NASAO Legislative Agenda

GENERAL PRINCIPLES

Working together, the federal and state governments, and the U.S. aviation industry, have developed the safest and most efficient air transportation system in history. Our air transportation system serves as a primary foundation of American economic strength. More than five thousand airports of all sizes, all across the nation, provide airline and general aviation service while supporting defense, homeland security, postal and cargo delivery, emergency medical transportation and disaster relief. Airports of all types and sizes connect both metropolitan and rural communities to state, regional, national and international markets. The U.S. network of airports serves as a blueprint for other nations to emulate.

NASAO believes that our nation must continue to make prudent investments to expand, modernize and maintain the nation's air transportation system while preparing for inevitable increases in demand.

NASAO fully recognizes the importance of efforts to reduce the national debt. However, NASAO notes that the Airport Improvement Program (AIP) and its associated Aviation Trust Fund are financed by a series of dedicated federal excise taxes, furnished by those who use the system and collected for the purpose of investing in aviation infrastructure. The aviation trust fund is self-financed and should not be used to simply reduce the deficit. Indeed, the raid on AIP to fund the contract towers and the increasing amounts drawn from the program for FAA operations are a source of great concern. System passengers and shippers pay taxes to fund improvements in the system, not to cover government operations and not to cover other expenses already paid for by other means.

NASAO firmly believes that providing a safe, efficient national air transportation system and developing our aviation infrastructure has always been and should always be a federal responsibility just like the development and maintenance of our nation's system of highways, roads and bridges. Failure to provide adequate and reliable funding to improve and maintain the nation's air transportation system should not be an excuse for the federal government to abandon its inherent responsibility. While the states are ready and willing to assist, as they always have, the leadership of financing our national aviation system properly rests with Congress, the Administration, the U.S. Department of Transportation and the Federal Aviation Administration (FAA).

Congressional enactment of AIR-21 initiated a period of sustained investment in the nation's aviation infrastructure. Working in partnership, the FAA and the states that comprise NASAO's membership have been able to make substantial improvements in the commercial service and general aviation airports that make up the nation's air transportation network. Timely action on a multi-year authorization of FAA/AIP funds enabled the FAA, states and airport sponsors to develop and execute long-range capital improvement plans in an efficient and effective manner. The ability of the FAA and states to efficiently and effectively execute such plans was severely disrupted when Congress delayed action on the FAA Modernization and Reform Act of 2012 with an unprecedented series of temporary extensions. For this reason, NASAO urges Congress to take prompt and early action to enact a comprehensive, multi-year reauthorization bill in its next session, and to complete its work prior to the September 30 expiration of the current authorization.

AIP Funding Levels

Although the cost of construction has risen over the past decade, we are now spending less through AIP on airport infrastructure than we did then, both in real and absolute terms. Indeed, in recent years AIP was actually reduced for deficit reduction purposes, even as the portion of AIP that is spent on FAA operations has increased. NASAO applauds the House for voting to increase AIP authorizations by $250 million to $3.6 billion in FY 2017 and grow the program's funding to $4 billion by FY 2022. NASAO strongly supports this boost in AIP investment. In recognition of the fact that construction costs are increasing, Congress should also consider ways to ensure investment keeps up with need. Such action by Congress would provide the states and their airports with a stable and predictable planning and implementation horizon, providing a basis for sustained economic growth. NASAO further supports a minimum FAA matching fund participation of 90%.

General Fund Contribution

Since all Americans benefit from a strong national air transportation network, NASAO believes there is a national stake in the system. For this reason, NASAO recommends, at a minimum, a twenty-five percent (25%) investment in FAA funding from the General Fund. This contribution from the General Fund is essential to avoid draining the Aviation Trust Fund for purposes other than infrastructure investment. Anything less would be a collective abrogation of our shared responsibilities to the national system.

Non-Primary Grants

The non-primary entitlement (NPE) program for general aviation airports has played a critical role as those airports and their states have worked together to make needed safety improvements and undertake pavement maintenance. These grants have been very effective at preserving an important component of the nation's aviation system that might otherwise have fallen into disrepair and become unsafe.

Since the creation of the NPE program in FY 2001, the amount of carryover has increased every year with carryover now exceeding the annual total amount allocated for NPE. The non-primary carryover percent has climbed from 5 percent of the total NPE in FY 2002, to 51 percent in FY 2012, to 100 percent in FY 2013. The total amount of carryover for all non-primary airports in FY 2013 was $376 million, which averages about $150,000 or the yearly maximum entitlement for a non-primary airport.

When non-primary funds are carried over or expire, they are converted to discretionary funds that go back to the FAA. In other words, the NPE program is at the expense of the State Apportionment, which has historically been used to fund high priority projects within a state. Since the NPE is calculated first out of the part of AIP funding dedicated to General Aviation, the State Apportionment has dropped each year.

