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Trends in State Aviation Legislation

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FEDERAL

TRENDS IN STATE AVIATION LEGISLATION

By Office of General Counsel, Civil Aeronautics Administration*

BACKGROUND OF FEDERAL-STATE COOPERATION

FOLLOWING a series of conferences with representatives of the National Association of State Aviation Officers, the Administrator of Civil Aeronautics in February 1946 established a cooperative program for air safety enforcement by the federal agencies and the states.¹ In the furtherance of this program the Civil Aeronautics Administration and the NASAO agreed upon uniform state statutes prohibiting careless and reckless operation of aircraft and requiring federal airmen and airworthiness certificates.

In order to present a picture of the program which has been made as a result of this Federal-State Aviation Cooperative Program and related matters, two charts have been prepared. The first chart tabulates state laws pertaining to state aviation organizational and enforcement activities. The second chart tabulates state aviation tax laws and laws applicable to the establishment and operation of airports. These charts serve as an index in determining the progress of the Federal-State Cooperative Program.

TRENDS AS INDICATED BY CHARTS

Enforcement Activities

As a first step towards federal-state cooperation, it is desirable that state aeronautics agencies be given the responsibility of promoting civil aviation in the state and coordinating with the CAA enforcement of the state aeronautical safety laws.² Chart number one reveals that all but two states have created a civil aeronautics agency and that most of them have set up a department or commission as provided by the model act. 38 states compensate their directors or secretaries, and 17 compensate the members of the aeronautics authority as well. The state agencies have entered four fields: Safety and Enforcement; National Airport Program; National Flight Training Program; Greater Liaison and Coordination between Federal and State Agencies affecting Aviation.³ In the field of Safety many state governments have adopted Section 13 of the Uniform State Aeronautics Act or a statute which contains a similar provision. This section of the uniform state act prohibits careless and reckless operation of aircraft and specifies that the federal civil air regulations shall be used as a standard in determining what constitutes careless and reckless operation.

The states adopting the single safety standard—the civil air regulations promulgated by the Federal Government—are shown on chart number one. This tabulation indicates the progress of the federal-state program in preventing multiple conflicting state laws affecting civil aviation. Such multiple laws would inevitably result in confusion and misunderstanding on the part of pilots and others connected with the civil aviation industry. The chart also shows an extensive use of the CAA program of training of state enforcement personnel.

* Research and analysis by Marshall I. Stewart and Dent D. Dalby.

¹ See Elwell, *Enforcement of Air Safety Regulations*, 14 J. Air L. & C. 318, 330 (1947).

² Suggested State Legislation Program for 1947, p. 1.

³ See, Madeline C. Dinu, *NASAO Activities*, 15 J. Air L. & C. 206 (1948).

	Recap.	Ala.	Ariz.	Ark.	Cal.	Colo.	Conn.	Del.	Fla.	Ga.	Idaho	Ill.	Ind.	Iowa	Kan.	Ky.	La.	Maine	Md.	Mass.	Mich.	Minn.	Miss.	Mo.	Mont.	Neb.	Nev.	N.H.	N.J.	N.M.	N.Y.	N.C.	N.D.	Ohio	Okla.	Ore.	Pa.	R.I.	S.C.	S.D.	Tenn.	Texas	Utah	Vt.	Va.	Wash.	W. Va.	Wis.	Wyo.						
Fostering Civil Aviation																																																							
Violation Enforcement																																																							
State Violation Enforcement	42	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X			
Co-operation with Federal Government	23		X																																																				
Violation Enforcement Officers	30		X																																																				
Special Aviation Police	12	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		
State Police	34	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		
County Police	33	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		
Municipal Police	33	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		
None	7	X																																																					
Training of Enforcement Personnel																																																							
Regular	1																																																						
Periodic	14																																																						
Prospective	14		X																																																				
Accident Investigation (13)																																																							
State Accident Investigation	24	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Co-operation with Federal Government	26																																																						

1—All aircraft and airmen not licensed by U. S. must be licensed by State.

2—Per diem allowance is provided for members but no salary.

