

CHAPTER 2-06 AIRPORT AUTHORITIES ACT

2-06-01. Definitions. The following words or terms whenever used or referred to in this chapter have the following respective meanings unless different meanings clearly appear from the context:

1. "Air navigation facility" means any facility, other than one owned and operated by the United States, used in, available for use in, or designed for use in aid of air navigation, including any structures, mechanisms, lights, beacons, markers, communicating systems, or other instrumentalities, or devices, used or useful as an aid, or constituting an advantage or convenience, to the safe taking off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport, and any combination of any or all of such facilities.
2. "Airport" means any area of land or water which is used, or intended for use, for the landing and taking off of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights of way, including approaches and clear zones, together with all airport buildings and facilities located thereon.
3. "Airport authority" or "authority" means any regional airport authority or municipal airport authority created pursuant to the provisions of this chapter, and the governing body of a municipality which has determined to exercise the powers of a municipal airport authority, pursuant to section 2-06-02.
4. "Airport hazard" means any structure, object of natural growth, or use of land which obstructs the airspace required for the flight of aircraft in landing or taking off at an airport or is otherwise hazardous to such landing or taking off of aircraft.
5. "Bonds" means any bonds, notes, interim certificates, debentures, or similar obligations issued by an authority pursuant to this chapter.
6. "Clerk" means the custodian of the official records of a municipality.
7. "Governing body" means the official or officials authorized by law to exercise ordinance or other lawmaking powers of a municipality.
8. "Municipal airport authority" or "municipal authority" means a municipal airport authority created pursuant to the provisions of section 2-06-02.
9. "Municipality" means any county, city, town, park district, or public body of this state.
10. "Person" means any individual, firm, partnership, corporation, limited liability company, company, association, joint-stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof.
11. "Project" means any airport operated by the authority, including all real and personal property, structures, machinery, equipment, and appurtenances or facilities which are part of such airport or used or useful in connection therewith either as ground facilities for the convenience of handling aviation equipment, passengers, and freight or as part of aviation operation, air navigation, and air safety operation.
12. "Real property" means lands, structures, and interests in land, including lands under water and riparian rights, and any and all things and rights usually included within the term real property, including not only fee simple absolute but also any and all lesser interests, such as easements, rights of way, uses, leases, licenses, and all

other incorporeal hereditaments and every estate, interest, or right, legal or equitable, pertaining to real property.

13. "Regional airport authority" or "regional authority" means a regional airport authority created pursuant to the provisions of section 2-06-03.

2-06-01.1. Aeronautics commission may exercise powers of airport authority -

Exceptions. The North Dakota aeronautics commission shall have all powers of an airport authority as defined in this chapter, except powers to certify or levy taxes or issue bonds, for the purpose of constructing and operating a public airport near the International Peace Garden and for constructing and operating such other public airports or landing fields near international border ports of entry, and near state or national parks or near recreational areas as the aeronautics commission may determine to be in the public interest.

2-06-01.2. Airport operation and income. The aeronautics commission shall have operational control of airports constructed under the provisions of section 2-06-01.1 and may provide for the imposition of landing fees, granting of fuel and service concessions, or the lease of portions of the premises for other related airport services or for purposes not inconsistent with the use of the premises for airport purposes. All income from the operation of such airports must be deposited in the state treasury in a special operating fund to be known as the airport operating fund. All expenditures from such fund must be within the limits of legislative appropriations and must be made upon vouchers, signed and approved by the director of the aeronautics commission. Upon approval of such vouchers by the office of the budget, warrant-checks for such expenditures must be prepared by the office of management and budget.

2-06-02. Creation of municipal airport authority. Any municipality may, by resolution of its governing body, create a public body corporate and politic to be known as a municipal airport authority, which is authorized to exercise its functions upon the appointment and qualification of the first commissioners thereof; or the governing body may by resolution determine to exercise any or all powers granted to such authorities in this chapter until or unless such powers are or have been conferred upon a municipal or regional airport authority. Upon the adoption of a resolution creating a municipal airport authority, the governing body of the municipality shall, pursuant to the resolution, appoint five persons as commissioners of the authority. The commissioners who are first appointed are designated to serve for terms of one, two, three, four, and five years, respectively, but thereafter, each commissioner shall be appointed for a term of five years, except that vacancies occurring otherwise than by expiration of term must be filled for the unexpired term by the governing body.

2-06-03. Creation of regional airport authority.

1. Two or more municipalities, whether in this state or in an adjoining state, provided that at least one municipality is in North Dakota, may by joint resolution, create a public body, corporate and politic, to be known as a regional airport authority which is authorized to exercise its functions upon the issuance by the secretary of state of a certificate of incorporation. The governing bodies of the municipalities participating in the creation of a regional airport authority shall, pursuant to such joint resolution, appoint not less than five persons as commissioners of the regional airport authority. The number to be appointed and their representation must be provided for in the joint resolution. The term of office of each regional airport authority commissioner must be in accordance with subsection 5. Each such regional airport authority, once created, shall organize, elect officers for terms of office to be fixed by agreement, and adopt and amend from time to time rules for its own procedure not inconsistent with section 2-06-06.
2. A regional airport authority may be increased from time to time to serve one or more additional municipalities if each additional municipality and each of the municipalities then included in the regional authority and the commissioners of the regional authority, respectively, adopt a resolution consenting thereto; provided, that if a municipal airport authority for any municipality seeking to be included in the regional

authority is then in existence, the commissioners of the municipal authority must consent to the inclusion of the municipality in the regional authority, and if the municipal authority has any bonds outstanding, one hundred per centum of the holders of the bonds must consent, in writing, to the inclusion of the municipality in the regional authority. Upon the inclusion of any municipality in the regional authority, all rights, contracts, obligations, and property, real and personal, of the municipal authority shall be in the name of and vest in the regional authority.

3. A regional airport authority may be decreased if each of the municipalities then included in the regional authority and the commissioners of the regional authority consent to the decrease and make provisions for the retention or disposition of its assets and liabilities; provided that, if the regional authority has any bonds outstanding no decrease may be effected unless one hundred per centum of the holders of the bonds consent thereto in writing.
4. A municipality may not adopt any resolution authorized by this section without a public hearing thereon. Notice thereof must be given at least ten days prior thereto in a newspaper published in the municipality, or if there is no newspaper published therein, then in a newspaper having general circulation in the municipality.
5. All commissioners of a regional airport authority must be appointed for terms of five years each, except that a vacancy occurring otherwise than by expiration of term shall be filled for the unexpired term in the same manner as the original appointments.

2-06-04. Certificate of incorporation of regional airport authority.

1. Upon the appointment and qualification of the commissioners first appointed to a regional airport authority, they shall submit to the secretary of state a certified copy of each resolution adopted pursuant to subsection 1 of section 2-06-03 hereof by the municipalities included in the regional authority, and upon receipt thereof the secretary of state shall issue a certificate of incorporation to the regional airport authority.
2. When a regional airport authority is increased or decreased pursuant to section 2-06-03, it shall forward to the secretary of state a certified copy of each resolution adopted pursuant thereto and upon receipt thereof, the secretary of state shall issue an amended certificate of incorporation in accordance therewith.

2-06-05. Proof of existence of authority.

1. In any suit, action, or proceeding involving the validity or enforcement of, or relating to any contract of a municipal airport authority, created pursuant to section 2-06-02 hereof, the municipal authority shall be conclusively deemed to have become established and authorized to transact its business and exercise its powers hereunder upon proof of the adoption by the municipality of the resolution creating the municipal airport authority and of the appointment and qualification of the first commissioners thereof. Duly certified copies of the resolution creating the authority and of the certificates of appointment of the commissioners are admissible in evidence in any suit, action, or proceeding.
2. In any suit, action, or proceeding involving the validity or enforcement of, or relating to, any contract of a regional airport authority, such regional airport authority shall be conclusively deemed to have become established and authorized to transact its business and exercise its powers hereunder upon proof of the issuance by the secretary of state of a certificate of incorporation of such regional airport authority. A copy of such certificate of incorporation, duly certified by the secretary of state, is admissible in evidence in any suit, action, or proceeding.

2-06-06. Commissioners - Compensation - Meetings - Officers. A commissioner of an authority may receive no compensation for his services, but is entitled to the necessary expense, including traveling expenses, incurred in the discharge of his duties. Each commissioner shall hold office until his successor has been appointed and has qualified. The certificates of the appointment and reappointment of commissioners must be filed with the authority.

The powers of each authority are vested in the commissioners thereof. A majority of the commissioners of an authority constitutes a quorum for the purpose of conducting business of the authority and exercising its powers and for all other purposes. Action may be taken by the authority upon a vote of not less than a majority of the commissioners present.

There must be elected a chairman and vice chairman from among the commissioners. An authority may employ an executive director, secretary, technical experts, and such other officers, agents, and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties, and compensation. For such legal services as it may require, an authority may call upon the chief law officer of the municipality or municipalities included in the authority or may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper.

2-06-07. General powers of an authority. An authority has all the powers necessary or convenient to carry out the purposes of this chapter including the power to certify, annually to the governing bodies creating it, the amount of tax to be levied by said governing bodies for airport purposes including, but not limited to, the power:

1. To sue and be sued, to have a seal, and to have perpetual succession.
2. To execute such contracts and other instruments and take such other action as may be necessary or convenient to carry out the purposes of this chapter.
3. To plan, establish, acquire, develop, construct, purchase, enlarge, improve, maintain, equip, operate, regulate, and protect airports and air navigation facilities, within this state and within any adjoining state, including the acquisition, construction, installation, equipment, maintenance, and operation at such airports or buildings and other facilities for the servicing of aircraft or for comfort and accommodation of air travelers, and the purchase and sale of supplies, goods, and commodities as are incident to the operation of its airport properties. For such purposes an authority may by purchase, gift, devise, lease, eminent domain proceedings or otherwise, acquire property, real or personal, or any interest therein, including easements in airport hazards or land outside the boundaries of an airport or airport site, as are necessary to permit the removal, elimination, obstruction-marking or obstruction-lighting of airport hazards or to prevent the establishment of airport hazards.
4. To establish comprehensive airport zoning regulations in accordance with the laws of this state. For the purpose of this chapter, a regional airport authority has the same powers as all other political subdivisions in the adoption and enforcement of comprehensive airport zoning regulations as provided for by the laws of this state.
5. To acquire, by purchase, gift, devise, lease, eminent domain proceedings or otherwise, existing airports and air navigation facilities; provided, however, an authority may not acquire or take over any airport or air navigation facility owned or controlled by another authority, a municipality, or public agency of this or any other state without the consent of such authority, municipality, or public agency.
6. To establish or acquire and maintain airports in, over, and upon any public waters of this state, any submerged lands under such public waters; and to construct and maintain terminal buildings, landing floats, causeways, roadways, and bridges for

approaches to or connecting with any such airport, and landing floats and breakwaters for the protection thereof.

