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# ARIZONA STATUTES

## Relating To

### AERONAUTICS



Issued By  
ARIZONA AVIATION AUTHORITY  
Sky Harbor Airport  
Phoenix, Arizona  
Phone BRidge 5-9169

1958 EDITION  
Arizona Revised Statutes



Title 2 - Article 1

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# ARIZONA STATUTES

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Title 2 - Article 1

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**ARIZONA AVIATION AUTHORITY**

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# TITLE 2

## AERONAUTICS

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## CHAPTER 1

### AVIATION IN GENERAL

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## ARTICLE 1. DEFINITIONS

## § 2-101. Definitions

A. In this title, unless the context otherwise requires:

1. "Aircraft" includes balloon, airplane, hydroplane and all craft used for navigation through the air.

2. "Aeronaut" includes aviator, pilot, balloonist and other persons participating in the operation of aircraft while in flight.

3. "Passenger" includes any person riding in aircraft but having no part in its operation.

B. A hydroplane while at rest on water and while being operated on or immediately above water shall be governed by the rules regarding water navigation, and while operated through the air otherwise than immediately above water shall be considered aircraft.

## Source:

§ 7, Ch. 38, L. '29; 48-107, C. '39.

the Act might be cited as the Uniform State Law for Aeronautics and for the construction of the Act. The provisions are omitted as unnecessary.

## Reviser's Note:

Laws 1929, Ch. 38, §§ 20, 22 (48-120, 48-122, C. '39) provided respectively that

## ARTICLE 2. SPACE ABOVE LANDS AND WATERS

## § 2-111. Sovereignty

Sovereignty in space above lands and waters of this state is declared to rest in the state, except where granted to and assumed by the United States pursuant to a lawful grant from this state.

## Source:

§ 8, Ch. 38, L. '29; 48-108, C. '39.

## § 2-112. Ownership

Ownership of space above lands and waters of this state is declared to be vested in the several owners of the surface beneath, subject to the right of flight described in § 2-203.

## Source:

§ 9, Ch. 38, L. '29; 48-109, C. '39.

## § 2-113. Crimes, torts and other wrongs; governing law

Crimes, torts and other wrongs committed by or against an aeronaut or passenger while in flight over this state shall be governed by the law of this state. The question whether damage occasioned by or to an

aircraft while in flight over this state constitutes a tort, crime or other wrong by or against the owner of the aircraft shall be determined by the law of this state.

**Source:**

§ 13, Ch. 38, L. '29; 48-113, C. '39.

**Cross References**

Jurisdiction and venue of offense in or against aircraft, see § 13-1507.

**§ 2-114. Legal relationships entered into while in flight**

Contractual and other legal relations entered into by aeronauts or passengers while in flight over this state shall have the same effect as if entered into on the land or water beneath.

**Source:**

§ 14, Ch. 38, L. '29; 48-114, C. '39.

**ARTICLE 3. STATE AVIATION AUTHORITY****§ 2-121. State aviation authority**

There shall be a state aviation authority.

**Source:**

§ 1, Ch. 45, L. '50, 1st S.S.; 48-144,  
C. '39, Supp. '52.

**§ 2-122. Members; appointment; terms; compensation;  
travel expenses**

A. The authority shall be composed of five persons appointed by the governor, selected on the basis of experience and interest in aviation, and with consideration for geographical areas of the state.

B. The terms of the members first appointed shall be one for one year, two for two years, and two for three years. Thereafter, upon expiration of the term of any member, a successor shall be appointed for a term of three years. In the event of a vacancy caused other than by expiration of term, the appointment shall be for the unexpired term only.

C. Members of the authority shall receive no compensation for their services, but shall receive travel expenses as provided for state officers.

**Source:**

§§ 2, 3, Ch. 45, L. '50, 1st S.S.; 48-145,  
48-146, C. '39, Supp. '52, comb'd.

## § 2-123. Powers and duties

A. The authority shall cooperate with all organizations, state, local and federal, for the purpose of encouraging and advancing aviation in this state.

B. The authority may assemble and distribute to the public information relating to aviation, landing fields, beacons and other matters pertaining to aviation, and may accept in the name of the state federal monies made available for the advancement of aviation.

C. The authority may distribute monies appropriated to it from the state aviation fund for construction and development of publicly owned and operated airport facilities in counties and incorporated cities and towns. The distribution of such monies shall be made according to the need for such facilities as shall be determined by the authority. As amended Laws 1958, Ch. 13, § 1.

