

5 suant thereto shall be guilty of a misdemeanor, and upon conviction
6 thereof shall be punished accordingly.

1 SEC. 43. **Separability.** If any section, clause, sentence, or phrase
2 of this act is for any reason held to be unconstitutional or invalid,
3 such decision shall not affect the validity of the remaining portions
4 of this act. The legislature hereby declares that it would have passed
5 this act and each section, clause, sentence or phrase hereof, irrespec-
6 tive of whether any one or more of the sections, clauses, sentences,
7 or phrases be declared unconstitutional.

1 SEC. 44. **Repeal.** Chapters three hundred eighty-three and one-
2 tenth (383.1) and three hundred eighty-three and two-tenths (383.2),
3 Code of Iowa, 1939, and all other acts or parts of acts inconsistent
4 with the provisions of this act are hereby repealed.

1 SEC. 45. **Special charter cities.** The provisions of this act shall be
2 applicable to cities operating under special charter.

1 SEC. 46. **Short title.** This act may be cited as the "State Aeronau-
2 tics Act."

Approved April 4, 1945.

CHAPTER 149

AIRPORT ZONING REGULATIONS

H. F. 366

AN ACT to empower municipalities, including cities acting under special charter, and other political subdivisions 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, condemnation or otherwise air rights and other interests in land; and to empower the state aeronautics commission to exercise like powers under given circumstances; and to provide penalties and remedies for violations of this act or any ordinance or regulation made under the authority conferred herein; and for other purposes as appear herein.

Be It Enacted by the General Assembly of the State of Iowa:

1 SECTION 1. **Definitions.** The following words, terms and phrases,
2 when used in this act, shall, for the purposes of this act, have the
3 meaning herein given, unless otherwise specifically defined, or unless
4 another intention clearly appears, or the context otherwise requires:

5 1. "Airport" means any area of land or water designed and set
6 aside for the landing and take-off of aircraft and utilized, or to be
7 utilized, in the interest of the public for such purposes.

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

12 3. "Airport hazard area" means any area of land or water upon
13 which an airport hazard might be established if not prevented as
14 provided by this act.

15 4. "Municipality" means any county, city, village, town, or town-
16 ship, of this state, and any other political subdivision, public cor-
17 poration, authority or district in this state which is or may be author-
18 ized by law to acquire, establish, construct, maintain, improve, and
19 operate airports.

20 5. "Person" means any individual, firm, co-partnership, corpora-
21 tion, company, association, joint stock association, or body politic,
22 and includes any trustee, receiver, assignee, or other similar repre-
23 sentative thereof.

24 6. "Structure" means any object constructed or installed by man,
25 including, but without limitation, buildings, towers, smokestacks, and
26 overhead transmission lines, including the poles or other structures
27 supporting the same.

28 7. "Tree" means any object of natural growth.

29 8. "Obstruction" means any tangible, inanimate physical object,
30 natural or artificial, protruding above the surface of the ground.

31 9. "Commission" means the Iowa aeronautics commission; "state"
32 or "this state" means the State of Iowa.

33 10. The singular shall include the plural, and the plural the singular.

1 SEC. 2. **Airport hazards contrary to public interest.** It is hereby
2 found that an airport hazard endangers the lives and property of users
3 of the airport and of occupants of land and other persons in its vicini-
4 ty, and also, if of the obstruction type, in effect reduces the size of
5 the area available for the landing, taking-off and maneuvering of air-
6 craft, thus tending to destroy or impair the utility of the airport and
7 the public investment therein. Accordingly, it is hereby declared:

8 1. That the creation or establishment of an airport hazard is a
9 public nuisance and an injury to the community served by the airport
10 in question;

11 2. That it is necessary in the interest of the public health, safety
12 and general welfare that the creation or establishment of airport
13 hazards be prevented; and

14 3. That this should be accomplished, to the extent legally possible,
15 by proper exercise of the police power.

16 4. That the prevention of the creation or establishment of airport
17 hazards, and the elimination, removal, alteration, mitigation, or mark-
18 ing and lighting of existing airport hazards are public purposes for
19 which municipalities may raise and expend public funds, as an inci-
20 dent to the operation of airports, to acquire land or property inter-
21 ests therein.