NASAO believes the time has come for a more strategic and efficient approach to how NPE funds are invested. Our proposed reform preserves airports' right to have first say in how NPE funds should be utilized while having the dual benefit of reducing the amount of undue carryover and increasing much needed State Apportionment dollars.

In order to keep funds invested in General Aviation and, more importantly, in the respective states, NASAO supports revising how NPE funds can be carried over. Our approach maintains the airports' ability to have their basic needs met in a timely manner, preserving the principle that every airport in the NPIAS is a safe place to land, and also prevents funds from being unnecessarily forfeited back to the FAA.

This proposal would allow a more strategic and data-driven approach to investing public AIP funds. States believe this would work best to strategically direct needed airport improvement investment. Additionally, NASAO supports the continued partnership between FAA and the states in collaboratively assessing airport needs and prioritizing airport investments.

AIP Revenue Sources & User Fees

The members of NASAO believe that the sources of funds to support AIP are just as important a consideration as how and where the funds are spent. NASAO continues to favor the collection of aviation fuel taxes at the pump as the most efficient and preferred method of generating revenue for the Aviation Trust Fund and AIP from general aviation. NASAO opposes any system of user fees that may be imposed on general aviation and opposes shifting aviation fuel tax revenues to purposes other than AIP. To provide a permanent buffer against the effects of inflation and rising construction costs, NASAO also urges Congress to adopt a method of indexing fuel taxes that would allow the revenue generated to "float" based on the market economy and other economic factors. In addition, NASAO is concerned that the changing airline business model undercuts the system by which airline passengers contribute to the trust fund through their ticket taxes. This mechanism needs reform, including the possibility of subjecting unbundled fees to the 7.5% ticket tax.

Air Service

A substantial number of member states have communities that rely on the Essential Air Service (EAS) Program to connect to regional, national and global destinations and markets. Many rural communities across the nation depend on the EAS Program to sustain their local economies. However, many states fear that the EAS Program is in danger of being substantially reduced or eliminated by the national deficit reduction debate and the recently enacted 1,500 hour pilot flight time requirement for regional air carriers.

NASAO continues to recognize the air service needs of our more rural states and supports the continued funding of the Essential Air Service Program at its current fully authorized level.

NASAO also recommends that Congress re-visit the 1,500 hour minimum flight time rule and consider a more data-driven method of balancing flight safety and the need of our rural regions to access reliable and sustainable air service. NASAO believes that the flight safety of the nation's regional air carriers can be achieved by establishing pilot qualifications on intensive flight training and demonstrated proficiency rather than being based on a flight time number alone.

NASAO supports continuation of the Small Community Air Service Development Program at a minimum annual funding level of $5 million.

NextGen

NASAO and FAA are actively engaged in joint NextGen activities as a result of a current Memorandum of Understanding. The states believe NextGen must be adequately funded to shape an efficient, safe, secure and productive national aviation system for the future. In any debate over new ways to structure and fund NextGen, it must be remembered that any change impacts all programs financed through the aviation trust fund and such impacts must be mitigated.

Fuel Fraud Tax

On August 8, 2016, the Government Accountability Office (GAO) released a report estimating that since fiscal year 2006, between $1 billion and $2 billion, or more than half of tax receipts for sales of noncommercial jet fuel, had not been transferred into the Airport and Airway Trust Fund (AATF) from the Highway Trust Fund. This is due to a misguided fuel fraud law that, in many ways, is a classic example of a Washington solution in search of a problem.

At the time the fuel fraud law was passed, federal officials raised concerns about the diversion of jet fuel to diesel truck use because jet fuel taxes were lower than those for diesel. What the recent GAO report discovered was that jet fuel diversion for nonaviation purposes is practically nonexistent. There are two primary reasons for this; the average retail price of jet fuel was $2.00 per gallon higher than the average retail price of highway diesel, and engine technology improvements and fuel composition changes made aviation fuel incompatible for truck use.

Aviation fuel vendors that are able to demonstrate that their fuel was actually used for aviation purposes can file for a refund. However, the GAO report also indicates that the refund process is so cumbersome that only a quarter of all registered vendors filed a credit or refund claim for jet fuel used in noncommercial aviation, and over half of all registered vendors did not file any claim for jet fuel sales. The overpayment to the Highway Trust Fund and subsequent lack of transfer to AATF is exacerbated due to the fact that end users are not allowed to file for a credit or refund on sales of noncommercial jet fuel under current law.

NASAO strongly urges Congress to reevaluate this law and either simplify the refund process or do away with the provision altogether to ensure that all General and Business Aviation fuel taxes go to AATF as intended by Congress.

