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Ind. Postponed.....
Passed Senate.....
Failed to Pass Senate.....
Passed House.....
Failed to Pass House.....

Senate File 260

February 11, 1941.
Passed on File.

By FAUL.

A BILL FOR

An Act declaring certain structures and other objects within the aerial approaches of the public utility class to be airport hazards and as such not in the public interest; empowering and directing the Iowa Aeronautics Commission, or other official or officials or agency of the state, as the case may be, to prepare airport approach plans for such airports, indicating the approach protection necessary; empowering and directing municipalities 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 the property in the vicinity of such airport; authorizing the acquisition by purchase, grant, or condemnation of air rights and other interests in land in cases in which the desired result cannot be obtained by regulation; prescribing certain standards and principles to be followed; making provision for notice, hearing and appeal and prescribing the procedure governing the adoption of airport zoning regulations, applications for permits and variances, and judicial review; and granting to cities and towns and to any zoning commission and board of adjustment therein additional authority under any law or ordinance to extend the jurisdiction of any such city or town and any zoning commission and board of adjustment to include the height of any structure or object within the provisions of this act not exceeding two miles from the center of any airport and not exceeding four thousand (4000) feet in the segment of a circle having a radius of two miles from the center of said airport and within the boundary lines of any runway extended to said circle. Compliance with the airport approach standards of the Civil Aeronautics Authority of the Federal Department of Commerce shall be prima facie evidence of compliance with

this act. Penalties and remedies for violations of this act or any ordinance or regulations made under the authority conferred thereby shall be provided herein.

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

1 Section 1. DEFINITIONS. As used in this act, unless the
2 context requires:

3 "Airport" means any area of land or water usable for the
4 landing and taking-off of airplanes.

5 "Airport hazard" means any overhead power line which interferes
6 with radio communication between an airport of the public utility
7 class and airplanes approaching or leaving same, or any structure
8 or object of natural growth which obstructs the aerial approaches
9 of such an airport or is otherwise hazardous to its use for landing
10 or taking-off.

11 An airport is of the "public utility class" if it is available
12 to and utilized by the general public for private flying or otherwise
13 as a point of arrival or departure by air.

14 "Commission" means the Iowa Aeronautics Commission, or other
15 similar officials or agency of the state government, as the case may
16 be.

17 "Person" means any individual, firm, co-partnership, public
18 or private corporation, company, association, joint stock association
19 or body politic, and includes any trustee, receiver, assignee or
20 other similar representative thereof.

21 "Structure" means any object constructed or installed by man,
22 including, but without limitation, buildings, towers, smokestacks,

25 or similar matters, that have been or may be adopted under authority
26 other than that conferred by this act, shall be consistent with,
27 and conform to, the commission's approach plan for such area, and
28 shall be amended from time to time as may be necessary to conform
29 to any revision of the plan that may be made by the commission ;
30 provided, however, that all such regulations shall be reasonable.

31 In the event that a political subdivision has adopted, or
32 hereafter adopts, a general zoning ordinance regulating, among
33 other things, the height of buildings, any airport zoning
34 regulations adopted for the same area or portion thereof under
35 this act, may be incorporated in and made a part of such general
36 zoning regulations, and administered and enforced in connection
37 therewith ; provided, that such interrelation of the two types of
38 zoning regulations shall not be construed to limit the effectiveness
39 or scope of those adopted under this act.

40 The governing body of any political subdivision authorized to
41 promulgate, administer, and enforce airport zoning regulations
42 under this act may delegate this power to any zoning board or
43 planning commission under its jurisdiction, and may, if it so
44 desires, authorize one such agency to determine and promulgate the
45 regulations and another to administer and enforce them.

1 Sec. 5. PERMITS AND VARIANCES.

2 (a) Permits for Continuance of Non-conforming Uses. The
3 owner of any structure or object of natural growth existing at the
4 time of the adoption of airport zoning regulations under authority
5 of this act, which does not conform to said regulations, shall be

6 granted a permit authorizing continuance of such non-conforming
7 use upon application therefor made by him to the board, commission
8 or agency authorized to administer and enforce the regulations ;
9 provided, that if such application is not made within ninety (90)
10 days after the effective date of the regulations in question,
11 such board, commission or agency shall by appropriate action compel
12 the owner of the non-conforming structure or object of natural
13 growth, at his own expense, to lower, remove, reconstruct, or equip
14 such object as may be necessary to conform to the regulations.

15 (b) Permits for Change and Repair of Non-conforming Uses.

16 Before any existing non-conforming structure or object of natural
17 growth for which a permit has been issued in accordance with
18 subsection (a) hereof may be altered or repaired, rebuilt, allowed
19 to grow higher or replanted, a permit must be secured from the
20 board, commission or agency authorized to administer and enforce
21 the regulations, authorizing such change or repair. No such permit
22 shall be granted that would permit the structure or object of
23 natural growth in question to be made higher or become a greater
24 hazard to air navigation than it was when the permit for its
25 continuance was granted under subsection (a) hereof ; and, where
26 the structure or object of natural growth has been more than fifty
27 per cent (50%) torn down or destroyed, whether voluntarily, by act
28 of God, or otherwise, or has become more than fifty per cent (50%)
29 deteriorated or decayed, no permit shall be granted that would permit
30 said structure or object of natural growth to exceed the applicable
31 height limit or otherwise deviate from the zoning regulations. In

32 all such cases of fifty per cent (50%) destruction, deterioration,
33 or decay, whether application is made for a permit for repair or
34 not, the said board or agency shall be appropriate action compel
35 the owner of the non-conforming structure or object of natural
36 growth, at his own expense, to lower, remove, reconstruct, or equip
37 such object as may be necessary to conform to the said regulations.
38 Except as indicated, all applications for permits for change or
39 repair of non-conforming uses shall be granted.

40 (c) Permits for all Uses. Where advisable to facilitate the
41 enforcement of zoning regulations adopted pursuant to this act, a
42 system for the granting of permits for all uses and structures
43 within the zoned area may be established.

44 (d) Variances. Any person desiring to erect any structure,
45 or increase the height of any structure, or permit the growth of
46 any object of natural growth, or otherwise use his property, in
47 violation of airport zoning regulations adopted under this act, must
48 apply to the board, commission or agency authorized to consider
49 such applications, for a variance from the zoning regulations in
50 question. Such variances shall be allowed upon a showing of
51 practical difficulty or unnecessary hardship.

52 (a) Obstruction Marking and Lighting. In granting any permit
53 or variance in accordance with this section, the board, commission,
54 or agency authorized to do so, may, if it deems such action advisable
55 to effectuate the purposes of this act and reasonable in the
56 circumstances, so condition such permit or variance as to require
57 the owner of the structure or object of natural growth in question

58 to install, operate, and maintain suitable obstruction markers and
59 obstruction lights.

60 (f) Exhaustion of Remedies. No person desiring to continue
61 a non-conforming use, to change or repair a non-conforming use, to
62 take any action requiring a variance under subsection (d) hereof,
63 or to take any other action covered by this section, shall initiate
64 any action in the courts unless and until he has exhausted the
65 remedies provided by this section.

1 Sec. 6. ACQUISITION OF AIR RIGHTS. In any case in which
2 (1) the approach protection necessary according to the commission's
3 airport approach plan cannot, because of constitutional limitations,
4 be provided for in airport zoning regulations under this act; or
5 (2) a permit for continuance of a non-conforming use has been granted
6 under section 5(a) hereof; or (3) a variance has been granted under
7 section 5(d) hereof, either the political subdivision having
8 jurisdiction or the commission may acquire, by purchase, grant or
9 condemnation, such an air right, easement, or other estate or
10 interest in the property or non-conforming use as may be necessary
11 to effectuate the purposes of this act. In cases of imminent danger
12 to the health, safety, or general welfare of the public the political
13 subdivision and the commission shall have the power to take such
14 immediate steps as may be necessary to remove or mitigate said
15 danger, and a hearing shall thereafter be held to determine what
16 compensation, if any, should be made to the owner of the property
17 or non-conforming use causing said danger.

1 Sec. 7. PROCEDURE. In all cases of applications for permits

2 and variances as provided for in section 5 hereof, a public notice
3 shall be published in the manner prescribed by law for publication
4 of legal notices, of a public hearing upon the application in
5 question; a public hearing shall be held at which any person having
6 an interest in the proceedings shall have an opportunity to offer
7 evidence for or in opposition to the application in question; and
8 written findings of fact and conclusions of law shall be made by
9 the board, commission or agency authorized to consider such
10 application, based upon the evidence offered at the public hearing.

11 Sec. 8. JUDICIAL REVIEW. Any person aggrieved by any zoning
12 regulations adopted pursuant to this act or by any order or ruling
13 upon an application for a permit or variance, may, within thirty
14 (30) days thereof, appeal therefrom to the district court of the
15 county within which the property, structure, or object of natural
16 growth in question is located; after such notice as such court
17 shall direct to the parties interested, including all political
18 subdivisions served by the airport affected and the agency
19 promulgating the zoning regulations in question, a hearing may be
20 had before such court at an early and convenient time and place
21 fixed by it, and said court may, by its decree, annul, affirm, or
22 alter the order or ruling complained of, if it finds that the
23 applicable rules of law so require; provided, that, in all cases,
24 any findings of fact that may have been made by the board, commission
25 or agency authorized to hear and consider applications for permits
26 and variances, if supported by substantial evidence, shall be
27 accepted by the court as conclusive. Appeals from the district

18 court to the supreme court shall be in accordance with the statutes
19 governing such appeals now in force and effect.

1 Sec. 9. PENALTIES AND REMEDIES. Penalties of fines and
2 imprisonment for violations of any regulations, order, or ruling
3 promulgated or made pursuant to this act, may be prescribed in
4 any airport zoning regulations that may be promulgated under
5 authority of this act. In addition, either the political subdivision
6 within which the property is located or the commission, or the city
7 or town into which the extension of the area between the side lines
8 extended of any runway may enter, may institute in any court of
9 competent jurisdiction, an appropriate action or proceeding to
10 prevent, restrain, correct or abate any violation of airport zoning
11 regulations adopted under this act, or any order or ruling made
12 in connection with their administration or enforcement, and the
13 court shall adjudge then to the plaintiff such relief, by way of
14 injunction (which may be mandatory) or otherwise, as may be proper
15 under all the facts and circumstances of the case, in order fully
16 to carry out and effectuate the purposes of this act and of the
17 regulations adopted and orders and rulings made pursuant to authority
18 herein given.

1 Sec. 10. EVIDENCE. Evidence of compliance with the airport
2 approach standards of the Civil Aeronautics Authority of the
3 Federal Department of Commerce shall be prima facie evidence of
4 compliance with this act.

1 Sec. 11. SEPARABILITY. Each separate provision of this act
2 shall be deemed to be independent of all other provisions herein,

3 and if any provision of this act is declared to be invalid, all
4 other provisions thereof shall remain valid and enforceable. If
5 any provision of this act is held invalid with regard to any person
6 or circumstances, it shall not be invalid as to other persons or
7 circumstances.

1 Sec. 12. INCONSISTENT ACTS REPEALED. All acts or parts of
2 acts inconsistent with this act are hereby repealed to the extent
3 of said inconsistency.

1 Sec. 13. CITATION OF ACT. This act shall be known and may
2 be cited as "The Uniform Airport Zoning Enabling Act."