1 SEC. 3. **Zoning regulations—powers granted.** Every municipality
2 having an airport hazard area within its territorial limits may adopt,
3 administer, and enforce in the manner and upon the conditions pre-
4 scribed by this act, zoning regulations for such airport hazard area,
5 which regulations may divide such area into zones and, within such
6 zones, specify the land uses permitted, and regulate and restrict, for
7 the purpose of preventing airport hazards, the height to which struc-
8 tures and trees may be erected or permitted to grow.

1 SEC. 4. **Extra-territorial airport hazard areas.** When any airport
2 hazard area appertaining to an airport owned or controlled by a mu-
3 nicipality is located outside the territorial limits of said municipality:

4 1. The municipality owning or controlling the airport, and the
5 municipality within which the airport hazard area is located, may
6 by duly adopted ordinance or resolution, as may be appropriate, adopt,
7 administer and enforce airport zoning regulations applicable to the
8 airport hazard area in question.

9 2. *Petition to district court.* If the municipality within which is
10 located such airport hazard area has failed or refused, within sixty
11 days after demand has been made upon it by any municipality owning
12 or controlling the airport, to adopt reasonably adequate airport zon-
13 ing regulations under Section 3 of this act, or to join in adopting
14 joint airport zoning regulations as authorized in Paragraph 1 of this
15 section, the municipality owning or controlling the airport may, upon
16 a resolution of necessity therefor duly adopted by its governing body,
17 petition the district court of the county in which such airport hazard
18 area is located, in the name of the municipality owning or controlling
19 the affected airport, praying that zoning regulations be established
20 for the airport hazard area in question.

21 3. *Petition—contents.* Such petition shall allege all essential facts
22 showing the necessity for bringing such action, the relief sought in-
23 cluding proposed zoning regulations, and the necessity therefor.

24 4. *Parties.* The parties defendant in such action shall be the mu-
25 nicipality in which such airport hazard area is located, and all per-
26 sons having an apparent or contingent interest in the property located
27 within such area, who may be joined in said action generally as a
28 class.

29 5. *Procedure.* The action shall be triable in equity and in accord-
30 ance with general rules of civil procedure, except that such action
31 shall have precedence over any other business of the court except
32 criminal cases, and the court shall set said petition for hearing not
33 less than sixty days nor more than one hundred twenty days from
34 the date it is filed with the clerk of said court.

35 6. *Notice.* The original notice in such action shall be served upon
36 the municipality in which such airport hazard area is located, and in
37 the same manner as original notice of any other action but not less
38 than thirty days prior to the date set for trial; and upon all other
39 defendants by the publication of said notice in some newspaper or
40 newspapers of general circulation within the area described in the
41 petition, or as near thereto as possible, which publication shall be
42 in the same manner as provided for the publication of other original
43 notices, provided however that the last publication thereof shall be
44 not less than thirty days prior to the date set for trial.

45 7. *Decree and modification.* Upon trial the court may enter decree
46 establishing such zoning regulations as it shall find reasonable and
47 necessary. The court having once taken jurisdiction of such matter
48 shall retain continuing jurisdiction thereof for such subsequent modi-
49 fication as it may deem advisable, upon proper application of inter-
50 ested parties, and due showing made thereunder after such notice to
51 possible adverse parties as the court shall prescribe.

52 8. *Appeal.* Any person or municipality adversely affected or ag-
53 grieved by any findings of the court may appeal therefrom as in other
54 civil actions.

55 9. *Enforcement.* Following the entry of any final decree by the
56 district court, and unless appeal has been taken therefrom, the zoning

57 regulations established by such decree may be enforced, and viola-
58 tions thereof punished, as provided by Section 14 of this act.

1 **SEC. 5. Prevention of airport hazards.** Any municipality owning
2 or controlling an airport may maintain actions in equity to restrain
3 and abate as nuisances the creation or establishment of airport haz-
4 ards appertaining to said airport, in violation of any zoning regula-
5 tions adopted or established pursuant to the provisions of this act
6 for any area whether within or without the territorial limits of said
7 municipality.

1 **SEC. 6. Zoning powers— aeronautics commission.** If any munici-
2 pality owning or controlling an airport adjacent to which there is
3 an airport hazard area shall fail or refuse, within sixty days after
4 demand made upon it by the aeronautics commission of the state of
5 Iowa, to adopt reasonably adequate airport zoning regulations under
6 Sec. 3 of this act, or to proceed as provided in Sec. 4 of this act, the
7 aeronautics commission of the state of Iowa may petition the district
8 court of the county in which such municipality is located, in the name
9 of the State of Iowa, praying that zoning regulations be established
10 for the airport hazard area in question, and the proceedings of sub-
11 sections 3 to 9 inclusive of Sec. 4 of this act shall apply to such actions.

12 The aeronautics commission of the State of Iowa may maintain
13 actions in equity to restrain and abate as nuisances the creation or
14 establishment of airport hazards appertaining to any airport within
15 the state of Iowa, in violation of any zoning regulations adopted or
16 established pursuant to the provisions of this act.

1 **SEC. 7. Relation to comprehensive zoning regulations.** Any munici-
2 pality, which has adopted, or hereafter adopts, zoning ordinances
3 under the provisions of Chapter 324, Code of Iowa, 1939, is hereby em-
4 powered to incorporate therein such airport hazard area zoning regu-
5 lations as are provided for by this act, and to administer and enforce
6 the same as herein provided.

1 **SEC. 8. Conflicting regulations.** In the event of any conflict be-
2 tween any airport zoning regulations adopted or established under
3 this act and any other regulations applicable to the same area, whether
4 the conflict be with respect to the height of structures or trees, the use
5 of land, or any other matter, the more stringent limitation or re-
6 quirement shall govern and prevail.

1 **SEC. 9. Procedure for adopting zoning regulations.** In adopting,
2 amending and repealing airport zoning regulations under this act the
3 governing body of the municipality shall follow the procedure as
4 provided in Sections 6455 and 6457, Code of Iowa, 1939. The com-
5 mission so appointed shall be known as the airport zoning commis-
6 sion. Where a comprehensive zoning commission already exists it
7 may, but need not, be appointed as the airport zoning commission.

1 **SEC. 10. Airport zoning requirements.**

2 1. All airport zoning regulations adopted under this act shall be rea-
3 sonable and none shall impose any requirement or restriction which
4 is not necessary to effectuate the purposes of this act.

5 2. No airport zoning regulations adopted under this act shall re-
6 quire the removal, lowering, or other change or alteration of any

7 structure or tree, or interfere with any use, not conforming to the
8 regulations when adopted or amended, except that they may require
9 the owner thereof to permit the municipality at its own expense to
10 install, operate and maintain thereon such markers and lights as may
11 be necessary to indicate to operators or aircraft the presence of the
12 airport hazard.

13 3. All such regulations shall provide that no pre-existing non-con-
14 forming structure, tree, or use, shall be replaced, rebuilt, altered,
15 allowed to grow higher or replanted, so as to constitute a greater air-
16 port hazard than it was when such airport zoning regulations or
17 amendments thereto were adopted.

1 SEC. 11. **Variances.** Any person desiring to erect or increase the
2 height of any structure, or to permit the growth of any tree, or other-
3 wise use his property in violation of airport zoning regulations adopted
4 under this act, may apply to the board of adjustment for a variance
5 from the zoning regulations. Such variances shall be allowed where
6 a literal application or enforcement of the regulations would result
7 in practical difficulty or unnecessary hardship and the relief granted
8 would not be contrary to the public interest, but would do substantial
9 justice and be in accordance with the spirit of the regulations and
10 this act; provided, however, that any such variance may be allowed
11 subject to any reasonable conditions that the board of adjustment
12 may deem necessary to effectuate the purposes of this act, including
13 the reservation of the right of the municipality, at its own expense,
14 to install, operate and maintain thereon such markers and lights as
15 may be necessary to indicate to operators of aircraft the presence of
16 the airport hazard.

1 SEC. 12. **Board of adjustment—creation—powers—duties.** The
2 governing body of any municipality availing or seeking to avail itself
3 of the powers by this act conferred shall, by ordinance or resolution
4 duly adopted, provide for the appointment of a board of adjustment,
5 as provided in Section 6458, Chapter 324, Code of Iowa, 1939. Such
6 board of adjustment shall have the same powers and duties, and its
7 procedure, and appeals thereto and therefrom, in all respects shall
8 be governed by and subject to the same provisions established in Sec-
9 tions 6460 to 6470, inclusive, Chapter 324, Code of Iowa, 1939.

10 The board of adjustment shall consist of two members from each
11 municipality, selected by the governing body thereof, and one addi-
12 tional member to act as chairman and to be selected by a majority
13 vote of the members selected by the municipality. Members shall
14 be removable for cause by the appointing authority upon written
15 charges and after public hearing. Vacancies shall be filled for the
16 unexpired term of any member whose term becomes vacant.

1 SEC. 13. **Administration of airport zoning regulations.** All airport
2 zoning regulations adopted under this act shall provide for the ad-
3 ministration and enforcement of such regulations by an administra-
4 tive agency (which may be an agency created by such regulations),
5 or by any official, board, or other existing agency of the municipality
6 adopting the regulations, or of one or both of the municipalities which
7 participated therein, but in no case shall such administrative agency
8 be or include any member of the board of adjustment. The duties of

9 any administrative agency designated pursuant to this act shall not in-
10 clude any of the powers herein delegated to the board of adjustment.

1 **SEC. 14. Enforcement and remedies.** Each violation of this act or
2 of any regulations, order, or rules promulgated pursuant to this act,
3 shall constitute a misdemeanor, and the perpetrator thereof, upon
4 conviction, shall be punished accordingly; and each day a violation
5 continues to exist shall constitute a separate offense.

1 **SEC. 15. Separability.** If any section, clause, sentence or phrase
2 of this act is for any reason held to be unconstitutional or invalid,
3 such decision shall not affect the validity of the remaining portions
4 of this act. The legislature hereby declares that it would have passed
5 this act and each section, clause, sentence or phrase hereof, irrespec-
6 tive of whether any one or more of the sections, clauses, sentences, or
7 phrases be declared unconstitutional or invalid.

1 **SEC. 16. Repeal.** All acts or parts of acts inconsistent with the
2 provisions of this act are hereby repealed.

1 **SEC. 17. Short title.** This act shall be known and may be cited as
2 the "Airport Zoning Act."

1 **SEC. 18. Special charter cities.** The provisions of this act shall
2 apply to cities operating under special charter.

Approved April 6, 1945.

CHAPTER 150

AIRPORTS

H. F. 365

AN ACT to amend chapter three hundred three and one-tenth (303.1), code, 1939, and to amend sections five thousand nine hundred three and two hundredths (5903.02), five thousand nine hundred three and three hundredths (5903.03), five thousand nine hundred three and seven hundredths (5903.07), and five thousand nine hundred three and nine hundredths (5903.09) of chapter three hundred three and one tenth (303.1), code, 1939; and to amend chapter two hundred ten (210) Acts of the Forty-ninth General Assembly; and to amend section six thousand nine hundred forty-four (6944) chapter three hundred thirty (330), code, 1939, relating to airports and airport approaches; the powers of political subdivisions with respect thereto, including the acquisition and planning thereof, acceptance of federal aid therefor and issuance of revenue bonds for improvements thereupon, the creation of airport commissions, and exemption from taxation, under certain circumstances, of land used for airport purposes.

Be It Enacted by the General Assembly of the State of Iowa:

1 **SECTION 1.** Chapter three hundred three and one-tenth (303.1),
2 Code, 1939, is hereby amended by adding thereto the following section:
3 "All powers herein conferred upon and granted to cities and towns
4 are hereby specifically extended and granted to and conferred upon
5 all other political subdivisions within this state, including villages,
6 townships and counties.

1 **SEC. 2.** Chapter three hundred three and one-tenth (303.1), Code,
2 1939, is hereby further amended by adding thereto the following
3 section: