

105TH CONGRESS
1ST SESSION

S. 1331

To amend title 49, United States Code, to enhance domestic aviation competition by providing for the auction of slots at slot-controlled airports, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 29, 1997

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

A BILL

To amend title 49, United States Code, to enhance domestic aviation competition by providing for the auction of slots at slot-controlled airports, 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 “Aviation Competition
5 Enhancement Act of 1997”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds that—

1 (1) the Airline Deregulation Act anticipated the
2 opening of markets and the growth of competitive
3 airline service throughout the United States;

4 (2) airline competition benefits communities
5 and consumers and should be promoted by the Fed-
6 eral government;

7 (3) the introduction of low-fare competition into
8 certain markets has enabled more consumers to fly
9 in those markets, resulting in enormous economic
10 growth for those communities;

11 (4) although the deregulation of the domestic
12 airline industry has led to better service and lower
13 fares for most air travelers, the full benefits of air-
14 line deregulation have yet to be realized, particularly
15 in communities served by small hub airports and
16 medium hub airports;

17 (5) the Secretary of Transportation has the au-
18 thority to promulgate and enforce standards of fair
19 competition in the airline industry under section
20 41712 of title 49, United States Code;

21 (6) studies by the General Accounting Office
22 (GAO) and independent concerns show that con-
23 centration in the domestic airline industry continues
24 to increase and that, where such concentration ex-

1 ists, fares have increased, with a significant impact
2 on communities and their residents;

3 (7) the GAO has identified operating limits, to
4 include slot controls, perimeter rules, and other air-
5 port restrictions that continue to block airline entry
6 at key airports in the East and upper Midwest, that
7 have an impact on air transportation service
8 throughout the country;

9 (8) of the over 3,100 domestic air carrier slots
10 at the 4 slot-controlled airports, which are known as
11 “high density airports”—

12 (A) fewer than 45 slots are held collectively
13 by air carriers started after deregulation; and

14 (B) foreign carriers hold approximately
15 twice as many slots as new entrant air carriers;

16 (9) the Department of Transportation allowed
17 the established air carriers to retain a large portion
18 of their slots free-of-charge when the current “Buy-
19 Sell Rule” was instituted in 1985;

20 (10) access to slot-controlled airports is crucial
21 to establishing new air service in the heavily-traveled
22 eastern and midwestern markets and if carriers are
23 going to be able to increase services to markets
24 served by small hub airports and medium hub air-
25 ports, particularly in the Southeast and the Midwest;

1 (11) the 1993 National Commission to Ensure
2 a Strong Competitive Airline Industry recommended
3 that the Federal Aviation Administration (FAA)
4 “review the rule that limits operations at high den-
5 sity airports with the aim of either removing these
6 artificial limits or raising them to the highest prac-
7 ticable level consistent with safety requirements”;

8 (12) the GAO reports that additional action is
9 needed because the Department of Transportation is
10 limited in the number of new slots it can grant
11 through the current exemption process;

12 (13) the perimeter rule at Washington National
13 Airport is Federally-mandated; and

14 (14) increasing competition by removing bar-
15 riers would not increase noise at Washington Na-
16 tional Airport due to the continued applicability of
17 limitations on the number of hourly air carrier oper-
18 ations, and noise restrictions that are in effect at
19 Washington National Airport after 10:00 p.m.,
20 which further restrict operations by certain Stage 3
21 aircraft, the standard for the quietest aircraft tech-
22 nology.

1 **SEC. 3. REDISTRIBUTION OF SLOTS BY AUCTION.**

2 (a) IN GENERAL.—Subpart II of part A of subtitle
3 VII of title 49, United States Code, is amended by adding
4 at the end thereof the following:

“CHAPTER 455—SLOT AUCTIONS

“Sec.

“45501. General authority to create, withdraw, and auction slots.

“45502. Auction.

“45503. Special rules.

“45504. Definitions.

5 **“§ 45501. General authority to create, withdraw, and**
6 **auction slots**

7 “(a) IN GENERAL.—The Secretary of Transportation
8 shall allocate slots at each slot-controlled airport for as-
9 signment to new entrant air carriers and limited incum-
10 bent carriers in accordance with this chapter.