### Source:

§ 4, Ch. 45, L. '50, 1st S.S.; 48-147, C. '39, Supp. '52.

## ARTICLE 4. STATE AVIATION FUND

### § 2-131. Aviation fund; unclaimed aviation gasoline taxes; administration

A. There shall be a state aviation fund. The state treasurer is directed to place to the credit of the fund all unclaimed and unrefunded aviation gasoline taxes transmitted to the state treasurer by the motor vehicle division of the Arizona highway department.

B. The state aviation authority shall administer monies appropriated by the legislature out of the state aviation fund.

### Source:

§ 5, Ch. 45, L. '50, 1st S.S.; 48-148, C. '39, Supp. '52.

### Reviser's Note:

Laws 1950, 1st Sp.Sess., Ch. 45, § 5 (48-148, C. '39, Supp. '52) created a state aviation fund but did not provide specifically for its administration. Subsection B is added to provide for the omission.

### Cross References

Refund on motor vehicle fuel used in aircraft, see § 28-1521.

## ARTICLE 5. CIVIL AIR PATROL

### § 2-141. Arizona department of civil air patrol

A. The Arizona department of civil air patrol shall consist of the civil air patrol, Arizona wing.

B. The appointed and qualified commanding officer of the Arizona civil air patrol shall be head of the department.

### Source:

§ 1, Ch. 38, L. '52; § 1, Ch. 8, L. '53; 64-601, C. '39, Supp. '53, in part.

**§ 2-142. Cooperation with United States agencies; acceptance of grants or gifts; expenditures**

A. The department may cooperate with the United States, the United States air force and any other agency of the United States or this state in carrying out the duties of the patrol and may accept grants or gifts made to the patrol for the purpose of assisting it in carrying out its duties or training programs.

B. Appropriations or grants when made to the civil air patrol, Arizona wing, may be accepted for use by the patrol, in which event such appropriations and grants may be retained by the commanding officer and shall be subject to expenditure, use and disposal for the purposes of the department by the commanding officer thereof, or his appointee.

**Source:**

§ 1, Ch. 38, L. '52; § 1, Ch. 8, L. '53; 64-601, C. '39, Supp. '53, in part.

**Reviser's Note:**

Laws 1952, Ch. 38, § 2 (64-602, C. '39, Supp. '52) provided for an appropriation to the state civil air patrol. The provision is omitted as executed.

## CHAPTER 2

### OPERATION OF AIRCRAFT

#### ARTICLE 1. GENERAL PROVISIONS

- Sec.
- 2-201. Federal regulation, licensing and registration of aircraft.
- 2-202. Federal licensing of persons operating aircraft; possession and inspection of licenses.
- 2-203. Limitations on flight and landings; damages caused by forced landings.
- 2-204. Trick or acrobatic flying; low level flying; dropping objects; penalty.
- 2-205. Killing or attempting to kill birds or animals; penalty.
- 2-206. Violations; penalty; allegations and proof.
- 2-207. Responsibility for damage caused by aircraft.
- 2-208. Aircraft collisions; law governing liabilities.

#### ARTICLE 1. GENERAL PROVISIONS

**§ 2-201. Federal regulation, licensing and registration of aircraft**

A. Aircraft operating within this state shall conform with respect to design, construction and airworthiness to standards prescribed by the United States or an agency thereof, with respect to navigation of aircraft subject to its jurisdiction.

B. It shall be unlawful for a person to navigate an aircraft within the state unless it is licensed and registered by the department of commerce of the United States in the manner prescribed by rules and regulations of the United States or an agency thereof.

**Source:**

§ 17, Ch. 38, L. '29; 48-117, C. '39.

public safety requiring and the advantages of uniform regulation making it desirable in the interest of aeronautical progress that . . ." The provision is deleted as unnecessary.

**Reviser's Note:**

The first sentence of Laws 1929, Ch. 38, § 17 (48-117, C. '39) provided, "The

### § 2-202. Federal licensing of persons operating aircraft; possession and inspection of licenses

A. A person engaging within this state in any operation of aircraft for which a license is required by the United States or an agency thereof shall have the class of license so required.

B. It is unlawful for a person to operate aircraft within this state in any manner without such a license.

C. The license shall be kept in the personal possession of the licensee when operating aircraft within this state, and shall be presented for inspection upon the request of a passenger, peace officer of the state, or an official, manager or person in charge of an airport in this state upon which the licensee shall land.

