



2020 South Dakota Legislature
House Bill 1066
ENROLLED

AN ACT

ENTITLED An Act to revise and repeal provisions regarding aviation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That a NEW SECTION be added:

9-24-7. Maximum liability--Municipal airport--Accidents or occurrences.

The maximum liability of any municipality operating an airport shall be five million dollars for any accident or occurrence at or in connection with the operation of the airport resulting in bodily injury or death to any person, or damage to property, or any combination thereof.

Section 2. That § 50-1-1 be AMENDED:

50-1-1. Definitions.

Terms as used in this title mean:

- (1) "Air traffic control," a service operated by an authority under Federal Aviation Administration oversight to promote the safe, orderly, and expeditious flow of air traffic in the United States;
- (2) "Aircraft," a device that is used, intended to be used, or designed for flight in the air. The term includes any airplane, balloon, drone, glider, and helicopter;
- (3) "Aircraft dealer," any person, manufacturer, or distributor engaged in the business of buying, selling, exchanging, or acting as a broker for three or more aircraft in any twelve consecutive months, other than a business liquidation of used aircraft;
- (4) "Airport," any area of land or water used, or intended to be used, for landing and take-off of aircraft, and any appurtenant area, structure, facility, or right of way to facilitate that use;
- (5) "Airport authority," a government entity created under this chapter for the purpose of acquiring, establishing, contracting, maintaining, improving and operating airports and other navigation facilities;

- (6) "Airport facility," any property, structure, mechanism, machinery, light, beacon, communicating system, or other equipment or device used as an aid to the safe taking off and landing of aircraft, or the safe and efficient operation or maintenance of an airport;
- (7) "Airport hazard," any existing or potential condition that can endanger the life or property of a user of an airport, any airport facility, or any occupant of land in the vicinity of an airport;
- (8) "Airport sponsor," a public agency, private owner, state entity, or other political subdivision that is associated with a public use airport facility and is a recipient of any federal airport improvement grant;
- (9) "Anemometer tower," a structure, including any guy wire or accessory facility, on which an anemometer is mounted;
- (10) "Aviation facility," any facility that supports aviation activities, including any airport, heliport, and navigational aid;
- (11) "Balloon," an aircraft that is not engine-driven, is lighter than air, and sustains flight through the use of gas buoyancy or an airborne heater;
- (12) "Commercial purpose," an aviation activity for profit that includes flight instruction, charter, air taxi, or rental, but does not include the substitution of a commercial use stamp for regular aircraft registration for the promotion of a business or other purpose that does not involve aviation;
- (13) "Commission," the South Dakota Aeronautics Commission;
- (14) "Controlled airspace," any airspace of specific and defined classifications and dimensions inside of which air traffic control services are provided;
- (15) "Department," the Department of Transportation;
- (16) "Drone," an unmanned aircraft (UA);
- (17) "Heliport," an area of land, water, or a structural surface, used or intended for use as a landing and take-off area for helicopters;
- (18) "Military airport," any military air base, air station, airfield, or other area, publicly or privately owned, that is designed, set aside, and operated by the state, a political subdivision of the state, or the United States, for civil or national defense, or for any federal program relating to flight, or for the operation of military aircraft, and used in the interest of the public for those purposes;
- (19) "Navigational aid," an aviation facility which is external to an aircraft specifically intended to assist a pilot in determining the aircraft's position and safe course;