7. To establish toll access roadways leading to air carrier terminal buildings. The toll access charge may not exceed one dollar per vehicle.

2-06-08. Eminent domain. In the acquisition of property by eminent domain proceedings authorized by this chapter, an airport authority shall proceed in the manner provided by chapter 32-15 of the laws of this state, and such other laws that may now or hereafter apply to the state or to political subdivisions of this state in exercising the right of eminent domain. The fact that the property to be acquired by eminent domain proceedings was acquired by its owner by eminent domain proceedings does not prevent its acquisition by such proceedings by the authority. For the purpose of making surveys and examinations relative to eminent domain proceedings, it is lawful for the authority to enter upon the land, doing no unnecessary damage. Notwithstanding the provisions of any other statute or other law of this state, an authority may take possession of any property to be acquired by eminent domain proceedings at any time after the commencement of such proceedings. The authority is not precluded from abandoning such proceedings at any time prior to final order and decree of the court having jurisdiction of such proceedings, provided that the authority shall be liable to the owner of the property for any damage done to the property during possession thereof by the authority.

2-06-09. Disposal of airport property. Except as may be limited by the terms and conditions of any grant, loan or agreement, authorized by section 2-06-13, an authority may, by sale, lease, or otherwise, dispose of any airport, air navigation facility or other property, or portion thereof or interest therein, acquired pursuant to this chapter. Such disposal by sale, lease, or otherwise, must be in accordance with the laws of this state governing the disposition of other public property, except that in the case of disposal to another authority, a municipality or an agency of the state or federal government for use and operation as a public airport, the sale, lease, or other disposal may be effected in such manner and upon such terms as the commissioners of the authority may deem in the best interest of civil aviation.

2-06-10. Bonds and other obligations.

1. An authority may borrow money for any of its corporate purposes and issue its bonds therefor, including refunding bonds, in such form and upon such terms as it may determine, payable out of any revenues of the authority, including grants or contributions from the federal government or other sources, which bonds may be sold at not less than ninety-eight percent of par plus the interest accrued on the bonds to the date of the delivery thereof.
2. Bond issues sold at private sale must bear interest at a rate or rates and be sold at a price resulting in an average net interest cost not exceeding twelve percent per annum. There is no interest rate ceiling on those issues sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities.
3. Any bonds issued pursuant to this chapter by an authority, or by a governing body exercising the powers thereof, are payable, as to principal and interest, solely from revenues of an airport or air navigation facility or facilities, and must so state on their face, but if any such issue of bonds constitutes an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, each bond of the issue is, subject to the requirements of subsection 9, an equally valid and binding special obligation of the authority or municipality, as the case may be, in accordance with its terms, in an amount proportionate to the total amount of the issue which is within the limitation or restriction. Neither the commissioners of an authority nor the governing body of a municipality nor any person executing such bonds is liable personally thereon by reason of the issuance thereof, except to the extent that the bonds, if constituting an indebtedness, exceed any applicable limitation or restriction.

4. In case any of the commissioners or officers of an authority or municipality whose signatures appear on any bonds or coupons cease to be such commissioners or officers after authorization but before the delivery of the bonds, the signature shall, nevertheless, be valid and sufficient for all purposes, the same as if the commissioners or officers had remained in office until delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this chapter are fully negotiable.
5. Any bond reciting in substance that it has been issued by the authority or municipality pursuant to this chapter and for a purpose or purposes authorized by this chapter is conclusively deemed, in any suit, action, or proceeding involving the validity or enforceability of the bond or the security therefor, to have been issued pursuant to this chapter and for such purpose or purposes.
6. Bonds issued by an authority or municipality pursuant to this chapter are declared to be issued for an essential public and governmental purpose and, together with interest thereon, and income therefrom, are exempt from all taxes.
7. For the security of any such bonds the authority or municipality may by resolution make and enter into any covenant, agreement, or indenture authorized to be made as security for revenue bonds issued under chapter 40-35. The sums required from time to time to pay principal and interest and to create and maintain a reserve for the bonds may be made payable from any and all revenues referred to in this chapter, prior to the payment of current costs of operation and maintenance of the facilities.
8. Whenever bonds are issued under this chapter and made payable from revenues of an airport involving municipalities with over ten thousand population, subject to requirements of subsection 9, the governing body of the municipality, if at any time all revenues, including taxes, appropriated and theretofore collected for such bonds are insufficient to pay principal or interest then due, shall levy a general tax upon all of the taxable property in the municipality for the payment of the deficiency. If at any time a deficiency is likely to occur within one year for the payment of principal and interest due on the bonds, the governing body, in its discretion, may levy a general tax upon all the taxable property in the municipality for the payment of the deficiency. The taxes are not subject to any limitation of rate or amount applicable to other municipal taxes.
9. For bonds issued under this section to be an obligation of a municipality or authority, the issuance of the bonds must be approved by a majority vote of the governing body of each municipality involved or, within thirty days after the authority decides it wishes to issue the bonds, the municipality or authority must put the question, specifying the amount of the bond at issue, to the people at an election. The question may be put at a general election, a primary election, a municipal election, or at an election called for the purpose. If a majority of the qualified electors voting on the issue vote in favor of issuing the bonds, the authority or municipality may, to the amount authorized in the election, pledge the general obligation of the authority or municipality to guarantee the repayment of the principal and interest on the bonds.

2-06-11. Operation and use privileges.

1. In connection with the operation of an airport or air navigation facility owned or controlled by an authority, the authority may enter into contracts, leases, and other arrangements for terms not to exceed thirty years with any persons:
 - a. Granting the privilege of using or improving the airport or air navigation facility or any portion or facility thereof or space therein for commercial purposes;

- b. Conferring the privilege of supplying goods, commodities, things, services, or facilities at the airport or air navigation facility; and
- c. Making available services to be furnished by the authority or its agents at the airport or air navigation facility.

In each case the authority may establish the terms and conditions and fix the charges, rentals, or fees for the privileges or services, which shall be reasonable and uniform for the same class or privilege or service and must be established with due regard to the property and improvements used and the expenses of operation to the authority; provided that in no case may the public be deprived of its rightful, equal, and uniform use of the airport, air navigation facility, or portion of facility thereof.

- 2. Except as may be limited by the terms and conditions of any grant, loan, or agreement authorized by section 2-06-13, an authority may by contract, lease, or other arrangements, upon a consideration fixed by it, grant to any qualified person for a term not to exceed thirty years the privilege of operating, as agent of the authority or otherwise, any airport owned or controlled by the authority; provided that no person may be granted any authority to operate an airport other than as a public airport or to enter into any contracts, leases, or other arrangements in connection with the operation of the airport which the authority might not have undertaken under subsection 1.

2-06-12. Regulations. An authority is authorized to adopt, amend, and repeal such reasonable resolutions, rules, regulations, and orders as it deems necessary for the management, government, and use of any airport or air navigation facility owned by it or under its control. No rule, regulation, order, or standard prescribed by the commission may be inconsistent with, or contrary to, any act of the Congress of the United States or any regulation promulgated or standard established pursuant thereto. The authority shall keep on file at the principal office of the authority for public inspection a copy of all its rules and regulations.

2-06-13. Federal and state aid.

- 1. An authority is authorized to accept, receive, receipt for, disburse, and expend federal and state moneys and other moneys, public or private, made available by grant or loan or both, to accomplish, in whole or in part, any of the purposes of this chapter. All federal moneys accepted under this section must be accepted and expended by the authority upon such terms and conditions as are prescribed by the United States and as are consistent with state law; and all state moneys accepted under this section must be accepted and expended by the authority upon such terms and conditions as are prescribed by the state.
- 2. An authority is authorized to designate the state aeronautics commission as its agent to accept, receive, receipt for, and disburse federal and state moneys, and other moneys, public or private, made available by grant or loan or both, to accomplish in whole or in part, any of the purposes of this chapter; and to designate the state aeronautics commission as its agent in contracting for and supervising the planning, acquisition, development, construction, improvement, maintenance, equipment, or operation of any airport or other air navigation facility. An authority may enter into an agreement with the said aeronautics commission prescribing the terms and conditions of the agency in accordance with such terms and conditions as are prescribed by the United States, if federal money is involved, and in accordance with the applicable laws of this state. All federal moneys accepted under this section by the state aeronautics commission must be accepted and transferred or expended by said commission upon such terms and conditions as are prescribed by the United States. All moneys received by the state aeronautics commission pursuant to this subsection shall be deposited in the state treasury, and unless otherwise prescribed by the agency from which such moneys were received, must be kept in separate

funds designated according to the purposes for which the moneys were made available, and held by the state in trust for such purposes.

2-06-14. Tax levy may be certified by airport authority or municipality. The airport authority may certify annually to the governing bodies, the amount of tax to be levied by each municipality participating in the creation of the airport authority, and the municipality shall levy the amount certified, pursuant to provisions of law authorizing cities and other political subdivisions of this state to levy taxes for airport purposes. The levy made may not exceed the maximum levy permitted by the laws of this state for airport purposes. The municipality shall collect the taxes certified by an airport authority in the same manner as other taxes are levied and collected. The proceeds of such taxes must be deposited in a special account or accounts in which other revenues of the authority are deposited and may be expended by the authority as provided for in this chapter. Prior to the issuance of bonds under section 2-06-10 the airport authority or the municipality may by resolution covenant and agree that the total amount of such taxes then authorized by law, or such portion thereof as may be specified by the resolution, will be certified, levied, and deposited annually until the bonds and interest are fully paid.

2-06-15. County tax levy for airport purposes. In counties supporting airports or airport authorities, a levy not exceeding the limitation in subsection 1 of section 57-15-06.7, may be made for such purposes, but this levy shall not apply to any city, township, or park district that already has an airport levy.

2-06-16. Joint operations.

