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AN EXPLANATION OF THE LEA BILL (H.R. 5174)*

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INTRODUCTION

The report of the Federal Aviation Commission includes one hundred and two recommendations and, of these, some fifty-three will require legislation to carry them into effect. To accomplish such a result, it became necessary to prepare, amend, or repeal about fifteen bills or acts. Of the fifteen, only two apply directly to civil aeronautics and one merely makes a change in two sentences of the Black-McKellar air mail law of 1934.¹ The entire civil aeronautics program as recommended by the Federal Aviation Commission, except for emergency problems of primary routes and increased rates of pay, is embodied in the provisions of H. R. 5174. Since the problems encountered in the preparation of this bill will be met by whatever administrative body is selected to control civil aeronautics, it seems desirable to explain the essential features of the proposal.

The objectives of the bill, briefly stated, are as follows:

- (1) To create an independent administrative agency which should have broad supervisory and regulatory powers over
 - (a) domestic and foreign air transport (including control of competition, service, air mail pay, other rates, and the awarding of subsidies), and
 - (b) other phases of civil aeronautics (including all the activities now carried on by the Air Regulation Division of the Bureau of Air Commerce);
- (2) To provide for the transfer or merger of such agency, by Executive Order, to or with any other administrative agency established to control all forms of transportation—when and if such transfer should be deemed desirable (but supposedly not until the im-

*Introduced, on January 31, 1935, by Mr. Lea of California, and referred to the committee on Interstate and Foreign Commerce. For text, see p. 219.

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1. Public Act No. 308, 73rd Congress, 2nd Session (S. 3170), approved June 12, 1934. See 5 JOURNAL OF AIR LAW 462 (1934).

mediately pressing problems of aviation had been met and the industry had come nearer to position of economic maturity);

- (3) To amend the Air Commerce Act of 1926 so as to modernize its provisions (in keeping with current practices and desires of the Bureau of Air Commerce); and
- (4) To codify into one act the essential provisions relative to civil aeronautics and to repeal any conflicting laws.

The present bill consists, therefore, of three sorts of provisions: (1) new provisions describing the organization and authority of the proposed commission—which provisions have been taken over or adapted from the standard provisions of the Interstate Commerce Act and Communications Act, (2) new provisions representing the practices of the present Bureau of Air Commerce for which no sufficiently express authority was given in the 1926 Act (or 1934 amendments),² but which require legislative expression; and (3) provisions reproducing the language of the 1926 Act, all of which (so far as not obsolete) have been included.

The general divisions of the bill into titles, chapters, and sections (as in the Communications Act and other modern laws) would make it possible to take this material over bodily so as to fit into any larger measure covering land, sea, and air commerce, whenever such a measure may be framed, or whenever the taking over should be deemed desirable.

The constitutional basis of the bill is the federal power over interstate and foreign commerce, as in the 1926 Act. But, on account of the fortunate attitude of the state aviation commissions—which invariably follow the methods and requirements of the Bureau of Air Commerce,—none of the usual difficulties as to the boundary between federal and state powers here arise. Hence, if this bill were to be enacted, it would, in its main features, represent an all-inclusive system of control.

The various provisions have been so put together as to make it adaptable to any views of policy that may receive the final determination of Congress. In other words, a change in any specific provision will not materially affect any other provision so as to require the re-writing of the whole bill or any substantial part of it.

TITLE I. GENERAL PROVISIONS

The purposes and policies are enumerated in some detail in

2. 5 JOURNAL OF AIR LAW 641 (1934).

order to meet the requirements of the constitutional principle that Congress cannot delegate its power to legislate. Accordingly, an attempt has been made to formulate rather fully the legislative policies so as to cover in broad language the administrative details that are to be covered by the various administrative agencies.

The scope of the bill is established in *Chapter 2* and, in this connection, it should be pointed out that Paragraph (2) of Section 23 is based upon the case of *Crandall v. State of Nevada*.³ The limitations on the public rights, provided in Section 24, should be entirely adequate for the protection of all concerned.

The definitions, contained in *Chapter 3*, have all been carefully revised and would seem to be in keeping with present experience. It will be noted that the term "airport" is not defined or used in the bill. This omission is deliberate and is due to the fact that the classification of landing areas into airports, landing fields, and landing strips is done in the first instance by the several states for purposes of licensing and regulation.⁴ The federal government issues no licenses to airports and the present practice of the Bureau of Air Commerce is toward a rating of only those landing areas used by airlines. It seems desirable, therefore, to permit the states to determine the requirements for an airport, landing field, or landing strip and to permit the federal government (largely for purposes of uniform classification) to classify and rate any and all landing areas, without making such action mandatory.

TITLE II. ADMINISTRATIVE AGENCIES

This title enumerates the various administrative agencies which the Congress may designate for giving practical effect to the policies and purposes defined in Title I.