11 “(b) APPLICATION PROCESS.—

12 “(1) REQUEST FOR SLOTS.—An air carrier with
13 appropriate Federal Aviation Administration safety
14 certification and Department of Transportation eco-
15 nomic certification may submit a request to the Sec-
16 retary for slots at a high density airport. The appli-
17 cation shall include—

18 “(A) the markets to be served;

19 “(B) the times requested;

20 “(C) information on the passenger demand
21 for the service to be provided; and

1 “(D) such additional information as the
2 Secretary may require.

3 “(2) ACTION ON REQUEST; FAILURE TO ACT.—
4 Within 45 days after a request under paragraph (1)
5 is received by the Secretary, the Secretary shall—

6 “(A) approve the request for processing if
7 the Secretary believes that—

8 “(i) the applicant can operate the
9 service for a period of not less than 180
10 days; and

11 “(ii) the service will improve the com-
12 petitive environment; or

13 “(B) return the request to the applicant
14 for further information.

15 If the Secretary neither approves the request under
16 subparagraph (A) nor returns the request under
17 subparagraph (B) within the 45-day period begin-
18 ning on the date it is received, then a request under
19 paragraph (1) is deemed to have been approved on
20 the 45th day.

21 “(3) PRIORITY FOR CERTAIN MARKETS.—In
22 carrying out this subsection, the Secretary shall give
23 priority to the consideration of applications that pro-
24 pose to provide service to communities served by
25 small hub airports, medium hub airports, and other

1 airports that do not have service to the high-density
 2 airport to which the application relates.

3 “(c) ALLOCATION PROCESS.—

4 “(1) IF SLOTS ARE AVAILABLE.—If an applica-
 5 tion under subsection (b) is approved for processing,
 6 the Secretary first shall allocate slots within 60 min-
 7 utes of the requested times if—

8 “(A) unused slots are available; or

9 “(B) slots may be awarded through the ex-
 10 emption process in accordance with the Federal
 11 Aviation Administration’s air traffic priorities.

12 “(2) IF SLOTS ARE UNAVAILABLE.—If an appli-
 13 cation under subsection (b) is approved for process-
 14 ing but the requested slots are not available for allo-
 15 cation under paragraph (a) of this subsection, then
 16 the Secretary may withdraw slots, under subsection
 17 (d), for auction under section 45502 or create new
 18 slots.

19 “(d) WITHDRAWAL OF SLOTS FOR AUCTION.—

20 “(1) WITHDRAWAL OF EXISTING SLOT ASSIGN-
 21 MENTS.—The Secretary shall withdraw, from major
 22 carriers at each airport—

23 “(A) for the first auction under this sec-
 24 tion, not more than 10 percent of the

1 auctionable slots assigned to such carriers at
2 that airport; and

3 “(B) for any subsequent auction under this
4 section, not more than 5 percent of the
5 auctionable slots assigned to such carriers at
6 that airport.

7 “(2) FREQUENCY.—Auctions under this section
8 shall not be held more frequently than 24 months
9 after the preceding auction.

10 “(3) AUCTIONABLE SLOTS.—For purposes of
11 this subsection, an auctionable slot is—

12 “(A) a slot assigned to an air carrier in
13 1985 that is still assigned to that air carrier, or
14 a slot received in even exchange with another
15 air carrier for a slot assigned to that air carrier
16 in 1985; and

17 “(B) any slot other than a slot—

18 “(i) used by a major carrier to provide
19 service to an airport that is a small or me-
20 dium hub airport; or

21 “(ii) acquired for value by an air car-
22 rier before July 1, 1997.

1 **“§ 45502. Auction**

2 “(a) GENERAL AUTHORITY.—The Secretary of
3 Transportation shall assign a slot to a qualified applicant
4 through the use of a system of competitive bidding.