1. For the purposes of this section, unless otherwise qualified, the term "public agency" includes municipality and authority, each as defined in this chapter, any agency of the state government and of the United States, and any municipality, political subdivision and agency of an adjoining state; and the term "governing body" includes commissioners of an authority, the governing body of a municipality, and the head of an agency of a state or the United States if the public agency is other than an authority or municipality. All powers, privileges, and authority granted by this chapter may be exercised and enjoyed by an authority jointly with any public agency of this state, and jointly with any public agency of any adjoining state or of the United States to the extent that the laws of such other state or of the United States permit such joint exercise of enjoyment. Any agency of the state government, when acting jointly with any authority, may exercise and enjoy all the powers, privileges, and authority conferred by this chapter upon an authority.
2. Any two or more public agencies may enter into agreements with each other for joint action pursuant to the provisions of this section. Each agreement must specify its duration, the proportionate interest which each public agency must have in the property, facilities, and privileges involved in the joint undertaking, the proportion of costs of operation, etc., to be borne by each public agency, and such other terms as are deemed necessary or required by law. The agreement may also provide for amendments and termination; disposal of all or any of the property, facilities, and privileges jointly owned, prior to, or at such times as said property, facilities, and privileges, or any part thereof, cease to be used for the purposes provided in this chapter, or upon termination of the agreement; the distribution of the proceeds received upon any disposal, and of any funds or other property jointly owned and undisposed of; the assumption of payment of any indebtedness arising from the joint undertaking which remains unpaid upon the disposal of all assets or upon a termination of the agreement; and such other provisions as may be necessary or convenient.
3. Public agencies acting jointly pursuant to this section shall create a joint board which shall consist of members appointed by the governing body of each participating public agency. The number to be appointed, their term and compensation, if any, must be provided for in the joint agreement. Each joint board shall organize, select officers for such terms as are fixed by the agreement, and adopt and amend from

time to time rules for its own procedure. The joint board has power, as agent of the participating public agencies, to plan, acquire, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate, protect, and police any airport or air navigation facility or airport hazard to be jointly acquired, controlled, and operated, and the board may be authorized by the participating public agencies to exercise on behalf of its constituent public agencies all the powers of each with respect to the airport, air navigation facility or airport hazard, subject to the limitations of subsection 4.

4.
 - a. The total expenditures to be made by the joint board for any purpose in any calendar year must be as determined by a budget approved by the constituent public agencies on or before the preceding December first, or as otherwise specifically authorized by the constituent public agencies.
 - b. No airport, air navigation facility, airport hazard, or real or personal property, the cost of which is in excess of sums fixed therefor by the joint agreement or allotted in the annual budget, may be acquired, established, or developed by the joint board without the approval of the governing bodies of its constituent public agencies.
 - c. Eminent domain proceedings under this section may be instituted by the joint board only by authority of the governing bodies of the constituent public agencies of the joint board. If so authorized, such proceedings must be instituted in the names of the constituent public agencies jointly, and the property so acquired shall be held by said public agencies as tenants in common.
 - d. The joint board may not dispose of any airport, air navigation facility, or real property under its jurisdiction except with the consent of the governing bodies of its constituent public agencies, provided that the joint board may, without such consent, enter into contracts, leases, or other arrangements contemplated by section 2-06-11 of this chapter.
 - e. Any resolutions, rules, regulations, or orders of the joint board dealing with subjects authorized by section 2-06-11 become effective only upon approval of the governing bodies of the constituent public agencies, provided that upon such approval, the resolutions, rules, regulations, or orders of the joint board have the same force and effect in the territories or jurisdictions involved as the ordinances, resolutions, rules, regulations, or orders of each public agency would have in its own territory or jurisdiction.
5. For the purpose of providing the joint board with moneys for the necessary expenditures in carrying out the provisions of this section, a joint fund shall be created and maintained, into which must be deposited the share of each of the constituent public agencies as provided by the joint agreement. Any federal, state, or other grants, contributions, or loans, and the revenues obtained from the joint ownership, control, and operation of any airport or air navigation facility under the jurisdiction of the joint board must be paid into the joint fund. Disbursements from such fund must be made by order of the board, subject to the limitations prescribed in subsection 4.

2-06-17. Public purpose. The acquisition of any land, or interest therein, pursuant to this chapter, the planning, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, regulation, and protection of airports and air navigation facilities, including the acquisition or elimination of airport hazards, and the exercise of any other powers herein granted to authorities and other public agencies, to be severally or jointly exercised, are hereby declared to be public and governmental functions, exercised for a public purpose, and matters of public necessity. All land and other property and privileges acquired and used by or on behalf of any authority or other public agency in the manner and for the purposes

enumerated in this chapter shall and are hereby declared to be acquired and used for public and governmental purposes and as a matter of public necessity.

2-06-18. Airport property and income exempt from taxation. Any property in this state acquired by an authority for airport purposes pursuant to the provisions of this chapter, and any income derived by the authority from the ownership, operation, or control thereof, is exempt from taxation to the same extent as other property used for public purpose.

2-06-19. Municipal cooperation. For the purpose of aiding and cooperating in the planning, undertaking, construction, or operation of airports and air navigation facilities pursuant to the provisions of this chapter, any municipality for which an authority has been created may, upon such terms, with or without consideration, as it may determine:

1. Lend or donate money to the authority.
2. Provide that all revenues received by the municipality for airport purposes, be transferred, paid, or credited to an airport authority fund. The city auditor or county treasurer may establish and maintain the fund to account for airport authority revenues and shall make payments from the fund for invoices that have been submitted and approved by the governing body of the airport authority. On request of the city auditor or county treasurer and during an audit, the governing board of the airport authority shall supply its records. The records must be provided on a timely basis. The fund may not revert to the governing body of the municipality at the end of any fiscal year. The fund must be used exclusively for the establishment and maintenance of airport facilities.
3. Cause water, sewer, or drainage facilities, or any other facilities which it is empowered to provide, to be furnished adjacent to or in connection with such airports or air navigation facilities.
4. Dedicate, sell, convey, or lease any of its interest in any property, or grant easements, licenses, or any other rights or privileges therein to the authority.
5. Furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways, and walks from established streets or roads to such airports or air navigation facilities.
6. Do any and all things, whether or not specifically authorized in this section and not otherwise prohibited by law, that are necessary or convenient to aid and cooperate with the authority in the planning, undertaking, construction, or operation of airports and air navigation facilities.
7. Enter into agreements with the authority respecting action to be taken by the municipality pursuant to the provisions of this section.

2-06-20. Out-of-state airport jurisdiction authorized - Reciprocity with adjoining states and governmental agencies. For the purpose of this section, "governmental agency" means any municipality, city, town, county, public corporation, or other public agency.

This state or any governmental agency of this state having any powers with respect to planning, establishing, acquiring, developing, constructing, enlarging, improving, maintaining, equipping, operating, regulating, or protecting airports or air navigation facilities within this state, may exercise those powers within any state or jurisdiction adjoining this state, subject to the laws of that state or jurisdiction.

Any state adjoining this state or any governmental agency thereof may plan, establish, acquire, develop, construct, enlarge, improve, maintain, equip, operate, regulate, and protect airports and air navigation facilities within this state, subject to the laws of this state applicable to airports and air navigation facilities. The adjoining state or governmental agency has the power

of eminent domain in this state, which must be exercised in the manner provided by the laws of this state governing condemnation proceedings, provided that the power of eminent domain may not be exercised unless the adjoining state authorizes the exercise of that power therein by this state or any governmental agency thereof having any of the powers mentioned in this section.

The powers granted in this section may be exercised jointly by two or more states or governmental agencies, including this state and its governmental agencies, in such combination as may be agreed upon by them.

This section may be cited as the "Extraterritorial Airports Section".

2-06-21. Supplemental authority. In addition to the general and special powers conferred by this chapter, every authority is authorized to exercise such powers as are necessary incidental to the exercise of such general and special powers.

2-06-22. Savings clause - Airport zoning. Nothing contained in this chapter shall be construed to limit any right, power, or authority of a municipality to regulate airport hazards by zoning.

2-06-23. Short title. This chapter may be cited as the Airport Authorities Act.

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September 12, 1997

Tim Mutchler
MUTCHLER NURSERY
Northwood, ND 58267

Re: Grand Forks Regional Airport Authority
Our File No. 0323

Dear Tim:

You have asked that I advise you on the legal basis for action that was apparently taken by the City Council for the City of Grand Forks and the County Commissioners for Grand Forks County in increasing the size of the Airport Authority from five to seven members.

Frankly, my opinion is that the action of the City and the County is open to serious legal question. My reasons are as follows:

The Airport Authorities Act (Chapter 2-06 NDCC) empowers two or more municipalities to pass a joint resolution creating a regional airport authority. The number of commissioners is fixed by whatever number the municipalities provide for in the joint resolution, but the number cannot be less than five. When the joint resolution is filed with the Secretary of State, a certificate of Incorporation is issued to the newly created airport authority. The law (NDCC 2-06-03) indicates that the regional airport authority is a "public body, corporate and politic."

After an airport authority is created, its legal existence is governed by the Airport Authorities Act. This Act provides that an authority has all the powers necessary or convenient to carry out the purposes for which the authority was created. The powers, which are very broad, are covered in subsections 1 through 7 of NDCC

2-06-07. Significantly, subsection 5 provides, in part, that the facilities of an airport authority cannot be taken away without its consent.

Under NDCC 2-06-06, the powers of the airport authority are vested in the commissioners who, by majority vote at a meeting where a quorum is present, determine the conduct and the affairs of the authority.

NDCC 2-06-03 provides the procedure for increasing or decreasing the size of an airport authority based on new municipalities coming under the jurisdiction of the authority or current municipalities leaving the authority. It is noteworthy that in either case, consent of the authority is required.

Under NDCC 2-06-12, an authority is specifically empowered to adopt resolutions, rules, regulations, and orders as it deems necessary for the management, government, and use of the airport under its control.

It is important in reviewing the Airport Authorities Act to notice that the law empowers the authority, and only the authority, to do all things necessary in operating, governing, and managing the affairs of authority.

There are no North Dakota cases that I have found covering the issue presented by the facts before us. There is, however, an interesting case decided by the Supreme Court of Nebraska in 1968. The case is Lock v. City of Imperial, 155 N.W.2d 924. The facts of the case involve the issue of whether a person injured at an airport controlled by an airport authority could sue the municipality that created the authority because the authority was no more than an appendage or a controlled agent of the municipality. The Supreme Court of Nebraska held that the authority was a separate and independent corporation, not just a mere appendage of the City and, therefore, the City was not liable for the acts of the Authority. The court cited Antieau's Local Government Law, v. 3A, Independent Local Government Entities, s. 30E.09, which states:

"Even though brought into existence by municipal corporations and counties, airport authorities are independent corporate entities, rather than mere instrumentality's of the municipalities involved."

As to corporate existence, 1 Fletcher (Perm. Ed.), Cyclopedia Corporations, s. 5, p. 22, quoted in the Lock case, supra, states:

"The distinguishing characteristics of a corporation are that it is an artificial person, a legal entity, capable of acting through its corporate officers and agents, of suing, being sued, of taking and holding


property, and of contracting in its own name, and of continuing to exist independent of individuals who compose it."

