SMALL UAV COALITION
A Partnership for Safety & Innovation

May 13, 2016

Honorable Ann Rest
Minnesota State Senate
Minnesota Senate Building, Room 3209
St. Paul, MN 55155

Rep. Jim Newberger
Minnesota House of Representatives
371 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Re: Small UAV Coalition comments on HF 2749

Dear Senator Rest and Representative Newberger:

The Small UAV Coalition[1] opposes portions of the above-captioned bill that would regulate operations of small unmanned aircraft systems ("sUAS") in the State of Minnesota and make some operations subject to prosecution as a misdemeanor. We understand that this bill is being considered in conference. While we respect the good intentions of the drafters of this bill, in several respects this bill – if adopted as currently written -- would be preempted by Federal law.

General comments

Under the Supremacy Clause of the United States Constitution, Article VI, clause 2, Federal law is the supreme law of the land. As a bedrock principle of constitutional law, a State aviation law is subject to preemption where Congress has vested the FAA with complete and exclusive regulatory authority or where the State law is inconsistent with Federal law or would frustrate the Federal government's objectives and purposes reflected in Federal statutes and regulations.

The FAA has plenary control over the navigable airspace and has promulgated a comprehensive set of safety regulations that leaves no room for supplementation by state or local law. Therefore, it does not matter that there may not be a "conflict" between Federal and local law. In fact, several provisions in HF 2749 would significantly conflict with Federal law. The FAA has proposed a set of rules governing operation of small unmanned aerial systems ("sUAS NPRM"); a final rule is expected in a matter of months. Also, the FAA has granted over 5,100 exemptions for commercial use of small UAS under section 333 of the FAA Modernization and Reform Act of 2012 subject to a comprehensive set of conditions and limitations.

A strong and consistent line of judicial decisions holds that State and local regulations that address matters entrusted to the FAA are preempted. See, e.g., *French v. Pan Am Express*, 869 F.2d 1, 4 (1st Cir. 1989)(Rhode Island law requiring drug testing of pilots preempted)("The intricate web of statutory provisions affords no room for the imposition of state-law criteria vis-

[1] Members of the Small UAV Coalition include AGI, AirMap, Amazon Prime Air, Botlink, Flirtey, Google [X] Project Wing, Intel, Kespry, PrecisionHawk, Strat- Aero, T-Mobile, Verizon Ventures, Walmart, and ZeroTech.

à-vis pilot suitability."); *Abdullah v. American Airlines,* 181 F.3d 363, 367 (3d Cir. 1999)("We hold that federal law establishes the applicable standards of care in the field of air safety, generally, thus preempting the entire field from state and territorial regulation."). The FAA's statutory authority to regulate operator certification and its authority to certificate air carriers derive from the broad authority under the Federal Aviation Act, as supplemented by the UAS-specific provisions of the FAA Modernization and Reform Act of 2012.

Specific comments

We are concerned with three provisions of the bill. First, paragraph (17) of section 37 of the bill would make it a misdemeanor to "knowingly operate . . . within one mile of a helicopter being operated by [a law enforcement agency, fire department, or emergency medical service provider]." This provision as written suggests that it would be a misdemeanor to operate within one mile of a helicopter even outside of an established "emergency zone." These operations would occur within the navigable airspace, subject to the exclusive jurisdiction of the FAA. The FAA has authority to establish an emergency zone pursuant to a Temporary Flight Restriction (TFR) or Notice to Airmen (NOTAM), which would apply to all aircraft operators (including non-medical helicopters) and not single out UAS operators. Also, because this is a criminal provision, it should not apply to a person unless that person knowingly *interferes* with emergency response activities. Moreover, it should not be presumed that a one-mile radius is required in all settings, with no accommodation for shielding or barriers between the emergency zone and the UAS operation. In the FAA's sUAS NPRM (proposed 14 C.F.R. 107.37) FAA would require UAS operators to yield to manned aircraft; FAA exemptions similarly require operators to yield to manned aircraft ("The UA must remain clear and give way to all manned aviation operations and activities at all times") and also generally require a small UAS operator to remain at least 500 feet horizontally from any person or structure not participating in the UAS operation, except where there is a barrier or structure. Thus, paragraph (17) both intrudes in a field reserved by Congress to the FAA and also conflicts with FAA regulations.

Section 40 of the bill sets up a State permitting process, imposes a permit fee (with proceeds apparently that would cross-subsidize airports), establishes qualifications for UAS operators and would develop an aeronautical knowledge test for the State to administer. Any State or local qualification requirement for a UAV operation or operator (company or pilot) is plainly preempted by Federal law, under an unbroken series of precedents and as recently confirmed in the FAA's State and Local Regulation of Unmanned Aircraft Systems (UAS) Fact Sheet dated December 17, 2015. The FAA's sUAS proposed rule (revisions to 14 C.F.R. part 61 and proposed subpart C of part 107) imposes an aeronautical knowledge test and an unmanned aircraft operator certification process. In any event, there is no reason for a State to duplicate this Federal process.

Paragraph 37 (14) of the bill would make it a misdemeanor to "drop[] any object . . . without the prior written consent of the commissioner of transportation. . . ." This consent would be required even where the property owner where the object may land consents. This provision also impermissibly intrudes on the FAA's regulation of UAS operations. The FAA's sUAS NPRM, at proposed 14 C.F.R. 107.23(b), prohibits a UAS operator from allowing an object to be dropped

from a UAV "if such action endangers the life or property of another." Thus, the bill conflicts with the FAA's proposed rule. Because the FAA regulates the operations of small UAS in these circumstances, a State may not do so.

In sum, the current and forthcoming Federal regulatory framework is and will be sufficient to address the apparent concerns underlying these provisions. An additional, as well as varying, layer of rules, no matter how well-intentioned, will serve only as a deterrent to an industry that has enormous potential to generate local revenues, create jobs, drive innovation, and reduce the risk of accidents, as well as produce substantial energy savings and environmental benefits. Conflicting or duplicative Federal and State laws and regulations are also a disservice to citizens and consumers who aim to operate within the confines of the law.

For these reasons, we urge you not to pass this bill without removing all provisions preempted by Federal law.

Thank you for your consideration.

Sincerely,

Gregory S. Walden
Aviation Counsel

Copy to:

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