5 “(b) USES TO WHICH BIDDING MAY APPLY.—A slot
6 may be assigned under this subsection if the Secretary de-
7 termines that the assignment of such slot will, or is rea-
8 sonably likely to, increase competition among air carriers
9 nationally, regionally, or in the markets affected by the
10 slot assignment in accordance with section 45501(b).

11 “(c) DESIGN OF SYSTEMS OF COMPETITIVE BID-
12 DING.—In identifying slots to be withdrawn for auction
13 under section 45501(d)(1), in specifying eligibility and
14 other characteristics of such slots, and in designing the
15 methodologies for use under this subsection, the Secretary
16 shall include safeguards to protect the public interest in
17 the use of the slots and shall seek to promote the following
18 objectives:

19 “(1) increasing competition in the provision of
20 air transportation in a way that benefits the public,
21 including those residing in rural areas;

22 “(2) promoting economic opportunity and com-
23 petition and ensuring that air transportation at com-
24 petitive rates is readily accessible to the American
25 people by avoiding excessive concentration of slots
26 among major air carriers;

1 “(3) recovery for the public of a portion of the
2 value of the slots made available by competitive bid-
3 ding and the avoidance of unjust enrichment
4 through the methods employed to award slots; and

5 “(4) efficient and intensive use of slots.

6 “(d) BIDDER QUALIFICATION.—No air carrier other
7 than a new entrant air carrier or a limited incumbent car-
8 rier may participate in a system of competitive bidding
9 under this section. No license shall be granted to an appli-
10 cant selected pursuant to this section unless the Secretary
11 determines that the applicant is qualified to utilize the slot
12 or slots to be so assigned.

13 “(e) RULES OF CONSTRUCTION.—Nothing in this
14 section, or in the use of competitive bidding, shall—

15 “(1) alter slots allocation criteria and proce-
16 dures established by the other provisions of this sub-
17 title;

18 “(2) diminish the authority of the Secretary
19 under the other provisions of this Act to regulate or
20 reclaim slots;

21 “(3) be construed to convey any rights, includ-
22 ing any expectation of renewal of a slot assignment,
23 that differ from the rights that apply to other slots
24 at the same airport that were not issued pursuant
25 to this section; or

1 “(4) be construed to prohibit the Secretary
2 from issuing additional slots.

3 “(f) CONSIDERATION OF REVENUES IN PUBLIC IN-
4 TEREST DETERMINATIONS.—

5 “(1) CONSIDERATION PROHIBITED.—In making
6 a decision to assign slots pursuant to this section,
7 and in prescribing regulations pursuant to this sec-
8 tion, the Secretary may not base a finding of public
9 interest, convenience, and necessity on the expecta-
10 tion of Federal revenues from the use of a system
11 of competitive bidding under this section.

12 “(2) CONSIDERATION LIMITED.—In prescribing
13 regulations pursuant to this section, the Secretary
14 may not base a finding of public interest, conven-
15 ience, and necessity solely or predominantly on the
16 expectation of Federal revenues from the use of a
17 system of competitive bidding under this section.

18 “(3) CONSIDERATION OF DEMAND FOR
19 SLOTS.—Nothing in this subsection shall be con-
20 strued to prevent the Secretary from considering
21 consumer demand for slots-based services.

22 “(g) TREATMENT OF REVENUES.—

23 “(1) GENERAL RULE.—Except as provided in
24 paragraph (2), all proceeds from the use of a com-
25 petitive bidding system under this subsection shall

1 be deposited in the Airport and Airway Trust Fund
 2 established under section 9502 of the Internal Reve-
 3 nue Code of 1986.

4 “(2) DEPOSIT AND USE OF AUCTION ESCROW
 5 ACCOUNTS.—Any deposits the Secretary may require
 6 for the qualification of any person to bid in a system
 7 of competitive bidding pursuant to this subsection
 8 shall be deposited in an interest bearing account at
 9 a financial institution designated for purposes of this
 10 subsection by the Secretary (after consultation with
 11 the Secretary of the Treasury). Within 45 days fol-
 12 lowing the conclusion of the competitive bidding—

13 “(A) the deposits of successful bidders
 14 shall be paid to the Treasury;

15 “(B) the deposits of unsuccessful bidders
 16 shall be returned to such bidders; and

17 “(C) the interest accrued to the account
 18 shall be transferred to the Airport and Airway
 19 Trust Fund.