**Source:**

§§ 18, 19, Ch. 38, L. '29; 48-118, 48-119, C. '39, comb'd.

public safety requiring and the advantages of uniform regulation making it desirable in the interest of aeronautical progress that . . ." The provision is deleted as unnecessary.

**Reviser's Note:**

The first sentence of Laws 1929, Ch. 38, § 18 (48-118, C. '39) provided, "The

### § 2-203. Limitations on flight and landings; damages caused by forced landings

A. Flight of aircraft over lands and waters of the state is lawful, unless at such low altitude as to interfere with the existing use to which land or water or space over the land or water is put by the owner, or unless conducted in a manner imminently dangerous to persons or property lawfully on the land or water beneath.

B. Landing of aircraft on lands or waters of another without his consent is unlawful, except in case of forced landing. The owner or

lessee of the aircraft or the aeronaut shall be liable for damages caused by forced landing as provided in § 2-207

**Source:**

§ 10, Ch. 38, L. '29; 48-110, C. '39.

pilot to damages resulting from his negligence, it specifically establishes liability only where there is negligence. Even though this subsection makes forced landings upon the property of others lawful, it is doubtful that it was intended to absolve an aircraft operator from liability for damages resulting from such landings, or to predicate such liability upon negligence.

**Reviser's Note:**

The phrase ". . . as provided by Section 11 (§ 2-207)" as it appeared in Laws 1929, Ch. 38, § 10 (48-110, C. '39) is changed to "notwithstanding the provisions of § 2-207." Although § 2-207 does not by its terms limit liability of a

### § 2-204. Trick or acrobatic flying; low level flying; dropping objects; penalty

An aeronaut or passenger who, while in flight over a densely inhabited area or over a public gathering within this state, engages in trick or acrobatic flying, or in any acrobatic feat, or, except while in landing or taking off, flies at such a low level as to endanger persons on the surface beneath, or drops any object except loose water, loose sand ballast or loose sheets of paper, is guilty of a misdemeanor punishable by a fine of not more than five hundred dollars, imprisonment for not more than one year, or by both such fine and imprisonment.

**Source:**

§ 15, Ch. 38, L. '29; 48-115, C. '39.

### § 2-205. Killing or attempting to kill birds or animals; penalty

An aeronaut or passenger who, while in flight, intentionally kills or attempts to kill birds or animals is guilty of a misdemeanor punishable by a fine of not more than one hundred dollars, imprisonment for not more than thirty days, or by both such fine and imprisonment.

**Source:**

§ 16, Ch. 38, L. '29; 48-116, C. '39.

### § 2-206. Violations; penalty; allegations and proof

A. A person violating any provision of this article, and no other punishment being specifically provided, is guilty of a misdemeanor punishable by a fine of not more than one hundred dollars, by imprisonment for not more than ninety days, or both.

B. Acts or omissions made unlawful by this article do not include an act or omission which violates the laws or regulations of the United States.

C. It is not necessary to allege or prove as part of the case for the state that the defendant is not, on account of the alleged violation, subject to prosecution under laws of the United States. The fact that he is amenable to such prosecution shall be a matter of defense, unless it affirmatively appears from the evidence of the state.

**Source:**

§ 21, Ch. 38, L. '29; 48-121, C. '39.

**§ 2-207. Responsibility for damage caused by aircraft**

Each pilot shall be responsible for damage to a person or property caused by aircraft directed by him or under his control which results from the negligence of the pilot, either in controlling the aircraft or while giving instructions to another, and if the pilot is the agent or employee of another, both he and his principal or employer shall be responsible for the damage.

**Source:**

§ 11, Ch. 38, L. '29; 48-111, C. '39.

**§ 2-208. Aircraft collisions; law governing liabilities**

The liability of the owner of one aircraft to the owner of another aircraft or to aeronauts or passengers on either aircraft, for damage caused by collision on land or in the air shall be determined by the law applicable to torts on land.

**Source:**

§ 12, Ch. 38, L. '29; 48-112, C. '39.

## CHAPTER 3

### AIRPORTS AND AIRPORT ZONING

#### ARTICLE 1. AIRPORTS IN GENERAL

- Sec.
- 2-301. Authority of cities, towns and counties.
  - 2-302. Airports declared a public purpose.
  - 2-303. Acceptance by state or municipalities of federal or other aid.
  - 2-304. Disposal of airports by cities and towns.
  - 2-305. Holding of real property interests for airport purposes.
  - 2-306. Acquisition of private property for airport purposes.
  - 2-307. Purchase price for real property for airport purposes.
  - 2-308. Construction and operation of airports; municipal charge; annual appropriations; tax levy.
  - 2-309. Airport regulations, fees and charges.

