

MAINE STATE LEGISLATURE

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N I N E T I E T H L E G I S L A T U R E

Legislative Document

No. 1029

H. P. 1745

House of Representatives, March 20, 1941.

Reported by Mr. Payson from Committee on Judiciary and laid on table to be printed under joint rules.

HARVEY R. PEASE, Clerk.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY-ONE

AN ACT Regulating Airport Zoning.

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

Sec. 1. Definitions. As used in this act, unless the context otherwise requires :

(1) "Airport" means any area of land or water designed for the landing and taking-off of aircraft and utilized or to be utilized by the public as a point of arrival or departure by air.

(2) "Airport hazard" means any overhead power line which interferes with radio communication between a publicly-owned airport and aircraft approaching or leaving same, or any structure or tree which obstructs the aerial approaches of such an airport or is otherwise hazardous to its use for landing or taking-off.

(3) "Political subdivision" means any municipality, city, county, village, plantation or town.

(4) "Person" means any individual, firm, copartnership, corporation, company, association, joint stock association or body politic, and includes any trustee, receiver, assignee, or other similar representative thereof.

(5) "Structure" means any object constructed or installed by man, including, but without limitation, buildings, towers, smoke-stacks, and overhead transmission lines.

(6) "Tree" means any object of natural growth.

Sec. 2. Airport hazards not in public interest. It is hereby found and declared that an airport hazard endangers the lives and property of users of the airport and of occupants of land in its vicinity, and also, if of the obstruction type, in effect reduces the size of the area available for the landing, taking-off and maneuvering of aircraft, thus tending to destroy or impair the utility of the airport and the public investment therein, and is therefore not in the interest of the public health, public safety, or general welfare.

Sec. 3. Adoption of airport zoning regulations. (1) Every political subdivision may adopt, administer, and enforce, under the police power and in the manner and upon the conditions hereinafter prescribed, airport zoning regulations, which regulations shall divide the area surrounding any airport within the jurisdiction of said political subdivision into zones, and, within such zones, specify the land uses permitted, and regulate and restrict the height to which structures and trees may be erected or allowed to grow. In adopting or revising any such zoning regulations, the political subdivision shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the nature of the terrain, the height of existing structures and trees above the level of the airport, the possibility of lowering or removing existing obstructions, and the views of the agency of the federal government charged with the fostering of civil aeronautics, as to the aerial approaches necessary to safe flying operations at the airport.

(2) In the event that a political subdivision has adopted, or hereafter adopts, a general zoning ordinance regulating, among other things, the height of buildings, any airport zoning regulations adopted for the same area or portion thereof under this act, may be incorporated in and made a part of such general zoning regulations, and be administered and enforced in connection therewith, but such general zoning regulations shall not limit the effectiveness or scope of the regulations adopted under this act.

(3) Any 2 or more political subdivisions may agree, by ordinance duly adopted, to create a joint board and delegate to said board the powers herein conferred to promulgate, administer and enforce airport zoning regu-

lations to protect the aerial approaches of any airport located within the corporate limits of any one or more of said political subdivisions. Such joint boards shall have as members 2 representatives appointed by the chief executive officer of each political subdivision participating in the creation of said board and a chairman elected by a majority of the members so appointed.

(4) The jurisdiction of each political subdivision is hereby extended to the promulgation, administering and enforcement of airport zoning regulations to protect the approaches of any airport which is owned by said political subdivision but located outside the corporate limits of said political subdivision. In case of conflict with any airport zoning or other regulations promulgated by any other political subdivision, the regulations adopted pursuant to this section shall prevail.

(5) All airport zoning regulations adopted under this act shall be reasonable, and none shall require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations when adopted or amended, or otherwise interfere with the continuance of any non-conforming use, except as provided in section 4 (1).

Sec. 4. Permits and variances. (1) Permits. Where advisable to facilitate the enforcement of zoning regulations adopted pursuant to this act, a system may be established by any political subdivision for the granting of permits to establish or construct new structures and other uses and to replace existing structures and other uses or make substantial changes therein or substantial repairs thereof. In any event, before any non-conforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted, a permit must be secured from the administrative agency authorized to administer and enforce the regulations, authorizing such replacement, change or repair. No such permit shall be granted that would allow the structure or tree in question to be made higher or become a greater hazard to air navigation than it was when the applicable regulation was adopted; and whenever the administrative agency determines that a non-conforming structure or tree has been abandoned or more than 80% torn down, destroyed, deteriorated, or decayed: (a) no permit shall be granted that would allow said structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations; and (b) whether application is made for a permit under this paragraph or not, the said agency may by appropriate action compel the owner of the non-conforming structure or tree, at his own expense, to lower, remove, reconstruct, or equip such object as may be

necessary to conform to the regulations or, if the owner of the non-conforming structure or tree shall neglect or refuse to comply with such order for 10 days after notice thereof, the said agency may proceed to have the object so lowered, removed, reconstructed, or equipped and assess the cost and expense thereof upon the object or the land whereon it is or was located. Unless such an assessment is paid within 90 days from the service of notice thereof on the agent or owner of such object or land, the sum shall bear interest at the rate of 10% per annum until paid, and shall be collected in the same manner as are general taxes. Except as indicated, all applications for permits for replacement, change or repair of non-conforming uses shall be granted.

