

109TH CONGRESS  
1ST SESSION

# H. R. 4542

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.

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 14, 2005

Mr. OBERSTAR (for himself, Mr. YOUNG of Alaska, Mr. COSTELLO, Mr. LOBIONDO, Mr. DEFazio, Ms. BERKLEY, Mr. BOSWELL, Mr. GRAVES, Mr. SMITH of New Jersey, Ms. NORTON, Ms. MILLENDER-McDONALD, Ms. WOOLSEY, Mr. PASCRELL, Mr. BRADY of Pennsylvania, Mr. MENENDEZ, Mr. LYNCH, Mr. EVANS, Mr. McHUGH, Ms. KILPATRICK of Michigan, Mr. ROTHMAN, Mr. VISCLOSKY, Mr. HINCHEY, Mr. OLVER, Mr. DAVIS of Tennessee, Mr. DAVIS of Alabama, Mr. MARSHALL, Mr. RAHALL, Mrs. MCCARTHY, Mr. LATOURETTE, Mr. MURPHY, Mr. SIMMONS, Mr. FERGUSON, Mr. MCINTYRE, Mr. McNULTY, Mr. UDALL of New Mexico, Mr. BACA, Mr. PAYNE, Mr. ANDREWS, Mr. MEEK of Florida, Mr. MICHAUD, Mr. MATHESON, Mr. RYAN of Ohio, Mr. SALAZAR, Mr. ENGEL, Mr. COSTA, Mr. HOLDEN, Mr. CUMMINGS, Mr. NEY, Mr. DICKS, Mr. CARNAHAN, Mr. BISHOP of New York, Mr. GENE GREEN of Texas, Mr. PASTOR, Mr. LANGEVIN, Mr. STRICKLAND, Mr. CARDIN, Mr. DUNCAN, Mr. BAIRD, Mr. BERRY, Mr. BLUMENAUER, Mr. ABERCROMBIE, Mr. CARTER, and Mr. FILNER) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committee on Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## 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,*

3        **SECTION 1. FINDINGS.**

4        Congress finds the following:

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

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

1           (3) To ensure that these long-standing policies  
2 remained in effect, Congress in 2003 passed an  
3 amendment specifically adding to the definition of  
4 “citizen of the United States” a requirement that  
5 the airline be “under the actual control of citizens  
6 of the United States”. When this “actual control”  
7 test was specifically added to the law, it clearly was  
8 intended to codify the policy developed by the Civil  
9 Aeronautics Board and the Department, which re-  
10 quired that United States interests control economic  
11 and competitive decisions of the airline, as well as  
12 safety and security decisions.

13           (4) Congress has repeatedly refused the Depart-  
14 ment’s requests to pass legislation to allow foreign  
15 interests to gain increased control of United States  
16 airlines by changing the statutory requirements that  
17 United States citizens must own 75 percent of the  
18 voting stock of United States airlines. The Depart-  
19 ment now seeks to accomplish increased foreign con-  
20 trol by other means.

21           (5) On November 7, 2005, the Department  
22 issued a Notice of Proposed Rulemaking (70 Fed.  
23 Reg. 67389) that proposes to change the Depart-  
24 ment’s long-standing interpretation of “actual con-  
25 trol”. Under the proposed rules, United States citi-

1       zens would be required to control decisions of a  
2       United States airline concerning commitments to the  
3       Civil Reserve Air Fleet, transportation security, safe-  
4       ty, and organizational documents. However, United  
5       States citizens would not be required to control the  
6       airline’s basic economic and competitive decisions,  
7       such as the cities to be served, the fares to be  
8       charged, the aircraft to be purchased, and the na-  
9       ture and size of the aircraft fleet.

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

14       (7) The proposed new interpretation would  
15       change long-standing policies and legal interpreta-  
16       tions that “actual control” means control over all  
17       operations of the airline, not only decisions con-  
18       cerning security, safety, the Civil Reserve Air Fleet  
19       program, and organizational documents.

20       (8) The proposed new interpretation could lead  
21       to fundamental changes in the Nation’s aviation sys-  
22       tem.

23       (9) The Department’s rulemaking is a major  
24       impairment of the policies and legal interpretation  
25       that Congress specifically required by statute in

1       2003, and that have been followed for over 60 years.

2       Any major change in the definition of “actual con-  
3       trol” should only be accomplished through the legis-  
4       lative process and should not be unilaterally imposed  
5       by the executive branch.

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

7       (a) IN GENERAL.—For a period of one year after the  
8       date of enactment of this Act, the Secretary of Transpor-  
9       tation shall not issue a decision on the notice of proposed  
10      rulemaking referred to in section 1(a)(5), issue any final  
11      rule, or make any fitness determination under section  
12      41102 of title 49, United States Code, that would change  
13      the Department of Transportation’s long-standing inter-  
14      pretation concerning what constitutes “actual control” of  
15      an airline for purposes of section 40102(a)(15) of such  
16      title.

17      (b) CONGRESSIONAL REVIEW.—Any final rule de-  
18      scribed in subsection (a) issued by the Secretary shall be  
19      treated as a major rule for purposes of chapter 8 of title  
20      5, United States Code.

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

1           (1) An assessment of the consequences of per-  
2           mitting greater participation of foreign interests in  
3           the direct operations of United States airlines, in-  
4           cluding the impact on national defense, competition  
5           between foreign and United States airlines, the  
6           growth of international air services performed by  
7           United States airlines, and access of United States  
8           citizens, especially those living in rural communities,  
9           to aviation service.

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

19                (A) national defense;

20                (B) competition between foreign and  
21                United States airlines;

22                (C) access to domestic aviation services;  
23                and

24                (D) whether such agreements would be  
25                consistent with the statutory requirement that

1           permits an airline to qualify as a citizen of the  
2           United States only if at least 75 percent of the  
3           voting interest in the airline is owned or con-  
4           trolled by persons that are citizens of the  
5           United States.

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

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

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

24                 (B) how the Department would define “re-  
25                 ciprocal access”;

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

5 (D) whether, as part of “reciprocal ac-  
6 cess”, the Department would require control by  
7 United States interests over economic decisions  
8 by a foreign airline.

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

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

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