Sec.

- 2-310. Agreements of cities, towns or counties with other parties; joint operations by state and municipalities.
- 2-311. Leases of airport land by city to nonprofit corporation.
- 2-312. Nonprofit corporations as lessees; tax exemption; bonds.

## ARTICLE 2. AIRPORT ZONING AND ZONING REGULATIONS

- 2-321. Definitions.
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- 2-323. Acquisition of facilities or nonconforming property; exception.
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- 2-328. Board of adjustment; powers; composition; proceedings.
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## ARTICLE 1. AIRPORTS IN GENERAL

### § 2-301. Authority of cities, towns and counties

The governing body of a city or town or the board of supervisors of a county may acquire, establish, construct, own, control, lease, equip, improve, maintain, operate and regulate airports for the use of aircraft within or without the limits of the municipality, and for that purpose may use property suitable therefor which is or may hereafter be owned or controlled by the city, town or county.

#### Source:

§ 1, Ch. 38, L. '29; § 1, Ch. 22, L. '45; L. '54, in part; § 2, Ch. 38, L. '29; 48-101, C. '39, Supp. '52; § 1, Ch. 141, 48-102, C. '39, comb'd.

#### Cross References

Acceptance by state land commissioner of real property for airport purposes, see § 37-104.

### § 2-302. Airports declared a public purpose

Lands acquired, owned, controlled or occupied by cities, towns or counties for the purposes enumerated in § 2-301 are for a public purpose and for a public necessity.

**Source:**

§ 3, Ch. 38, L. '29; 48-103, C. '39.

towns and counties could acquire property for the purposes set forth by § 2-301 under the power of eminent domain. The provision is deleted as covered by § 2-306.

**Reviser's Note:**

The last clause of Laws 1929, Ch. 38, § 3 (48-103, C. '39) provided that cities,

### § 2-303. Acceptance by state or municipalities of federal or other aid

A. The state, county, city or town is authorized to accept, receive and receipt for federal 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 laws of the United States and rules and regulations made thereunder for the expenditure of federal monies upon airports and air navigation facilities.

B. The governing body of a county, city or town is authorized to designate the state aviation authority as its agent to accept, receive and receipt for federal monies in its behalf for airport and other air navigation facility purposes and to contract for acquisition, construction, enlargement, improvement, maintenance, equipment or operation of such airports or other air navigation facilities, and may enter into an agreement with the authority prescribing the terms and conditions of such agency in accordance with federal laws, rules and regulations and applicable laws of this state.

C. Monies paid over by the United States shall be paid to the municipality under such terms and conditions as may be imposed by the United States in making the grant.

D. Contracts for acquisition, construction, enlargement, improvement, maintenance, equipment or operation of airports or other air navigation facilities, made by the state, county, city or town itself, or through the authority shall be made pursuant to the laws governing the making of like contracts, but where the acquisition, construction, improvement, enlargement, maintenance, equipment or operation is financed wholly or partly with federal monies, the contracts may be let in the manner prescribed by the federal authorities, acting under the law of the United States, and rules or regulations thereunder, notwithstanding state law to the contrary.

**Source:**

§ 1, Ch. 16, L. '45, 1st S.S.; 48-124, C. '39, Supp. '52.

**AMENDMENT SECTION 2-123**  
**ARIZONA REVISED STATUTES**

D. The Authority shall administer the laws relating to aeronautics and shall make such rules and regulations concerning aviation as may be necessary to promote public safety and the best interests of aviation in the state.

E. The Authority may appoint a director to serve at its pleasure. The director shall have an aeronautical background as may be required by the Board. The director shall act as the executive officer of the Authority and under its direction shall administer the aeronautical laws and enforce the rules and regulations of the Authority. The salary of the director shall be fixed by the Authority, subject to Legislative appropriation.

### § 2-304. Disposal of airports by cities and towns

The governing body of a city or town may, by resolution, sell, lease and dispose of any airport acquired under this article, and if sold, leased or disposed of to the county in which the airport is located, or the state, or the United States or any of its agencies, may be sold, leased or disposed of for a nominal consideration without advertising and without holding a special election as prescribed by §§ 9-402 and 9-403.

**Source:**

§ 1, Ch. 38, L. '29; § 1, Ch. 22, L. '45;  
48-101, C. '39, Supp. '52; § 1, Ch. 141,  
L. '54, in part.

