

## LEGISLATIVE BILL 609

Approved by the Governor May 15, 1995

Introduced by Hartnett, 45; Lynch, 13

AN ACT relating to aeronautics; to amend sections 3-104, 3-107, 3-113, 3-116, 3-119, 3-124, 3-125, 3-126, 3-143, 3-144, and 3-147, Reissue Revised Statutes of Nebraska, and section 3-101, Revised Statutes Supplement, 1994; to change provisions relating to privately owned public use airports; to define a term; to provide powers and duties for the Department of Aeronautics; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 3-101, Revised Statutes Supplement, 1994, is amended to read:

3-101. (1) For the purpose of the laws of this state relating to aeronautics, the following words, terms, and phrases shall have the meanings given in this section, unless otherwise specifically defined or unless another intention clearly appears or the context otherwise requires.

(2) Aeronautics means transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants, and accessories, including the repair, packing, and maintenance of parachutes; and the design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports, restricted landing areas, or other air navigation facilities, and air instruction.

(3) Aircraft means any contrivance now known, hereafter invented, used, or designed for navigation of or flight in the air.

(4) Public aircraft means an aircraft used exclusively in the service of any government or of any political subdivision thereof, including the government of any state, territory, or possession of the United States or the District of Columbia, but not including any government-owned aircraft engaged in carrying persons or property for commercial purposes.

(5) Civil aircraft means any aircraft other than a public aircraft.

(6) Airport means (a) any area of land or water, except a restricted landing area, which is designed for the landing and takeoff of aircraft, whether or not facilities are provided for the sheltering, servicing, or repairing of aircraft or for receiving or discharging passengers or cargo, (b) all appurtenant areas used or suitable for airport buildings or other airport facilities, and (c) all appurtenant rights-of-way, whether heretofore or hereafter established.

(7) Department means the Department of Aeronautics, commissioner means the Nebraska Aeronautics Commission, commissioner means any member of the commission, director means the Director of Aeronautics, and state or this state means the State of Nebraska.

(8) Restricted landing area means any area of land, water, or both, which is used or is made available for the landing and takeoff of aircraft, the use of which shall, except in case of emergency, be only as provided from time to time by the commission.

(9) Air navigation facility means any facility, other than one owned or controlled by the federal government, used in, available for use in, or designed for use in, aid of air navigation, including airports, restricted landing areas, and any structures, mechanisms, lights, beacons, marks, communicating systems, or other instrumentalities or devices used or useful as an aid or constituting an advantage or convenience to the safe takeoff, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport or restricted landing area and any combination of any or all of such facilities.

(10) Air navigation means the operation or navigation of aircraft in the air space over this state or upon any airport or restricted landing area within this state.

(11) Operation of aircraft or operate aircraft means the use of aircraft for the purpose of air navigation and includes the navigation or piloting of aircraft. Any person who causes or authorizes the operation of aircraft, whether with or without the right of legal control, in the capacity of owner, lessee, or otherwise, of the aircraft, shall be deemed to be engaged in the operation of aircraft within the meaning of the statutes of this state.

(12) Airman means any individual who engages, as the person in command, or as pilot, mechanic, or member of the crew, in the navigation of aircraft while under way and (excepting individuals employed outside the

United States, any individual employed by a manufacturer of aircraft, aircraft engines, propellers, or appliances to perform duties as inspector or mechanic in connection therewith, and any individual performing inspection or mechanical duties in connection with aircraft owned or operated by him or her) any individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft engines, propellers, or appliances and any individual who serves in the capacity of aircraft dispatcher or air traffic control-tower operator.

(13) Air instruction means the imparting of aeronautical information by any aeronautics instructor or in or by any air school or flying club.

(14) Aeronautics instructor means any individual engaged in giving instruction, or offering to give instruction, in aeronautics, either in flying or ground subjects, or both, for hire or reward, without advertising such occupation, without calling his or her facilities an air school or anything equivalent thereto, and without employing or using other instructors. It does not include any instructor in any public school or university of this state or any institution of higher learning duly accredited and approved for carrying on collegiate work while engaged in his or her duties as such instructor.

(15) Flying club means any person, other than an individual, who, neither for profit nor reward, owns, leases, or uses one or more aircraft for the purpose of instruction or pleasure or both.

(16) Person means any individual, firm, partnership, limited liability company, corporation, company, association, joint-stock association, or body politic and includes any trustee, receiver, assignee, or other similar representative thereof.

(17) State airway means a route in the navigable air space over and above the lands or waters of this state, designated by the department as a route suitable for air navigation.

(18) Navigable air space means air space above the minimum altitudes of flight prescribed by the laws of this state or by the regulations of the department consistent therewith.

(19) Municipality means any county, city, village, or town of this state and any other political subdivision, public corporation, authority, or district in this state which is or may be authorized by law to acquire, establish, construct, maintain, improve, and operate airports and other air navigation facilities.

(20) Airport protection privileges means easements through or other interests in air space over land or water, interests in airport hazards outside the boundaries of airports or restricted landing areas, and other protection privileges, the acquisition or control of which is necessary to insure safe approaches to the landing areas of airports and restricted landing areas and the safe and efficient operation thereof.

(21) Airport hazard means any structure, object of natural growth, or use of land which obstructs the air space required for the flight of aircraft in landing or taking off at any airport or restricted landing area or is otherwise hazardous to such landing or taking off.

(22) The singular ~~shall include~~ includes the plural and the plural the singular. The masculine gender ~~shall include~~ includes the feminine.

(23) Location ~~shall mean~~ means the general vicinity to be served by a specific airport.

(24) Site ~~shall mean~~ means the specific land area to be used as an airport.

(25) Privately owned public use airport means any airport owned by a person which is primarily engaged in the business of providing necessary services and facilities for the operation of civil aircraft and which (a) has at least one paved runway, (b) is engaged in the retail sale of aviation gasoline or aviation jet fuel, and (c) possesses facilities for the sheltering, servicing, or repair of aircraft.

Sec. 2. Section 3-104, Reissue Revised Statutes of Nebraska, is amended to read:

3-104. There is hereby created the Nebraska Aeronautics Commission which shall consist of five members, who shall be appointed by the Governor. The terms of office of the members of the commission initially appointed shall expire on March 1 of the years 1946, 1947, 1948, 1949, and 1950, as designated by the Governor in making the respective appointments. As the terms of members expire, the Governor shall, on or before March 1 of each year, appoint a member of the commission for a term of five years to succeed the member whose term expires. Each member shall serve until the appointment and qualification of his or her successor. In case of a vacancy occurring prior to the expiration of the term of a member, the appointment shall be made only for the remainder of the term. All members of the commission shall be citizens and bona fide residents of the state and, in making such an

appointment, the Governor shall take into consideration the interest or training of the appointee in some one or all branches of aviation. The commission shall, in December of each year, select a chairperson for the ensuing year. The Director of Aeronautics shall serve as secretary as set forth in section 3-127. Three members shall constitute a quorum and no action shall be taken by less than a majority of the commission. The commission shall meet upon the written call of the chairperson, the director, or any two members of the commission. Regular meetings shall be held at the office of the department but, whenever the convenience of the public or of the parties may be promoted or delay or expense may be prevented, it may hold meetings or proceedings at any other place designated by it. All meetings of the commission shall be open to the public. No member shall receive any salary for his or her service, but each shall be reimbursed for actual and necessary expenses incurred by him or her in the performance of his or her duties as provided in sections 81-1174 to 81-1177, for state employees. It shall be the duty of the commission to advise the Governor relative to the appointment of a director and it shall report to the Governor whenever it feels that the director is not properly fulfilling his or her duties. It shall further act in an advisory capacity to the director. The commission shall have, in addition, the following specific duties: (1) To allocate state funds and approve the use of federal funds to be spent for the construction or maintenance of airports; (2) to designate the locations and approve sites of airports; (3) to arrange and authorize the purchase of aircraft upon behalf of the state; (4) to select and approve pilots to be employed by the state, if any; and (5) to assist the director in formulating the regulations and policies to be carried out by the department under the terms of sections 3-101 to 3-154 the State Aeronautics Department Act. The director may designate one or more members of the commission to represent the department in conferences with officials of the federal government, of other states, or of other agencies or municipalities of this state, or of persons owning privately owned public use airports.

