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SFA BILL ANALYSIS

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Senate Bill 541 (as passed by the Senate)
Sponsor: Senator Walter H. North
Committee: Transportation and Tourism

Date Completed: 11-19-01

RATIONALE

The Michigan Aeronautics Code, or Public Act 327 of 1945, prescribes standards for aeronautical activity in the State. Since 1945, of course, aviation has changed a great deal. Periodically, the Code is updated to reflect current technologies and to comply with the Federal Aviation Administration standards. Currently, the Code contains no provisions for ultralight aircraft or hot air balloons, for example. In addition, the Code prohibits operating an aircraft in violation of the Code, but does not provide for penalties when violations occur. Some people believe that it is necessary to correct this, as well as update definitions, restore certain sections that have been repealed, and delete provisions duplicated in the administrative rules of the Aeronautics Division.

CONTENT

The bill would amend the Aeronautics Code to impose new penalties for violations of the Federal Aviation certification requirements; establish a statutory garage keepers lien for the storage, maintenance, and repair of aircraft; revise licensing provisions; incorporate new definitions; and repeal parts of the Code.

Noncompliance

The bill would provide for penalties in cases in which a person violated Federal aviation certification requirements.

Specifically, if a person failed to comply with the Federal "airman" certification requirements under the Code of Federal Regulations, he or she would be guilty of a misdemeanor, punishable by imprisonment for up to 93 days or a fine of up to $500, or both. For a second violation within five years of the first, the person would be guilty of a felony, punishable by imprisonment for up to two years or a maximum fine of $1,000, or both. For a third or subsequent violation within five years of the second or subsequent violation, the person would be guilty of a felony punishable by imprisonment for up to four years or a maximum fine of $5,000, or both. (Under the Code, "airman" is defined as any individual, including the one in command, and any pilot, mechanic, or member of the crew who engages in the navigation of aircraft while under way, and any individual who is in charge of the inspection, overhauling, or repair of aircraft, and any individual who serves in the capacity of aircraft dispatcher or air traffic control tower operator.)

If a person conducted flight operations in violation of a valid Federal aviation rules air carrier or operating certificate, or a commercial operator's certificate, that person would be guilty of a misdemeanor punishable by imprisonment for up to 93 days or a fine of up to $1,000, or both.

A person who conducted flight operations without a valid Federal aviation rules air carrier or operating certificate, or valid commercial operator's certificate, would be guilty of a felony, punishable by imprisonment for up to four years or a maximum fine of $5,000, or both. A second violation within five years after the first would be a felony punishable by imprisonment for not less than one year or more than five years, or a fine of at least $5,000 but not more than $50,000, or both. A third or subsequent violation within five years after a conviction for flying without a license would be a felony punishable by

imprisonment for not less than four years or more than 10 years, or a maximum fine of $10,000, or both.

Aeronautical Facility Licensing

Currently, the Code requires all non-Federal airports, landing fields, and other aeronautical facilities to be licensed by the Michigan Department of Transportation (MDOT). The bill would retain that provision, but delete specific requirements, including expiration dates and fees. Instead, the bill would require that each certificate of approval of an aeronautical facility be registered annually, and authorize MDOT to establish a reasonable fee in accordance with issued rules and regulations. (The Code defines "aeronautical facilities" as any device, physical or otherwise, that is an object of nature or human-made, that aids and is used in aeronautics.) The bill would exempt from these licensing requirements the landing areas designated for the exclusive use of ultralights or balloons. (A "balloon" would be defined as lighter-than-air aircraft that was not engine-driven and that sustains flight through the use of either gas buoyance or an airborne heater.) The bill specifies that the landing areas for ultralights or balloons could not be established, without Commission approval, within five nautical miles of a public use facility certified by the Commission.

Garage Keeper Liens

The bill would establish the rights of a garage keeper who furnished labor, materials, or supplies on or for an aircraft, and who went unpaid. A "garage keeper" would be defined under the bill as any person who, for hire or reward, publically offered to store, maintain, keep, or repair aircraft or any accessory used in the operation of aircraft. The bill would abolish the common law garage keeper's lien and establish this lien as the sole one available for garage keepers in regard to aircraft.