### § 2-305. Holding of real property interests for airport purposes

A city, town or county may accept and hold real property or any interest therein, by gift, trust or purchase or any other manner for the purpose of establishing, constructing, operating or maintaining airports or for uses incidental thereto, subject to such terms and agreements as the governing body may deem advisable.

**Source:**

§ 1, Ch. 5, L. '41; § 1, Ch. 67, L. '52;  
48-123, C. '39, Supp. '52, in part.

### § 2-306. Acquisition of private property for airport purposes

Private property required by a city, town or county for an airport shall be acquired by purchase if the municipality can agree with the owner on terms of purchase. If unable to agree, the municipality may acquire the property by condemnation in the manner provided by law whereby cities, towns and counties are authorized to acquire real property for public purposes other than street purposes, or if there is no such law, then in the manner provided by general law for condemnation of private property.

**Source:**

§ 4, Ch. 38, L. '29; 48-104, C. '39, in part.

### § 2-307. Purchase price for real property for airport purposes

The purchase price for real property acquired for an airport may be paid from monies available therefor, or wholly or in part from proceeds of the sale of bonds of the city, town or county as the governing body shall determine, subject to the adoption of a proposal therefor, and

the approval thereof at an election and in the manner provided for the authorization and issuance of bonds for public purposes generally.

**Source:**

§ 4, Ch. 38, L. '29; 48-104, C. '39, in part.

**§ 2-308. Construction and operation of airports; municipal charge; annual appropriations; tax levy**

A. The governing body of a city, town or county which has established an airport and has acquired, leased or set apart real property for such purpose may construct, improve, equip, maintain and operate it or may vest jurisdiction for the construction, improvement, equipment, maintenance and operation thereof in any suitable officer, board, or body of the municipality.

B. Expenses of construction, improvement, equipment, maintenance and operation shall be a municipal charge.

C. A city, town or county to which this article is applicable may annually appropriate and cause to be raised by taxation funds sufficient to carry out the provision of this article.

**Source:**

§§ 5, in part, 6, Ch. 38, L. '29; 48-105, in part, 48-106, C. '39, comb'd.

**§ 2-309. Airport regulations, fees and charges**

The governing body of a city, town or county may adopt regulations and establish fees or charges for use of airport facilities, or may authorize an officer, board or body of the municipality to adopt regulations and establish fees and charges, subject to approval by the governing body before such fees and charges become effective.

**Source:**

§ 5, Ch. 38, L. '29; 48-105, C. '39, in part.

**§ 2-310. Agreements of cities, towns or counties with other parties; joint operations by state and municipalities**

A. A city, town or county may enter into agreements, upon such terms as the governing body deems advisable, with agencies of the United States or with any person, firm or corporation engaged in the air transportation industry for the establishment, construction, operation or maintenance of airports or uses incidental thereto, either by the city, town or county, or by the other contracting party.

**B.** The powers, rights and authority granted by this article to any city, town or county may be exercised by two or more thereof, or by the state and one or more thereof, acting jointly, either within or without the territorial limits of the city, town or county. Such powers may likewise be exercised, either within or without this state, by the state, or by the state and a city, town or county thereof, acting jointly with another state or with another state and a city, town or county in such state, if laws of the other state permit the joint action.

**Source:**

§ 1, Ch. 5, L. '41; § 1, Ch. 67, L. '52; Ch. 16, L. '45, 1st S.S.; 48-125, C. '39  
48-123, C. '39, Supp. '52, in part; § 2, Supp. '52, comb'd.

**§ 2-311. Leases of airport land by city to nonprofit corporation**

When a city has leased land owned by it to a nonprofit corporation for airport or air terminal purposes pursuant to a lease agreement which provides that title to all buildings, structures and additions made or added to the leased premises by the nonprofit corporation shall vest in the city in such manner and subject to such restrictions as are contained in the agreement, such agreement as it exists or as it may be amended is declared to be binding and effective in accordance with its terms.

**Source:**

§ 1, Ch. 5, L. '41; § 1, Ch. 67, L. '52;  
48-123, C. '39, Supp. '52, in part.

**§ 2-312. Nonprofit corporations as lessees; tax exemption; bonds**

**A.** Every nonprofit corporation which is a lessee as provided in § 2-311 is declared to be a validly organized and existing body politic and corporate exercising its powers for the benefit of the people, for the improvement of their health and welfare and for the increase of their traffic and prosperity and is declared to be engaged in a public purpose essential to transportation and communication, and performing an essential governmental function as an agency or instrumentality of the city and state.

