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# AERONAUTICS

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## CHAPTER 38

S. B. No. 173

Introduced by Committee on State Affairs

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### AERONAUTICS DIVISION PUBLIC SERVICE COMMISSION

An Act Creating an aeronautics division in the Public Service Commission for the promotion and development of aviation, air commerce, and the establishment of an adequate system of airways and airports within this state; providing for the appointment by the Governor of a committee of aeronautics consisting of five members, one of whom shall be a member of the Public Service Commission; declaring the public policy; prescribing powers and duties of aeronautics committee; authorizing cooperation with the federal agencies and municipalities; providing for federal aid; conferring power to receive and disburse federal aid and other funds; providing for organization of committee, meetings, reports, and compensation; authorizing appointment of director of aeronautics; making an appropriation; and declaring an emergency.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. DECLARATION OF POLICY.] It is hereby declared to be the public policy of this state that the promotion and development of aeronautics, air commerce and a state system of airways and airports is affected with a public interest; that the committee of aeronautics created by this act in the exercise of its powers and performance of its duties shall be considered to be the state acting in a governmental capacity in the performance of a governmental function.

§ 2. DIVISION OF AERONAUTICS.] There is hereby created a division of aeronautics within the Public Service Commission; that the powers, duties and functions of said division of aeronautics shall be administered by a committee of aeronautics consisting of five members who shall be appointed by the Governor, not more than one of whom shall always be a member of the Public Service Commission. Each appointed member shall be a qualified elector of the state, and shall be so located as to residence that each of four sections of the state (the southwest, northwest, northeast, and southeast) shall have equal representation on such committee. The governor shall appoint one member for two years; two members for four years, and two members for six years; their term shall end July first in each of the years 1947, 1949 and 1951, inclusive. Thereafter, each member shall be appointed and serve for a term of six years. Each member so appointed shall be subject to removal by the governor for cause, and in the case of death, resignation or removal of such appointed

member, the vacancy created thereby shall be filled by the appointive power and each member so appointed shall serve for the unexpired term. Before entering upon the discharge of his official duties each appointed member shall take, subscribe and file with the secretary of state his oath, as prescribed by the Constitution, for the discharge of his duties as a member of said committee.

§ 3. POWERS AND DUTIES OF COMMITTEE OF AERONAUTICS.] The committee of aeronautics shall have, and is hereby vested, with full and complete power, authority and supervision over the promotion and development of aeronautics, air commerce, and a state system of airways and airports:

1. To designate, design and plan a state airway and airport system which will best serve the interests of the state;
2. To coordinate such state airway and airport system in aid of and to supplement air commerce with the federal, or interstate air services;
3. To encourage the use of all types of air navigation facilities within the state;
4. To provide and furnish all expert, engineering, legal or other technical services, without charge, to municipalities in need thereof while engaged in the planning, construction, or operation of airports;
5. To represent the state in aeronautical matters before state and federal agencies;
6. To institute or participate in investigations and hearings pertaining to the promotion and development of aeronautics, air commerce, and the establishment of a system of airways and airports in this state;
7. To assist in the enforcement of all laws of this state relating to aeronautics and air commerce, and all rules and regulations made in pursuance thereof;
8. To cooperate with federal agencies and all municipalities of this state engaged in the promotion and development of aeronautics and air commerce;
9. To assemble, use and furnish all available data, records and services that may be necessary to carry out the purposes of this act;
10. To make reports of all of its investigations and hearings to the governor, and to make such reports and other data available to the appropriate federal and state agencies;
11. To employ a director of aeronautics; to prescribe his powers and duties, and to fix his salary; and

12. To employ such other experts, clerical and stenographic help as the committee may determine necessary to administer the provisions of this act.