The bill states that any garage keeper who furnished labor, material, or supplies under any contract, expressed or implied, written or unwritten, would be regarded as having a lien on any aircraft stored, maintained, supplied, or repaired by him or her for the proper charges due. Charges would be for the storage, maintenance, keeping, and repair of the aircraft, including for gasoline or aviation fuel, electric current, or other accessories and supplies at the request or consent of the registered owner of the aircraft (whether the owner was a conditional sale vendee or a mortgagor remaining in possession, or otherwise). The bill provides that a garage keeper could detain the aircraft at any time it was in his or her possession, within 90 days after performing the last labor or furnishing the last supplies for which the lien was claimed.

The bill states that a lien for labor and material furnished in making repairs upon an aircraft would have priority against all other liens upon the aircraft, unless the prior lienholder paid the garage keeper the amount of the lien attributable to labor and materials, or the following applicable amount, whichever was less:

-- $5,000 in the case of an aircraft with a single engine less than 150 horsepower.
-- $10,000 in the case of an aircraft with a single engine of 150 or more horsepower.
-- $20,000 in the case of a multiengine, nonturbocharged aircraft, or an aircraft rated at less than 6,000 pounds maximum certificated gross takeoff weight.
-- $40,000 in the case of a multiengine turbocharged aircraft, or an aircraft rated at 6,000 or more pounds maximum certificated gross takeoff weight.
-- $100,000 in the case of a turboprop or turbojet aircraft.

The prior lienholder's payment for labor and materials would be added to the amount of the prior lienholder's lien and would be subtracted from the amount of the garage keeper's lien.

The bill further provides that, if the charges for labor and materials were not paid when due, the garage keeper could, within 60 days after the last work or service was performed, file a claim of lien with the Federal Aviation Administration (FAA) Aircraft Registry. The claim would have to state the name and address of the lien claimant and the amount due, and describe the aircraft by make, model, serial number, and registration number.

If the charges were not paid within 60 days after the claim of lien and itemized statement of the account were delivered to the owner, and a record of the lien described had been

filed with the FAA Aircraft Registry, the garage keeper could sell the aircraft at public auction. The sale would have to be held not less than 20 days or more than 60 days after the 60-day period expired. At least 20 days before the sale, the garage keeper would have to give written notice of the time and place of the sale to the FAA Aircraft Registry, to any other lienholder, and to the registered owner of the aircraft. These notices would have to be delivered by first-class mail, in the case of the FAA and the other lienholders, and certified mail or personal delivery, in the case of the owner. Notice of the time and place of the sale would have to posted at a conspicuous place at the place of the sale and at every airport in a 25-mile radius of the place of sale.

The garage keeper could bid for and purchase the aircraft at the public auction. If the keeper directly or indirectly purchased the aircraft, the proceeds of the sale would be determined to be either the amount paid by the garage keeper or the fair cash market value of the aircraft as determined by a neutral aircraft appraiser immediately before the sale, whichever was greater.

After all charges to the garage keeper had been satisfied and all costs of the sale deducted, any surplus would have to be returned to any lienholder who had a properly recorded security interest in the aircraft or part of the aircraft before distribution of the proceeds of the sale was complete. The balance would have to be returned to the registered owner of the aircraft.

New Definitions

"Accident" would be defined as an event involving an aircraft that was in-flight or taxiing, resulting in death or injury to any person, damage to the aircraft affecting its ability to operate safely, or damage to public property or property of another person. "In-flight" would mean that time from the beginning of an aircraft's take-off run to the end of the landing run. "Taxi" would be defined as the moving of an aircraft under its own power, either on the ground or on the surface of the water, prior to the beginning of the take-off run and after the end of the landing run.