Chapter 1 deals with the Department of Commerce. The duties here enumerated are almost all taken from the Act of 1926, and the only ones omitted are those which have been suggested for transfer to the proposed Air Commerce Commission.⁵

Chapter 2 deals with the other departments in their various relations to aviation,—State, Treasury, War, Post Office, Interior, Agriculture, Labor, etc.

While it was not desired to interfere with the practice of set-

3. 6 Wall. 35 (1867).

4. See definitions and provisions in Uniform State Aeronautical Regulatory Act.

5. Transfer of the Air Regulation Division would mean the transfer of about 200 of the total of 1800 employed by the Bureau.

ting aside airspace reservations by Executive Order, it was believed desirable to give the proposed commission an opportunity, before the signing, to indicate any burdens that might be placed upon air transport operations by such setting aside.

In Section 213, an important addition has been suggested to permit the Secretary of the Treasury to designate certain landing areas as ports of entry only for airlines holding certificates or operation approvals. A similar provision has been incorporated in Section 218 relative to the authority of the Secretary of Labor. Such a provision could be of very real service to the scheduled air transport operators.

In Section 219, a change has been made in Section 5(d) of the 1926 Act so as to permit the sale of materials to commercial and private users other than in cases of emergency. This change would have considerable significance in connection with operations in the Canal Zone.

Chapter 3 deals with the proposed Air Commerce Commission relative to its internal organization, membership, staff, procedure, meetings, reports, etc. The provisions are entirely standard and have been closely patterned after the Communications Act.

Chapter 4 enumerates the authorities and duties which might be assigned to the proposed Air Commerce Commission. In several cases, the detailed authorities are found in later parts of the bill. Many of these authorities originate from the Act of 1926 since the regulatory powers of the Bureau of Air Commerce have been transferred to the commission, under this proposal.

The regulation of air commerce involves the supervision and control of at least four constituent agencies: (1) airlines, (2) aircraft, (3) airmen, and (4) air navigation facilities. Each of these must be dealt with, in appropriate provisions and, for convenience, they have been grouped into the three titles which follow in order.

TITLE III. AIR TRANSPORT

The material found in this title is not to be found in any federal aviation legislation, although the Bureau of Air Commerce has already regulated the subject for years without benefit of specific authority.⁶

Chapter 1 is devoted to the various topics pertaining to airline regulation. Section 301 authorizes the commission to deal with

6. The authority inserted in the 1934 amendment is most fragmentary and almost escapes notice. There are reasons to believe that it might have been prepared so as to escape notice.

competition as dictated by the public interest. To prevent wasteful duplication of services, control is secured through the medium of certificates of convenience and necessity for interstate operations and airline operation approvals for the establishment of foreign services. The distinction between the control of domestic and foreign services is more apparent than real and has been suggested to meet practical (not legal) difficulties that might stand in the way of issuing certificates of convenience for foreign airline operations. The term "trade route approval" might seem to be more fortunate but is far less accurate.

Section 302 continues the present requirement of the Bureau of Air Commerce relative to a certificate or letter of authority (based upon safety features) but describes the certificate as being based on capacity to perform airline service—which would seem to square more nearly with the purpose involved.

Section 303 suggests broad supervisory powers over airline rates and services. The language follows that of the Interstate Commerce and Communications Acts and attempts very little that is new. It was anticipated that these powers would not be used for several years except as a means of gathering information upon which to base a rate structure. A hurried use of these powers by any regulatory body—particularly as respects passenger and express rates—can work untold injury to air transport.

Section 304 contains the provisions respecting valuations which are both usual and necessary to any enlightened rate policy or system of allocating subsidies or other aids to the air carriers.

Section 305, dealing with control over financial structures, is bottomed upon the corresponding provisions in the Interstate Commerce Act⁷ but also incorporates several features of the present Black-McKellar Act.⁸ Many of these are quite drastic in appearance but have been modified materially by permitting the commission to grant exemptions in those cases which seem to fall within considerations of the public interest. The special exemption granted to investment trusts, in paragraph (13) would seem to be in keeping with sound practice. To prohibit investment trust moneys from entering the aeronautical industry would appear to be entirely unwise. To prevent any direct aids (subsidies) from escaping too readily into salary channels, paragraph (17) has been inserted, and paragraph (18) provides for the approval of loan applications—a provision not found in other legislation.

7. Section 20a.

8. Sections 7(a), (b) and (c).

Section 306 recognizes that airlines must for a while receive some government financial aid. But instead of concealing such aid under the heading of air mail payments (with consequent substantial deficit to the Post Office Department), it is here placed upon its proper footing. Hence, it is suggested that Congress determine the amount of aid after receiving recommendations from the proposed commission.

Sections 307 and 308 provide for customary accounting practices and reports. These are standard requirements, adapted from the Interstate Commerce Act and the Communications Act.

Section 309 provides only that the commission shall foster collective bargaining in aeronautical industry labor disputes. This is merely an empowering section and is not in any way intended to supplant any existing means for adjusting labor difficulties.

The remaining sections are based upon corresponding provisions of the Communications Act and offer nothing of novelty.