3—Aeronautics body is empowered to require registration of aircraft, airmen, air schools, and airports.

4—For public use only.

5—Division of Aeronautics is within Kansas Industrial Development Commission.

6—Compliance with Federal Regulations is required.

7—Required of G. I. Schools only.

8—To determine whether state law has been violated.

9—Traveling expense reimbursement plus per diem while attending meetings of Aviation Commissions.

10—Division of Aeronautics is within State Corporation Commission.

11—Instructors only, air schools not required to be certified.

12—Legislation is effective July 1, 1948.

13—Under broad or specific legislation aeronautics body is empowered to investigate state accidents and co-operate with Federal Government.

- 1—State levy; some counties also authorized to tax; municipalities may tax under general licensing law.
 - 2—State Land Commissioner.
 - 3—Cities of first and second classes and incorporated towns.
 - 4—Exemption only when gasoline is purchased outside state, stored in the state and withdrawn for use.
 - 5—Port of New York Authority may receive aid directly from Federal Government.
 - 6—State Highway Board.
 - 7—Does not apply to cities over 500,000 population (Chicago). (Legislation effective July 1, 1948).
 - 8—If state contributes funds to project.
 - 9—State Highway Commission.
 - 10—Airport operators engaged in selling aviation fuel required to obtain permits to purchase tax-free fuel. Consumers of aviation fuel which was not purchased tax free are entitled to refund.
 - 11—Counties may join in the construction, operation, and maintenance of airports.
 - 12—Purchases in quantities of forty or more gallons used for purposes other than operating motor vehicles on public highway exempt to extent of 3¢ per gal. if exemption permit obtained by manager or chief officer of airport.
 - 13—Department of Public Works.
 - 14—Bonded certificated air carriers may purchase fuel tax exempt from bonded dealer.
 - 15—Municipality exempt if its aviation commission or authority was in existence prior to passage of Channeling Act.
 - 16—Refund of 1½¢ per gal. to airlines operating interstate scheduled flights.
 - 17—Refund to a maximum of 3½¢ per gal. made according to a graduated scale.
 - 18—Refund of 5¢ per gal.; exemption permits may be obtained by operators or owners of licensed airports.
 - 19—Refund if quantities are 50 gals or more at any one purchase.
 - 20—If required by Federal Government or agency.
- 21—Commissioner of Revenue may relieve distributor from payment of tax on fuel used exclusively in aircraft motors.
 - 22—Full refund of 5¢ allowed licensed air schools.
 - 23—Department of Public Works.
 - 24—State, rather than municipalities, constructs, operates and maintains airports.
 - 25—Refund to a maximum of 2¢ per gal. made according to a graduated scale.
 - 26—If sponsor presently maintains larger than Class 3 airport, state approval and state channeling of funds not necessary.
 - 27—Municipalities may negotiate directly with Federal Government if state funds are not to be used.
 - 28—Full refund on gasoline purchased within the state and consumed outside state; refund of 2¢ per gal. on gasoline purchased within the state and consumed in flight over state.
 - 29—Under broad or specific power.
 - 30—Refund if quantities are 25 gals. or more.
 - 31—State Highway Department.
 - 32—Refund of 2¢ per gal. on purchases in excess of 10,000 gals. per month.
 - 33—Additional 1½¢ per gal. optional county gasoline tax is subject to the same non-highway use refund as the 4¢ per gal. tax.
 - 34—In the amount of \$2,000 annually.
 - 35—Authority vested in State Improvement Commission.
 - 36—Authority vested in State Highway Commission.
 - 37—If project application was made or negotiations started before April 1, 1948 channeling is voluntary and approval not necessary.
 - 38—Purchaser must secure an annual permit.
 - 39—Motor fuel testing 78 octane or higher for exclusive use in aircraft motors exempt.
 - 40—95% refundable to commercial operators.
 - 41—Gasoline used for propelling aircraft is exempt from motor fuel tax if proper proof of such intended use is shown.

*Legislation concerning aviation fuel taxation pending.

