

State Zoning Laws

Michigan's Airport Zoning Act

AIRPORT ZONING ACT Act 23 of 1950 (Ex. Sess.)

AN ACT to empower and direct the Michigan Aeronautics Commission to adopt airport approach plans for publicly owned airports within this state; to empower the Michigan Aeronautics Commission, municipalities, and other political subdivisions to promulgate, adopt, establish, 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 publicly owned airports, and to acquire, by purchase, grant, condemnation, or otherwise, air rights and other interests in land; to provide for the establishment of zoning commissions, administrative agencies, and boards of appeals to administer the provisions of this act, and to provide for their organization and procedure and appeals therefrom; and to provide penalties and remedies for violations of this act or ordinances or regulations made under the authority herein conferred; to provide for reciprocity with adjoining states maintaining and operating airports; and to repeal any inconsistent act or parts of acts.

259.431 Airport zoning act; definitions.

Sec. 1. For the purpose of this act the words, terms and phrases set forth in sections 2 through 10, inclusive, shall have the meanings prescribed in such sections.

259.432 Airport; publicly owned; definitions.

Sec. 2. The term "airport", when used in this act means any location which is used for the landing or taking off of aircraft, which provides facilities for the shelter, supply or care of aircraft, or for receiving or discharging passengers or cargo, and all appurtenant areas used or acquired for airport buildings or other airport facilities, and all appurtenant rights-of-way, either heretofore or hereafter established. An airport is "publicly owned" if the portion thereof used for the landing and taking off of aircraft is owned, operated, controlled, leased to or leased by the United States, any agency or department thereof, this state or any municipality or other political subdivision of this state, or any other governing body, public agency or other public corporation.

259.433 Airport hazard; definition.

Sec. 3. The term "airport hazard", when used in this act means any structure or tree or use of land or of appurtenances thereof which obstructs the air space required for the safe flight of aircraft in landing or taking off at an airport or is otherwise hazardous or creates hazards to such safe landing or taking off of aircraft.

259.434 Airport hazard area; definition.

Sec. 4. The term "airport hazard area", when used in this act means any area of land or water, or both, upon which an airport hazard might be established if not prevented as provided in this act, including any such area which has been declared to be an "airport hazard area" by the Michigan aeronautics commission in connection with any airport approach plan adopted by said commission.

259.435 Commission; definition.

Sec. 5. The term "commission", when used in this act means the Michigan aeronautics commission, or any successor thereto established by law.

259.436 Political subdivision; definition.

Sec. 6. The term "political subdivision", when used in this act means any county, city, village or township of this state, and any other political subdivision, public corporation, authority, or district in this state which is or may hereafter be authorized by law to construct, enlarge, improve, maintain, equip, operate and regulate airports.

259.437 Person; definition.

Sec. 7. The term "person", when used in this act means any individual, firm, partnership, corporation, company, association, joint stock association, municipal corporation or other body politic and includes any trustee, receiver,

assignee, or other similar representative thereof.

259.438 State; definition.

Sec. 8. The term "state" when used in this act means the state of Michigan.

259.439 Structure; definition.

Sec. 9. The term "structure", when used in this act means any object constructed or installed by man, including, but without limitation, buildings, towers, smoke stacks and overhead transmission lines, but not including highways and their appurtenances.

259.440 Tree; definition.

Sec. 10. The term "tree", when used in this act, means any object of natural growth.

259.441 Airport hazard declared nuisance; prevention.

Sec. 11. It is hereby found that an airport hazard endangers the lives and property of the general public, 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 or maintenance of an airport hazard is a public nuisance and an injury to the community served by the airport in question; and (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. It is further declared that both the prevention of the creation or establishment of airport hazards and the elimination, removal, alteration, mitigation, abatement, or marking or lighting of existing airport hazards are public purposes for which political subdivisions may raise and expend public funds and acquire land or property rights therein.

259.442 Airport approach plan; adoption by aeronautics commission; considerations.

Sec. 12. The commission shall formulate, adopt and revise, when necessary, an airport approach plan for each publicly owned airport in this state. Each such plan shall indicate and determine the circumstances in which structures and trees are or would be airport hazards, the airport hazard area within which measures for the protection of the airport's aerial approaches should be taken, and what the height limits and other objectives of such measures should be. In adopting or revising any such plans, the commission shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the traffic pattern and regulations affecting flying operations at the airport, the nature of the terrain, the height of existing structures and trees above the level of the airport, and the possibility of lowering or removing existing obstructions; and the commission may obtain and consider the views of the agency of the federal government charged with the fostering of civil aeronautics, as to the aerial approaches necessary to safe flying operations at the airport.

259.443 Airport hazard area; determination; zoning regulations; "development" defined.

Sec. 13. (1) In order to prevent the creation or establishment of airport hazards, every political subdivision having an airport hazard area wholly or partly within its territorial limits or jurisdiction may make an official determination that the area is in fact an airport hazard area and may thereupon adopt, administer, and enforce, in the interest of public safety and in the manner and upon the conditions prescribed in this act, airport zoning regulations for that part of the airport hazard area which is within its territorial limits or jurisdiction. The regulations may divide the area into zones, and, within those zones, may specify the land uses permitted and regulate and restrict the height to which structures and trees may be erected or allowed to grow.

(2) A political subdivision in which is wholly or partially located an airport hazard area, may adopt, administer, and enforce zoning regulations for that part of an airport hazard area within the political subdivision's territorial limits or jurisdiction to protect public health and safety. The political subdivision may divide the area into zones and specify within the zones the land uses or developments permitted. As used in this subsection, "development" means an activity which materially alters or affects the existing conditions or use on any land.

259.444 Joint airport zoning board; creation; powers; membership.

Sec. 14. In each case where (a) an airport is owned, operated, controlled, leased to, or leased by a political subdivision and an airport hazard area appertaining to the airport is located wholly or partly outside the territorial limits or jurisdiction of the political subdivision, or (b) an airport hazard area is located wholly or partly within the territorial limits or jurisdiction of 2 or more political subdivisions, whether or not the particular airport in connection with which the airport hazard area exists is owned, operated, controlled, leased to, or leased by 1 or more of the political subdivisions, all the political subdivisions involved, including the political subdivision which is the owner, operator, controller, lessee, or lessor of the airport, shall, by ordinance or by 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 section 13 in the political subdivision or political subdivisions within which the hazard area is wholly or partly located. Each joint board shall have as members 2 representatives appointed by the governing body of each political subdivision participating in its creation and in addition, another member to be elected by a majority of the members so appointed. This section shall not require the creation of a joint airport zoning board whenever a county, acting through its governing body or any county agency which is by law authorized to maintain, operate, and improve airports, adopts airport zoning regulations applicable to an airport hazard area located entirely within the territorial limits or jurisdiction of the county and the airport zoning regulations shall supersede any other airport zoning regulations applicable to the same airport zoning area.

259.445 Airport zoning regulations; incorporation into zoning ordinance.

Sec. 15. In the event that a political subdivision 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 may be administered and enforced as an integral part thereof.

259.446 Airport zoning regulations; amendment.

Sec. 16. Every airport zoning regulation for an airport hazard area existing in connection with a publicly owned airport shall be designed to effectuate the commission's airport approach plan, as amended by it, whenever necessary, for such publicly owned airport, and said regulations shall likewise be amended, when necessary, to conform to any revision of the applicable airport approach plan that may be made by the commission.

259.447 Airport hazard; definition and certification by aeronautics commission; joint airport zoning board, appointment, meetings, powers, compensation and expenses, expenditures.

Sec. 17. In each case where an airport hazard area exists in connection with a publicly owned airport and suitable airport zoning regulations have not been adopted, administered and enforced for such airport hazard area in a form and manner deemed reasonably adequate by the commission for the purposes of this act, the commission on behalf of this state shall define and determine such airport hazard area and certify such determination to the board of supervisors of the county or counties within which such airport hazard area is located and to the political subdivision authorized by law to maintain, operate, improve and regulate such airport, hereinafter referred to in this section as the airport operating agency. Whereupon and within 90 days thereafter, the board of supervisors of each county involved shall appoint 3 members and the operating agency and the commission shall each appoint 1 member to a board which shall constitute a joint airport zoning board. Two of the members appointed by the board of supervisors of each county involved shall be from a township or townships within which the hazard area is located and 1 shall be from that part of the county outside the townships where the hazard area is located. Within 120 days after such certification such airport zoning board shall meet and organize and thereafter function in the same manner and with the same powers as joint airport zoning boards provided for under section 14 of this act. Members of joint zoning boards created pursuant to the provisions of this section shall be compensated for services actually rendered at a rate established by the airport operating agency and approved by the commission, and shall be reimbursed for any actual and necessary expenses incurred by them in the performance of their duties.

Subject to the approval of the airport operating agency, each joint board created pursuant to the provisions of this section is hereby authorized to make such expenditures, to employ such servants and to engage such professional and consultant services as are necessary to carry out the provisions of this act. All expenses of such joint boards, including the compensation of its members, shall be paid by the airport operating agency. Provided, however, That the commission and the board of supervisors of any county involved, or any of them, are hereby authorized to par-

ticipate in and contribute toward such compensation and expenses in such amounts and to such extent as may be fixed or provided by agreement.

259.448 Airport zoning regulations; conflict, determination by commission.

Sec. 18. In the event of conflict between any airport zoning regulations adopted under this act and any other zoning regulations applicable to the same area, whether such other regulations were adopted by the political subdivision which adopted the airport zoning regulations or by some other political subdivision, or by a joint airport zoning board, and whether the conflict be with respect to the height of structures or trees, the use of land, or any other matter, those limitations or requirements which may be determined by the commission to be most conducive to airport and air travel safety shall govern and prevail.

259.449 Airport zoning regulations; public hearing on adoption or amendment, notice.

Sec. 19. No airport zoning regulations shall be adopted, amended, or changed under this act except by action of the governing body of the political subdivision in question, or by action of the joint board provided for in sections 14 or 17, after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least 15 days' notice of the hearing shall be published in a newspaper of general circulation, in the political subdivision or subdivisions in which is located wholly or partly, the airport hazard area to be zoned, or, if no newspaper is generally circulated in any such political subdivision, then in a newspaper of general circulation in the county in which such political subdivision is located.

259.450 Airport zoning commission; appointment, reports and hearings.

Sec. 20. Prior to the initial zoning of any airport hazard area under this act, the governing body of the political subdivision or the joint airport zoning board which is to adopt the regulations shall appoint a body, 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 airport zoning commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and the governing body of the political subdivision 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 airport zoning commission. Where a city plan commission or comprehensive zoning commission already exists, it may be appointed as the airport zoning commission.

259.451 Airport zoning regulations; reasonableness, considerations.

Sec. 21. 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 traffic pattern and regulations affecting flying operations 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.

259.452 Airport zoning regulations; removal or alteration of structures or trees prohibited, exception.

Sec. 22. 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 sections 23 and 25.

259.453 Airport zoning regulations; construction permits for new structures required.

Sec. 23. Any airport zoning regulations adopted under this act shall 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 substantially repaired. All such regulations shall further provide that before any non-conforming structure or tree may be replaced, substantially altered or substantially repaired, rebuilt, allowed to grow higher, or replanted, a permit authorizing such replacement, change or repair must be secured from the administrative agency authorized to administer and enforce the regulations. 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 non-conforming use to be made or become higher or become a greater hazard to air navigation than it was when the

the regulations, or by the joint airport zoning board adopting the regulations, as the case may be; and said members shall be removable by the appointing body for cause shown, upon written charges and after notice and opportunity for public hearing before the appointing body.

The concurring vote of a majority of the members of the board of appeals shall be sufficient for all purposes including the reversal of any order, requirement, decision or determination of the administrative agency, or a decision 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.

The board shall adopt rules concerning its organization and procedure and other authorized matters, consistent with the provisions of this act, and 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 vice-chairman, may administer oaths or affirmations and issue subpoenas to 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 be immediately filed in the offices of the board and shall be a public record.

In case of disobedience of a subpoena, the board or its duly authorized agents may invoke the aid of any circuit court of the state of Michigan in requiring the attendance and testimony of witnesses and the production of books, records and papers pertaining to the question involved. Any of the circuit courts of the state within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena, issue an order requiring such person to appear before said board or its duly authorized agents and to produce books, records and papers if so ordered and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

259.459 Appeals; filing, hearing, notice.

Sec. 29. In cases where airport zoning regulations are adopted by a political subdivision or joint airport zoning board under sections 13, 14, 15 or 17, any person, including the commission on behalf of the state, aggrieved 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 subdivision, or any joint airport zoning board, which is of the opinion that a decision of such an administrative agency is an improper application of airport zoning regulations of concern to such governing body or board, may appeal to the board of appeals authorized to hear and decide appeals from the decisions of such administrative agency.

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

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.

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.

The board may, in conformity with the provisions of this act, reverse or affirm, wholly or partly, or modify, the order, requirement, decisions, 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.

259.460 Appeals; petitions for review by circuit court.

applicable regulation was adopted or than it is when the application for permit is made. Whenever an administrative agency determines that a non-conforming use or non-conforming structure or tree has been abandoned or more than 80 per cent torn down, destroyed, deteriorated or decayed, no permit shall be granted that would allow such structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations.

259.454 Airport zoning regulations; variances, application, allowance.

Sec. 24. 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 the airport zoning regulations adopted under this act, may apply to the board of appeals, 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 would do substantial justice and be in accordance with the spirit of the regulations of this act: Provided, however, That any variance may be allowed subject to any reasonable conditions or condition subsequent that the board of appeals may deem necessary to effectuate the purposes of this act. Nothing in this section authorizes the allowance of any variation which will conflict with any general zoning ordinance or regulation of any political subdivision, except such as is adopted exclusively for airport zoning purposes.