Sec. 3. Section 3-107, Reissue Revised Statutes of Nebraska, is amended to read:

3-107. The department shall have general supervision over aeronautics within this state. It is empowered and directed to encourage, foster, and assist in the development of aeronautics in this state and encourage the establishment of airports and other air navigation facilities. No ~~PROVIDED, HOWEVER,~~ state funds herein appropriated or made available for the acquisition, engineering, construction, improvement, or maintenance of airports shall be expended upon any project or for any work upon any such project which is not done under the supervision of the department. When any airport which has received state grant funds pursuant to the provisions of the State Aeronautics Department Act ceases to be an airport or a privately owned public use airport, the department shall, consistent with all other provisions of state and federal law, seek to recover so much of the state funds provided to the airport as it may and shall deposit any such funds so recovered into the Department of Aeronautics Cash Fund.

Sec. 4. Section 3-113, Reissue Revised Statutes of Nebraska, is amended to read:

3-113. It The department may, insofar as is reasonably possible, offer ~~the~~ its engineering or other technical services, of the department, without charge, to any municipality or to any person owning a privately owned public use airport desiring them in connection with the construction, maintenance, or operation or the proposed construction, maintenance, or operation of an airport or restricted landing area.

Sec. 5. Section 3-116, Reissue Revised Statutes of Nebraska, is amended to read:

3-116. It shall be the duty of the department, the Director of Aeronautics, and every state, county, and municipal officer, charged with the enforcement of state and municipal laws, to enforce and assist in the enforcement of sections 3-101 to 3-154 the State Aeronautics Department Act, all rules and regulations issued pursuant thereto, and all other laws of this state relating to aeronautics. In the aid of such enforcement, general police powers are hereby conferred upon the Director of Aeronautics, and such of the officers and employees of the department as may be designated by it, to exercise such powers. The department is further authorized, in the name of this state, to enforce the provisions of sections 3-101 to 3-154 act and the rules and regulations issued pursuant thereto by injunction in the courts of this state. Municipalities and persons owning privately owned public use airports are authorized to cooperate with the department in the development of aeronautics and aeronautical facilities in this state. The department may use the facilities and services of other agencies of the state to the utmost

extent possible and such agencies are authorized and directed to make available such facilities and services. The department may also, with the approval of the Governor, contract with or employ the Department of Roads to maintain airports or perform necessary engineering service in carrying out the provisions of sections 3-101 to 3-154 act.

Sec. 6. Section 3-119, Reissue Revised Statutes of Nebraska, is amended to read:

3-119. The department may render assistance in the acquisition, development, operation, or maintenance of privately owned public use airports or airports owned, controlled, or operated, or to be owned, controlled, or operated by municipalities in this state, out of appropriations made by the Legislature for that purpose.

Sec. 7. Section 3-124, Reissue Revised Statutes of Nebraska, is amended to read:

3-124. ~~It~~ The department is authorized to accept, receive and receipt for federal and other money, either public or private, for and on behalf of this state, or any municipality, or any person owning a privately owned public use airport, thereof, for the acquisition, construction, improvement, maintenance, and operation of airports and other air navigation facilities, whether such work is to be done by the state, or by such municipalities, or by any person owning a privately owned public use airport, or jointly, aided by grants of aid from the United States, upon such terms and conditions as are or may be prescribed by the laws of the United States and any rules or regulations made thereunder. The department may and it is authorized to act as agent of any municipality of this state or any person owning a privately owned public use airport, upon the request of such municipality or person, in accepting, receiving and receipting for such money in its behalf for airports or other air navigation facility purposes, and in contracting for the acquisition, construction, improvement, maintenance, or operation of airports or other air navigation facilities, financed either in whole or in part by federal money, and such person or the governing body of any such municipality is authorized to designate the department as its agent for such purposes and to enter into an agreement with it prescribing the terms and conditions of such agency in accordance with federal laws, rules, and regulations and with sections 3-101 to 3-154 the State Aeronautics Department Act. Such money as is paid over by the United States Government shall be retained by the state or paid over to ~~said~~ the municipalities or persons under such terms and conditions as may be imposed by the United States Government in making such grants.

Sec. 8. Section 3-125, Reissue Revised Statutes of Nebraska, is amended to read:

3-125. All contracts for the acquisition, construction, improvement, maintenance, and operation of airports, or other air navigation facilities made by the department, either as the agent of this state, or as the agent of any municipality, or as the agent of any person owning a privately owned public use airport, shall be made pursuant to the laws of this state governing the making of like contracts, When PROVIDED; HOWEVER; that, where the acquisition, construction, improvement, maintenance, and operation of any airport, landing strip, or other air navigation facility is financed wholly or partially with federal money, the department, as agent of the state, or of any municipality, or of any person owning a privately owned public use airport, thereof, 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.

Sec. 9. Section 3-126, Reissue Revised Statutes of Nebraska, is amended to read:

3-126. All money received by the department, pursuant to sections 3-101 to 3-156, shall be deposited in the state treasury and placed by remitted to the State Treasurer in for credit to the Department of Aeronautics Cash Fund. The department is authorized, whether acting for this state, or as the agent of any of its municipalities, or as the agent of any person owning a privately owned public use airport, or when requested by the United States Government or any agency or department thereof, to disburse such money. Any money in the Department of Aeronautics Cash Fund available for investment shall be invested by the state investment officer pursuant to the provisions of sections 72-1237 to 72-1259. Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Sec. 10. Section 3-143, Reissue Revised Statutes of Nebraska, is amended to read:

3-143. ~~It~~ The department may engage in all such activities jointly with the United States, with other states, and with municipalities or other

agencies of this state, and with persons owning privately owned public use airports.

Sec. 11. Section 3-144, Reissue Revised Statutes of Nebraska, is amended to read:

3-144. It The department may exercise the right of eminent domain, in the name of the state, for the purpose of acquiring any property which it is herein authorized to acquire by condemnation. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724. The fact that the property so needed has been acquired by the owner under power of eminent domain shall not prevent its acquisition by such department by the exercise of the right of eminent domain herein conferred. It shall not be precluded from abandoning the condemnation of any such property in any case where possession thereof has not been taken. Nothing in the State Aeronautics Department Act shall be construed as granting to privately owned public use airports the authority to exercise the power of eminent domain nor shall anything in the State Aeronautics Department Act be construed as granting to the department or any municipality the authority to exercise the right of eminent domain for the purpose of acquiring lands or easements for the sole use or benefit of privately owned public use airports.

Sec. 12. Section 3-147, Reissue Revised Statutes of Nebraska, is amended to read:

3-147. The acquisition of any lands for the purpose of establishing airports or other air navigation facilities; the acquisition of any airport protection privileges; the acquisition, establishment, construction, enlargement, improvement, maintenance, equipment, and operation of airports and other air navigation facilities, whether by the state separately or jointly with any municipality, ~~or municipalities, or any person owning a privately owned public use airport; thereof;~~ the assistance of this state in any such acquisition, establishment, construction, enlargement, improvement, maintenance, equipment, and operation; and the exercise of any other powers herein granted to the department are hereby declared to be public and governmental functions, exercised for a public purpose, and matters of public necessity. Such lands and other property and privileges, acquired and used by the state in the manner and for the purposes enumerated in ~~sections 3-101 to 3-154;~~ the State Aeronautics Department Act shall be and are hereby declared to be acquired and used for public and governmental purposes and as a matter of public necessity.

Sec. 13. Original sections 3-104, 3-107, 3-113, 3-116, 3-119, 3-124, 3-125, 3-126, 3-143, 3-144, and 3-147, Reissue Revised Statutes of Nebraska, and section 3-101, Revised Statutes Supplement, 1994, are repealed.