**B.** Every such nonprofit corporation is exempt from property taxation by the state or an agency thereof, and possesses and may exercise police powers and other governmental powers on the terms, conditions, limitations, restrictions and agreements provided in the lease agreements.

**C.** The nonprofit corporation may issue bonds and incur obligations and pledge its revenues as security for the payment thereof for air-

port and air terminal purposes to the extent provided by the lease agreement as it exists or as it may be amended, without regard to any statutory limitation of indebtedness of corporations having authorized capital stock.

**Source:**

§ 1, Ch. 5, L. '41; § 1, Ch. 67, L. '52;  
48-123, C. '39, Supp. '52, in part.

**Reviser's Note:**

Laws 1952, Ch. 67, § 1 (48-123, C. '39, Supp. '52) provided, in the last sentence, for the severability of the section. The provision is deleted as unnecessary.

## ARTICLE 2. AIRPORT ZONING AND ZONING REGULATIONS

### § 2-321. Definitions

In this article, 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 those purposes.

2. "Airport hazard" means any structure, tree or use of land which obstructs the air space required for flight of aircraft in taking off or landing at an airport, or is otherwise hazardous to aircraft taking off or landing.

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 article.

4. "Political subdivision" means city, town or county.

5. "Person" means an individual, firm, partnership, corporation, company, association, joint stock association or body politic, and includes a trustee, receiver, assignee or other representative thereof.

6. "Structure" means an 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.

**Source:**

§ 1, Ch. 15, L. '45, 1st S.S.; 48-131  
C. '39, Supp. '52.

### § 2-322. Airport hazards as public nuisance; prevention and elimination

A. It is declared:

1. That creation or establishment of an airport hazard is a public nuisance and a public injury to the community served by an airport.

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

3. That prevention of these hazards should be accomplished to the extent legally possible by exercise of the police power without compensation.

B. 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 subdivisions may raise and expend public funds and acquire land or interests in land.

**Source:**

§ 2, Ch. 15, L. '45, 1st S.S.; 48-132, C. '39, Supp. '52.

**Reviser's Note:**

The first clause in the first sentence of Laws 1945, Ch. 15, § 2, 1st S.S. (48-132, C. '39, Supp. '52) took notice that airport hazards endangered lives and property. The provision is deleted as unnecessary.

**Cross References**

Abatement of public nuisance by cities and towns, see §§ 9-240, 9-276.

**§ 2-323. Acquisition of facilities or nonconforming property; exception**

A. In any case in which it is desired to remove, lower or otherwise terminate a nonconforming structure or use, or the approach protection necessary cannot, because of constitutional limitations, be accomplished by airport zoning regulations under this article, or 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 nonconforming 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 law under which political subdivisions are authorized to acquire real property for public purposes, the air right, navigation easement, or other estate or interest in the property or nonconforming structure or use in question as may be necessary to effectuate the purposes of this article.

B. Lands owned or held for use for and in connection with the transportation of United States mail and transportation of property in interstate commerce, and all structures thereon, shall not be subject to the provisions of this article.

**Source:**

§ 13, Ch. 15, L. '45, 1st S.S.; 48-143, C. '39, Supp. '52.

**§ 2-324. Authority of political subdivisions to adopt and administer airport zoning regulations; joint zoning boards; comprehensive zoning ordinances; conflicts between regulations**

A. In order to prevent airport hazards, every political subdivision 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 the airport hazard area. The regulations may divide the area into zones, and, within such zones, specify land uses permitted, and they may regulate and restrict the height to which structures and trees may be erected or allowed to grow.

B. When an airport is owned or controlled by a political subdivision and an airport hazard area is located without its territorial limits, the political subdivision owning or controlling the airport and the political subdivision within which the airport hazard area is located may, by ordinance or resolution, create a joint airport zoning board which shall have the same power to adopt, administer and enforce airport zoning regulations applicable to the airport hazard area as that vested by subsection A in the political subdivision within which the area is located.

C. The joint board shall have as members two representatives appointed by each political subdivision participating in its creation and a chairman selected by a majority of the members so appointed.

D. If a political subdivision has adopted, or hereafter adopts, a comprehensive zoning ordinance regulating 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 the comprehensive zoning regulations, and may be administered and enforced in connection therewith.