The Federal Aid Airport Program

Chart number two discloses an extensive federal-state cooperation in the Federal Aid Airport Program. This program has encouraged the creation of state and local authority to construct, operate, and maintain airports. The sponsored legislation permits the states to participate fully in the Federal Aid Airport Program of the CAA by authorizing state financial assistance for developing state-owned and municipal-owned airports. Of the states participating in the Federal Aid Airport Program, at least 33 are offering technical aid to airport construction and development.

The model Airport Zoning Act has also been extensively used by state legislatures. This act empowers municipalities and other political subdivisions of a state to issue under the state police power regulations limiting height of structures and other potential navigational hazards and use of property in the vicinity of public airports. Further powers are given under the act to acquire by purchase air rights and other interests in land for the purpose of preventing obstruction of approaches to an airport.⁴

State Aviation Fuel Taxes

State taxes on motor fuels have been justified as benefit taxes on the theory that the operators of motor vehicles pay the cost of highways by means of a tax on gasoline consumed. By 1929 all of the 48 states were levying a tax at various rates on motor fuel. A majority of the states, however, either exempt from taxation gasoline used by aircraft or refund all or a part of such taxes. The accompanying tabulation indicates the extent to which various states have provided some form of gasoline tax exemption or refund to aircraft operators. Retail sales taxes applicable to gasoline as well as other commodities have not been included in the tabulation.

During the 1947-1948 state legislative sessions, there was a trend toward affording greater gasoline tax relief to operators of aircraft through either increasing the amount of refunds or providing complete exemptions. For example, the states of Ohio, Oklahoma, and Rhode Island joined the list of states providing full relief for fuel taxes, while Nebraska and South Dakota, which heretofore provided no relief, established a system of partial refunds. However, New Hampshire imposed a tax on fuel consumed in aircraft for the first time and Vermont increased its tax by a small amount.

CONCLUSION

An effort has been made to make an accurate presentation of the provisions of the state statutes relating to civil aviation. Because of the limitations attendant upon the presentation of state statutes in tabulation form and because of possible changes made in state laws subsequent to preparation, the charts should be used as a general guide only. They will serve as quick references and may indicate trends of state legislation in the overall program of federal-state cooperation. For specific information concerning the provisions of state laws, reference should of course be made directly to the state statutes.

⁴ Suggested State Legislation Program for 1947, p. 61.

CIVIL AVIATION LEGISLATION ENACTED BY THE SECOND
SESSION, 80th CONGRESS

- P. L. 274 *Immigration*—To amend the Immigration Act with respect to the arrival of aliens or U.S. citizens at any port of entry by water or air. Approved July 30, 1947.
- P. L. 486 *Federal Airport Act*—To extend provisions to Virgin Islands. Approved April 17, 1948.
- P. L. 514 *Reciprocal Tax Exemption*—To make it possible for U.S. flag carriers operating in foreign countries to obtain an exemption from income taxes in countries which grant such exemptions on a reciprocal basis. Approved May 4, 1948.
- P. L. 540 *Personal Exemption under Customs Laws*—To increase to \$400 the personal exemption granted under the customs law for bringing into the U.S. articles acquired abroad. Approved May 19, 1948.
- P. L. 548 *Reconstruction Finance Corporation*—To amend the RFC Act to extend the authority. Approved May 25, 1948.
- P. L. 549 *Nat'l Advisory Committee for Aeronautics*—To promote the National Defense by increasing the membership of the NACA. Approved May 25, 1948.
- P. L. 562 *Alaska Airports*—To authorize construction of airports at Anchorage and Fairbanks, Alaska. Appropriations for the construction of the airports (\$13,000,000) were authorized in the Second Deficiency Appropriations bill, 1948. Approved May 28, 1948.
- P. L. 647 *International Aviation Facilities*—To permit the CAA and Weather Bureau to establish, acquire, and operate air navigation facilities, airports, and meteorological facilities in foreign territory; to train foreign nationals in the operation of civil aircraft; to transfer airport and airway property in foreign territory and owned by the United States to a foreign government or an international organization; and to provide air navigation aids for civil air navigation throughout the Canal Zone and the Republic of Panama. Approved June 16, 1948.
- P. L. 656 *Liability*—To encourage the financing of aircraft purchases by removing the risk of liability imposed by certain state laws on lenders not in possession of aircraft. (The purpose of this Act was to protect mortgagors and other security owners of aircraft from liability in damage suits arising out of aircraft accidents.) Approved July 2, 1948.
- P. L. 657 *Thunderstorms*—To provide for an investigation of the causes and characteristics of thunderstorms. Approved June 16, 1948.
- P. L. 692 *Recordation of Spare Parts*—To provide a system for the federal recordation of liens on engines and spare parts used by airlines. Approved June 19, 1948.
- P. L. 738 *Weather Stations*—To authorize the Coast Guard to operate and maintain ocean weather stations, together with such air navigation facilities as CAA deems necessary. Approved June 22, 1948.
- P. L. 786 *Loran Stations*—To authorize the Coast Guard to operate Loran stations to serve the needs of U.S. air commerce as deter-

