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NASAO Activities

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STATE AND LOCAL

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NASAO ACTIVITIES

AT an executive session held in Washington the week of May 17, 1948, the NASAO carefully reviewed and analyzed the aviation bills introduced in the 80th Congress (57 Senate and 120 House). Statements were presented at hearings conducted on some of the bills; statements are being prepared for hearings to be conducted on others. H.R. 6147 and its companion bill S.B. 2452 dealing with State Enforcement of Federal Civil Air Regulations provoked the most discussion. Since the Federal Government is seeking the cooperation and assistance of the states in enforcing the Civil Air Regulations, greater coordination can only be had if the states contribute their practical experience to the legislative proposals which would accomplish this end.

This subject will continue to receive close study by NASAO. The statement presented by Colonel Clarence F. Cornish, President of NASAO, to the House Interstate and Foreign Commerce Committee on May 4, 1948, evidences NASAO's stand on the subject, and reads in part as follows:

*"Statement of National Association of State Aviation Officials in
Regard to H.R. 6147, 80th Congress, Second Session."*

"The NASAO has long recognized that it is important from the standpoint of the public interest and for the safety and progress of aviation to provide more effective means of curbing reckless and unsafe flying practices. When the original proposal was made to the states by the CAB to secure enabling legislation empowering the states to enforce certain Civil Air Regulations, (CAR), NASAO initiated an exhaustive study to determine the position of the states relative to this important matter. The study was completed in time for presentation to the National Convention of the NASAO in October of 1947 and assisted the convention in arriving at certain conclusions and findings. It was determined that to a great extent, the basic tools had been made available to accomplish the purposes of the proposed amendment to Title VI of the Civil Aeronautics Act of 1938 as amended.

"The Uniform Aeronautics Commission Act, fostered by the NASAO and befriended by the CAB and the CAA, has within its provisions, the powers to promote a safe flying program at the state level. It provides for: (1) Registration of airmen and aircraft; (2) A reckless flying law; and (3) Adoption of rules and regulations, using the Federal rules and regulations as a standard. Many states have embarked upon a formal program using all of the above named provisions to bring about a curbing of reckless flying. Their programs have included formal training of State Police as well as other enforcement agencies of the state in the subject of state aviation law enforcement. Safety programs designed to bring about respect for safe flying practices have also been inaugurated.

"The reckless flying laws of the various states which have followed Section 13 of the uniform act are so designed as to present an immediate deterrent to the flagrant violator, easily enforceable by local enforcement

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agencies. Many states, enabled by statutory authority to adopt rules and regulations, and having the Federal rules and regulations as a standard, have adopted reckless flying rules, and in so doing, have aided in the trend toward uniformity, and at the same time made possible the added advantage of direct local enforcement.

"The NASAO study, therefore, concluded that a great portion of the machinery had been made available and was in use on a uniform basis throughout the several states for the maintenance of a program against reckless flying. Nevertheless, it appeared that even though adequate facilities were available at the state level for the enforcement of reckless flying laws already in operation in many states, the safe flying programs of the various states could be strengthened appreciably should the states be given power to reach the Federal airman certificates of violators. The association, having made this observation, formally resolved that its officials should confer with officials of the CAA and the CAB for the purpose of drafting and supporting an amendment to the Civil Aeronautics Act of 1938 which, after affording the holder procedural due process, would permit state courts and state aviation agencies to suspend or revoke for a limited period the Federal airman certificate of any violator of Federal laws or regulations designed to prohibit reckless or unsafe flying.

"We recognize and appreciate the great and growing administrative burden on the Federal Government in enforcing its own Civil Air Regulations, violation of which is becoming day by day a problem of increasing local concern since violation of our own state reckless flying laws and other aeronautical laws are so closely related with violation of the Federal rules. The impracticability of efficient Federal enforcement of C. A. R.s has been recognized by the aviation industry as witnessed by Bill No. 20-A, passed at the 1947 National Aviation Clinic, the recommendations of both the President's Air Policy Commission and the Congressional Aviation Policy Board.