The Grand Forks Regional Airport Authority is a corporation duly created and validly existing under North Dakota law by virtue of a Certificate of Incorporation No. 41175 issued by the Secretary of State on October 8, 1987. It has been an independent body since its creation, and at all times has conducted its affairs and its governance by its duly appointed commissioners. There is nothing in the Airport Authorities Act that gives either the City of Grand Forks or Grand Forks County the right or the power to unilaterally increase the number of commissioners from five to seven. Moreover, there is nothing in the Joint Resolution of the City Council for the City of Grand Forks or of the County Commissioners for Grand Forks County dated May 18, 1987, that reserves the right or power to change the number of commissioners for our Regional Airport Authority.

For the reasons cited above, I believe there is good cause to believe that any action taken by the airport authority in which the two newly appointed commissioners vote could be challenged at a later time on the basis that the action was a nullity.

Even though I disagree with the City and the County on the legality of the action that has been taken and the manner in which it was taken, I think we all respect both of these bodies and want to resolve this matter in a non-adversarial way, if at all possible. To this end, I would suggest that the two newly appointed members be seated when the Airport Authority meets, that they be allowed to participate in deliberations, but that neither of them vote. I would then urge the City to seek an Attorney General's opinion on this matter at the earliest possible time. If the City ignores this request or refuses to act, then I think the Airport Authority should initiate a request for an Attorney General's opinion.

Very truly yours,


DONALD J. OLSON

DJO/mls

Fifty-first Legislative Assembly, State of North Dakota, begun and held at the Capitol in the City of Bismarck, on Wednesday, the fourth day of January, one thousand nine hundred and eighty-nine

HOUSE BILL NO. 1238
(Representatives A. Hausauer, Goetz)
(Senator Satrom)

AN ACT providing optional property tax levy increase authority of political subdivisions and providing limitations on that authority; and to provide an effective date and an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Protection of taxpayers and taxing districts. Each taxing district may levy the lesser of the amount in dollars as certified in the budget of the governing body, or the amount in dollars as allowed in this section, subject to the following:

1. No taxing district may levy more taxes expressed in dollars than the amounts allowed by this section.
2. For purposes of this section "base year" means the taxing district's taxable year with the highest amount levied in dollars in property taxes of the three taxable years immediately preceding the budget year and "budget year" means the taxing district's year for which the levy is being determined under this section.
3. A taxing district may elect to levy at most five percent more in the budget year than the amount levied in dollars in the base year. Any levy of a percentage increase under this section must be specifically approved by a resolution approved by the governing body of the taxing district. Before adding the increase, the dollar amount levied in the base year must be:
 - a. Reduced by an amount equal to the sum determined by the application of the base year's mill rate for that taxing district to the final base year taxable valuation of any property that is not included in the assessment for the budget year but was included in the assessment for the base year.
 - b. Increased by an amount equal to the sum determined by the application of the base year's mill rate for that taxing district to the final budget year taxable valuation of any property that was not included in the assessment for the base year but which is included in the assessment for the budget year.
 - c. Reduced to reflect expired temporary mill levy increases authorized by the electors of the taxing district.

H. B. No. 1238 - Page 2

4. A taxing district may levy an amount in dollars equal to the amount levied in any of the previous three years reduced to reflect expired temporary mill levy increases authorized by the electors of the taxing district and increased by an amount equal to the sum determined by the application of any unused mill levy authority from that year, which was authorized by law or by the electors of that taxing district but not levied for that year, to the budget year taxable valuation of the taxable property in that taxing district. A taxing district electing to increase its levy under this subsection may not add the percentage increase permitted by subsection 3 to the amount levied under this subsection.
5. In addition to any other increase under this section, a taxing district may increase its levy in dollars to reflect new or increased mill levies authorized by the legislative assembly or authorized by the electors of the taxing district.
6. Under the provisions of this section a taxing district may supersede any applicable mill levy limitations otherwise provided by law, or a taxing district may levy up to the mill levy limitations otherwise provided by law without reference to this section, but the provisions of this section do not apply to the following:
 - a. Any irrepealable tax to pay bonded indebtedness levied pursuant to section 16 of article X of the Constitution of North Dakota.
 - b. The one-mill levy for the state medical center authorized by section 10 of article X of the Constitution of North Dakota.
7. A school district choosing to increase its levy authority under this section may apply the allowable percentage increase only to the amount in dollars levied for general fund purposes under section 57-15-14 or, if the levy in the base year included separate general fund and special fund levies under sections 57-15-14 and 57-15-14.2, the school district may apply the allowable percentage increase to the total amount levied in dollars in the base year for both the general fund and special fund accounts. School district levies under any section other than section 57-15-14 may be made within applicable limitations but those levies are not subject to the allowable percentage increase under this section.
8. Optional levies under this section may be used by any city or county that has adopted a home rule charter unless the provisions of the charter supersede state laws related to property tax levy limitations.

SECTION 2. EFFECTIVE DATE - EXPIRATION DATE. This Act is effective for the first two taxable years beginning after December 31, 1988, and is thereafter ineffective.

Approved March 29, 1989
Filed March 30, 1989

required for the purpose which is or may be made construction or improvement pose until the construction ion was made is fully com-

ference.

agency commission, power to e diversion of appropriated ce §§ 54-16-03, 54-16-04.

iven preference for use in ns purchasing material for litions, or in erecting new alterations, repairs, or addi- vements therewith or per- being equal or better, shall ced within this state and, ctured or produced in part

al nces. , Public Works and Con- 27.

rtisement for bids for such shall be made in accordance 02-05, and may be included items of the improvement. d in North Dakota shall be as to where the product is e of North Dakota.

acts, preference for native in the notice the governing bids received and may reject st and best bidder. If there rials, products and supplies d within the state of North lowest of such bids shall be ch materials, products, and or manufactured in North less the accepting of such of material which could not eds of the purchaser

or of a quality which is not at least equal to out-of-state products when tested by recognized national standards of the industry, in which the producer of the material offered is engaged, and if such North Dakota products are not higher in price than the non-North Dakota product, or not priced inconsistent with the value thereof. If the bid of the North Dakota supplier is rejected as not being of quality at least equal to out-of-state products, the reason why such North Dakota materials, products and supplies are not reasonably equal to the out-of-state products under recognized standards of the industry shall be reduced to writing, made a matter of record, and be furnished to the North Dakota bidders.

Source: S. L. 1953, ch. 282, § 3; R. C. 1943, 1957 Supp., § 48-02102.

48-02-10.3. Violations—Remedy.—Any contract entered into or carried out in violation of the provisions of sections 48-02-10, 48-02-10.1, and 48-02-10.2 shall be void to the full extent of its provisions relating to North Dakota products and any such contract or purchase order shall be unenforceable in any court.

Any person who shall have submitted a bid shall have the right to maintain an action in equity to prevent the violation of the terms of sections 48-02-10, 48-02-10.1, and 48-02-10.2 within fifteen days after the letting of the contract.

Source: S. L. 1953, ch. 282, § 4; R. C. 1943, 1957 Supp., § 48-02103.

48-02-11. Specified brands, marks, names, or patented articles not to be specified.—The governing board, in specifying materials to be used in or about any work mentioned in this chapter, or in plans or specifications therefor, shall not ask for bids for any article of a specified or copyrighted brand or name, the product of any one manufacturer, nor any patented apparatus or appliance when such requirement will prevent proper competition, unless such specifications also shall ask for bids on other similar articles of equal value, utility, and merit.

Source: S. L. 1911, ch. 235, § 9; C. L. 1913, § 1836; S. L. 1929, ch. 195, § 9; R. C. 1943, § 48-0211.

Collateral Reference.

64 Am. Jur. 2d, Public Works and Contracts, §§ 28, 29.

48-02-12. Officers must not be interested in contract.—No governing board, nor any member, employee, or appointee thereof, shall be pecuniarily interested or concerned directly or indirectly in any public contract, either verbal or written, that may be entered into by any such board or officer.

Source: S. L. 1911, ch. 235, § 10; C. L. 1913, § 1837; S. L. 1929, ch. 195, § 10; R. C. 1943, § 48-0212.

Cross-References.

Bribery and unlawful influencing of public servants, see ch. 12.1-12.

County officers and employees not to be interested in contracts, see § 11-09-47.

STATE OF NORTH DAKOTA
ATTORNEY GENERAL'S OPINION 91-05

Date issued: March 13, 1991
Requested by: James T. Odegard
Grand Forks County State's Attorney

- QUESTIONS PRESENTED -

I.

Whether a township can split mill levies levied for an airport authority between two different airport authorities.

II.

Whether a township may withdraw its financial support of a regional airport authority without the consent of the other municipalities included in the regional authority and the commissioners of the regional authority.

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that a township cannot split mill levies levied for an airport authority between two different airport authorities.

II.

It is my further opinion that a township may not withdraw its financial support of a regional airport authority without the consent of the other municipalities included in the regional authority and the commissioners of the regional authority.

- ANALYSIS -

I.

The Legislative Assembly enacted N.D.C.C. §§ 57-15-37.1 and 58-03-07(19) in 1979. 1979 N.D. Sess. Laws ch. 593. These provisions provide:

57-15-37.1. Township levy for airport purposes
The electors of each township may vote at the annual meeting to levy a tax for the purpose of supporting an airport or an airport authority in an amount not

ATTORNEY GENERAL'S OPINION 91-05
March 13, 1991
Page 2

exceeding the limitation in subsection 6 of section 57-15-20.2. The tax levy provided in this section shall not apply to any city, park district, or other taxing district that already has an airport levy.

58-03-07. Powers of electors. The electors of each township have the power at the annual township meeting:

19. To support an airport or to support or create an airport authority and to levy a tax for airport purposes within the limitations of section 57-15-37.1.

(Emphasis supplied.)

To resolve the issue of whether under these provisions a township can split the mill levies levied for an airport authority between two different airport authorities, it is necessary to resort to the rule of construction regarding the use of the disjunctive word "or." 1A N. Singer, Sutherland Statutory Construction § 21.14 (4th ed. 1985 rev.). This rule has been followed by the North Dakota Supreme Court in Heartview Foundation v. Glaser, 361 N.W.2d 232, 234 (N.D. 1985). The rule provides that although the "use of the disjunctive 'or' usually denotes the existence of alternatives [it] is not followed when the legislative intent is clearly contrary." (Citation omitted.)