- (20) "Obstruction," any structure or obstacle, or use of land, that obstructs an aerial approach of an airport or is otherwise hazardous to the use of an airport by aircraft for landing or taking off;
- (21) "Place of business," a permanent enclosed structure at which a permanent business of bartering, trading, or selling aircraft is carried out in good faith. The term does not include any residence, tent, stand, or any other temporary structure;
- (22) "Prescribed adjusted height," a height adjusted upward seventeen feet for an interstate highway, fifteen feet for any other public road, ten feet or the height of the highest mobile object that would normally traverse the road, whichever is greater, for a private road, and twenty-three feet for a railroad;
- (23) "Private airport," any privately-owned airport that is available for use only by the owner and the owner's invitees;
- (24) "Public airport," any airport, whether publicly or privately owned, that is available for use by the public;
- (25) "Small unmanned aircraft," a UA that weighs not more than fifty-five pounds, (twenty-five kilograms) including everything that is onboard or otherwise attached to the aircraft;
- (26) "Small unmanned aircraft system" or "sUAS," any small unmanned aircraft and its associated elements including communication links and the components that control the UA that are required for the safe and efficient operation of the UA;
- (27) "Temporary airport," any airport established and set aside for the operation of aircraft for transitory or impermanent purposes;
- (28) "Unmanned aircraft" or "UA," an aircraft operated without the possibility of direct human intervention from within or on the aircraft.

Section 3. That § 50-2-12 be AMENDED:

50-2-12. Expenditures and disbursements--Approval--Purposes.

The commission shall approve the expenditure and disbursement of grants or funds appropriated and available for matching purposes, and for the planning, construction, development, operation, and maintenance of airport facilities. The commission may also approve expenditures from the state aeronautics fund to support the advancement of aviation and aviation commerce within the state.

Section 4. That a NEW SECTION be added:

50-2-32. Commission action--Appeal.

A person may appeal an action of the commission in accordance with chapter 1-26.

Section 5. That § 50-4-12 be AMENDED:

50-4-12. Sale of aircraft fuel--Report--Violation as misdemeanor.

Each person engaged in selling aircraft fuel to retailers or consumers at wholesale, shall, on or before the fifteenth day of each month, file a sworn statement and report with the department, upon forms provided by the department, showing the number of gallons of aircraft fuel sold in South Dakota for use in aircraft. Any person failing to file such report is guilty of a Class 2 misdemeanor.

Section 6. That § 50-4-13 be AMENDED:

50-4-13. Aircraft fuel tax revenues--Appropriation and use.

The aircraft fuel tax collected on aircraft fuel purchased, imported, received, or distributed for subsequent sale for use in aircraft shall be appropriated and used as provided in § 50-4-14.

Section 7. That § 50-7-2 be AMENDED:

50-7-2. County commissioners and municipalities--Airports--Powers and jurisdiction--Airport boards.

The board of county commissioners of any county in this state may acquire, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate airports for the use of aircraft within the limits of the county, and may use for any such purpose any real property suitable therefor owned or controlled by the county. Each municipality has the same power and jurisdiction except that a municipality may exercise the power either within or without the corporate limits of the municipality. The governing boards of a county or a municipality may create an airport board by resolution.

Section 8. That § 50-7-7 be AMENDED:

50-7-7. Statement of intention to establish airport--Protest by voters--Submission to vote.

If the question of establishing a county airport has not previously been approved by a majority vote of the voters at an election at which the question was submitted, then

any county desiring to establish and construct an airport shall state in the next published report of the county's proceedings the county's intention to establish and construct the airport stating the maximum amount which might be required to do so. If within sixty days from the publication a protest signed by fifteen percent of the voters of the county voting at the last general election for Governor be filed with the county commissioners, then no action may be taken until the question has been submitted to a vote of the people and sixty percent of those voting shall vote in favor thereof. The question to be so submitted shall be, "Shall the county expend an amount not to exceed \$_____ to establish and construct an airport?"

Section 9. That § 50-7-10 be AMENDED:

50-7-10. Airport sponsors--Powers--Federal grants--Agreements.

The airport sponsor may designate the department as the airport sponsor's agent to accept, receive, and receipt for federal grants in the body's behalf for airport purposes, and to contract for the planning, construction, and maintenance of aviation facilities. The airport sponsor may enter into an agreement with the department prescribing the terms and conditions of the agency under this section. The federal grants shall be paid to the airport sponsor under the terms and conditions imposed by the United States government in making the grant.

Section 10. That § 50-7-15 be AMENDED:

50-7-15. