

MAINE STATE LEGISLATURE

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ACTS AND RESOLVES

AS PASSED BY THE

Ninety-fourth Legislature

OF THE

STATE OF MAINE

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PUBLIC LAWS
OF THE
STATE OF MAINE

As Passed by the Ninety-fourth Legislature

1949

tion to be made on all mutuel contributions exceeding a sum equal to the next lowest multiple of 5. Said maximum shall include the ~~3½%~~ 5% tax hereinafter prescribed. A sum equal to ½% of such total contributions shall be paid to the treasurer of state to be credited to the "stipend" fund provided by section 16 of chapter 27 as amended.'

Sec. 7. R. S., c. 77, § 16, amended. Section 16 of chapter 77 of the revised statutes, as amended by section 26 of chapter 297 of the public laws of 1945, is hereby further amended to read as follows:

'Sec. 16. Tax on pari mutuel pools. Each person, association or corporation licensed to conduct a race or race meet under the provisions of this chapter shall pay to the treasurer of state, to be credited to the general fund of the state, a sum equal to ~~3½%~~ 5% of the total contributions to all pari mutuel pools conducted or made at any race or race meet licensed under the provisions of this chapter.'

Emergency clause. In view of the emergency cited in the preamble, this act shall take effect when approved.

Effective May 7, 1949

Chapter 389

AN ACT Relating to Aviation.

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

R. S., c. 21, repealed and replaced. Chapter 21 of the revised statutes, as amended by chapter 233 of the public laws of 1945 and by chapter 397 of the public laws of 1947, is hereby repealed and the following enacted in place thereof:

'CHAPTER 21

AVIATION.

Sec. 1. Title of chapter. This chapter shall be known and may be cited as the "Maine Aeronautics Act".

Sec. 2. Declaration of purpose. It is hereby declared that the purpose of this chapter is to further the public interest by:

I. The revision of existing statutes relative to aviation in order to centralize all aeronautical activities in a single state agency authorized to participate in any activity essential to progress in aeronautics;

II. Making available for the development of aeronautics the funds now received for the registration of airmen, aircraft and landing areas, and providing new sources of revenue;

III. Effecting a uniformity in the regulations pertaining to the operation of aircraft by authorizing the adoption of uniform regulations consistent with federal regulations and making non-compliance with federal regulations a violation of the state law, thereby enabling the law enforcement agencies of the state to enforce the laws regulating the operation of aircraft;

IV. Providing for the protection and promotion of the public interest and safety in connection with the operation of aircraft.

Sec. 3. Definitions. As used in this chapter, unless the context clearly requires otherwise:

“Administration” means the civil aeronautics administration of the department of commerce of the United States, or any federal agency succeeding the civil aeronautics administration.

“Aeronautics” means the act or practice of the art and science of transportation by aircraft, and operation, construction, repair or maintenance of aircraft, airports, landing fields, air navigation facilities or air instruction.

“Air carrier” means any person who undertakes, whether directly or indirectly or by a lease or any other arrangement, to engage in scheduled intrastate air transportation which at any time or in any manner is not subject to the interstate scheduled airline rules of the civil air regulations.

“Air commerce” means the carriage by aircraft of persons or property for compensation or hire, or the operation or navigation of aircraft in the conduct or furtherance of a business or vocation.

“Aircraft” means any contrivance now known or hereafter invented, used or designed for navigation of or flight in the air, except a parachute or other contrivance designed for such navigation but used primarily as safety equipment.

“Airman” means any individual who engages, as the person in command or as pilot, mechanic or member of the crew, in the navigation of aircraft while under way; and any individual who is directly in charge of the inspection, maintenance, overhauling or repair of aircraft, aircraft engines, propellers or appliances.

“Air navigation facility” means any facility used in, available for use in, or designed for use in, aid of air navigation, including landing areas, lights, any apparatus or equipment for disseminating weather information, for

signaling, for radio-directional finding, or for radio or other electrical communication, and any other structure or mechanism having a similar purpose for guiding or controlling flight in the air or the landing and take-off of aircraft.

“Airport” means any area of land or water which is used, or intended for use, for the landing and take-off of aircraft, any appurtenant areas which are used or intended for use, for airport buildings, other airport facilities, rights of way, together with all airport buildings, wharfs and facilities thereon.

“Airport hazard” means any structure or tree which obstructs the aerial approaches of a publicly owned airport.

“Air transportation” means the transportation of persons, property or mail by aircraft.

“Certificate, airworthiness” is a document issued by the administration to the registered owner of an aircraft, certifying that the aircraft is airworthy when operated and maintained in accordance with the terms of said certificate.

“Certificate, experimental” is a document issued by the administration to the registered owner of an aircraft, certifying that the aircraft is an experimental aircraft and specifying such operation limitations as are deemed necessary by the authority.

“Certificate of competency” is a document issued by the administration to airmen specifying the kind of aeronautical activity for which they are deemed competent.

“Certificate, registration (federal)” is a document, together with an identification mark, issued by the administration to the owner of an aircraft for purposes of identifying the aircraft and determining its nationality.

“Certificate, registration (state)” is a document issued by the commission for airmen, aircraft, landing areas and air carriers, specifying the aeronautical activities in which the holder thereof may engage.

“Civil aircraft” means any aircraft other than a public aircraft.

“Civil air regulations” means the regulations of the civil aeronautics administration issued under the authority of the “Civil Aeronautics Act of 1938,” as amended, or any federal regulations superseding those issued under the authority of that act.

“Commission” means the Maine aeronautics commission created by this chapter.

"Director" means the Maine director of aeronautics authorized by this chapter.

"Landing area" means any locality, either of land or water, including airports and intermediate landing fields, which is used, or intended to be used, for the landing and take-off of aircraft, whether or not facilities are provided for the shelter, servicing or repair of aircraft, or for receiving or discharging passengers or cargo.

"Navigable air space" means air space above the minimum altitudes of flight prescribed by the civil air regulations.

"Navigation of aircraft" or "navigate aircraft" includes the piloting of aircraft.

"Operation of aircraft" or "operate aircraft" means the use of aircraft, for the purpose of air navigation and includes the navigation of aircraft. Any person who causes or authorizes the operation of aircraft, whether with or without the right of legal control (in the capacity of owner, lessee or otherwise) of the aircraft, shall be deemed to be engaged in the operation of aircraft within the meaning of this chapter.

"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.

"Private landing area" means any landing area other than a public landing area.

"Public aircraft" means an aircraft used exclusively in the service of any government or of any political subdivision thereof, including the government of any state, territory or possession of the United States, or the District of Columbia, but not including any government-owned aircraft engaged in carrying persons or property for commercial purposes.

"Public landing area" means a landing area owned, occupied or leased by the federal government, the state, counties or towns. In the case of landing areas on the inland waters, ownership, use or lease of the ramp or other beaching and terminal facilities will be considered as ownership, occupation or lease of the landing as a private area.

"Resident" means a person who has resided and made his home not less than 6 months next prior to his application for registration continuously within the state.

"Structure" means any object constructed or installed by man, including such objects although regulated or licensed by other provisions of law.

Sec. 4. Aeronautics commission; appointment; terms. The aeronautics commission shall consist of 5 persons who shall be residents of the state and who shall be appointed by the governor, with the advice and consent of the council. One member of the commission shall be a commercial airport operator, 1 member shall be regularly employed in the aviation trades and 3 members shall be in no way connected with the aviation industry. Each member shall serve for a term of 3 years and until his successor is duly appointed and qualified. Members to fill vacancies shall be appointed for the unexpired term and shall serve until their successors are appointed and qualified. The commission shall organize annually by electing from its membership a chairman. Each member of the commission shall receive as compensation for each day actually spent on the work of the commission the sum of \$20 and his actual and necessary expenses incurred in the performance of duties pertaining to his office.

Sec. 5. Duties of the commission. The commission shall administer the laws relating to aeronautics and shall make such rules and regulations concerning air traffic, not inconsistent with federal regulations covering aeronautics, as may be necessary to promote public safety and the best interests of aviation in the state. The commission shall advance the interest of aeronautics within the state by studying aviation needs, assisting and advising authorized representatives of political subdivisions within the state in the development of aeronautics and by cooperating and coordinating with such other agencies whether local, state, regional or federal, as may be working toward the development of aeronautics within the state.

The commission shall supervise and control all state airports and shall make such rules and regulations concerning the use of the said airports and their facilities as they deem necessary for the efficient management thereof and the development of aviation.

The commission shall have the care and supervision of such planes as may be owned by the state for the use of its departments and agencies and shall provide adequate hangar facilities and be responsible for the maintenance, repair, upkeep and operation of such planes, and for that purpose the governor and council may authorize the advance of working capital from the unappropriated surplus of the general fund. The commission is authorized to charge said departments and agencies requisitioning planes amounts sufficient to reimburse the commission for operating expense of said planes. Planes owned or operated by the department of inland fisheries and game, or the forestry department, are exempt and excluded from the provisions of this paragraph.

Sec. 6. Aeronautical director. The commission may appoint an aeronautical director to serve at its pleasure. The director shall be a licensed

pilot. The director shall act as executive officer of the commission and under its direction shall administer the aeronautical laws and enforce the rules and regulations of the commission. The salary of the director shall be fixed by the commission, subject to the approval of the governor and council.

Sec. 7. Powers and duties of director. The director shall be the executive officer of the commission, and under the supervision of the commission, shall administer the provisions of this chapter and all the laws of the state relative to aeronautics. The director, with the approval of the commission, and within the limits of the appropriation, may hire field and office assistants necessary for the proper execution of his duties. The director shall exercise general supervision, control and direction on behalf of the state over all matters pertaining to the location, construction and maintenance of all air navigation facilities now or hereafter built or maintained, either in whole or in part, with money appropriated from the state treasury. He may recommend to the governor and council that the state acquire land, easements and rights of way for the establishment of air navigation facilities. Such land, easements and rights of way may be acquired by purchase, grant or condemnation in the manner provided by law by which the governor and council are authorized to acquire real property for public purposes, and property so acquired may be conveyed to a town for use in connection with the establishment of air navigation facilities for such a consideration as the governor and council may determine.

Sec. 8. State airways system. The state airways system is hereby declared to consist of all air navigation facilities available for public use now existing or hereafter established, whether natural or man-made, except those under the jurisdiction of the federal government. It is hereby declared that jurisdiction over the state airways system is vested in the commission and that expenditure of state funds in the interest of safety on any or all of the facilities of this system serves a useful public purpose and satisfies a public need. The commission shall prescribe the terms and conditions of the activities authorized for each such facility.

Sec. 9. Declaration of public uses. All lands acquired, owned, leased, controlled or occupied by such cities, towns or counties for the purpose or purposes hereof shall be and are declared to be acquired, owned, leased, controlled or occupied for public uses.

Sec. 10. Federal aid. Cities and towns separately and cities or towns jointly with one another or with counties are authorized to accept, establish, construct, own, lease, control, equip, improve, maintain and operate airports and landing fields for the use of aircraft within their boundaries

or without the limits of such cities and towns with the consent of the city or town where said airport or landing field is to be located, and may use for such purpose or purposes any land suitable therefor that is now or may at any time hereafter be owned or controlled by any city, town or county.

Cities and towns separately and cities and towns jointly with one another or with counties, by and through their municipal officers or their duly constituted representatives, are authorized to accept federal funds and to do all things necessary or incidental to the acceptance of said federal funds.

Airports owned and operated by any city or town are declared to be governmental agencies and entitled to the same immunities as an agency of the state.

Sec. 11. Property acquisition.

