

Sen. State Gov. 4/30

FILED APR 29 1976

SENATE FILE 1317

By HILL of Polk

Passed Senate, Date _____ Passed House, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to airspace.

2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. NEW SECTION. This Act shall be known and may
2 be cited as the "Iowa Airspace Act".

3 Sec. 2. NEW SECTION. As used in this Act, "airspace"
4 means that space which extends upward from the surface of
5 the earth and which is reasonably subject to being used or
6 occupied or is otherwise necessary for the enjoyment and use
7 of the land surface and any structures on the surface by the
8 surface owner. The airspace owned by a surface owner is that
9 which lies within the vertical upward extension of the surface
10 owner's surface boundaries. The definition of airspace shall
11 not affect any rights pertaining to aviation or spaceflight.
12 The public right of transit through navigable airspace is
13 expressly recognized.

14 Sec. 3. NEW SECTION. Airspace shall be considered real
15 property and is the property of the surface owner holding
16 title to the land underneath it until the airspace is
17 separately transferred.

18 Sec. 4. NEW SECTION. Airspace shall be subject to being
19 acquired, held, possessed, and transferred in any manner as
20 other real property. Any interest, right, title, or estate
21 which may be created in land may be created in airspace re-
22 gardless of whether the airspace is contiguous to the surface.
23 Airspace may be divided or apportioned in any geometric design
24 or shape.

25 Sec. 5. NEW SECTION. The state and its political sub-
26 divisions shall have the same powers, rights and duties with
27 respect to airspace as are possessed with respect to other
28 real property. All persons shall have the same powers, rights,
29 and duties with respect to airspace as are possessed with
30 respect to other real property.

31 Sec. 6. NEW SECTION. All interests in airspace shall
32 be subject to taxation to the same extent and in the same
33 manner as such an interest in other real property. For the
34 purposes of taxation, interests in airspace which are not
35 held by the surface owner shall be taxed separately from the

1 land surface, and the surface owner shall not be taxed for
2 interests in airspace which are not owned by the surface
3 owner.

4 Sec. 7. NEW SECTION. This Act shall not extend the power
5 of the state or its political subdivisions having jurisdic-
6 tion over roads to the extent that the right of the public
7 to full and unobstructed use of the roads is impaired or to
8 the extent that results in the unavailability of federal funds
9 for the improvement of streets and highways.

10 Sec. 8. NEW SECTION.

11 1. The state department of transportation and any agency
12 exercising jurisdiction over any road as provided in section
13 three hundred six point four (306.4) of the Code may join
14 with any public or private person or agency in the acquisi-
15 tion, sale, or use of interests in airspace. This power shall
16 include, but not be limited to, the joint development and
17 multiple use of rights-of-way and adjoining property or air-
18 space. In order to develop a joint development and multiple
19 use plan the department and such agencies may:

20 a. Collect and distribute informational material.

21 b. Cooperate with other public or private agencies or
22 persons.

23 c. Employ or contract for consultants, planners, and other
24 professional services.

25 d. Purchase or contract for supplies, equipment, or other
26 items.

27 e. Apply for other funds from public or private sources
28 and agree to reasonable restrictions on the use of those
29 funds.

30 f. Perform such other acts or enter into contracts as
31 may be necessary or appropriate to develop and execute the
32 joint development and multiple use plan.

33 2. The state department of transportation and other such
34 agencies shall coordinate the joint development and multiple
35 use plan with the comprehensive plans of other state agencies

1 and of local governments having jurisdiction over the plan-
2 ning and zoning of the area involved.

3 3. The state department of transportation and other such
4 agencies shall have the power to condemn land or airspace
5 pursuant to chapter four hundred seventy-two (472) of the
6 Code in excess of that necessary for road purposes when
7 necessary to execute the joint development and multiple use
8 plan.

9 Sec. 9. NEW SECTION. The state or its political sub-
10 divisions may convey title or lesser interests in airspace
11 not needed for public use at public or private sale for not
12 less than the appraised value as determined by two or more
13 disinterested, qualified appraisers.

14 Sec. 10. NEW SECTION. Where the state or its political
15 subdivision holds only an easement of right-of-way upon which
16 a road or bridge is constructed:

17 1. The state or its subdivision shall possess the easement
18 for road purposes with full, free and unobstructed passage
19 over the road and the right to maintain, alter, repair or
20 remove the road.

21 2. The state or its subdivisions shall possess the right
22 to make full use of the airspace over or under the road pro-
23 vided that the title of the fee owner shall not be additionally
24 encumbered or limited unless just compensation be made pur-
25 suant to the exercise of the power of eminent domain.

26 EXPLANATION

27 The bill defines airspace as real property and provides
28 that interests in airspace shall be treated as interests in
29 real property. The bill also provides for the development
30 and execution of a joint development and multiple use plan
31 by the state department of transportation and local govern-
32 ments having jurisdiction over roads. The joint develop-
33 ment and multiple use plan shall be coordinated with other
34 state and local comprehensive plans. The power of eminent
35 domain is granted to execute the plan. The bill provides

1 for the ownership of airspace over roads for which only an
2 easement is held.

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