adjacent
9 thereto, the Administrator and the Director shall—

10 “(A) initiate at least one public meeting
11 with interested parties to develop a commercial
12 air tour management plan for the park;

13 “(B) publish the proposed plan in the Fed-
14 eral Register for notice and comment and make
15 copies of the proposed plan available to the
16 public;

17 “(C) comply with the regulations set forth
18 in sections 1501.3 and 1501.5 through 1501.8
19 of title 40, Code of Federal Regulations (for
20 purposes of complying with those regulations,
21 the Federal Aviation Administration is the lead
22 agency and the National Park Service is a co-
23 operating agency); and

24 “(D) solicit the participation of any Indian
25 tribe whose tribal lands are, or may be,

1 overflowed by aircraft involved in commercial air
2 tour operations over a national park or tribal
3 lands, as a cooperating agency under the regu-
4 lations referred to in paragraph (4)(C).

5 “(5) AMENDMENTS.—Any amendment of an air
6 tour management plan shall be published in the
7 Federal Register for notice and comment. A request
8 for amendment of an air tour management plan
9 shall be made in such form and manner as the Ad-
10 ministrator may prescribe.

11 “(c) INTERIM OPERATING AUTHORITY.—

12 “(1) IN GENERAL.—Upon application for oper-
13 ating authority, the Administrator shall grant in-
14 terim operating authority under this paragraph to a
15 commercial air tour operator for the Great Smoky
16 Mountains National Park or tribal lands adjacent
17 thereto for which the operator is an existing com-
18 mercial air tour operator.

19 “(2) REQUIREMENTS AND LIMITATIONS.—In-
20 terim operating authority granted under this
21 subsection—

22 “(A) shall provide annual authorization
23 only for the greater of—

24 “(i) the number of flights used by the
25 operator to provide such tours within the

1 12-month period prior to the date of enact-
2 ment of the Great Smoky Mountains Na-
3 tional Park Overflights Act; or

4 “(ii) the average number of flights per
5 12-month period used by the operator to
6 provide such tours within the 36-month pe-
7 riod prior to such date of enactment, and,
8 for seasonal operations, the number of
9 flights so used during the season or sea-
10 sons covered by that 12-month period;

11 “(B) may not provide for an increase in
12 the number of operations conducted during any
13 time period by the commercial air tour operator
14 to which it is granted unless the increase is
15 agreed to by the Administrator and the Direc-
16 tor;

17 “(C) shall be published in the Federal Reg-
18 ister to provide notice and opportunity for com-
19 ment;

20 “(D) may be revoked by the Administrator
21 for cause;

22 “(E) shall terminate 180 days after the
23 date on which an air tour management plan is
24 established for that park or those tribal lands;
25 and

1 “(F) shall—

2 “(i) promote protection of national
3 park resources, visitor experiences, and
4 tribal lands;

5 “(ii) promote safe operations of the
6 commercial air tour;

7 “(iii) promote the adoption of quiet
8 technology, as appropriate; and

9 “(iv) allow for modifications of the op-
10 eration based on experience if the modi-
11 fication improves protection of national
12 park resources and values and of tribal
13 lands.

14 “(3) NEW ENTRANT AIR TOUR OPERATORS.—

15 “(A) IN GENERAL.—The Administrator, in
16 cooperation with the Director, may grant in-
17 terim operating authority under this paragraph
18 to an air tour operator for the Great Smoky
19 Mountains National Park or tribal lands adja-
20 cent thereto if that operator is a new entrant
21 air tour operator if the Administrator deter-
22 mines the authority is necessary to ensure com-
23 petition in the provision of commercial air tours
24 over that national park or those tribal lands.

1 “(B) SAFETY LIMITATION.—The Adminis-
2 trator may not grant interim operating author-
3 ity under subparagraph (A) if the Adminis-
4 trator determines that it would create a safety
5 problem at that park or on tribal lands, or the
6 Director determines that it would create a noise
7 problem at that park or on tribal lands.

8 “(C) ATMP LIMITATION.—The Adminis-
9 trator may grant interim operating authority
10 under subparagraph (A) of this paragraph only
11 if the air tour management plan for the park or
12 tribal lands to which the application relates has
13 not been developed within 24 months after the
14 date of enactment of the Air Transportation
15 Improvement Act.

16 “(d) DEFINITIONS.—In this section, the following 25
17 definitions apply:

18 “(1) COMMERCIAL AIR TOUR.—The term ‘com-
19 mercial air tour’ means any flight conducted for
20 compensation or hire in a powered aircraft where a
21 purpose of the flight is sightseeing. If the operator
22 of a flight asserts that the flight is not a commercial
23 air tour, factors that can be considered by the Ad-
24 ministrators in making a determination of whether

1 the flight is a commercial air tour, include, but are
2 not limited to—

3 “(A) whether there was a holding out to
4 the public of willingness to conduct a sightsee-
5 ing flight for compensation or hire;

6 “(B) whether a narrative was provided
7 that referred to areas or points of interest on
8 the surface;

9 “(C) the area of operation;

10 “(D) the frequency of flights;

11 “(E) the route of flight;

12 “(F) the inclusion of sightseeing flights as
13 part of any travel arrangement package; or

14 “(G) whether the flight or flights in ques-
15 tion would or would not have been canceled
16 based on poor visibility of the surface.

17 “(2) COMMERCIAL AIR TOUR OPERATOR.—The
18 term ‘commercial air tour operator’ means any per-
19 son who conducts a commercial air tour.

20 “(3) EXISTING COMMERCIAL AIR TOUR OPERA-
21 TOR.—The term ‘existing commercial air tour opera-
22 tor’ means a commercial air tour operator that was
23 actively engaged in the business of providing com-
24 mercial air tours over a national park at any time
25 during the 12-month period ending on the date of

1 enactment of the Air Transportation Improvement
2 Act.

3 “(4) NEW ENTRANT COMMERCIAL AIR TOUR
4 OPERATOR.—The term ‘new entrant commercial air
5 tour operator’ means a commercial air tour operator
6 that—

7 “(A) applies for operating authority as a
8 commercial air tour operator for a national
9 park; and

10 “(B) has not engaged in the business of
11 providing commercial air tours over that na-
12 tional park or those tribal lands in the 12-
13 month period preceding the application.

14 “(5) COMMERCIAL AIR TOUR OPERATIONS.—
15 The term ‘commercial air tour operations’ means
16 commercial air tour flight operations conducted—

17 “(A) over a national park or within ½ mile
18 outside the boundary of any national park;

19 “(B) below a minimum altitude, deter-
20 mined by the Administrator in cooperation with
21 the Director, above ground level (except solely
22 for purposes of takeoff or landing, or necessary
23 for safe operation of an aircraft as determined
24 under the rules and regulations of the Federal
25 Aviation Administration requiring the pilot-in-

1 command to take action to ensure the safe op-
 2 eration of the aircraft); and

3 “(C) less than 1 mile laterally from any
 4 geographic feature within the park (unless more
 5 than ½ mile outside the boundary).

6 “(6) GREAT SMOKY MOUNTAINS NATIONAL
 7 PARK.—The term ‘Great Smoky Mountains National
 8 Park’ means the Great Smoky Mountains National
 9 Park to which reference is made in section 3 of the
 10 Federal Water Power Act (16 U.S.C. 403b) and any
 11 other unit of the National Park System in or contig-
 12 uous to the State of Tennessee designated by the Di-
 13 rector.

14 “(7) TRIBAL LANDS.—The term ‘tribal lands’
 15 means ‘Indian country’, as defined by section 1151
 16 of title 18, United States Code, that is within or
 17 abutting the Great Smoky Mountains National Park.

18 “(8) ADMINISTRATOR.—The term ‘Adminis-
 19 trator’ means the Administrator of the Federal Avia-
 20 tion Administration.

21 “(9) DIRECTOR.—The term ‘Director’ means
 22 the Director of the National Park Service.”.

- 1 (b) CLERICAL AMENDMENT.—The table of sections
2 for such chapter 401 is amended by adding at the end
3 thereof the following:

“40125. Overflights of certain national parks.”.