"The complexity and intricacy of Federal procedural regulation required for the administration and enforcement of C. A. R. by the Federal Government, as now exercised, multiplied by the constantly increasing size and complexity of the aviation industry will require an ever increasing Federal personnel and a constant demand for larger Federal appropriation. The Federal authorities and the bill under consideration both admit the inability of the Federal Government to enforce the Civil Air Regulations in the personal plane field. This field, according to authoritative statistics, comprises 85% of all air activity in the United States. H.R. 6147 proposes that the states assume the function of enforcing Civil Air Regulations in the non-air carrier field. The NASAO, recognizing the state's responsibility in this area of regulation, stated in its statement to the Congressional Aviation Policy Board of February 9th, 1948, that 'The states should be empowered to enforce the Civil Air Regulations of the Federal Government, including the right to suspend or revoke airman certificates.' This organization, however, has indicated its support to this proposal only to the extent that such legislation will be permissive and not mandatory in nature, leaving final individual state acceptance of that particular enforcement feature dependent on constitutionality and state policy.

"As we interpret H.R. 6147, it contains three separate distinct and not necessarily related purposes. Sections 1 and 2 of the bill provide for the extension of Federal jurisdiction beyond the field of interstate commerce and changes the entire concept of Federal jurisdiction in the field of aviation. Section 3 provides for the enforcement of Federal air traffic regulations by the states and section 4 would make Federal regulation of air traffic exclusive. It is the substance of certain far reaching sections of

the proposed bill, and not particularly section 3, which NASAO considers as seriously objectionable and transcend the scope of the basic principle of state enforcement as contemplated and understood by NASAO when the original proposal for state enforcement was tendered by representatives of the CAB.

"Objections to H.R. 6147 are outlined specifically as follows:

"1. The bill would redefine the term 'air commerce' in the Civil Aeronautics Act of 1938 by substituting in lieu thereof the words 'air navigation' and give that term so broad a definition as to include every use of aircraft, whether upon the ground or in the air, whether intrastate or interstate, whether local or national in its effect, and whether or not it is feasible for the Federal Government to exercise effective regulation. 'Air navigation' would be defined as the operation or navigation of aircraft (a) upon any airport in the United States or in the airspace over the United States, or (b) to or from any place in the United States whether or not through the airspace over the United States. The concept of correlative state and Federal functions in the field is abandoned completely. By virtue of this amendatory stroke, the entire field of regulation of flight operations would be pre-empted by the Federal Government. The old term 'air commerce,' which would be replaced by the new and broader term, is defined in Section 1, paragraph 3 of the Civil Aeronautics Act. Such definition in conjunction with the definition of the term interstate, overseas or foreign air commerce contained in paragraph 20 of section 1 outlines a field of jurisdiction which includes the following: (a) interstate and foreign carriage by aircraft of persons or property for compensation or hire, (b) carriage of mail by aircraft, (c) interstate or foreign operation or navigation of aircraft in the conduct or furtherance of a business or vocation, (d) operation of aircraft within the limits of any civil airway, (e) any operation or navigation of aircraft which directly affects or which may endanger safety in interstate, overseas or foreign commerce. It is noted that through this definition Congress extended Federal jurisdiction in regard to the powers of the CAA over air safety to the full limit believed in 1938 to be constitutional. Only those operations of a purely local nature which could in nowise affect interstate or foreign commerce were omitted from the purview of the CAA's authority.

"2. Section 611(b) of the Civil Aeronautics Act as it would be amended by the proposed bill provides for the collection of civil penalties by a proceeding in a state court arising out of the violation of a Civil Air Regulation which penalty shall be paid to the state. This requirement necessitates running the gauntlet of legal civil procedures to secure a judgment, before the civil penalty is collected. Civil proceedings are inherently slower in arriving at a conclusion and serve as a far less deterrent and are less effective than the present state procedures of criminal prosecutions. A civil action commenced today on a busy metropolitan docket would have little chance of being tried in little less time than it takes at present to arrive at a determination and conclusion of a case involving violations of Civil Air Regulations before the Civil Aeronautics Board. The substitution of civil proceedings for the CAB proceedings now presently employed could well serve as a repetition and perpetuation of the CAA's present enforcement predicament.

"3. Subsection (d) of amended section 611 provides that the CAB by regulation shall from time to time designate which of the regulations a state may enforce. The proposed legislation offers no indication as to how narrow these regulations might be made, possibly reserving to federal enforcement the major portion of their rules and possibly leaving the states helplessly restricted.