(2) **Variances.** Any person desiring to erect any structures, or increase the height of any structure, or permit the growth of any tree, or otherwise use his property, in violation of airport zoning regulations adopted under this act, may apply to the board of appeals as provided in section 5 (3), for a variance from the zoning regulations in question. Such variances shall be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but do substantial justice and be in accordance with the spirit of the regulations and this act.

(3) **Obstruction marking and lighting.** In granting any permit or variance under this section, the administrative agency or board of appeals may, if it deems such action advisable to effectuate the purposes of this act and reasonable in the circumstances, so condition such permit or variance as to require the owner of the structure or tree in question to permit the political subdivision, at its own expense, to install, operate, and maintain suitable obstruction markers and obstruction lights thereon.

Sec. 5. Procedure. (1) Adoption of zoning regulations. No airport zoning regulations shall be adopted, amended, or changed under this act except by action of the legislative body of the political subdivision in question, or the joint board provided for in section 3 (3), after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least 15 days' notice of the hearing shall be published in an official paper, or a paper of general circulation, in the political subdivision or subdivisions in which the airport is located.

(2) **Administration of zoning regulations; administrative agency.** The legislative body of any political subdivision adopting airport zoning regula-

tions under this act may delegate the duty of administering and enforcing such regulations to any administrative agency under its jurisdiction, or may create a new administrative agency to perform such duty, but such administrative agency shall not be or include any member of the board of appeals. The duties of such administrative agency shall include that of hearing and deciding all permits under section 4 (1), but such agency shall not have or exercise any of the powers delegated to the board of appeals.

(3) Administration of airport zoning regulations; board of appeals. Airport zoning regulations adopted under this act shall provide for a board of appeals to have and exercise the following powers:

(a) To hear and decide appeals from any order, requirement, decision, or determination made by the administrative agency in the enforcement of this act or of any ordinance adopted pursuant thereto:

(b) To hear and decide special exceptions to the terms of the ordinance upon which such board may be required to pass under such ordinance;

(c) To hear and decide specific variances under section 4 (2). Where a zoning board of appeals or adjustment already exists, it shall be appointed as the board of appeals. Otherwise, the board of appeals shall consist of 5 members, each to be appointed for a term of 3 years and to be removable for cause by the appointing authority upon written charges and after public hearing. Provided, however, that in the 1st instance one member shall be appointed for a term of 3 years, 2 for a term of 2 years, and 2 for a term of 1 year. Thereafter each member appointed shall serve for a term of 3 years or until his successor is duly appointed and qualified.

The board shall adopt rules in accordance with the provisions of any ordinance adopted under this act. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall immediately be filed in the office of the board and shall be a public record.

Appeals to the board may be taken by any person aggrieved, or by any officer, department, board, or bureau of the political subdivision affected, by any decision of the administrative agency. An appeal must be taken within

a reasonable time, as provided by the rules of the board, by filing with the agency from which the appeal is taken and with the board, a notice of appeal specifying the grounds thereof. The agency from which the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the agency from which the appeal is taken certifies to the board, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would, in its opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board or by a court of record on application on notice to the agency from which the appeal is taken and on due cause shown.

The board shall fix a reasonable time for the hearing of the appeal, give public notice and due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

The board may, in conformity with the provisions of this act, reverse or affirm, wholly or partly, or modify, the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the administrative agency from which the appeal is taken.

The concurring vote of a majority of the members of the board shall be sufficient to reverse any order, requirement, decision, or determination of the administrative agency, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance, or to effect any variation in such ordinance.

Sec. 6. Judicial review. (1) Any person aggrieved by any decision of the board of appeals, or any taxpayer, or any officer, department, board, or bureau of the political subdivision, may appeal to the superior court in the manner provided for appeal on estimate of damages for town ways in section 20 of chapter 27 of the revised statutes.

Costs shall not be allowed against the board of appeals unless it appears to the court that it acted with gross negligence, in bad faith, or with malice, in making the decision appealed from.

Sec. 7. Enforcement and remedies. Each violation of this act or of any regulations, order, or ruling promulgated or made pursuant to this act, shall constitute a misdemeanor and shall be punishable by a fine of not more than \$300 or imprisonment for not more than 90 days, or by both such fine and imprisonment, and each day a violation continues to exist shall constitute a separate offense. In addition, the political subdivision within which the property is located may institute in any court of competent jurisdiction, an action to prevent, restrain, correct or abate any violation of this act, or of airport zoning regulations adopted under this act, or of any order or ruling made in connection with their administration or enforcement, and the court shall adjudge to the plaintiff such relief, by way of injunction (which may be mandatory) or otherwise, as may be proper under all the facts and circumstances of the case, in order fully to effectuate the purposes of this act and of the regulations adopted and orders and rulings made pursuant thereto.

Sec. 8. Acquisition of air rights. In any case in which: (1) it is desired to remove, lower, or otherwise terminate a non-conforming use; or (2) the approach protection necessary cannot, because of constitutional limitations, be provided by airport zoning regulations under this act; or (3) it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations, the political subdivision within which the property or non-conforming use is located or the political subdivision owning the airport or served by it may acquire, by purchase, grant, or condemnation in the manner provided by the law under which political subdivisions are authorized to acquire real property for public purposes, such an air right, easement, or other estate or interest in the property or non-conforming use in question as may be necessary to effectuate the purpose of this act.

Sec. 9. Severability. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 10. Short title. This act shall be known and may be cited as the "Model Airport Zoning Act."

Sec. 11. Repeal. All acts or parts of acts which are inconsistent with the provisions of this act are hereby repealed.