259.455 Airport zoning regulations; variances, markers and lights required.

Sec. 25. In granting any permit under section 23 or variance under section 24, any administrative agency or board of appeals may, if it deems such action advisable to effectuate the purposes of this act and reasonable in view of the surrounding circumstances, so condition such permit or variance as to require the owner of the structure or tree in question to permit the state or the political subdivision, as the case may be, 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.

259.456 Airport zoning regulations; administration and enforcement.

Sec. 26. 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 any political subdivision adopting the regulations or one of the political subdivisions which participated in the creation of the joint 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 appeals. The duties of any administrative agency designated pursuant to this act shall include that of hearing and deciding all permits under section 23 but such agency shall not have or exercise any of the powers herein granted to the board of appeals.

259.457 Board of appeals; provision, powers.

Sec. 27. All airport zoning regulations adopted under the provisions of this act shall provide for a board of appeals 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 zoning regulations, as provided in section 29;
- (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 24.

259.458 Board of appeals; members, appointment, terms, officers, removals, rules, meetings, records, subpoenas.

Sec. 28. Where a zoning board of appeals already exists it may be appointed as the board of appeals under this act. Otherwise, the board of appeals shall consist of 5 members, each to be appointed for a term of 3 years and until his successor is appointed and qualified, 1 of whom shall be designated as chairman and 1 of whom shall be designated as vice-chairman, which appointments shall be made by the governing body of the political subdivision adopting

Sec. 30. Any person, including the commission, on behalf of and in the name of the state, aggrieved by any decision of a board of appeals, or any governing body of a political subdivision or any joint airport zoning board who is of the opinion that a decision of a board of appeals is erroneous, after first exhausting the remedies provided by such board, may present to the circuit court in any county in which the board transacts its business, a verified petition setting forth that the decision is erroneous, in whole or in part, and specifying the grounds of the error. Such petition shall be presented to the court within 30 days after the decision is filed in the office of the board. When petitions for review are filed in qualified courts located in different counties, the court in which a petition is filed first shall have exclusive jurisdiction of the matter.

259.461 Board of appeals; certiorari; jurisdiction of court.

Sec. 31. Upon presentation of such petition the court may allow a writ of certiorari directed to the board of appeals to review such decisions of the board. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, or notice to the board and on due cause shown, grant a restraining order.

The board of appeals 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.

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 appeals. The findings of fact of the board if supported by substantial evidence, shall be accepted by the court as conclusive.

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.

259.462 Approach protection; acquisition of property by aeronautics commission.

Sec. 32. In any case in which: (a) it is desired to remove, lower, or otherwise terminate a non-conforming structure, tree or use; or (b) the approach protection necessary cannot, because of constitutional limitations, be provided by airport zoning regulations under this act; or (c) it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations, the commission, on behalf of and in the name of the state, within the limitation of available appropriations, or each political subdivision within which the property or non-conforming use is wholly or partly located or the political subdivision owning, operating, controlling or which is lessee or lessor of the airport or is served by it may acquire, by purchase, grant, or condemnation in the manner provided by the law under which the commission, on behalf of and in the name of the state, or political subdivisions are authorized to acquire real property for public purposes, such air right, aviation 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.

259.463 Violation of act or regulations; penalty.

Sec. 33. Any person who shall violate this act or any regulations, orders, or rulings promulgated or made pursuant to this act, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$100.00 and imprisonment for a term not to exceed 90 days, and each day a violation continues to exist after notice shall constitute a separate offense. In addition, the political subdivision or joint airport zoning board adopting airport zoning regulations under this act may institute in the circuit court of any county in which the airport hazard area is located, in whole or in part, in connection with which such airport zoning regulations were adopted, 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 to fully effectuate the purposes of this act and of

the regulations adopted and orders and rulings made pursuant thereto.

259.464 Airport zoning act; short title.

Sec. 34. This act shall be known and may be cited as the "Airport Zoning Act."

259.465 Powers and duties of contiguous political subdivision in adjoining state as to airports, landing fields, and other aeronautical facilities.

Sec. 35. The governing body of a contiguous political subdivision in an adjoining state whose laws permit may acquire, establish, construct, enlarge, own, control, lease, equip, improve, maintain, and operate airports, landing fields, and other aeronautical facilities in this state with a political subdivision thereof, subject to the laws and rules of this state applicable to its political subdivisions in aeronautical projects and subject to the laws of the other state in matters relating to financing the projects. A political subdivision of an adjoining state shall have the same privileges, rights, and duties of a like political subdivision of this state. This section shall not apply unless the laws of the adjoining state permit political subdivisions of this state to acquire, establish, construct, enlarge, own, control, lease, equip, improve, maintain, operate, and otherwise control airports, landing fields, and other aeronautical facilities in the adjoining state with all privileges, rights, and duties applicable to the other political subdivisions of that state in aeronautical projects.

History: Add. 1976, Act 158, Imd. Eff. June 17, 1976.