E. In case of conflict between any airport zoning regulations adopted under this article, and other regulations applicable to the same area, whether the conflict is with respect to the height of structures or trees, use of land or any other matter, and whether the other regulations were adopted by the political subdivision which adopted the airport zoning regulations, or by some other political subdivision, the more stringent limitation or requirement shall govern and prevail.

**Source:**

§§ 3, 4, Ch. 15, L. '45, 1st S.S.; 48-133, 48-134, C. '39, Supp. '52, comb'd.

**§ 2-325. Procedure for promulgating regulations; airport zoning commission**

A. In adopting, amending and repealing airport zoning regulations under this article, the political subdivision or joint airport zoning board shall follow the procedure prescribed by law for the adoption, amendment and repeal of comprehensive zoning regulations.

B. Prior to the initial zoning of any airport hazard area under this article, the political subdivision or joint airport zoning board shall appoint a commission known as the airport zoning commission which shall recommend the boundaries of zones to be established and the regulations to be adopted therefor.

C. The commission shall make a preliminary report and hold public hearings thereon before submitting a final report, and the political subdivision or the joint airport zoning board shall not hold public hearings or take other action until it has received the final report of the commission.

D. Where a city planning commission or comprehensive zoning commission already exists, it may be appointed as the airport zoning commission.

**Source:**

§ 5, Ch. 15, L. '45, 1st S.S.; 48-135, C. '39, Supp. '52.

**§ 2-326. Reasonableness of regulations; criteria; interference with prior nonconforming uses; exceptions**

A. Airport zoning regulations adopted under this article shall be reasonable and none shall impose any requirement or restriction which is not reasonably necessary to effectuate the purposes of this article.

B. 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 will be put and is adaptable.

C. No airport zoning regulations adopted under this article 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 nonconforming use, except as provided by subsection E of § 2-327.

**Source:**

§ 6, Ch. 15, L. '45, 1st S.S.; 48-136, C. '39, Supp. '52.

**§ 2-327. Administration of regulations; agency; duties; permits for new or changed construction or use; limitations; variances; conditions**

A. Airport zoning regulations adopted under this article shall provide for the administration and enforcement of the regulations by an administrative agency which may be an agency created by the regulations, or any official, board or other existing agency of the political subdivision adopting the regulations, or of one of the political subdivisions which participated in creation of the joint airport zoning board adopting the regulations, if satisfactory to that political subdivision. In no case shall the administrative agency be, or include any member of, the board of adjustment.

B. The duties of an administrative agency designated pursuant to this article shall include that of hearing and deciding applications for permits under subsection C of this section, but the agency shall not exercise any powers delegated in this article to the board of adjustment.

C. An airport zoning regulation adopted under this article may require that a permit be obtained before any new structure or use may be constructed or established and before any existing structure or use may be substantially changed, 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 shall be obtained from the administrative agency authorized to administer and enforce the regulations authorizing the replacement, change or repair. No permit shall be granted that will allow establishment or creation of an airport hazard or permit a nonconforming structure or tree or nonconforming use to be made or become higher or a greater hazard to air navigation than it was when the applicable regulation was adopted or than it is when application for a permit is made. Except as provided in this section, all applications for permits shall be granted.

D. A person desiring to erect or increase the height of a structure, or permit the growth of a tree, or otherwise use his property in violation of airport zoning regulations adopted under this article, may apply to the board of adjustment for a variance from the zoning regulations in question. 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 would do substantial justice and would be in accordance with the spirit of the regulations and this article. Any variance may be allowed subject to any reasonable conditions the board of adjustment deems necessary to effectuate the purposes of this article.

E. In granting a permit or variance under this section, the administrative agency or board of adjustment, if it deems such action advisable to effectuate the purposes of this article and reasonable in the circumstances, may condition the permit or variance so 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 thereon markers and lights as are necessary to indicate the presence of an airport hazard.

**Source:**

§§ 7, 9, Ch. 15, L. '45, 1st S.S.; 48-137, 48-139, C. '39, Supp. '52, comb'd.

**§ 2-328. Board of adjustment; powers; composition; proceedings**

A. Airport zoning regulations adopted under this article shall provide for a board of adjustment which shall exercise the following powers:

1. Hear and decide appeals from an order, requirement, decision or determination made by the administrative agency in the enforcement of the airport zoning regulations as provided in § 2-329.

2. Hear and decide special exceptions to the terms of the airport zoning regulations upon which the board may be required to pass under the regulations.