I. Land. Private property needed by a city, town, county or authorized state agency for an airport or landing field or for the expansion of an airport or landing field may be acquired by gift, purchase, lease or other means. As a matter of public exigency, a city or town may take land for use as an airport or landing field whether such land is within or without its corporate limits and may alter, extend or discontinue such use. All proceedings including the assessment of damages and appeal therefrom shall be the same as is provided by law for laying out, altering and discontinuing town ways. No land outside the corporate limits of a city or town shall be laid out by it for such use unless the consent of the municipal officers of the town or city in which such land is located has first been obtained. As a matter of public exigency a county or authorized state agency may take land for use as an airport or landing field and may alter, extend or discontinue such use. In the case of a county or authorized state agency, all proceedings including assessment of damages, appeal and the taking of land in two or more counties shall be the same as provided by law for laying out, altering and discontinuing highways by the county commissioners. No property rights, or easements, of a public utility shall be taken herefor without the approval of the public utilities commission after hearing and upon such notice to the public utility affected thereby as said commission may order.

II. Air rights. The provisions hereof shall apply to the acquisition of air rights and easements over private property adjoining such airports and landing fields in order to provide unobstructed air space and safe approaches for the landing and taking off of aircraft using such airports and landing fields, to place and maintain suitable marks and lights for the safe operation thereof, and to prevent any use of such adjoining land as would hinder the proper development or use of such airports and land-

ing fields. Cities and towns may enact zoning ordinances applicable to such airports, landing fields and adjoining lands situated within the limits of such cities and towns.

Sec. 12. State registration certificates. The commission is empowered to issue registration certificates for airmen, aircraft, landing areas and air carriers and establish the requirements for the terms, conditions and limitations of such certificates. A state registration certificate shall not be effective until in actual possession of the applicant. A state registration certificate shall remain in force until the 1st day of April next following the date of its issue, or until sooner suspended, revoked or cancelled. A state registration certificate of aircraft shall not be transferable, unless the holder shall in writing report the transfer to the commission and shall properly execute the certificate as to transfer of title and surrender it to the transferee.

I. Airmen, riggers. No civil aircraft shall be flown in the state unless such aircraft and its pilot are properly licensed under federal law, nor unless they have an unrevoked and unsuspended certificate of registration as hereinafter provided. All aircraft pilots and all parachute riggers resident in the state and operating in the state shall register with the commission and pay a fee of \$1.

II. Aircraft. All aircraft owners resident in the state and operating planes in the state shall register such aircraft with the commission and pay a fee of \$1 for each registration.

III. Airports. Except as may be provided hereinafter, the commission is authorized to provide for the licensing of airports including private landing areas and the annual renewal of such licenses. A fee not to exceed \$5 for each original license and not to exceed \$5 for each renewal thereof may be charged. Licenses or renewals thereof shall be issued by the commission if it is satisfied that the airport conforms to such minimum standards of safety as may be determined by the commission. Licenses and renewals thereof may be issued subject to any reasonable conditions that the commission may deem necessary to effectuate the purposes of this section. Upon determination by the commission that a license shall not be granted for an airport, notice of such determination shall be duly forwarded to the applicant for the license with reasons for such refusal set forth and advising the applicant of an opportunity for hearing. The commission is likewise empowered to revoke any license or renewal thereof, with notice and opportunity for hearing as provided for refusal to issue a license or renewal thereof when it shall reasonably determine that there has been an abandonment of the airport or that

there has been a failure to comply with the conditions of the license or renewal thereof or that because of a change of physical or legal conditions or circumstances, the airport has become unsafe or unusable for the aeronautical purposes for which the license or renewal was issued. It shall be unlawful for any municipality, officer or employee thereof, or any person, to operate an airport without an appropriate license for such as may be duly required by rule or regulation issued pursuant to this section. The provisions of this section shall not apply to airports owned or operated by the United States.