"4. Subsection (g) of proposed section 611 requires that when a proceeding is commenced at the state level a copy of the complaint or other documents initiating such action shall be filed with the CAB by the official bringing such action or proceedings, and a copy of any judgment or final order or decree issued in any such action or proceeding shall also be filed with the Board by the appropriate state official. This procedure is obviously cumbersome and unworkable in practical application.

"5. Section 4 of H.R. 6147 provides that 'no state, territory or possession of the United States, or political subdivision thereof shall without the consent of Congress impose upon any person any prohibition or requirement which relates to the same subject matter as any provision of Title VI of this act.' Should this section be permitted to become law, the states could be forced to forfeit the right to register airmen and aircraft, certificate flying institutions, certificate intrastate air carriers, etc. When the term 'air navigation' is substituted for 'air commerce' it is readily noted that section 601 (a) of the 1938 Act, if amended as proposed, would create an exclusive Federal jurisdiction over aeronautical activities heretofore determined to be within the realm of the states.

"6. The proposed bill does not provide a state voice in the promulgation of rules and regulations to be enforced for the Federal Government in a sphere of activity wherein the state responsibility and jurisdiction has not yet been denied, and, if attempted, may raise the question of constitutionality.

"This Association presented its recommendations to the Congressional Aviation Policy Board and therein outlined its concept of the function of the states and the Federal Government in the field of aviation.

'The States Should Be Empowered to Enforce the Civil Air Regulations of the Federal Government Including the Right to Suspend or Revoke Airmen's Certificates. This can only be accomplished by Congressional legislation. The impracticability of efficient federal enforcement of Civil Air Regulations has been recognized by the aviation industry, as witness by Bill No. 20-A passed at the last National Aviation Clinic, and the recommendation of the President's Air Policy Commission on page 126 of their report. However, a state should not be empowered to take away the right to fly of a resident of another state. The methods and details to be incorporated in this legislation should be carefully developed by close cooperation between Congressional and state agencies, and methods of attaining uniformity of state legislation should be explored at the same time.

'Also as stated in our first recommendation, the states should have a greater voice in the promulgation of regulations they are being asked to enforce.'

"This offer of cooperation between the states and the Federal Governmental agencies has apparently been ignored. H.R. 6147 has been drafted and presented without consultation or conference with those who will be required to exercise those responsibilities. As a result, administrative difficulties of great magnitude will be found in the bill. Questions of venue and jurisdiction of proceedings in state courts and administrative agencies are completely overlooked. Accommodational procedure to state administrative and judicial systems has been ignored. Consequently the bill, as presently written, is not acceptable to the NASAO.

"Therefore, the National Association of State Aviation Officials, for reasons herein set forth makes the following recommendations: (1) That H.R. 6147 be not favorably reported by the Committee on Interstate and Foreign Commerce, and (2) That a cooperative effort be initiated by both Federal and state aeronautical agencies to draft a mutually acceptable bill which will enable permissive state actions to suspend or revoke Federal Airman certificates."

That enforcement problems daily are confronting the states in greater numbers is a known fact to those who are beleaguered by irate citizens. Questions of jurisdiction or of legal philosophies are of no concern to persons who have had their property damaged, or been bereaved by unlawful flying. They demand that something be done by their nearest law enforcing agency. The state aviation agencies have, consequently, been forced to adopt whatever practical and effective measures they can summon, within the framework of existing empowerment.

A concise statement of policy and procedure dealing with this subject was adopted by the Aeronautics Commission of New Hampshire on April 5, 1948. From its excellent coverage of the basic factors, and the results attained, persons who are responsible for recommending and drafting federal legislation, can well realize the need for state contribution to and participation in the formulating of any coordinate uniform plan incorporated in legislation on enforcement. The New Hampshire statement follows:

"POLICY AND PROCEDURE—LAW ENFORCEMENT, ACCIDENT PREVENTION AND INVESTIGATION

A—Provisions of Law

"*State Registration.* The law empowers the Commission to issue State Registration Certificates for aircraft, airmen and landing areas and makes it a violation of the law to operate or authorize the operation of aircraft without an appropriate Federal Certificate and, if a resident, a State Registration Certificate. Such certificates are also required for non-resident aircraft and airmen operating in air commerce within the State (intrastate operation). Any landing area established and marked as such is required by law to be registered with the Commission.