"Flight school" would be defined as any person providing or offering to provide flight leading to pilot or flight instruction certification, for hire or compensation, and engaged in advertising or calling oneself a flight school or anything equivalent; or hiring, contracting, or otherwise using one or more flight instructors in any aeronautical endeavor. Currently, the Code contains these two defining clauses as well as a third, which defines a flight school as the provision of aircraft for the purposes of flight training. The bill would delete this third clause.

"Temporary commercial operations" would mean any commercial operation conducted for a period not to exceed 120 days per calendar year.

Other Provisions

Transportation of State Elected Officials. The bill would authorize the Michigan Aeronautics Commission to transport State-elected officials, employees, commissioners, board members, and employees or board members of State four-year colleges and universities traveling on business, as well as their properly invited guests. In addition, the Commission would be authorized to acquire, maintain, and operate aircraft for this purpose, as well as for the furthering of its duties and missions.

Ultralights. The bill would prohibit the operation of an ultralight aircraft in a manner that would create a hazard to other people or to property, including dropping an object from the ultralight and creating a collision hazard with any other aircraft. Also, the bill would prohibit the operation of an ultralight between sunset and sunrise, and over any congested area of a city, town, or open air assembly of people. Further, the bill specifies that a person operating an ultralight would have to maintain vigilance and yield the right-of-way to all aircraft. Under the bill, a powered ultralight would have to yield the right-of-way to an unpowered ultralight.

Seaplanes. The bill would require a seaplane operator conducting commercial operations to assure that the seaplane base used for takeoff or landing had sufficient distance for the operation, as specified by the plane manufacturer's operating limitations. (A "seaplane" would be defined under the bill as an aircraft capable of landing and taking off on the water).

Discrimination. Currently, the Code gives political subdivision certain powers, including vesting authority for the construction and improvement of aeronautical facilities, and leasing authority for the use of airports, landing fields, etc. The Code prohibits political subdivisions form discriminating against facilities when applying terms, fees, and rental charges. The bill would prohibit "unjust discrimination", rather than "discrimination". (The Code defines "political subdivision" as a county, city, village, or township in the State, and any other political subdivision, public corporation, authority, or district in the State that is authorized to acquire, establish, construct, maintain, improve, and operate airports, landing fields, and other aeronautical facilities.)

Approach Protection Plans. Under the Code, the Commission can create and establish a State plan for approach protection areas surrounding aeronautical facilities by establishing standards for structures or obstructions near the boundaries of the aeronautical facilities. The bill would retain these provisions but would refer to standards of height and use of the structures or obstructions.

Repeals

The bill would repeal many of the existing definitions found in Chapter 2 of the Code. All of the definitions that would be repealed would be re-incorporated in the bill.

The bill would further repeal Sections 86a, 86b, and 86c of the Code, which specify license and application requirements for aeronautical facilities, and the powers and duties of airport managers.

MCL 259.2 et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

In 1998 the Garage Keeper's Lien Act was amended. In the process, language relevant to aeronautical garage keepers was repealed. To correct this, the Code should provide a remedy for aeronautical mechanics and repair shop owners who go unpaid. Other changes proposed in the bill are valuable as well. Pilots would like to see stricter penalties for those who violate certification requirements, and ultralight planes are becoming increasingly popular. The Aeronautics Code must continue to reflect current standards and practices, and prescribe the cost of violating those standards and practices. The bill would update the Code, provide clarity, and bring it into conformity with Federal regulations.

Legislative Analyst: C. Layman

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on the State or local government. The elimination of the $50 fee for temporary field permits would not reduce State revenue as this licensing provision is contained in administrative rules. A total of $600 is collected annually from the temporary field permit fee.

There are no data to indicate how many people a year would be convicted for any of the offenses proposed in the bill (as described above). Offenders convicted of a misdemeanor would be subject to probation or incarceration in a local facility. Local units would incur the cost of probation as well as the cost of incarceration, which may vary between $27 and $62 per day. Offenders convicted of a felony would be subject to probation or incarceration in a State prison. The State would incur the cost of felony probation, estimated to be $4.23 per day, or the cost of incarceration at an annual average cost of $22,000.

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