

103D CONGRESS
1ST SESSION

H. R. 470

To amend the Federal Aviation Act of 1958 to provide for review of certain acquisitions of voting securities of air carriers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 1993

Mr. OBERSTAR introduced the following bill; which was referred to the Committee on Public Works and Transportation

A BILL

To amend the Federal Aviation Act of 1958 to provide for review of certain acquisitions of voting securities of air carriers, 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. AMENDMENTS TO THE FEDERAL AVIATION ACT**

4 **OF 1958.**

5 (a) REVIEW PROCESS.—Title IV of the Federal Avia-
6 tion Act of 1958 (49 U.S.C. App. 1371–1389) is amended
7 by adding at the end thereof the following new section:

1 **“SEC. 420. REVIEW OF CERTAIN ACQUISITIONS OF VOTING**
2 **SECURITIES OF AIR CARRIERS.**

3 “(a) GENERAL RULE.—No person shall acquire, di-
4 rectly or indirectly, any voting securities of a major air
5 carrier or person who controls a major air carrier unless
6 the acquiring person files notification pursuant to the
7 rules under subsection (d), the waiting period described
8 in subsection (b)(1) has expired, and the Secretary has
9 not disapproved such acquisition under subsection (c)—

10 “(1) if such acquisition is of 15 percent or more
11 of the voting securities of the acquired person; or

12 “(2) if, before such acquisition, the acquiring
13 person holds less than 15 percent of the voting secu-
14 rities of the acquired person and, as a result of such
15 acquisition, the acquiring person would hold 15 per-
16 cent or more of the voting securities of the acquired
17 person.

18 “(b) WAITING PERIOD.—

19 “(1) GENERAL RULE.—The waiting period re-
20 quired under subsection (a) shall—

21 “(A) begin on the date of receipt by the
22 Secretary of the completed notification required
23 under this section from the acquiring person;
24 and

1 “(B) end on the 30th day after the date of
2 such receipt or such later date as may be set
3 under subsection (e)(2).

4 “(2) TERMINATION.—The Secretary may, in in-
5 dividual cases, terminate the waiting period specified
6 in paragraph (1) and allow any person to proceed
7 with any acquisition subject to this section and
8 promptly shall cause to be published in the Federal
9 Register a notice that the Secretary does not intend
10 to take any action within such period with respect
11 to such acquisition.

12 “(c) DISAPPROVAL.—The Secretary shall disapprove
13 an acquisition of voting securities subject to this section
14 if the Secretary finds—

15 “(1) that the acquisition is likely to weaken the
16 acquired person financially to such an extent—

17 “(A) that a deterioration in the ability of
18 the air carrier to comply with its established
19 safety procedures would occur;

20 “(B) that the air carrier would be unable
21 to take the steps necessary to continue to oper-
22 ate with the highest degree of safety;

23 “(C) that the air carrier would be required
24 to dispose of a substantial portion of its avia-

1 tion-related assets in order to meet its financial
2 obligations; or

3 “(D) that a substantial deterioration in the
4 air carrier’s ability to compete in providing air
5 transportation would result;

6 “(2) that the probable intent of the acquiring
7 person is to make a major reduction in the size of
8 the air carrier by disposing of aviation-related as-
9 sets; except in any case in which—

10 “(A) such disposition would be necessary,
11 in the absence of the acquisition, to avoid the
12 financial failure of the air carrier,

13 “(B) the assets to be disposed of could not
14 be used profitably by the air carrier, or

15 “(C) such disposition would be in the pub-
16 lic interest;

17 “(3) that the acquisition would result in a per-
18 son who is not a citizen of the United States having
19 power to exercise control over the air carrier;

20 “(4) that the acquisition would result in a
21 major reduction in wages, benefits, or number of
22 employees of the air carrier which is not agreed to
23 by the employees and is required primarily as a re-
24 sult of added costs arising out of the acquisition; or

1 “(5) that the acquiring person is not providing,
2 in a timely manner, the documentary material and
3 information required by the Secretary to make a de-
4 cision regarding the acquisition under this section.

5 “(d) FORM OF NOTIFICATION AND OTHER RULES.—

6 “(1) IN GENERAL.—The Secretary, by regula-
7 tion—

8 “(A) shall require that the notification
9 under subsection (a) be in such form and con-
10 tain such information and documentary mate-
11 rial relevant to a proposed acquisition as is nec-
12 essary to enable the Secretary to determine
13 whether such acquisition should be disapproved
14 under this section, and

15 “(B) may prescribe such other rules as
16 may be necessary and appropriate to carry out
17 the purposes of this section, including rules re-
18 lating to the submission by the air carrier of in-
19 formation or documentary material described in
20 subparagraph (A).

21 “(2) DEADLINE FOR ISSUANCE OF REGULA-
22 TIONS.—Not later than 10 days after the date of the
23 enactment of this section, the Secretary shall issue
24 regulations necessary to carry out the objectives of
25 this section.

1 “(e) EXTENSION OF WAITING PERIOD.—

2 “(1) SUBMISSION OF ADDITIONAL INFORMA-
3 TION.—The Secretary may, before the expiration of
4 the 30-day waiting period specified in subsection
5 (b)(1), require the submission of additional informa-
6 tion or documentary material relevant to the pro-
7 posed acquisition, from a person required to file no-
8 tification with respect to such acquisition under sub-
9 section (a), from the air carrier, or from any officer,
10 director, partner, agent, or employee of such person.

11 “(2) DURATION.—The Secretary, in his discre-
12 tion, may extend the 30-day waiting period specified
13 in subsection (b)(1) for an additional period of not
14 more than 20 days after the later of—

15 “(A) the date on which the Secretary re-
16 ceives from the acquiring person or any officer,
17 director, partner, agent, or employee of such
18 person all of the information and documentary
19 material required to be submitted pursuant to
20 a request under paragraph (1); or

21 “(B) the date by which the air carrier or
22 any officer, director, partner, agent, or em-
23 ployee of the air carrier is directed to submit
24 information or documentary material pursuant
25 to a request under paragraph (1).

1 “(f) PROTECTION OF INFORMATION.—Any informa-
2 tion or documentary material filed with the Secretary
3 pursuant to this section shall be exempt from disclosure
4 under section 552 of title 5, United States Code, and no
5 such information or documentary material may be made
6 public, except as may be relevant to any administrative
7 or judicial action or proceeding. Nothing in this section
8 is intended to prevent disclosure to either House of Con-
9 gress or to any duly authorized committee or subcommit-
10 tee of Congress.

11 “(g) COMPUTATION OF VOTING SECURITIES.—For
12 purposes of this section, the amount or percentage of vot-
13 ing securities of a person which are acquired or held by
14 another person shall be determined by aggregating the
15 amount or percentage of such voting securities held or ac-
16 quired by such other person and each affiliate thereof.

17 “(h) DEFINITIONS.—As used in this section—

18 “(1) MAJOR AIR CARRIER.—The term ‘major
19 air carrier’ means an air carrier with annual reve-
20 nues of more than \$750,000,000.

21 “(2) VOTING SECURITIES.—The term ‘voting
22 securities’ means any securities which at present or
23 upon conversion entitle the owner or holder thereof
24 to vote for the election of directors of the issuer or,

1 with respect to unincorporated issuers, persons exer-
2 cising similar functions.”.

3 (b) CONFORMING AMENDMENT.—The portion of the
4 table of contents contained in the first section of the Fed-
5 eral Aviation Act of 1958 relating to title IV of such Act
6 is amended by adding at the end thereof the following new
7 item:

“Sec. 420. Review of certain acquisitions of voting securities of air carriers.”.

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