In this case the legislative history does not reveal a "clearly contrary" intent to use the word "or" in a conjunctive manner. The testimony of the North Dakota State Aeronautics Commissioner, Harold Vavre, was typical of a preponderance of the testimony before the Political Subdivisions Committee.

Harold G. Vavre, (sic) Bismarck, North Dakota State Aeronautics -- I rise in support of the bill. I'd like to discuss a few things that came up on the senate floor. Basically townships have the authority by law to own and operate airports and the authority to create a township airport authority or combine a township with a city authority, and have a regional authority.

Rep. Kennelly (to Vavre) (sic) Would this have any effect on the Fargo airport? Also wasn't there an amendment to this bill?

ATTORNEY GENERAL'S OPINION 91-05

March 13, 1991

Page 3

Vavre (sic) No amendments. There would be no affect on Fargo from the bill in the present form.

Hearings on S. 2449 before the House Committee on Political Subdivisions, 46th Leg. (March 1, 1979).
(Emphasis supplied.)

Because the word "or" appears in this legislation in its usual disjunctive usage, it is my opinion the electors of a township may choose to levy a tax to support either an airport authority, whether local or regional, or a local airport facility, but may not elect to split mill levies to support two different entities.

II.

A political subdivision "may speak and act only in the manner and on the matters prescribed by the Legislature in statutes enacted pursuant to constitutional authority." County of Stutsman v. State Historical Society, 371 N.W.2d 321, 329 (N.D. 1985); Dornacker v. Olson, 248 N.W.2d 844, 849-850 (N.D. 1976).

A regional airport authority exists and operates under the provisions of N.D.C.C. ch. 2-06. A township (which is defined as a municipality under N.D.C.C. ch. 2-06) may elect to participate as part of a regional airport authority. N.D.C.C. §§ 2-06-01(9), 2-06-03, 57-15-37.1, and 58-03-07(19).

If a township decides to withdraw from a regional airport authority, the requirements of N.D.C.C. § 2-06-03(3) must be met as follows:

A regional airport authority may be decreased if each of the municipalities then included in the regional authority and the commissioners of the regional authority consent to the decrease and make provisions for the retention or disposition of its assets and liabilities; provided that, if the regional authority has any bonds outstanding no decrease may be effected unless one hundred per centum of the holders of the bonds consent thereto in writing.

N.D.C.C. § 2-06-03(3).

Under these provisions, a township may not withdraw its financial support of a regional airport authority without the consent of the other municipalities included in the regional authority and the commissioners of the regional authority.

ATTORNEY GENERAL'S OPINION 91-05
March 13, 1991
Page 4

- EFFECT -

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

Nicholas J. Spaeth
Attorney General

Assisted by: Robert W. Wirtz
Assistant Attorney General

jfl

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P.O. Box 1075

January 26, 1989

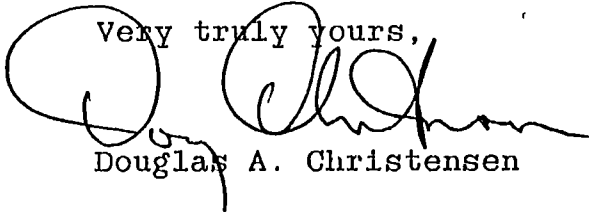
Mr. Robert Selig
Grand Forks Airport Authority
Grand Forks International Airport
RR #2
Grand Forks, ND 58201

Dear Mr. Selig:

This is in reference to your letter of January 9th wherein you requested that I review Chapter NDCC 2-06 dealing with Airport Authorities and NDCC Chapter 40-16 dealing with City Auditors and advise if the Airport Authority is required to comply with the provisions of 40-16.

In my opinion, the provisions of NDCC 40-16, as the same pertain to the duties and responsibilities of City Auditors, do not apply to the Grand Forks Regional Airport Authority. Further, I do not feel that the Authority's operation and policy manual has to be amended in any manner to comply with the provisions of NDCC 40-16 City Auditor for these provisions only apply to the Grand Forks City Auditor.

Very truly yours,



Douglas A. Christensen

DAC/jm

48-02-01. Definition of governing board.

Cross-References.

Municipal industrial development projects,

chapter applicable to buildings constructed or improved as, see § 40-57-03.

48-02-02. Prerequisite to building and repair by contract — Exceptions. If in altering, repairing, or constructing any building belonging or appertaining to any of the public institutions of the state, or to any county, city, park district, school district, or other political subdivision of the state, or in making any improvements connected with the building, the total estimated cost of all work involved amounts to more than fifty thousand dollars for the completed project, the governing body of the public institution, municipality, or political subdivision shall procure plans, drawings, and specifications for the work, upon competitive bids or otherwise as the board may deem necessary. In all cases where the estimated cost of the work exceeds fifty thousand dollars, the plans, drawings, and specifications must be procured from a licensed architect; provided, that in the case of public buildings in use by or to be used by the North Dakota agricultural experiment station in connection with farm or agricultural research operations, the plans, drawings, and specifications may, with the approval of the board of higher education, be procured from a registered professional engineer, providing the engineer is in the regular employment of the agricultural experiment station.

Source: S.L. 1911, ch. 235, § 1; C.L. 1913, § 1829; S.L. 1929, ch. 195, § 1; R.C. 1943, § 48-0202; S.L. 1955, ch. 293, § 1; 1957 Supp., § 48-0202; S.L. 1959, ch. 340, § 1; 1961, ch. 299, § 1; 1971, ch. 454, § 1; 1975, ch. 426, § 1; 1983, ch. 510, § 1; 1983, ch. 511, § 1.

Note.

Section 48-02-02 was amended twice by the 1983 Legislative Assembly. Section 1 of chapter 510, S.L. 1983, and section 1 of chapter

511, S.L. 1983, changed the requirements for using a licensed architect for public work projects. The amendments made by chapter 511 were contained in the amendments made by chapter 510 and the section is printed above as it appears in chapter 510.

Cross-References.

Architects and engineers to be provided product listing of in-state manufacturers, see § 54-36-06.1.

48-02-03. Method used in securing bids — Emergency waiver. The governing board shall advertise for bids for the doing of the work for which plans, drawings, and specifications are required by section 48-02-02. Such advertisement shall be published for three successive weeks, the first publication thereof to be at least twenty-one days prior to the date of the opening of bids thereunder. Such advertisement shall be published in the official newspaper of such municipality or political subdivision, and also in some trade publication of general circulation among the contractors, building manufacturers, and dealers of this state. Alterations or improvements may be accomplished by a state department or institution on competitive bids or on a time and material basis or by institutional personnel if the total cost of any one project does not exceed the sum of twenty-five thousand dollars. In instances where a contractor is performing work on a time

and material must be obtained for projects. The board if it does not promptly destroy the portion thereof, demolition,

Source: S.L. § 1830; S.L. 19 § 48-0203; S.L. 375, § 10; 1983 § 1.

48-02-04
required by

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CHAPTER 2-02 AIRPORTS AND LANDING FIELDS

2-02-01. Authority to acquire, operate, and regulate airports. The North Dakota aeronautics commission and all counties, cities, park districts, and townships of this state, separately or jointly, may acquire, establish, construct, expand, own, lease, control, equip, improve, maintain, operate, regulate, and police airports and landing fields for the use of aircraft either within or without the geographic limits of such political subdivisions, and may use for such purpose or purposes any available property owned or controlled by the state aeronautics commission or such political subdivisions. Any property acquired, owned, leased, controlled, or occupied for the purpose or purposes enumerated herein hereby is declared to be acquired, owned, leased, controlled, or occupied for a public purpose and as a matter of public need, and there is no liability on the part of the state aeronautics commission or any county, city, park district, or township in connection therewith, or in the operation thereof, except to its own employees.

2-02-02. Property - How acquired. Private property needed by a county, city, park district, or township for an airport or landing field, or for the expansion of an airport or landing field, may be acquired by grant, purchase, lease, or other means, if such political subdivision is able to agree with the owners of said property on the terms of such acquisition, and otherwise by right of eminent domain.

2-02-03. Purchase price - How paid - Bond issue. The purchase price or award for real property acquired in accordance with the provisions of this chapter for an airport or landing field may be paid for by appropriation of moneys available therefor or wholly or partly from the proceeds of the sale of bonds of said counties, cities, park districts, and townships, as the proper officials of such political subdivisions shall determine, but any bonds for such purpose must be authorized and issued under the provisions of chapter 21-03.

2-02-04. Air rights - How acquired. Where necessary, in order to provide unobstructed air space for the landing and taking off of aircraft utilizing airports and landing fields acquired or maintained under the provisions of this chapter, the counties, cities, park districts, and townships may acquire such air rights over private property as are necessary to ensure safe approaches to the landing areas of said airports and landing fields. Such air rights may be acquired by grant, purchase, lease, or by right of eminent domain in the same manner as is provided in section 2-02-02 for the acquisition of the airport or landing field itself or the expansion thereof.

2-02-05. Rights for marking fields - How acquired. Such political subdivisions may acquire the right or easement for a term of years or perpetually to place and maintain suitable marks for the daytime, and to place, operate, and maintain suitable lights for the nighttime marking of buildings or other structures or obstructions interfering with the safe operation of aircraft utilizing airports and landing fields acquired or maintained under the provisions of this chapter. Such rights or easements may be acquired in the manner provided in section 2-02-02.

2-02-06. Authority to construct, operate, regulate, or lease airports. Counties, cities, park districts, and townships which have established airports or landing fields, or which acquire, lease, or set apart real property for such purpose or purposes, may:

1. Construct, equip, maintain, and operate the same, or vest authority for the construction, equipment, improvement, maintenance, and operation thereof, in an officer, board, or body of such political subdivision. The expenses of such construction, equipment, improvement, maintenance, and operation are a responsibility of said political subdivision.
2. Adopt regulations and establish charges, fees, and tolls for the use of such airports or landing fields and fix penalties for the violation of said regulations.

3. Lease such airports or landing fields to private parties for operation, or lease or assign to private parties for operation, space, area, improvements, and equipment on such airports or landing fields, if in each case the public, in so doing, is not deprived of its rightful use thereof.
4. Establish toll access roadways leading to air carrier terminal buildings. The toll access charge may not exceed one dollar per vehicle.

2-02-07. Authority to raise money by taxation and use airport income. The local public authorities having power to appropriate moneys within the political subdivisions acquiring, establishing, developing, operating, maintaining, or controlling airports or landing fields under the provisions of this chapter may appropriate and cause to be raised by taxation or otherwise in such political subdivisions, moneys sufficient to carry out therein the provisions of this chapter, and also may use for such purpose or purposes moneys derived from said airports or landing fields.

2-02-08. Police power outside geographic limits. Counties, cities, park districts, and townships acquiring, establishing, developing, operating, maintaining, or controlling airports or landing fields under the provisions of this chapter without the geographic limits of such subdivisions have the same police powers over such airports or landing fields as they may exercise within the geographic limits of such subdivisions.

2-02-09. Authorization for airport liability insurance - Exceptions. After June 30, 1967, any airport authority, county, city, township, or other political subdivision which operates an airport, is hereby authorized to carry liability insurance for its own protection and the protection of any employee from claim for loss or damage for bodily injury or property damage arising out of or by reason of its operation and maintenance of airport facilities in connection therewith or landing fields; provided, that any airport authority or political subdivision, and its agents, servants, and employees have full government immunity for any claims in excess of the limits afforded by such insurance policies or full governmental immunity in the event no insurance is carried. The existence of insurance coverage may not be conveyed to the jury in the event of suits thereon, either directly or indirectly. If a dispute exists concerning the amount or nature of the insurance coverage, the dispute must be tried separately before the main trial determining the claims and damages of the claimant. This statute confers no right for a claimant to sue the insurer directly.

CHAPTER 2-03 SUBSTANTIVE AND JURISDICTIONAL PROVISIONS

2-03-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Aircraft" means any contrivance now known or hereafter invented, used, or designed for navigation of or flight in the air. Provided, 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.
2. "Airman" means any individual who engages, as the person in command, or as pilot or member of the crew, in the operating and navigation of an aircraft while underway.
3. "Passenger" includes any person riding in an aircraft, but having no part in its operation.

2-03-02. Sovereignty in space. Sovereignty in the space above the 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 constitutional grant from the people of this state.

2-03-03. Ownership of space. The ownership of the space above the 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 section 2-03-04.

2-03-04. Lawfulness of flight. Flight in aircraft over the lands and waters of this state is lawful, unless at such a low altitude as to interfere with the then existing use to which the land or water, or the space over the land or water is put by the owner, or unless so conducted as to be imminently dangerous to persons or property lawfully on the land or water beneath. The landing of an aircraft on the lands or waters of another, without his consent, is unlawful except in the case of a forced landing. For damages caused by a forced landing, however, the owner or lessee of the aircraft or the airman is liable, as provided in section 2-03-05.

2-03-05. Damage to persons and property. The owner and the pilot, or either of them, of every aircraft which is operated over the lands or waters of this state are liable for injuries to persons or property on the land or water beneath caused by the ascent, descent, or flight of the aircraft, or the dropping or falling of any object therefrom, in accordance with the rules of law applicable to torts in this state, unless the injury is caused in whole or in part by the negligence of the person injured, or of the owner or bailee of the property injured. If the aircraft is leased at the time of the injury to person or property, both owner and lessee are liable and they may be sued jointly, or either or both of them may be sued separately. An airman who is not the owner or lessee is liable only for the consequences of his own negligence. The injured person, or owner, or bailee of the injured property, has a lien on the aircraft causing the injury to the extent of the damage caused by the aircraft or objects falling from it.

As used in this section, "owner" includes a person having full title to aircraft and operating it through servants, and also includes a bona fide lessee or bailee of such aircraft, whether gratuitously or for hire; but "owner", as used in this section, does not include a bona fide bailor or lessor of such aircraft, whether gratuitously or for hire, or a mortgagee, conditional seller, trustee for creditors of such aircraft or other person having a security title only, nor is the owner of such aircraft liable when the pilot thereof is in possession thereof as a result of theft or felonious conversion.

The person in whose name an aircraft is registered with the United States department of transportation or the aeronautics commission of this state is prima facie the owner of such aircraft within the meaning of this section.

2-03-06. Collision of aircraft. The liability of the owner of one aircraft to the owner of another aircraft, or to the airmen or passengers on either aircraft, for damage caused by collision on land or in the air, must be determined by the rules of law applicable to torts on land.

2-03-07. Aircraft - Common carriers. Aircraft carrying passengers or property for hire are deemed common carriers and are subject to all of the rules applicable thereto.

2-03-08. Jurisdiction over crimes and torts. All crimes, torts, and other wrongs committed by or against an airman or passenger while in flight over this state are governed by the laws of this state, and 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 such aircraft, must be determined by the laws of this state.

2-03-09. Jurisdiction over contracts. All contractual and other legal relations entered into by airmen or passengers while in flight over this state have the same effect as if entered into on the land or water beneath.

2-03-10. Reckless operation - Operation while intoxicated - Tampering with aircraft - Misdemeanors - Penalties.

1. Any person who operates any aircraft within the airspace over, above, and upon the lands and waters of this state, carelessly and heedlessly in willful disregard of the rights or safety of others, or without due caution and circumspection in a manner so as to endanger or be likely to endanger any person or property, is guilty of a class A misdemeanor.
2. Whoever operates any aircraft in this state on land, water, or in the air while in an intoxicated condition or while under the influence of alcoholic beverages or any controlled substance, is guilty of a class A misdemeanor.
3. No person may act as a crew member of any aircraft or start an engine of any aircraft within eight hours after the consumption of any alcoholic beverage or while using any controlled substance that affects his faculties in any way contrary to safety. Anyone violating the provisions of this subsection is guilty of a class A misdemeanor.
4. No person may, without express or implied authority of the owner, operate, climb upon, enter, manipulate the controls or accessories of, set in motion, remove parts or contents therefrom, or otherwise tamper with any civil aircraft within this state with intent to injure the same or cause inconvenience to the owner or operator thereof, or knowingly cause or permit the same to be done. Any person who violates any of the provisions of this subsection is guilty of a class B misdemeanor.

2-03-11. Notice. Whenever a person, firm, corporation, limited liability company, or association shall erect anywhere in this state a building, structure, or tower of any kind over two hundred feet [60.96 meters] in height above the terrain such person, firm, corporation, limited liability company, or association shall first file a notice with the state of North Dakota aeronautics commission.

2-03-12. Obstructions near runway approaches. It is unlawful to build or maintain any obstruction near the runway approach to any airport in the state open for public use, except pursuant to rules and regulations adopted by the aeronautics commission.

2-03-13. Penalty. Each violation of sections 2-03-11 or 2-03-12 or any regulations, orders, or rulings promulgated or made pursuant to this chapter constitutes a class A misdemeanor.

2-03-14. Civil liability for injuries to guest passenger. No person transported by the owner or operator of any aircraft as a guest without payment for such transportation has claim for relief for damages against the owner or operator for injury, death, or loss in case of accident, unless the accident was caused by the gross negligence, intoxication, or willful and wanton misconduct of the owner or operator of the aircraft, and unless the gross negligence, intoxication, or willful and wanton misconduct of the owner or operator of the aircraft contributed to the injury, death, or loss. No person so transported has claim for relief if he has willfully or by want of ordinary care brought the injury upon himself. For purposes of this section, the word "guest" means any person other than an employee of the owner or registrant of any aircraft, or of a person responsible for its operation with the owner's or registrant's express or implied consent, being in or upon, entering or leaving the same, except any passenger for hire and except any passenger while the aircraft is being used in the business of demonstrating or testing. The sharing of expense does not constitute a carriage for hire within the meaning of this section.

CHAPTER 2-04 AIRPORT ZONING

2-04-01. Definitions. As used in this chapter, 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 interests of the public for such purposes.
2. "Airport hazard" means any structure or tree or use of land which obstructs the airspace required for the flight of aircraft in landing or taking off at any airport or is otherwise hazardous to such landing or taking off of aircraft.
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 chapter.
4. "Person" means any individual, firm, copartnership, corporation, limited liability company, company, association, joint-stock association, the state of North Dakota or any political subdivision thereof, and includes any trustee, receiver, assignee, or other similar representative thereof.
5. "Political subdivision" means any county, city, park district, or township.
6. "Structure" means any 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.

2-04-02. Airport hazards contrary to public interest. It is hereby found that an airport hazard endangers the lives and property 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 of an airport hazard is a public nuisance and an injury to the community served by the airport in question; (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; and (c) that this should be accomplished, to the extent legally possible, by exercise of the police power, without compensation. It is further declared that both 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 property interests therein.

2-04-03. Power to adopt airport zoning regulations.

1. In order to prevent the creation or establishment of 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 such airport hazard area, which regulations may divide such area into zones, and, within such zones, specify the land uses permitted and regulate and restrict the height to which structures and trees may be erected or allowed to grow.
2. Where an airport is owned or controlled by a political subdivision and any airport hazard area appertaining to such airport is located outside the territorial limits of said political subdivision, 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 duly adopted, create a joint airport zoning board, which board has the same power to adopt, administer, and enforce airport zoning

regulations applicable to the airport hazard area in question as that vested by subsection 1 in the political subdivision within which such area is located. Each such joint board shall have as members two representatives appointed by each political subdivision participating in its creation and in addition a chairman elected by a majority of the members so appointed.

3. If in the judgment of a political subdivision owning or controlling an airport, the political subdivision within which is located an airport hazard area appertaining to that airport, has failed to adopt or enforce reasonably adequate airport zoning regulations for such area under subsection 1 and if that political subdivision has refused to join in creating a joint airport zoning board as authorized in subsection 2, the political subdivision owning or controlling the airport may itself adopt, administer, and enforce airport zoning regulations for the airport hazard area in question. In the event of conflict between such regulations and any airport zoning regulations adopted by the political subdivision within which the airport hazard area is located the regulations of the political subdivision owning or controlling the airport govern and prevail.

2-04-04. Relation to comprehensive zoning regulations.

1. Incorporation. 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 be administered and enforced in connection therewith.
2. Conflict. In the event of conflict between any airport zoning regulations adopted under this chapter and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, the use of land, or any other matter, and whether such 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 governs and prevails.

2-04-05. Procedure for adoption of zoning regulations.

1. No airport zoning regulations shall be adopted, amended, or changed under this chapter except by action of the legislative body of the political subdivision in question, or the joint board provided for in subsection 2 of section 2-04-03 after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen days' notice of the hearing shall be published in an official newspaper, or a newspaper of general circulation, in the political subdivision or subdivisions in which is located the airport hazard area to be zoned.
2. Prior to the initial zoning of any airport hazard area under this chapter, the political subdivision or joint airport zoning board which is to adopt the regulations shall appoint a commission, 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. The commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and the legislative 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 commission. Where a city planning commission or zoning commission already exists, it may be appointed as the airport zoning commission.

2-04-06. Airport zoning requirements.

1. Reasonableness. All airport zoning regulations adopted under this chapter must be reasonable and none may impose any requirement or restriction which is not

reasonably necessary to effectuate the purposes of this chapter. 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 is put and adaptable.

2. Nonconforming uses. No airport zoning regulations adopted under this chapter may 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 in subsection 3 of section 2-04-07.

2-04-07. Permits and variances.

1. Permits. Any airport zoning regulations adopted under this chapter may 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 repaired. In any event, however, all such regulations must provide that before any nonconforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted, a permit must be secured from the administrative agency authorized to administer and enforce the regulations, authorizing such replacement, change, or repair. No permit may be granted that would allow the establishment or creation of an airport hazard or permit a nonconforming structure or tree or nonconforming use to be made or become higher or become a greater hazard to air navigation than it was when applicable regulation was adopted or than it is when the application for a permit is made. Except as provided herein, all applications for permits must be granted.
2. Variances. 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 airport zoning regulations adopted under this chapter may apply to the board of adjustment for a variance from the zoning regulations in question. Such variances must 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 do substantial justice and be in accordance with the spirit of the regulations and this chapter; provided, that any variance may be allowed subject to any reasonable conditions that the board of adjustment may deem necessary to effectuate the purposes of this chapter.
3. Hazard marking and lighting. In granting any permit or variance under this section, the administrative agency or board of adjustment may, if it deems such action advisable to effectuate the purposes of this chapter and reasonable in the circumstances, so condition such permit or variance 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 such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard.

2-04-08. Appeals.

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

2. All appeals taken under this section must be taken within a reasonable time, as provided by the rules of 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.
3. An appeal stays 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 may 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.
4. 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 attorney.
5. The board may in conformity with the provisions of this chapter, reverse or affirm wholly or partly, or modify, the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end has all the powers of the administrative agency from which the appeal is taken.

2-04-09. Administration of airport zoning regulations. All airport zoning regulations adopted under this chapter must 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 the political subdivision adopting the regulations or of one of the political subdivisions which participated in the creation of the joint airport zoning board adopting the regulations, if satisfactory to that political subdivision, but in no case may such administrative agency be or include any member of the board of adjustment. The duties of any administrative agency designated pursuant to this chapter include that of hearing and deciding all permits under subsection 1 of section 2-04-07, but such agency shall not have or exercise any of the powers herein delegated to the board of adjustment.

2-04-10. Board of adjustment.

1. All airport zoning regulations adopted under this chapter must provide for a board of adjustment 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 airport zoning regulations, as provided in section 2-04-08.
 - 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 subsection 2 of section 2-04-07.
2. Where 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 to be removable by the appointing authority for cause, upon written charges and after public hearing.
3. The concurring vote of a majority of the members of the board of adjustment is sufficient to reverse any 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 pass under the airport zoning regulations, or to effect any variation in such regulations.

4. The board shall adopt rules 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 acting chairman, may administer oaths and compel the attendance of witnesses. All hearings of the board must 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 must immediately be filed in the office of the board and shall be a public record.

2-04-11. Judicial review.

1. Any person aggrieved, or taxpayer affected, by any decision of a board of adjustment, or any governing body of a political subdivision or any joint airport zoning board which is of the opinion that a decision of a board of adjustment is illegal, may present to the district court a verified petition setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. Such petition must be presented to the court within fifteen days after the decision is filed in the office of the board.
2. Upon presentation of such petition the court may allow a writ of certiorari directed to the board of adjustment to review such a decision of the board. The allowance of the writ does not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.
3. The board of adjustment is not required to return the original papers acted upon by it, but it is sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by the writ. The return must concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and must be verified.
4. The court has 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 adjustment. The findings of fact of the board, if supported by substantial evidence, must be accepted by the court as conclusive, and no objection to a decision of the board may be considered by the court unless such objection has been urged before the board, or, if it was not so urged, unless there were reasonable grounds for failure to do so.
5. Costs may 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.
6. In any case in which airport zoning regulations adopted under this chapter, 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 North Dakota or the Constitution of the United States, such holding does not affect the application of such regulations to other structures and parcels of land.

2-04-12. Enforcement and remedies. Each violation of this chapter or of any regulations, orders, or rulings promulgated or made pursuant to this chapter, constitutes a class B misdemeanor. In addition, the political subdivision or agency adopting zoning regulations under this chapter may institute in any court of competent jurisdiction, an action to prevent, restrain, correct, or abate any violation of this chapter, or of airport zoning regulations adopted under this chapter, 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 fully to effectuate the purposes of this chapter and of the regulations adopted and orders and rulings made pursuant thereto.

2-04-13. Acquisition of air rights. In any case in which:

1. It is desired to remove, lower, or otherwise terminate a nonconforming structure or use;
2. The approach protection necessary cannot, because of constitutional limitations, be provided by airport zoning regulations under this chapter; or
3. 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 the law under which political subdivisions are authorized to acquire real property for public purposes, such 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 chapter.

2-04-14. Short title. This chapter must be known and may be cited as the "Airport Zoning Act".

CHAPTER 2-05 AERONAUTICS COMMISSION

2-05-01. Aeronautics commission - Creation - Membership. There is hereby created the North Dakota aeronautics commission to consist of five members, who shall be appointed by the governor for a term of five years, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. Each member must serve until the appointment and qualification of his successor. Each member of the commission must be a qualified elector of this state and must be appointed by the governor. Any member of the commission may be removed by the governor for inefficiency, neglect of duty, or malfeasance in office. Each member of said commission shall receive the sum of twenty dollars per day for each day actually engaged in the performance of the duties of his office, and with traveling expenses as provided by section 54-06-09 of this code to be claimed as provided therein, and his board and lodging while away from his home in the performance of his official duties as provided by section 44-08-04.

2-05-02. Director of aeronautics - Appointment - Qualifications - Compensation. A director of aeronautics must be appointed by the commission to serve at the pleasure of the commission. He shall devote his entire time to the duties of his office, and he shall have no pecuniary interest in or any stock or bonds of any civil aeronautical enterprises. He shall receive such compensation as the commission may determine and must be reimbursed for all traveling and other expenses incurred by him in the discharge of his official duties, at the same rates and under the same conditions for the payment of traveling expenses and board and lodging as is provided in section 2-05-01.

2-05-03. Powers and duties of director. The director shall be the executive officer of the commission. The director shall attend all meetings of the commission, but has no voting power. At the direction of the commission, the director shall, together with the chairman of the commission, execute all contracts entered into by the commission which are legally authorized. The director shall appoint, subject to the approval of the commission, such employees as may be necessary for the proper discharge of the functions of the commission. The director shall act as the agent of the tax commissioner for purposes of enforcement of chapter 57-40.5. Whenever requested by the director of the department of transportation as provided in section 24-02-01.3, the director shall report administratively concerning all activities of the aeronautics commission.

2-05-04. Commission organization - Reports - Offices. Within thirty days after its appointment, the commission shall organize and adopt rules for its administration as it may determine to be expedient. The commission may submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04. The commission shall maintain its office in the state capitol.

2-05-05. Duty of commission in development of aeronautics. The commission shall have general supervision over aeronautics within this state and shall:

1. Encourage the establishment of airports and air navigation facilities;
2. Cooperate with and assist the federal government, the municipalities of this state, and other persons in the development and coordination of all aeronautical activities;
3. Represent the state in aeronautical matters before state and federal agencies; and
4. Participate as party plaintiff or defendant or as intervener on behalf of the state or any municipality or citizen thereof in any controversy which involves the interest of the state in aeronautics.

2-05-06. Federal aid. The commission may act as agent of all municipalities in accepting, receiving, receipting for, and disbursing federal moneys, made available to finance, in

whole or in part, the planning, acquisition, construction, improvement, maintenance, or operation of municipal airports or air navigation facilities. The commission, as principal on behalf of the state, and for any municipality, may enter into any contracts, with the United States, with any municipality, or with any person, which may be required in connection with a grant or loan of federal moneys for municipal airport or air navigation facility purposes, provided that no contract may be entered into on behalf of any municipality except pursuant to written request of such municipality. All federal moneys accepted under this section must be accepted and transferred or expended by the commission upon such terms and conditions as are prescribed by the United States. All moneys received by the commission pursuant to this section must be deposited in the state treasury, and, unless otherwise prescribed by the authority from which such moneys were received, shall be kept in separate funds designated according to the purpose for which the moneys were made available, and held by the state for such purposes. All such moneys are hereby appropriated for the purposes, for which the same were made available, to be disbursed or expended in accordance with the terms and conditions upon which they were made available.

2-05-06.1. Authorization to accept federal or other moneys. The North Dakota aeronautics commission, or any county, city, park district, or township is authorized to accept, receive, and receipt for federal moneys, and other moneys, 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 the provisions of the laws of the United States and any rules and regulations made thereunder for the expenditure of federal moneys upon such airports and other air navigation facilities.

2-05-06.2. Designation of aeronautics commission as agent. The governing body of any political subdivision referred to in section 2-05-06.1, is authorized to designate the state aeronautics commission of the state as its agent to accept, receive, and receipt for federal moneys in its behalf for airport purposes and to contract for the acquisition, construction, enlargement, improvement, maintenance, equipment, or operation of such airports, or other air navigation facilities, and may enter into an agreement with such aeronautics commission prescribing the terms and conditions of such agency in accordance with federal laws, rules and regulations, and applicable laws of this state. Such moneys as are paid over by the United States government must be paid over to said municipality under such terms and conditions as may be imposed by the United States government in making such grant.

2-05-06.3. Contracts. All contracts for the acquisition, construction, enlargement, improvement, maintenance, equipment, or operation of airports or other air navigation facilities, made by any of the political subdivisions referred to in sections 2-05-06.1 and 2-05-06.2, by itself or through the agency of the aeronautics commission of the state, must be made pursuant to the laws of this state governing the making of like contracts; provided, however, that where such acquisition, construction, improvement, enlargement, maintenance, equipment, or operation is financed wholly or partly with federal moneys the municipality, or the aeronautics commission as its agent, may let contracts in the manner prescribed by the federal authorities, acting under the laws of the United States, and any rules or regulations made thereunder, notwithstanding any other state law to the contrary.

2-05-06.4. Declaration of purpose - Financial assistance to airports. The legislative assembly declares that the people of North Dakota are placing an ever increasing reliance upon airline service for their transportation needs. The legislative assembly further declares that the existing methods of financing airports are inadequate to meet the growing needs, and that the property tax on real estate located within the boundaries of municipalities operating airports is frequently an inequitable method of financing airports, inasmuch as many persons served by airports do not live within these boundaries. It is the intent of the legislative assembly to provide a means of better serving all of the people of North Dakota, and to provide an equitable method of sharing the financial burdens of modern airline service without neglecting the needs of the general aviation airports.

2-05-06.5. State assistance for airports. Each public airport owned or operated by a public entity and each airport operated by an airport authority in this state which is served by at least one airline which is certified by the federal aviation administration or was at one time served

by an airline certified by the federal aviation administration, but is served by a scheduled commuter airline certified by the North Dakota aeronautics commission may be provided assistance according to guidelines established by the commission by rule, within the limits of legislative appropriations. The governing body or airport authority which operates an airport that receives assistance under this section shall deposit the moneys received in the same account or accounts as other airport funds are deposited and may expend the moneys as provided by law for other airport funds, including matching any funds made available by the United States.

2-05-07. State airways system. The state airways system shall consist of all air navigation facilities available for public use now existing or hereafter established, whether publicly or privately owned or except those under the jurisdiction of the federal government. Jurisdiction over the state airways system in matters of safety is vested in the aeronautics commission. The commission may expend state funds duly appropriated for such purpose in the interest of safety on any or all facilities of the system which serve a useful public purpose and satisfy a public need. The commission may make, promulgate, and amend reasonable safety rules, safety regulations, and safety procedures, and establish minimum safety standards covering the activities for each such facility.

2-05-08. Rules, regulations, standards. The commission may perform such acts, issue and amend such orders, and make, promulgate, and amend such reasonable rules, regulations, and procedures, and establish such minimum standards as it deems necessary.

2-05-09. Reckless operation of aircraft. Repealed by S.L. 1975, ch. 106, § 673.

2-05-10. Registration of airmen. Repealed by S.L. 1999, ch. 52, § 1.

2-05-11. Aircraft registration - Fees. The following procedures governing fees and registration apply:

1. Except as provided in section 2-05-11.3, every aircraft or ultralight vehicle operating within this state for more than thirty days must be registered with the aeronautics commission for each year in which the aircraft or ultralight vehicle is operated within this state, subject to rules adopted by the commission. The commission shall charge a fee for each such registration. The following fees apply:

| Gross Weight in Pounds | Registration Fees |
|------------------------|-------------------|
| 0 to 500 | \$ 15.00 |
| 501 to 1,000 | 30.00 |
| 1,001 to 1,500 | 38.00 |
| 1,501 to 2,000 | 45.00 |
| 2,001 to 2,500 | 60.00 |
| 2,501 to 3,000 | 75.00 |
| 3,001 to 3,500 | 90.00 |
| 3,501 to 4,000 | 105.00 |
| 4,001 to 5,000 | 120.00 |
| 5,001 to 6,000 | 150.00 |
| 6,001 to 7,000 | 180.00 |
| 7,001 to 8,000 | 210.00 |
| 8,001 to 9,000 | 240.00 |
| 9,001 to 10,000 | 270.00 |
| 10,001 to 15,000 | 300.00 |
| 15,001 to 20,000 | 450.00 |
| 20,001 to 30,000 | 600.00 |
| 30,001 to 40,000 | 900.00 |
| 40,001 to 50,000 | 1,200.00 |
| 50,001 to 75,000 | 1,500.00 |
| 75,001 to 100,000 | 2,250.00 |
| 100,001 and over | 3,000.00 |

The fees must be reduced ten percent each year after the initial registration, or if the aircraft is one year old or older and being registered for the first time, the fees must be reduced ten percent for each year after the year of manufacture of the aircraft, until the fee reaches a figure equal to fifty percent of the original registration fee, which is the fee each year thereafter.

2. All weights must be based upon the maximum permissible take-off weight, except that the weights must be empty weights for all ultralight vehicles which are not certificated for maximum permissible take-off weight.
3. The aeronautics commission may charge a reasonable cost of service fee for registration of aircraft operated by state agencies, political subdivisions, or the civil air patrol in lieu of the regular registration fee.
4. All fees received under this section must be deposited in the aeronautics commission special fund.

2-05-11.1. Definitions. As used in sections 2-05-11.1 through 2-05-11.3, unless the context otherwise requires:

1. "Antique aircraft" means an aircraft built and originally federally certified by its manufacturer before January 1, 1941.
2. "Classic aircraft" means an aircraft built and originally federally certified by its manufacturer after January 2, 1941, and before January 1, 1948.
3. "Warbird aircraft" means an aircraft built before January 1, 1948, expressly for the purpose of military service.

2-05-11.2. Permanent registration of certain older aircraft. On making proper application to the commission and paying the fee required under section 2-05-11.3, the owner of an antique, classic, or warbird aircraft may permanently register that aircraft in accordance with this section. An aircraft so registered may be used only for display, airshow demonstration, testing, and maintenance, and preparation flights necessary to maintain flight safety of operations otherwise permitted under this section. An aircraft so registered cannot be used for conducting commercial or private aviation business. An aircraft entitled to a permanent registration may be transferred to a new owner under that permanent registration. The new owner is entitled to permanent registration as long as the owner qualifies in accordance with this section.

2-05-11.3. Fee for a permanent registration - Issuance of registration decal - Disposition of fee. The fee for a permanent registration under section 2-05-11.2 is eighty-five dollars. The commission shall prepare a distinctive decal denoting permanent registration under section 2-05-11.2. That decal must be displayed in the aircraft in the same manner required for the registration decal otherwise issued under this chapter. The fee must be deposited in the aeronautics commission special fund.

2-05-12. Licensing of air schools and aeronautics instructors. The commission may provide for the licensing of air schools, and of aeronautics instructors giving instructions in ground subjects pertaining to aeronautics. For each license it shall charge an annual fee of ten dollars. These funds must be deposited into the aeronautics commission special fund.

2-05-13. Investigations, hearings. The commission may hold investigations and hearings concerning matters covered by the provisions of this chapter which must be open to the public and must be held upon such call or notice as the commission deems advisable. Each member of the commission may administer oaths and issue subpoenas.

2-05-14. Enforcement of aeronautics laws. The commission, its members, the director, officers, and the employees of the commission, and every state patrolman and all peace officers shall enforce and assist in the enforcement of this chapter.

2-05-15. Common carrier certificate required. No person may engage in the business of a common carrier by aircraft unless there is in force a certificate issued by the commission authorizing such person to engage in such business according to rules and regulations promulgated by the commission and after public hearing. The commission shall charge and collect the following fees for common carrier certificates:

| | |
|-----------------------------|----------|
| For certificate | \$150.00 |
| For transfer of certificate | 50.00 |
| For duplicate certificate | 10.00 |

For the purposes of this section, "common carrier" means aircraft operating on a definite schedule between fixed termini.

2-05-15.1. Bond required. Before issuance or transfer of any common carrier certificate by aircraft as provided for in section 2-05-15 to any entity, the North Dakota aeronautics commission shall require such entity to post a bond issued by a licensed surety company, or in cash with the North Dakota aeronautics commission payable to the North Dakota aeronautics commission as trustee for the state treasurer, in an amount equal to the estimated annual utility taxes to be assessed upon such air transportation entity and assessed and collected pursuant to chapters 57-06, 57-07, 57-08, 57-13, and 57-32, as amended, for each calendar year that such air transportation entity holds a common carrier certificate issued or transferred to it by the state aeronautics commission, authorizing such holder to engage in the business of common carrier by aircraft operating on a definite schedule between fixed termini in North Dakota. The state aeronautics commission shall consult with the state tax commissioner and such air transportation entity to determine the estimated annual utility taxes to be assessed to each such air transportation entity and the state aeronautics commission shall set the bond amount based on reasonable estimates. The bond amount posted and required for each such air transportation entity must be secured by the state aeronautics commission, after such utility taxes become delinquent, in an amount equal to such utility taxes and penalties and the state aeronautics commission shall pay such proceeds to the state treasurer, after the state treasurer has notified the state aeronautics commission in writing that the utility taxes on such air transportation entity are delinquent and unpaid with the amount of taxes and penalties due. In the event such air transportation entity fails to sufficiently maintain its bond at any time, the state aeronautics commission shall take action to revoke any common carrier certificate by aircraft that such air transportation entity holds that was issued by the North Dakota aeronautics commission.

2-05-16. Filing of tariffs required. Every common carrier by aircraft shall file with the commission, and make available to the public, tariffs showing all rates, fares, and charges for air commerce between points served by it, and between points served by it and points by any other common carrier by aircraft when through air commerce service and rates have been established, together with all classifications, rules, and regulations applicable to such air commerce.

2-05-17. Penalty. Any person violating any of the provisions of this chapter is guilty of a class A misdemeanor.

2-05-18. License for aerial spraying - Regulations - Penalties. No person may engage in aerial spraying without first obtaining a license for each aircraft used in such activities as provided in this section. Application must be made for such license to the North Dakota aeronautics commission upon forms provided by the commission for such purpose. Upon the payment of a license fee of fifteen dollars for each aircraft to be licensed, and upon compliance with such reasonable rules and regulations as may be promulgated by the aeronautics commission for the safety and protection of persons and property, the commission shall issue a license for such aircraft to be used in aerial spraying. Persons engaged in private spraying are required to pay same fee for the use of aircraft for this purpose, and shall comply with all rules and regulations promulgated by the commission for aerial spraying. The license and fees provided in this section are in addition to any other license or registration required by law, and the proceeds must be deposited in the aeronautics commission special fund.

Any person violating any provision of this section or rules or regulations promulgated under the authority of this section shall be guilty of a class B misdemeanor.

2-05-19. Cease and desist orders. The aeronautics commission may issue and serve upon any person, engaged in aerial spraying, an order to cease and desist when the commission has reason to believe the person is violating, has violated, or is attempting to violate this chapter or any rule adopted by the commission. An interested party may appeal the issuance of a cease and desist order under chapter 28-32 by filing written notice of appeal within seven days after service of the order. A hearing must be held within ten days after a notice of appeal has been timely filed. A person who has been issued an order to cease and desist that has been determined to be final either through default or an adjudicative proceeding may not engage in aerial spraying for any other commercial applicator in this state.

2-05-20. Assessment of civil money penalties. The aeronautics commission may impose civil money penalties against any person willfully violating an order to cease and desist or any provision of this chapter or any of the rules adopted by the commission in an amount not to exceed five hundred dollars for each violation. As used in this section, the term "willfully" means that the person engaged in the conduct intentionally, knowingly, or recklessly. An interested party may appeal the assessment of civil money penalties under chapter 28-32 by filing written notice of appeal within twenty days after service of the assessment of civil money penalties. A civil money penalty collected under this section must be paid to the state treasurer and deposited in the aeronautics commission's special fund.