IV. Exemptions. The provisions of this section shall not apply to:

A. an aircraft owned by and used exclusively in the service of any government or any political subdivision thereof, including the government of the United States, any state, territory or possession of the United States, or the District of Columbia, which is not engaged in carrying persons or property for commercial purposes;

B. an aircraft registered under the laws of a foreign country;

C. an aircraft which is owned by a non-resident and registered in another state;

D. an aircraft engaged principally in commercial flying constituting an act of interstate or foreign commerce;

E. an individual piloting an aircraft owned by, and used exclusively in the service of, any government or any political subdivision thereof, including the government of the United States, any state, territory or possession of the United States, or the District of Columbia, which is not engaged in carrying persons or property for commercial purposes;

F. an individual piloting any aircraft registered under the laws of a foreign country;

G. a non-resident piloting aircraft in this state who is registered in another state;

H. an individual piloting an aircraft engaged principally in commercial flying constituting an act of interstate or foreign commerce;

I. an individual operating model aircraft;

J. an individual piloting an aircraft which is equipped with fully functioning dual controls when a properly certificated pilot is in full charge of one set of said controls and such flight is solely for instruction or for the demonstration of said aircraft to a bona fide prospective purchaser.

V. Revocation or suspension. The commission is hereby empowered to revoke or suspend a registration certificate issued pursuant to the terms of this section, after notice and opportunity for hearing to the holder thereof, for any one of the following causes:

- A. makes any false statement in an application for a certificate or in any report required by the commission;
- B. is convicted of a violation of federal law or rules or regulations or the law, rules or regulations of another state which are not inconsistent with the then current federal law or rules or regulations relating to civil aeronautics;
- C. is in unsound physical or mental condition, in the case of a pilot;
- D. violates any provision of this chapter or any rule or regulation duly issued hereunder.

Sec. 13. Investigations, hearings; general power. The commission, any member thereof, the director or any officer or employee of the commission designated by it, shall have the power to hold investigations, inquiries and hearings concerning matters covered by the provisions of this chapter and the rules, regulations and orders of the commission, and concerning accidents in aeronautics within this state. Hearings shall be open to the public and, except as provided in section 14, shall be held upon such call or notice as the commission shall deem advisable. Each member of the commission, the director and every officer or employee of the commission designated by it to hold any inquiry, investigation or hearing 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.

Sec. 14. Commission orders, notice and opportunity for hearings, judicial review. Every order of the commission requiring performance of certain acts or compliance with certain requirements and any denial or revocation of an approval, certificate or license shall set forth the reasons and shall state the acts to be done or requirements to be met before approval by the commission will be given or the approval, license or certificate granted or restored or the order modified or changed. Orders issued by

the commission pursuant to the provisions of this chapter shall be served upon the persons affected either by registered mail or in person. In every case where notice and opportunity for hearing are required under the provisions of this chapter the order of the commission shall, on not less than 14 days' notice, specify a time when and place where the person affected may be heard, or the time within which he may request hearing, and such order shall become effective upon the expiration of the time for exercising such opportunity for hearing, unless a hearing is held or requested within the time provided, in which case the order shall be suspended until the commission shall affirm, disaffirm or modify such order after hearing held or default by the person affected. To the extent practicable, hearings on such orders shall be held in the county where the affected person resides or does business. Any person aggrieved by an order of the commission or by the grant, denial or revocation of any approval, license or certificate may have the action of the commission reviewed by the courts of this state in the manner provided for, and subject to the rules of law applicable to, the review of the orders of other administrative bodies of the state.

Sec. 15. Prohibitions and penalties.

I. Prohibitions. It shall be unlawful:

A. for any person to operate or authorize the operation of any civil aircraft which is not possessed of a valid identification mark assigned or approved therefor by the authority, or if owned by a resident of the state, is not also possessed of a currently effective airworthiness or experimental certificate and a state registration certificate;

B. for any person to operate or authorize the operation of any civil aircraft in air commerce within the state which is not possessed of a currently effective airworthiness certificate and a state registration certificate;

C. for any person to serve in any capacity as an airman in connection with any civil aircraft without an airman certificate issued by the authority authorizing him to serve in such capacity, and if a resident, or a non-resident engaged in air commerce within the state, unless possessed of such certificate issued by the authority and an appropriate state registration certificate. Provided, however, that such state registration certificate shall not be required of a person receiving a demonstration flight or dual flying instruction carried out in accordance with the civil air regulations;

D. for any person to employ for service in connection with any civil aircraft an airman who does not have the certificates required by para-

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graph C, authorizing him to serve in the capacity for which he is employed;

E. for any person to operate as an air carrier without an air carrier registration certificate;

F. for any person to designate any area of land or of the inland waters as a landing area by markings, the display of a wind direction indicator, or otherwise, or operate or permit operation of aircraft on or from any area for compensation or hire, unless such area is registered with the commission. For the purpose of this section, an area used either as the point of departure or as the destination of an aircraft operation, but not as both, shall not be considered a landing area;

G. for any person to operate or authorize the operation of aircraft in violation of any other rule or regulation, or in violation of the terms of any certificate issued under the authority of this chapter;

H. for any person to operate or authorize the operation of aircraft for compensation or hire from any of the public inland waters or ice areas of the state unless each such area is registered with the commission. Applications for such registration shall contain such details with respect to the areas from which flights are to be made as the commission may from time to time require;

I. for any person to operate an aircraft in the air, or on the ground or water, while under the influence of intoxicating liquor, narcotics or other habit-forming drug, or to operate an aircraft in the air or on the ground or water, in a careless or reckless manner so as to endanger the life or property of another. In any proceeding charging careless or reckless operation of aircraft in violation of the provisions of this section, the court in determining whether the operation was careless or reckless shall consider the standards for safe operation of aircraft prescribed by federal statutes or regulations governing aeronautics.

II. Penalties. Violation of any provision of this chapter or rules and regulations made hereunder shall be punishable as follows:

A. any person who violates any provisions of this chapter pertaining to registration or the air traffic rules, or who violates any provisions of an order, rule or regulation made hereunder, or fails to answer a subpoena or to testify before the commission shall be punished by a fine of not more than \$200 or by imprisonment for not more than 3 months, or by both such fine and imprisonment;

B. any person who fraudulently forges, counterfeits, alters or falsely makes any certificate authorized under this chapter, or any person who

knowingly uses or attempts to use any such fraudulent certificate shall be punished by a fine of not more than \$1,000, or be imprisoned for not more than 3 years, or by both such fine and imprisonment;

C. any person who displays any false light, signal or air marking, or who moves, defaces, obstructs or otherwise interferes with the use of any airport or airway light or marking, any air navigation facility, or any device or equipment used in connection with air navigation shall be punished by a fine of not more than \$5,000, or by imprisonment for not more than 5 years, or by both such fine and imprisonment.

Sec. 16. Appropriations, bond issues and taxation. The purchase price or award for land acquired for an airport or landing field may be paid for by appropriation of moneys available therefor or wholly or partly paid for from the proceeds of sale of bonds of the city, town or county as the proper officers of the city, town or county shall determine, subject, however, to the adoption of a proposition therefor if required by law as a prerequisite to the issuance of bonds of such cities, towns or counties for public purposes generally. Cities, towns and counties are authorized to appropriate or cause to be raised by taxation or otherwise in such cities, towns or counties sums sufficient to carry out the provisions of sections 10 to 24, inclusive.

Sec. 17. Airport construction fund.

I. Commission. The commission is hereby authorized to transfer out of the aeronautical fund such sums as it may determine in any year to aid in the construction, extension and improvement of state or municipal airports within the state, the sums so transferred to be known, designated and segregated as "Airport Construction Fund." Any unexpended balance at the end of any fiscal year shall not lapse, but shall be carried forward for use in any succeeding fiscal year. All payments made out of said fund shall be made on order of the commission with the approval of the governor and council.

The commission with the consent of the governor and council may, from the amounts appropriated and known as the "Airport Construction Fund", match funds with the federal government for the purpose of constructing, extending or improving state owned airports.

II. State aid. The commission with the consent of the governor and council may from the amount appropriated to aid in the construction, extension and improvement of state or municipal airports, known as the "Airport Construction Fund", grant to cities and towns separately and cities and towns jointly with one another or with counties 25% of the total cost of the construction, extension or improvement of such airport or airports, or any lesser per cent of said costs.

III. State approval. No municipality in this state, whether acting alone or jointly with another municipality or with the state, shall submit to the administrator of civil aeronautics of the United States any project application under the provisions of section 9 of the Federal Airport Act, so called, or any amendment thereof, unless the project and the project application have been first approved by the aeronautics commission.

Sec. 18. 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. 19. Adoption of airport zoning regulations. 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.

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 the provisions of sections 19 to 24, inclusive, 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 the provisions of sections 19 to 24, inclusive.

Any two 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 regula-

tions 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 officers of each political subdivision participating in the creation of said board and a chairman elected by a majority of the members so appointed.

The jurisdiction of each political subdivision is extended to promulgation, administration 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 the provisions of this section shall prevail.

All airport zoning regulations adopted under the provisions of sections 19 to 24, inclusive, 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 subsection I of section 20.

Sec. 20. Permits and variances.

I. Permits. Where advisable to facilitate the enforcement of zoning regulations adopted pursuant to the provisions of sections 19 to 24, inclusive, 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 subsection or not, the said agency may by appropriate action compel the owner of the non-conforming structure or tree, at its 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 year 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.

II. 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 the provisions of sections 19 to 24, inclusive, may apply to the board of appeals, as provided in subsection III of section 21, 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 of sections 19 to 24, inclusive.

III. Obstruction marking and lighting. In granting any permit or variance under the provisions of this section, the administrative agency or board of appeals may, if it deems such action advisable to effectuate the purposes of sections 19 to 24, inclusive, 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. 21. Procedure.

I. Adoption of zoning regulations. No airport zoning regulations shall be adopted, amended or changed under the provisions of sections 19 to 24, inclusive, except by action of the legislative body of the political subdivision in question, or the joint board provided for in the 3rd paragraph of section 19, 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.

II. Administration of zoning regulations; administrative agency. The legislative body of any political subdivision adopting airport zoning regulations under the provisions of sections 19 to 24, inclusive, 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 the provisions of subsection I of section 20, but such agency shall not have or exercise any of the powers delegated to the board of appeals.

III. Administration of airport zoning regulations; board of appeals. Airport zoning regulations adopted under the provisions of sections 19 to 24, inclusive, 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 said sections 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 the provisions of subsection II of section 20. 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 first 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.

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 and 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. At the hearing any party may appear in person or by agent or by attorney.

The board may, in conformity with the provisions of sections 19 to 24, inclusive, 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 board shall adopt rules in accordance with the provisions of any ordinance adopted under sections 19 to 24, inclusive. 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 examination 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.

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. 22. Judicial review. 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 33 of chapter 84.

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. 23. Enforcement and remedies. Each violation of sections 19 to 24, inclusive, or of any regulations, order or ruling promulgated or made pursuant to sections 19 to 24, inclusive, shall constitute a misdemeanor and shall be punishable by a fine of not more than \$300, or by 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 sections 19 to 24, inclusive, or of airport zoning regulations adopted under the provisions of sections 19 to 24, inclusive, 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 sections 19 to 24, inclusive, and of the regulations adopted, and orders and rulings made pursuant thereto.

Sec. 24. Acquisition of air rights. In any case in which:

I. It is desired to remove, lower or otherwise terminate a non-conforming use; or

II. The approach protection necessary cannot, because of constitutional limitations, be provided by airport zoning regulations under the provisions of sections 19 to 24, inclusive; or

III. 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 sections 19 to 24, inclusive.'