Chapter 2 pertains to air mail and provides, in general, that air mail payments shall fall within the total revenues received for air mail services. It is proposed that rates should be based on periodical calculations of revenue actually received from air mail—thus relieving the Post Office of the burden of what really amounts, under the present system, to direct financial aid. The system herein proposed is based somewhat upon that of the Railway Mail Service Pay Act.⁹ Under it, the Postmaster General is authorized to place mail on any authorized schedule of any airline having a certificate of convenience or operation approval; the airline is charged with the duty of transporting the mail; and the commission is authorized to prescribe the service required, to determine the amounts of payments due, and to make other rules and regulations for the proper performance of the air mail service.

Section 326 preserves intact the existing foreign air mail contracts but provides that no new contracts of such a nature shall be entered into.

TITLE IV. AIRCRAFT

The provisions of this title are mainly taken over from the Air Commerce Act of 1926 but do include several new features of importance.

Chapter 1 groups all those provisions dealing with registration for purposes of nationality determination, and includes the re-

9. 39 Stat. L. 412 (July 28, 1916).

quirements pertaining to foreign aircraft. Section 403 states that while registration shall be inclusive evidence of nationality for international purposes, it will not be so in any proceeding under the laws of the United States. Such registration is not intended to be evidence of *ownership*. To avoid multiplication of records, it is provided that the certificate of registration may be by an entry made on the aircraft license.

The treatment of foreign civil aircraft under treaty and not under treaty is distinguished and clarified.

Chapter 2 suggests an experiment in recording transfers of ownership. The sections of this chapter are taken from the Merchant Marine Act of 1920. The idea is new for aircraft, but is recommended by the Bureau of Air Commerce as a measure of great usefulness to the industry and to individuals in connection with dealings in aircraft. It is a simple measure—analogue to the chattel mortgage acts in the states—and makes no attempt to determine *title* (as in registration of title), but merely makes a deed of transfer ineffective as against third persons until recorded.

Chapter 3 merely takes over and clarifies the provisions of the Air Commerce Act of 1926 relative to licensing of aircraft for purposes of navigation. The chapter provides for little that is new but gives a legal basis for that which has long been done without adequate authority.

TITLE V. AIRMEN AND AIR NAVIGATION FACILITIES

The airmen license requirements of the Act of 1926 are re-stated and clarified according to the experience of a decade.

Authority is given to the proposed commission to inspect, classify, and rate any and all air navigation facilities available to civil aircraft. However, it will be noticed that the bill differs from the Act of 1926 in that such powers are permissive and not mandatory. The change in favor of flexibility is believed desirable for already the Bureau has been forced to break the letter of the law—due to the practical impossibility of rating all facilities.

The proposed bill differs in another respect in that it neither imposes a duty nor grants permission to the federal administrative body to inspect, classify, or rate air schools or other air instruction. Such omission in the present bill is believed by the writers to be undesirable. In their opinion, a grant of authority (that need not be exercised until deemed to be desirable) would be helpful to provide a national standard of quality and uniformity in matters affecting the important subject of air instruction. However, a

belief on the part of the majority of the commission members that this matter belonged peculiarly within the province of the several states, and not within the realm of federal concern, led to its omission in the present bill.

TITLE VI. PROCEDURE

The provisions of this title are standard and are applicable to nearly all administrative tribunals. The chapter arrangement establishes a convenient handling of the various problems relating to hearings and appeals. The chapter dealing with accident investigations was carefully prepared to facilitate the getting of accurate data and the safeguarding of the interests of those conducting the investigations.¹⁰

Section 637 provides that the decision of the proposed commission shall be conclusive upon the facts—which seems to be about as much as any statute can accurately attempt.

TITLE VII. PENALTIES

The first chapter merely groups and continues the penalties provided for in the Act of 1926. Section 707 incorporates a "burden of proof" provision found in the Uniform State Aeronautical Regulatory Act as affecting aircraft and airmen license cases.

Attention should be directed to the "venue" provision of chapter 2 wherein it is stated that the venue of any offense as to air navigation "shall be in any district in or over the area of which the act constituting the offense was *begun, continued, or completed*; . . ." Such a provision should prove to be of great practical assistance.

TITLE VIII. MISCELLANEOUS

This title is intended to serve as the catch-all for the customary closing provisions. Paragraph (2) of Section 801 may be found of interest. It provides that the custodian of records may certify to the *non-existence* of certain documents (such as aircraft or airmen license certificate duplicates) so as to avoid the necessity of his presence at trial for personal testimony.¹¹

Section 804 continues in effect the orders, licenses, and so forth, made and granted by other existing administrative agencies until such time as the proposed commission could be set up and assume its duties, following the passage of the proposed bill.

10. See Section 802 of Title VIII.

11. See *Fred D. Fagg, Jr. & Leo Freedman*, "The Prosecution of Unlicensed Flying Cases," 3 *JOURNAL OF AIR LAW* 515, 519 (1932).