20 “(h) EVALUATION.—Not later than March 1, 1999,
 21 the Secretary shall conduct a public inquiry and submit
 22 to the Congress a report—

23 “(1) containing a statement of the revenues ob-
 24 tained, and a projection of the future revenues, from

1 the use of competitive bidding systems under this
2 section;

3 “(2) describing the methodologies established
4 by the Secretary pursuant to subsections (c) and
5 (d);

6 “(3) comparing the relative advantages and dis-
7 advantages of such methodologies in terms of attain-
8 ing the objectives described in such subsections; and

9 “(4) recommending any statutory changes that
10 are needed to improve the competitive bidding
11 process.

12 **“§ 45503. Special rules**

13 “(a) RESALE OR REVERSION OF PURCHASED
14 SLOTS.—

15 “(1) RESALE.—A slot assigned by competitive
16 bidding under section 45502 may be—

17 “(A) sold by the air carrier to which it was
18 assigned only to a new entrant air carrier or
19 limited incumbent carrier within 24 months of
20 the slot acquisition; or

21 “(B) leased to any air carrier, except that
22 any such leased slot shall be sold to a new en-
23 trant air carrier or limited incumbent air car-
24 rier that offers to purchase it.

1 “(2) REVERSION.—A slot assigned by competi-
 2 tive bidding under section 45502 that is lost by the
 3 air carrier to which it was assigned under section
 4 93.227 of the Federal Aviation Administration’s reg-
 5 ulations (14 C.F.R. 93.227), shall be returned to the
 6 Federal Aviation Administration.

7 “(b) OTHER EXISTING SLOTS.—

8 “(1) EXPIRATION.—Any slot not withdrawn for
 9 assignment under this chapter shall continue in ef-
 10 fect until the earlier of—

11 “(A) the date on which it is subsequently
 12 withdrawn for such assignment; or

13 “(B) the date on which it expires or is
 14 withdrawn according to the terms of its assign-
 15 ment.

16 “(2) FUTURE REVENUES.—Any amount paid
 17 for assignment or use of an expired slot shall be
 18 treated in accordance with the provisions of section
 19 45502(h) as if received under that section.

20 “(c) APPLICATION OF 80-PERCENT RULE.—

21 “(1) IN GENERAL.—In applying section
 22 93.227(a) of the Federal Aviation Administration’s
 23 regulations (14 C.F.R. 93.227(a)), the Secretary of
 24 Transportation shall take such action as may be nec-
 25 essary to maximize slot usage.

1 “(2) STUDY.—The Secretary of Transportation
 2 shall initiate a study to determine whether the appli-
 3 cation of the high density rule contained in subpart
 4 S of part 93 of title 14, Code of Federal Regula-
 5 tions, promotes or hinders airline competition or has
 6 no effect on airline competition, and the impact of
 7 changes to the rule on safety.

8 “(3) USE OF SLOTS BY COMMUTER OPERA-
 9 TORS.—The Secretary of Transportation shall limit
 10 the use of air carrier slots by commuter air carriers.
 11 In carrying out this paragraph, the Secretary shall
 12 weigh the benefits of the use of air carrier slots by
 13 commuter air carriers against the use of those slots
 14 by other air carriers, taking into account the provi-
 15 sions of section 93.227 of the Federal Aviation Ad-
 16 ministration’s regulations (49 C.F.R. 93.227).

17 **“§ 45504. Definitions**

18 “For purposes of this chapter—

19 “(1) HIGH DENSITY AIRPORT.—The term ‘high
 20 density airport’ has the meaning given it by section
 21 41714(h)(2) of this title.

22 “(2) NEW ENTRANT AIR CARRIER; LIMITED IN-
 23 CUMBENT CARRIER.—The terms ‘new entrant air
 24 carrier’ and ‘limited incumbent carrier’ have the
 25 meaning given such terms by section 93.213 of the

1 Federal Aviation Administration's regulations (14
2 C.F.R. 93.213).

3 “(3) COMMUTER AIR CARRIER.—The term
4 ‘commuter air carrier’ has the meaning given that
5 term by section 41714(h)(1) of this title.