- mined by CAA. Approved June 26, 1948.
- P. L. 815 *Traffic Control Tower Operators*—To provide for the training of. Approved June 29, 1948.
- P. L. 819 *Air Parcel Post*—To establish an Air Parcel Post system. Approved June 29, 1948.
- P. L. 840 *Federal Airport Act*—To amend Section 17 relating to reimbursement for damage by Federal agencies to public airports. Approved June 29, 1948.
- P. L. 862 *Veteran Flight Training*—Independent Offices Supplemental Appropriations Act, 1949, provided, among other things, that teaching a veteran to fly and related aviation courses shall not be considered avocational or recreational, and therefore prohibited after July 1, 1948, when the veteran certifies that he has selected aviation education or training for use in connection with his existing or contemplated business, occupation, or education. Approved June 30, 1948.
- P. L. 872 *CAA Powers Broadened*—(a) Permits CAA to acquire, establish, operate and maintain air navigation facilities wherever necessary, provided CAA shall give consideration to the requirements of National Defense; (b) authorizes CAA to acquire and dispose of real and personal property by purchase, condemnation, or lease, "including, in the case of air-navigation facilities (including airports) owned by the United States and operated under the direction of the Administrator, easements through or other interests in airspace immediately adjacent thereto and needed in connection therewith"; (c) authorizes CAA to take evidence, issue subpoenas, take depositions, and compile testimony as is vested in CAB by Section 1004 of the C. A. Act; and (d) authorizes CAB to delegate to CAA authority to prescribe safety regulations under Title VI of the Act, and to perform functions relating to accident investigation authorized under Section 702 of the Act, provided Board may prescribe procedures for review of actions taken by CAA under authority delegated hereunder as deemed necessary in the public interest. Approved July 1, 1948.

Of the twenty-three Bills introduced to carry out the recommendations of the Congressional Aviation Policy Board¹ five were passed and approved² by the President. The remaining Bills introduced to implement the recommendations of the Board died with the adjournment of Congress. It is significant to note that the measures that became law are minor in importance as compared with Bills that failed to pass, among them were: S. J. Res. 205, establishing a Joint Congressional Committee on Aviation Policy; S. 2448, providing for government reorganization (Omnibus Bill); S. 2449, concerning regulation of contract carriers; S. 2447 (5-year plan), "To provide for the planning of military aircraft requirements, to authorize the development and procurement of military aeronautical equipment . . ."; S. 2453, providing for the avoidance of multiple taxation of air commerce; S. 2450, concerning "settlement of claims arising from termination of contracts of the armed services . . ."; S. 2644, the Prototype Development Bill; S. 2458, regarding "carriage of all long range domestic and foreign first-class mail by air . . ." S. 2464, authorizing U.S. Maritime Commission to study the development of lighter-than-air rigid airships for commercial use, was passed by the Senate and House and was pocket vetoed by the President.

¹ 15 J. Air L. & C. (1948).

² Public Laws 647, 692, 656, 657, and 819.