"*Regulations.* The necessary uniformity in rules and regulations governing the operation of aircraft is effected by the requirement of the New Hampshire Law which empowers the Commission to make rules and regulations *not inconsistent with* 'the then current federal legislation governing aeronautics and the regulations duly promulgated thereunder.' Under this authority the Commission has adopted as 'Air Traffic Rules' all of Part 60 of the CAR and the pertinent sections of Parts 20 and 43 of the CAR. The Commission makes and amends the State regulations as the Federal regulations change.

B—Prosecution of Violations

"*Criminal Prosecution.* It is the policy of the Commission that violations of the law or the regulations be handled by the courts of the State in a manner similar to all other violations of State law or regulations. This provides prompt and effective action. Regarding violations by non-residents there has not yet been an instance when the violator has failed to return to this State to stand trial. This is accomplished by notification through the State Police or through local police that charges are pending.

"*Administrative Action.* This is taken only rarely and when circumstances require that it be taken. The law empowers the Commission to suspend or revoke state registration certificates for various reasons, including conviction of violation of the Federal law or rules or regulations.

C—Accident Prevention

"*Field Rules.* These are required by regulations of the Commission which also require the establishment of practice areas. As a result of many years of effort toward uniformity in this matter Uniform Field Rules have been generally agreed upon for all the landing areas in the State. It is expected there will be few, if any, deviations from these rules and they have already been adopted for 32 landing areas.

"*Inspection and Education.* A continuing program of inspection and education with aggressive action in the prosecution of careless and reckless airmen is conducted as an accident prevention measure.

"*Accident Investigation.* A complete investigation is made of all aircraft accidents, always with complete coordination and cooperation with the CAA District office.

D—Exchange of Information

"Reports of investigations of accidents and reports of action taken in the case of violations are filed with the CAA District office and, in the case of non-residents, with the State Aviation Agency of the home state.

E—Plan for Coordinated Action by States

"*State Registration.* The issuance of State Registration Certificates for aircraft, airmen and landing areas is fundamental to the control and regulation of aircraft operation. The State of New Hampshire appears to have ample authority to exercise such control and in the manner described above. Presumably other states have similar power. The amount of fees charged for such certificates seems to be a matter for each individual state to determine and they should be reasonable in any case. (Aircraft in New Hampshire are not subject to personal property tax and therefore no reduction in the aircraft fee is contemplated.)

"*Apprehension of Violators.* The use of the teletype and radio communications systems of the law enforcement agencies are very effective in identifying and apprehending violators. If the registration files of aircraft and airmen are readily available in all states, the use of these communication facilities will expedite the apprehension of violators from the identification of aircraft in flight.

"*Suspension and Revocation by State Agencies.* Legislative action empowering a state aviation agency to suspend or revoke a state certificate provides all the control needed *provided* that the agency can take this action upon conviction of a *serious* violation of the law or rules or regulations of another state. Authority to take this action is similar to the power now delegated to agencies charged with the regulation of the operation of motor vehicles.

"*Exchange of Information.* As outlined in 'D' above, the procedure provides the Federal and State agencies with all necessary information.

F—New Legislation Proposed in New Hampshire

"The New Hampshire Aeronautics Commission plans to recommend to the next legislature that the section of the law pertaining to *Suspension or Revocation* be amended to read as follows: 'A State Registration Certificate may be suspended or revoked if the holder thereof:—

"II. Is convicted of a violation of federal law or rules or regulations, or the law or regulations of another state, relating to civil aeronautics.'—The above is the only change needed in the law to empower this Commission to carry out the program outlined above.

G—Ultimate Plan of Registration

"*Coordination With Federal Agency.* Were all states to require registration of aircraft and airmen, it is conceivable that, with the cooperation of the Federal agency concerned, the application for Federal registration of aircraft and certification of airmen could be accomplished through the CAA District offices. From the District office the applications can be routed through the office of the state agency for state registration, then on to Washington and if necessary returned through the same channels. Not until some such procedure is established and in operation will adequate, up-to-date information be available on all aircraft and airmen in the United States. Such a procedure will give the states all the data required and will still maintain the central files in Washington. If the Federal agencies want the States to take over law enforcement and certain phases of aircraft accident investigation, it is fundamental that certain basic data be made available to the state agencies. Registration at the state level provides the basic data required."

M. C. D.