6 “(4) MAJOR CARRIER.—The term ‘major car-
7 rier’ means an air carrier to which Part 121 of title
8 14, Code of Federal Regulations, applies.

9 “(5) MEDIUM HUB AIRPORT.—The term ‘me-
10 dium hub airport’ means an airport that each year
11 has at least 0.25 percent, but less than 1.00 percent,
12 of the total annual boardings in the United States.

13 “(6) SLOT.—The term ‘slot’ has the meaning
14 given that term by section 41714(h)(4) of this title.

15 “(7) SMALL HUB AIRPORT.—The term ‘small
16 hub airport’ has the meaning given that term by sec-
17 tion 41731(a)(3).”.

18 **SEC. 4. SECRETARY MAY GRANT EXEMPTIONS TO PERIM-**
19 **ETER RULE.**

20 (a) IN GENERAL.—The Secretary of Transportation
21 shall by order grant exemptions from the application of
22 section 6012 of the Washington Metropolitan Airport Au-
23 thority Act of 1986 (49 U.S.C. App. 2461) to all air car-
24 riers to operate limited frequencies and aircraft on select

1 routes between Washington National Airport and other
2 airports if the Secretary finds that the exemption will—

3 (1) provide air transportation service with net-
4 work benefits; and

5 (2) increase competition in multiple markets.

6 (b) CRITERIA.—The Secretary shall apply the criteria
7 set forth in section 45502(c) of this title in granting ex-
8 emptions under subsection (a).

9 (c) LIMITATIONS.—Any exemption granted under
10 subsection (a)—

11 (1) may not affect the number of hourly com-
12 mercial operations permitted at Washington Na-
13 tional Airport; and

14 (2) may not be granted with respect to any air-
15 craft that is not a Stage 3 aircraft (as defined by
16 the Secretary).

17 (d) The Secretary shall not approve applications that
18 propose to relinquish service to small hub airports and me-
19 dium hub airports in return for long haul service beyond
20 the perimeter rule. The Secretary shall subsequently pro-
21 hibit the holder of the exemption from shifting service
22 among slots at Washington National Airport in order to
23 provide the high frequency service that it relinquished to
24 provide long haul service under the exemption.

1 (e) REPORT.—Within 1 year after the date of enact-
 2 ment of this Act, and biannually thereafter, the Secretary
 3 shall certify to the United States Senate Committee on
 4 Commerce, Science, and Transportation and the United
 5 States House of Representatives Committee on Transpor-
 6 tation and Infrastructure that noise standards, air traffic
 7 congestion, airport-related vehicular congestion, safety
 8 standards, and adequate air service to communities within
 9 the perimeter described in section 6012 of the Washington
 10 Metropolitan Airport Authority Act of 1986 (49 U.S.C.
 11 App. 2461) have been maintained at levels that are the
 12 same as, or better than, the levels maintained in 1997.

13 **SEC. 5. COMPLAINTS CONCERNING PREDATORY BEHAVIOR.**

14 Section 41712 of title 49, United States Code, is
 15 amended—

16 (1) by inserting “(a) GENERAL.—” before “On
 17 the initiative”; and

18 (2) by adding at the end thereof the following:

19 “(b) PREDATORY BEHAVIOR COMPLAINTS.—If an air
 20 carrier files a complaint under subsection (a) that another
 21 air carrier has engaged in predatory behavior, then the
 22 Secretary of Transportation shall respond to that com-
 23 plaint within 90 days by—

1 “(1) finding that the air carrier that is the sub-
2 ject of the complaint has engaged in predatory be-
3 havior;

4 “(2) finding that such air carrier has not en-
5 gaged in such behavior; or

6 “(3) requesting additional information from the
7 parties; or

8 “(4) finding that there is insufficient evidence
9 on which to base a finding under paragraph (1) or
10 (2) of this subsection.”.

○