3. Hear and decide specific variances under subsection D of § 2-327.

B. When 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 members, each to be appointed for a term of three years by the authority adopting the regulations, and who may be removed by the appointing authority for cause, upon written charges, and after public hearing.

C. The concurring vote of a majority of the members of the board of adjustment shall be sufficient to reverse an 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 act under the airport zoning regulations, or to make variations in the regulations.

D. The board shall adopt rules in accordance with provisions of the ordinance or resolution by which it was created. Meetings of the board shall be held at call of the chairman and at 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 a member is absent or fails to vote, indicating that fact, and shall keep records of its examinations and other official actions, all of which shall be filed in the office of the board and shall be a public record.

**Source:**

§ 10, Ch. 15, L. '45, 1st S.S.; 48-140, C. '39, Supp. '52.

**§ 2-329. Appeals to board of adjustment; procedure; hearing and decision**

A. A person aggrieved or taxpayer affected by a decision of an administrative agency made in the administration of airport zoning regulations adopted under this article, or a governing body of a political subdivision, or a joint airport zoning board, which is of the opinion that a decision of the administrative agency is an improper application of airport zoning regulations, may appeal to the board of adjustment authorized to hear and decide appeals from the decisions of the administrative agency.

B. Appeals taken under this section shall 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 appeal is taken shall forthwith transmit to the board all papers constituting the record upon which the action appealed from was taken.

C. An appeal shall stay all proceedings 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. Proceedings shall not be stayed otherwise than by order of the board on notice to the agency from which the appeal is taken and for cause shown.

D. The board shall fix a reasonable time for hearing appeals, shall give public notice and notice to the parties in interest, and render a decision within a reasonable time. Upon the hearing a party may appear in person or by agent or attorney.

E. The board may, in conformity with the provisions of this article, reverse or affirm, wholly or in part, or modify, the order, requirement, decision or determination appealed from and may make an appropriate order, requirement, decision or determination, and to that end shall have all the powers of the administrative agency from which the appeal is taken.

**Source:**

§ 8, Ch. 15, L. '45, 1st S.S.; 48-138, C. '39, Supp. '52.

**§ 2-330. Appeals to superior court; procedure; extent and limitations of judicial review; effect of decisions based on constitutional grounds**

**A.** Any person aggrieved, or taxpayer affected, by a decision of a board of adjustment, or a governing body of a political subdivision, or a joint airport zoning board which is of the opinion that a decision of a board of adjustment is invalid, may file in the superior court a verified petition setting forth that the decision is invalid, in whole or in part, and specifying the grounds. The petition shall be filed within thirty days after the decision is filed in the office of the board.

**B.** Upon presentation of the petition, the court may allow a writ of certiorari directed to the board of adjustment to review the decision of the board. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application and on notice to the board, and on good cause shown, grant injunctive relief.

**C.** The board of adjustment shall not be required to return the original record acted upon, but it shall be sufficient to return certified or sworn copies thereof, or such parts thereof as may be called for by the writ. The return shall concisely set forth other facts that are material to show the grounds of the decision appealed from, and shall be verified.

**D.** 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 necessary, to order further proceedings by the board of adjustment.

**E.** Findings of fact by 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 the objection has been urged before the board, or, if it was not so urged, unless there are reasonable grounds for failure to do so.

**F.** 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.

**G.** In any case in which airport zoning regulations adopted under this article, although generally reasonable, are held by the 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 the structure or parcel of land, as to constitute a taking of property in violation of the constitution of this state or the United States, the holding shall not affect application of the regulations to other structures and parcels of land.

**Source:**

§ 11, Ch. 15, L. '45, 1st S.S.; 48-141, C. '39, Supp. '52.

**§ 2-331. Enforcement; penalties; remedies**

A. Each violation of this article, or of any regulations, orders or rulings made pursuant to this article, shall constitute a misdemeanor punishable by a fine of not more than one hundred dollars, by imprisonment for not more than thirty days, or both. Each day a violation continues shall constitute a separate offense.

B. The political subdivision or agency adopting zoning regulations under this article may institute in a court of competent jurisdiction an action to restrain, correct or abate a violation of this article or airport zoning regulation adopted under this article, or any order or ruling made in connection with their administration or enforcement, and the court shall award such relief by injunction, or otherwise, as may be proper in order fully to effectuate the purposes of this article and the regulations, orders and rulings made pursuant thereto.

**Source:**

§ 12, Ch. 15, L. '45, 1st S.S.; 48-142, C. '39, Supp. '52.