

MAINE STATE LEGISLATURE

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ONE - HUNDRETH LEGISLATURE

Legislative Document

No. 418

S. P. 172

In Senate, January 18, 1961

Taken from the Table by Senator Farris of Kennebec. Referred to Committee on Legal Affairs. Sent down for concurrence and ordered printed.

CHESTER T. WINSLOW, Secretary

Presented by Senator Farris of Kennebec.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-ONE

AN ACT Relating to Control of Structures Near Airports.

Be it enacted by the People of the State of Maine, as follows:

R. S., c. 24-A, additional. The Revised Statutes are amended by adding a new chapter 24-A, to read as follows:

Chapter 24-A.

Structures Near Airports.

Sec. 1. Declaration of purpose. The safety, welfare and protection of persons and property in the air and on the ground and the maintenance of electronic communications within this State require that the navigable airspace overlying the State and the approaches to and the air traffic pattern area of any approved airport in this State be maintained in a reasonably unobstructed condition for the safe flight of aircraft. To that end, the location, identification and height of structures and the use of land thereto related, is regulated.

Sec. 2. Definitions. As used in this chapter, unless the context clearly requires otherwise:

I. Approved airport. "Approved airport" means any area of land or water, or both, designed and set aside for the taking off and landing of aircraft and utilized or to be utilized in the interest of the public for such purposes and approved as such by the commission.

II. Commission. "Commission" means the Maine Aeronautics Commission.

III. Contested case. "Contested case" means a proceeding before the commission in which the legal rights, duties or privileges of specific parties are

required by law or constitutional right to be determined after a commission hearing. It does not include informal meetings held by consent of the commission and all interested parties.

IV. Permit. "Permit" means a permit issued by the commission under this chapter.

V. Person. "Person" means any individual, firm, trustee, receiver, partnership, association, business or nonprofit corporation, religious corporation, municipal corporation or body politic.

VI. Structure. "Structure" means any object constructed or installed by man.

Sec. 3. Limitation on structure. Until a permit therefor has been issued by the commission, no person shall erect, add to the height of or replace any structure:

I. Near airports. Within an area lying 1,500 feet on either side of the extended center line of a runway or landing strip for a distance of 2 miles from the nearest boundary of any approved airport which will result in a structure extending to a height of more than 150 feet above the level of such runway or landing strip; nor, within that portion of such areas that is within a distance of 3,000 feet from such nearest boundary, that will result in a structure extending higher than a height above the level of such runway or landing strip determined by the ratio of one foot vertically to every 20 feet horizontally measured from such nearest boundary.

II. Height. At any other place within the State which will result in a structure extending more than 500 feet above the highest point of land within a one-mile radius from such structure.

Sec. 4. Permits. No permit shall be issued to erect, add to or replace any structure which will extend more than 1,000 feet above the highest point of land within a one-mile radius from the location of the structure, except as otherwise provided, nor shall any person erect, add to or replace any structure for which a permit is required that exceeds the height allowed by the permit.

The commission may issue a permit to erect or add to a structure which will extend to a height of more than 1,000 feet above the highest point of land within a one-mile radius from the location of the structure proposed to be erected or added to if such proposed structure will not be higher than the height of the highest structure in existence on the effective date of this chapter which is within a distance of one mile from location of the structure proposed to be erected or added to.

In any instance where permission of the Federal Government, or some agency thereof, is required for the erection of an electronic structure the commission shall not issue a permit for the erection thereof until federal permission is granted.

Sec. 5. Ownership. It is not necessary that ownership of, option for or other possessory right to a specific location site be held by the applicant before

application for a permit is filed with the commission but any permit granted by the commission shall, among other things, state the location, either specifically or within a definite area, and also the maximum height allowed for the structure.

Sec. 6. Conditions. Every permit granted shall specify what if any, obstruction markers, markings, lighting or other visual or aural identification shall be installed on or in the vicinity of the structure. Such identification characteristics required shall conform to federal laws and regulations where applicable; however, a higher standard of identification may be required under this chapter.

Sec. 7. Investigation. Upon receiving an application for a permit the commission, any member thereof, the director, deputy director or any officer or employee of the commission designated by it shall make such investigation as may be necessary to process the application properly under this chapter.

If, upon such investigation, the commission determines that a permit should not be issued or that the height or location should be other than as applied for, the commission shall thereupon notify the applicant in writing of its determination. Such notification may be served by delivering it personally to the applicant or by sending it by first class mail to the applicant at the address specified in the application. Such determination shall become final 30 days after notification thereof is served unless the applicant, within such 30-day period, requests in writing that a hearing be held before the commission with reference to the application. In any contested case, all parties shall be afforded an opportunity for hearing after reasonable notice. All such hearings shall be open to the public. Any person interested may appear and be heard, either in person or by counsel, and may present such evidence and testimony as may be pertinent.

Sec. 8. Hearing and procedure. The commission, any member thereof, the director, deputy director or any officer or employee of the commission designated by it shall have the power to hold hearings concerning matters covered by this chapter and the rules, regulations and orders of the commission. Hearings shall be open to the public. Each member of the commission, the director, deputy director and every officer or employee of the commission designated by it to hold hearings shall have the power to administer oaths and affirmations, certify to all official acts, issue subpoenas and order the attendance and testimony of witnesses and the production of papers, books and documents. In case of the failure of any person to comply with any subpoena or order issued under the authority of this section, the commission or its authorized representative may invoke the aid of any court of this State of general jurisdiction. The court may thereupon order such person to comply with the requirements of the subpoena or order or to give evidence touching the matter in question. Failure to obey the order of the court may be punished by the court as a contempt thereof.

Every decision and order adverse to a party to the proceeding, rendered by an agency in a contested case, shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. Parties to the proceeding shall be notified of the decision and order in person or by mail. A copy of the decision and order accompanying findings

and conclusions shall be delivered or mailed upon request to each party or his attorney of record.

Sec. 9. Judicial review. Any person aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form, is entitled to judicial review.

Proceedings for review shall be instituted by filing a petition in the Superior Court within 30 days after the service of the final decision of the commission. Copies of the petition shall be served upon the commission and all other parties of record. The court, in its discretion, may permit other interested persons to intervene.

The filing of the petition shall not stay enforcement of the commission's decision; but the commission may do so, or the reviewing court may order a stay upon such terms as it deems proper.

Within 30 days after service of the petition, or within such further time as the court may allow, the commission shall transmit to the reviewing court the original or certified copy of the entire record of the proceeding under review; but, by stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

If, before the date set for hearing, application is made to the court for leave to present additional evidence to the issues in the case, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the commission, the court may order the additional evidence to be taken before the commission upon such conditions as the court deems proper. The commission may modify its findings and decision by reason of the additional evidence and shall file with the reviewing court, to become a part of the record, the additional evidence, together with any modifications or new findings or decision.

The review shall be conducted by the court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the commission, not shown in the record, testimony thereon may be taken in the court. The court shall, upon request, hear oral argument and receive written briefs.

The court may affirm the decision of the commission or remand the case for further proceedings, or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the administrative findings, inferences, conclusions or decisions are: In violation of constitutional provisions; or in excess of the statutory authority or jurisdiction of the commission; or made upon unlawful procedure; or affected by other error of law; or unsupported by competent, material and substantial evidence in view of the entire record as submitted; or arbitrary or capricious.

An aggrieved party may secure a review of any final judgment of the Superior Court by appeal to the Supreme Judicial Court sitting as a law court.

Such appeal shall be taken in the manner provided by law for appeals from the Superior Court in other civil actions.

Sec. 10. Orders. In any instance where the commission learns or has reasonable grounds to believe that any person is erecting or adding to a structure that would be subject to this chapter but concerning which no application for a permit has been filed, it may on its own motion issue an order to such person to appear before the commission and show cause why an application for a permit to erect or add to the structure need not be obtained. A date for a hearing thereon shall be set out in such order.

Sec. 11. Action to restrain. In addition to any other remedy, the commission may institute in any court of competent jurisdiction an action to prevent, restrain, correct or abate any violation of this chapter or of any rules, regulations or orders of the commission issued pursuant thereto. The court may grant such relief, by way of injunction, which may be mandatory, or otherwise, as may be necessary under this chapter and the rules, regulations and orders of the commission issued pursuant thereto.

Sec. 12. Rules and regulations. The commission shall adopt and promulgate, and may from time to time amend or rescind, rules and regulations for the administration of this chapter, and shall prescribe and furnish forms necessary for the administration hereof.

Sec. 13. Filing and taking effect of rules. The commission shall file forthwith in the office of the Secretary of State a certified copy of each rule adopted by it under this chapter. The Secretary of State shall keep a permanent register of such rules open to public inspection.

The commission shall file forthwith in the office of the Attorney General a certified copy of each rule hereafter adopted by it.

No rule shall become effective until approved as to form and legality by the office of the Attorney General. Such approval shall be presumed if that office takes no action within a period of 30 days after the proposed rule or amendment is submitted for such approval.

Except as set forth in the preceding paragraph, each rule hereafter adopted shall become effective upon filing, unless a later date is required by statute or specified in the rule.

Sec. 14. Penalties. Each violation of this chapter or of any regulation, order or ruling promulgated or made thereunder shall constitute a misdemeanor and shall be punishable by a fine of not less than \$200 nor more than \$1,000. When an appeal is taken from any such order, no fine shall be imposed for that period of time during which said appeal is pending.

Sec. 15. Limitations. This chapter shall not apply in any instance where the proposed erection, addition to or replacement of a structure is located in an area for which airport approach regulations are effective under local airport zoning.

This chapter shall not be construed to require any change in height or location of any structure in existence or in the process of construction on the effective date of this chapter.

STATEMENT OF FACTS

This act, providing for regulation by the State of the height, location and certain other characteristics of man-made structures in order to prevent obstruction of airport approaches and airplanes, is suggested state legislation by the Council of State Governments for 1961.

The authority granted would be exercised by the State only to supplement zoning by local authorities exercised under state airport zoning enabling legislation. The authority would be exercised through a permit system. The commission administering the act is given authority to seek injunctive or other appropriate relief in the courts to prevent or correct violations of provisions of the act or rules and regulations issued pursuant to it.