Unmanned Aircraft Systems (UAS)

NASAO is very pleased that the key role of state government in integrating UAS technology into our airspace has been recognized by the inclusion of NASAO Members on the Drone Advisory

Committee (DAC), Drone Advisory Subcommittee (DASC), Micro UAS Aviation Rulemaking Committee (ARC), and the UAS Registration Task Force. One of the primary issues the DAC is addressing is the proper roles and responsibilities of each level of government with respect to UAS integration. By proactively working with industry stakeholders, NASAO is confident that a constructive federal/state/local partnership can be reached.

NASAO successfully advocated for the exclusion of the UAS preemption provision that was originally included in the Senate FAA Reauthorization bill in 2016. The provision would have barred states from having any role whatsoever in drone integration and regulation, and shut down the discussion regarding this that is currently taking place in the DAC. NASAO believes the preemption provision was an overreach and went beyond precedent established for manned aviation. Furthermore, it directly contradicts the FAA Chief Counsel's fact sheet regarding state and local regulation of UAS released on December 17, 2015, in which laws traditionally related to state and local police power — land use, zoning, privacy, trespass, and law enforcement operations — were acknowledged as not being subject to federal regulation or preemption.

Rather than simply opposing preemption, NASAO will continue to provide the FAA with input and advice on UAS integration and regulation issues by helping to identify challenges and prioritize improvements.

Sales Tax Dedication (Napolitano Amendment)

The FAA has issued multiple legal opinions clarifying that revenue from a tax on aviation fuel, regardless of how the tax language is worded or how the levy is applied, must be put back into the aviation system. Despite nearly thirty years of consistent federal interpretation, attempts to re-establish or relitigate Congressional intent continue to occur.

In our reading of the amendment and consultation with the FAA, it has been made abundantly clear that this policy applies to both excise and sales taxes alike. The cumulative fiscal impact that fuel sales taxes can have on aviation are carefully measured. It has been proven that the overtaxing of fuel can lead to declined flight activity. The point of the original law is to maintain a reasonable balance of state and federal taxes.

The revenues collected by the sales tax on aviation fuel is crucial to so many important programs. States like Louisiana rely solely on the sales tax to fund their state aviation system and would be devastated by this proposed policy change. NASAO was pleased to see this effort defeated in the previous Congress and remains firmly opposed.

Passenger Facility Charges

NASAO believes the cap on Passenger Facility Charge (PFC) rates at commercial service airports should be increased from the current $4.50 to $8.50 to account for inflation, that it should be indexed, and that greater flexibility should be provided in the use of these funds.

The State Block Grant Program

In 1996, Congress made the State Block Grant Program permanent but limited the number of states that could participate to ten. Today, ten states are fully responsible for efficiently and effectively administering federal AIP funds through the State Block Grant Program. Based on the successful accomplishments of the ten block grant states for the past eighteen years, this program can and should be expanded by Congress to allow qualified states that request to participate in the program do so. NASAO also urges Congress to authorize the FAA to allow a reasonable amount of AIP funds be used to administer the State Block Grant Program to bring the administrative costs borne by the states more in line with other modal programs of the U.S. Department of Transportation.

NASAO also proposes granting Block Grant States the authority to distribute non-primary grant funds in the same manner as the distribution of State Apportionment funds. Allowing the block grant states to distribute the funds to general aviation airports with viable current needs will ensure the efficient and appropriate expenditure of limited but much needed federal resources. To assure fair treatment, Block Grant States should be required, upon application for eligible project needs, to invest over a given time the amount of funds each airport would have received had the airport used their formula non-primary funds each year.

Federal Contract Tower Program

The Federal Contract Tower Program provides an effective and efficient opportunity for the FAA and airport sponsors to cooperatively fund the operations of air traffic control towers at smaller airports that experience a substantial number of operations (takeoffs and landings) for their size and location. NASAO recognizes the enhanced safety implications of the Federal Contract Tower Program and urges Congress to adopt statutory language in the FAA reauthorization bill that would provide long-term stability to the program by eliminating the annual benefit/cost (b/c) analysis unless an airport's annual traffic drops by more than 25 percent annually, prohibiting FAA from adding non-site specific/indirect costs to b/c's, removing the $2 million cap on AIP eligibility for tower construction, and guaranteeing full funding of the program.

Airport Cooperative Research Program (ACRP)

The studies and reports issued by the Transportation Research Board's Airport Cooperative Research Program have proven to be an invaluable source of authoritative information pertaining to airport planning, design, operations and management for both commercial service and general aviation facilities. Congress is urged to continue its support of the Airport Cooperative Research Program with an annual 15 Million Dollar appropriation so it can continue its pursuit of airport related research and reporting.

Airport Bonds

NASAO supports reducing financing costs by permanently excluding airport private activity bonds from the Alternative Minimum Tax (AMT).