§ 4. COOPERATION WITH FEDERAL AGENCIES AND MUNICIPALITIES.] The committee of aeronautics shall cooperate with and assist the federal government and all agencies of the state including municipalities of this state engaged in the promotion and development of aeronautics, air commerce and the establishment and maintenance of airways and airports in this state, to assure the sound development of aeronautics and the establishment and maintenance of an adequate system of state airways and airports in this state, to furnish reasonably adequate air commerce for the transportation of persons and property for hire. The committee, for said purpose, shall avail itself of all records, facilities and services of such federal agencies as it may determine useful and necessary, and shall, in turn, reciprocate by furnishing to the federal agencies such data and assistance as it may determine necessary to carry out the purposes of this act.

§ 5. FEDERAL OR PRIVATE AID.] The committee of aeronautics shall have authority to accept, receive and receipt for all federal moneys allocated to this state for the promotion and development of aeronautics, air commerce and the establishment and maintenance of an adequate system of airways and airports in this state. Said committee may, authorized by any municipality, act as its agent in receiving and receipting for and in its behalf of any moneys allocated or contributed for any of the purposes authorized by this act. Said committee may also receive either public or private contributions made for the purpose of promoting and developing aeronautics, air commerce and the establishment and maintenance of an adequate system of airways and airports in this state.

§ 6. DISPOSITION OF FEDERAL AND OTHER FUNDS.] All moneys received from the federal government or any agency thereof, and from other public agencies or private persons, association, or corporations, shall be credited to a special fund and shall be disbursed only for the purposes for which such moneys may be allocated or contributed to said committee, and that all moneys credited to such fund and held in trust for the purpose for which such aid is granted shall be disbursed only after all claims and demands upon such funds shall have been duly audited and approved by the committee, and shall thereupon be disbursed in the manner prescribed by rules and regulations.

§ 7. ORGANIZATION MEETINGS; REPORTS.] The committee shall meet, within a reasonable time after its appointment, to organize, adopt a seal, and make and amend such rules and regulations as it may deem expedient to carry out the provisions of this act. At such organization meeting it shall elect from its membership a chairman, a vice-chairman, and a secretary. All meetings shall be held in its

offices in the Capitol, except that the committee may hold special meetings at such times and places, and upon such notice as it may, by resolution, provide. Notices of regular and special meetings may be given by telegram, or by writing, at least three days prior to the date of meeting. A majority of the members shall constitute a quorum, and no action shall be taken by less than a majority except for adjournment. The chairman, or in his absence or disability, the vice-chairman of the committee, may issue a call for any general or special meetings. The committee shall make at least an annual report to the governor on or before the first day of July of each year. Said report shall contain a summary of its proceedings during the preceding fiscal year, and an itemized statement of all moneys received and expended by the committee, or in behalf of any municipality, or agency of the federal government, *provided however*, that the committee shall, upon request by the governor, make such additional reports to him as he may require.

§ 8. COMPENSATION AND EXPENSES OF COMMITTEE.] Each member of said committee, except the member appointed from the Public Service Commission, shall receive, as compensation for his services, the sum of Eight Dollars (\$8.00) per day for each day actually engaged in the performance of the duties of his office, including time for travel between his home and the place at which he performs such duties, together with actual traveling and maintenance while away from his home in the performance of his official duties, *provided however*, that the member of the Public Service Commission shall only receive actual traveling and maintenance expenses while attending special meetings held at places other than the Capitol.

§ 9. DIRECTOR OF AERONAUTICS.] The committee shall appoint a director of aeronautics who shall serve at its pleasure. He shall be appointed with due regard to his fitness by reason of his aeronautical education and practical experience. He shall devote his entire time to the duties of his office and shall not be actively engaged in any other business or employment; nor shall he have any pecuniary interest in any civil aeronautics enterprise. He shall receive such compensation as the committee may fix and determine, and shall be reimbursed for all traveling and maintenance expenses in the performance of his official duties, *provided however*, that such salary and expenses so authorized by said committee shall not exceed the amount appropriated for said purposes. The director of aeronautics shall exercise such powers and perform such duties as the committee of aeronautics may confer or impose upon him. He shall be in charge of the office of the committee and be responsible for the preparation of reports, the collection and dissemination of factual data pertaining to the promotion and development of aeronautics, air commerce and the establishment of an adequate system of airways and airports in this state. The director shall, before entering upon the performance

of his official duties, be bonded with the State Bonding Fund in the penal sum of \$10,000.00 conditioned upon the faithful performance of his official duties. The amount of the premium for such bond shall be paid out of funds appropriated therefor. The director shall maintain his office in the Capitol at Bismarck, and all of his acts shall be subject to the supervision and control of the committee of aeronautics.

§ 10. VIOLATIONS AND PENALTIES.] Any person who shall fail to comply with the requirements of or violates any provisions of this act, or rules and regulations made by the aeronautics committee pursuant to the provisions of this act, shall be guilty of a misdemeanor and punishable by a fine of not more than Five Hundred Dollars (\$500.00), or suffer imprisonment for a period not to exceed ninety (90) days, or by both such fine and imprisonment.

§ 11. APPROPRIATION.] There is hereby appropriated out of any moneys in the State Treasury, not otherwise appropriated, the sum of Twenty-five Thousand Dollars, (\$25,000.00) or so much thereof as may be necessary for the purpose of carrying out the provisions of this act.

§ 12. EMERGENCY.] This act is hereby declared to be an emergency measure and shall be in full force and effect from and after its approval.

Approved March 12, 1945.

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## CHAPTER 39

S. B. No. 55

Introduced by Senators Rue, Nordhougen, Raschko, Schrock,  
Brunsdale and Flatt

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### AIRPORT FUNDS, POLITICAL SUBDIVISIONS

An Act Authorizing counties, cities, villages, park districts and townships to accept federal and other monies for airports and other air navigation facilities and sites therefor; to designate the state aeronautics committee of North Dakota as its agent in connection therewith; to enter into contracts in connection therewith; and declaring an emergency.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AUTHORIZATION TO ACCEPT FEDERAL OR OTHER MONIES.] Any county, city, village, park district, or township is authorized to accept, receive, and receipt for federal monies, and other monies, either public or private, for the acquisition, construction, enlargement, improvement, maintenance, equipment, or operation of airports and

other air navigation facilities, and sites therefor, and to comply with the provisions of the laws of the United States and any rules and regulations made thereunder for the expenditure of federal monies upon such airports and other air navigation facilities.

§ 2. DESIGNATION OF AERONAUTICS COMMITTEE AS AGENT.] The governing body of any political subdivision referred to in section one (1) hereof, is authorized to designate the state aeronautics committee of the state as its agent to accept, receive, and receipt for federal monies in its behalf for airport purposes and to contract for the acquisition, construction, enlargement, improvement, maintenance, equipment or operation of such airports, or other air navigation facilities, and may enter into an agreement with such aeronautics committee prescribing the terms and conditions of such agency in accordance with federal laws, rules and regulations and applicable laws of this state. Such monies as are paid over by the United States government shall be paid over to said municipality under such terms and conditions as may be imposed by the United States government in making such grant.

§ 3. CONTRACTS.] All contracts for the acquisition, construction, enlargement, improvement, maintenance, equipment or operation of airports or other air navigation facilities, made by any of the political subdivisions referred to, by itself or through the agency of the aeronautics committee of the state, shall be made pursuant to the laws of this state governing the making of like contracts; provided, however, that where such acquisition, construction, improvement, enlargement, maintenance, equipment or operation is financed wholly or partly with federal monies the municipality, or the aeronautics committee as its agent, may let contracts in the manner prescribed by the federal authorities, acting under the laws of the United States, and any rules or regulations made thereunder, notwithstanding any other state law to the contrary.

§ 4. EMERGENCY.] This Act is hereby declared an emergency act and shall be in full force and effect from and after its approval.

Approved March 9, 1945.

## CHAPTER 40

S. B. No. 56

Introduced by Senators Rue, Nordhougen, Raschko, Schrock,  
Brunsdale and Flatt.AUTHORIZING POLITICAL SUBDIVISIONS PROVIDE  
AND REGULATE AIRPORTS

An Act To empower counties, cities, villages, park districts and townships to promulgate, administer, and enforce airport zoning regulations limiting the height of structures and objects of natural growth, and otherwise regulating the use of property, in the vicinity of airports, and to acquire, by purchase, grant, or condemnation, air rights and other interests in land; to provide penalties and remedies for violations of this Act or any ordinance or regulation made under the authority conferred herein; and declaring an emergency.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. DEFINITIONS.] As used in this Act, unless the context otherwise requires:

(1) "Airport" means any area of land or water designed and set aside for the landing and taking-off of aircraft and utilized or to be utilized in the interest of the public for such purposes.

(2) "Airport hazard" means any structure or tree or use of land which obstructs the airspace required for the flight of aircraft in landing or taking-off at any airport or is otherwise hazardous to such landing or taking-off of aircraft.

(3) "Airport hazard area" means any area of land or water upon which an airport hazard might be established if not prevented as provided in this Act.

(4) "Political sub-division" means any county, city, village, park district, or township.

(5) "Person" means any individual, firm, co-partnership, corporation, company, association, joint stock association, the State of North Dakota or any political sub-division thereof, and includes any trustee, receiver, assignee, or other similar representative thereof.

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

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

§ 2. AIRPORT HAZARDS CONTRARY TO PUBLIC INTEREST.] It is hereby found 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. Accordingly, it is hereby declared: (a) that the creation or establishment of an airport hazard is a public nuisance and an injury to the community served by the airport in question; (b) that it is therefore necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of airport hazards be prevented; and (c) that this should be accomplished, to the extent legally possible, by exercise of the police power, without compensation. It is further declared that both the prevention of the creation or establishment of airport hazards and the elimination, removal, alteration, mitigation or marking and lighting of existing airport hazards are public purposes for which political sub-divisions may raise and expend public funds and acquire land or property interests therein.

§ 3. POWER TO ADOPT AIRPORT ZONING REGULATIONS.] (1) In order to prevent the creation or establishment of airport hazards, every political sub-division having an airport hazard area within its territorial limits may adopt, administer, and enforce, under the police power and in the manner and upon the conditions hereinafter prescribed, airport zoning regulations for such airport hazard area, which regulations may divide such area 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.

(2) Where an airport is owned or controlled by a political sub-division and any airport hazard area appertaining to such airport is located outside the territorial limits of said political sub-division, the political sub-division owning or controlling the airport and the political sub-division within which the airport hazard area is located may, by ordinance or resolution duly adopted, create a joint airport zoning board, which board shall have the same power to adopt, administer and enforce airport zoning regulations applicable to the airport hazard area in question as that vested by subsection (1) in the political sub-division within which such area is located. Each such joint board shall have as members two representatives appointed by each political sub-division participating in its creation and in addition a chairman elected by a majority of the members so appointed.

(3) If in the judgment of a political sub-division owning or controlling an airport, the political sub-division within which is located an airport hazard area appertaining to that airport, has failed to adopt or enforce reasonably adequate airport zoning regulations for such area under subsection (1) and if that political sub-division has refused to join in creating a joint airport zoning board as authorized in subsection (2), the political sub-division owning or controlling the airport may itself adopt, administer, and enforce airport zoning regulations for the airport hazard area in question. In the event of

conflict between such regulations and any airport zoning regulations adopted by the political sub-division within which the airport hazard area is located the regulations of the political sub-division owning or controlling the airport shall govern and prevail.

§ 4. RELATION TO COMPREHENSIVE ZONING REGULATIONS.]

(1) INCORPORATION.] In the event that a political sub-division has adopted, or hereafter adopts, a comprehensive zoning ordinance regulating, among other things, the height of buildings, any airport zoning regulations applicable to the same area or portion thereof, may be incorporated in and made a part of such comprehensive zoning regulations, and be administered and enforced in connection therewith.

(2) CONFLICT.] In the event of conflict between any airport zoning regulations adopted under this Act and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, the use of land, or any other matter, and whether such other regulations were adopted by the political sub-division which adopted the airport zoning regulations or by some other political sub-division, the more stringent limitation or requirement shall govern and prevail.

§ 5. PROCEDURE FOR ADOPTION OF ZONING REGULATIONS.]

(1) NOTICE AND HEARING.] No airport zoning regulations shall be adopted, amended, or changed under this Act except by action of the legislative body of the political sub-division in question, or the joint board provided for in Section 3 (2), after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen (15) days' notice of the hearing shall be published in an official paper, or a paper of general circulation, in the political sub-division or sub-divisions in which is located the airport hazard area to be zoned.

(2) AIRPORT ZONING COMMISSION.] Prior to the initial zoning of any airport hazard area under this Act, the political sub-division or joint airport zoning board which is to adopt the regulations shall appoint a commission, to be known as the airport zoning commission, to recommend the boundaries of the various zones to be established and the regulations to be adopted therefor. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and the legislative body of the political sub-division or the joint airport zoning board shall not hold its public hearings or take other action until it has received the final report of such commission. Where a city plan commission or comprehensive zoning commission already exists, it may be appointed as the airport zoning commission.

§ 6. AIRPORT ZONING REQUIREMENTS.] (1) REASONABLENESS.] All airport zoning regulations adopted under this Act shall

be reasonable and none shall impose any requirement or restriction which is not reasonably necessary to effectuate the purposes of this Act. In determining what regulations it may adopt, each political subdivision and joint airport zoning board shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the nature of the terrain within the airport hazard area, the character of the neighborhood, and the uses to which the property to be zoned is put and adaptable.

(2) NON-CONFORMING USES.] No airport zoning regulations adopted under this Act 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 7 (3).

§ 7. PERMITS AND VARIANCES.] (1) PERMITS.] Any airport zoning regulations adopted under this Act may require that a permit be obtained before any new structure or use may be constructed or established and before any existing use or structure may be substantially changed or substantially altered or repaired. In any event, however, all such regulations shall provide that before any nonconforming 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 permit shall be granted that would allow the establishment or creation of an airport hazard or permit a non-conforming structure or tree or nonconforming use to be made or become higher or become a greater hazard to air navigation than it was when the applicable regulation was adopted or than it is when the application for a permit is made. Except as provided herein, all applications for permits shall be granted.

(2) VARIANCES.] Any person desiring to erect any structure, 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 Adjustment 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; provided, that any variance may be allowed subject to any reasonable conditions that the Board of Adjustment may deem necessary to effectuate the purposes of this Act.

(3) HAZARD MARKING AND LIGHTING.] In granting any permit or variance under this section, the administrative agency or

Board of Adjustment may, if it deems such action advisable to effectuate the purpose 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 sub-division, at its own expense, to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard.

§ 8. APPEALS.] (1) Any person aggrieved, or taxpayer affected, by any decision of an administrative agency made in its administration of airport zoning regulations adopted under this Act, or any governing body of a political sub-division, or any joint airport zoning board, which is of the opinion that a decision of such administrative agency is an improper application of airport zoning regulations of concern to such governing body or board, may appeal to the Board of Adjustment authorized to hear and decide appeals from the decisions of such administrative agency.

(2) All appeals taken under this section must be taken within a reasonable time, as provided by the rules of 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.

(3) 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 cases proceedings shall not be stayed otherwise than by order of the Board on notice to the agency from which the appeal is taken and on due cause shown.

(4) The board shall fix a reasonable time for the hearing of appeals, 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.

(5) 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.

§ 9. ADMINISTRATION OF AIRPORT ZONING REGULATIONS.] All airport zoning regulations adopted under this Act shall provide for the administration and enforcement of such regulations by an administrative agency which may be an agency created by such regulations or any official, board, or other existing agency of the political sub-

division adopting the regulations or of one of the political subdivisions which participated in the creation of the joint airport zoning board adopting the regulations, if satisfactory to that political subdivision, but in no case shall such administrative agency be or include any member of the Board of Adjustment. The duties of any administrative agency designated pursuant to this Act shall include that of hearing and deciding all permits under Section 7 (1), but such agency shall not have or exercise any of the powers herein delegated to the Board of Adjustment.

§ 10. BOARD OF ADJUSTMENT.] (1) All airport zoning regulations adopted under this Act shall provide for a Board of Adjustment 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 the airport zoning regulations, as provided in Section 8.

(b) To hear and decide any special exceptions to the terms of the airport zoning regulations upon which such board may be required to pass under such regulations.

(c) To hear and decide specific variances under Section 7 (2).

(2) Where a zoning board of appeals or adjustment already exists, it may be appointed as the Board of Adjustment. Otherwise, the Board of Adjustment shall consist of five (5) members, each to be appointed for a term of three (3) years by the authority adopting the regulations and to be removable by the appointing authority for cause, upon written charges and after public hearing.

(3) The concurring vote of a majority of the members of the Board of Adjustment 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 the airport zoning regulations, or to effect any variation in such regulations.

(4) The board shall adopt rules in accordance with the provisions of the ordinance or resolution by which it was created. 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 hearings 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.

§ 11. JUDICIAL REVIEW.] (1) Any person, aggrieved, or

taxpayer affected, by any decision of a Board of Adjustment, or any governing body of a political sub-division or any joint airport zoning board which is of the opinion that a decision of a Board of Adjustment is illegal, may present to the district court a verified petition setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. Such petition shall be presented to the court within fifteen (15) days after the decision is filed in the office of the board.

(2) Upon presentation of such petition the court may allow a writ of certiorari directed to the Board of Adjustment to review such decision of the board. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

(3) The Board of Adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(4) The court shall have exclusive jurisdiction to affirm, modify, or set aside the decision brought up for review, in whole or in part, and if need be, to order further proceedings by the Board of Adjustment. The findings of fact of the board, if supported by substantial evidence, shall be accepted by the court as conclusive, and no objection to a decision of the board shall be considered by the court unless such objection shall have been urged before the board, or, if it was not so urged, unless there were reasonable grounds for failure to do so.

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

(6) In any case in which airport zoning regulations adopted under this Act, although generally reasonable, are held by a court to interfere with the use or enjoyment of a particular structure or parcel of land to such an extent, or to be so onerous in their application to such a structure or parcel of land, as to constitute a taking or deprivation of that property in violation of the Constitution of this state or the Constitution of the United States, such holding shall not affect the application of such regulations to other structures and parcels of land.

§ 12. ENFORCEMENT AND REMEDIES.] Each violation of this Act or of any regulations, orders, or rulings promulgated or made pursuant to this Act, shall constitute a misdemeanor and shall be punishable by a fine of not more than five hundred dollars (\$500.00)

or imprisonment for not more than ninety (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 or agency adopting zoning regulations under this Act 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.

§ 13. ACQUISITION OF AIR RIGHTS.] In any case in which: (1) it is desired to remove, lower, or otherwise terminate a non-conforming structure or 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 sub-division within which the property or non-conforming use is located or the political sub-division owning the airport or served by it may acquire, by purchase, grant, or condemnation in the manner provided by the law under which political sub-divisions are authorized to acquire real property for public purposes, such air right, navigation easement, or other estate or interest in the property or non-conforming structure or use in question as may be necessary to effectuate the purposes of this Act.

§ 14. SEVERABILITY.] If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the 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.

§ 15. SHORT TITLE.] This Act shall be known and may be cited as the "Airport Zoning Act."

§ 16. REPEAL.] All acts or parts of acts which are inconsistent with the provisions of this Act are hereby repealed.

§ 17. EMERGENCY.] This Act is hereby declared an emergency Act and shall be in full force and effect from and after its approval.

Approved March 9, 1945.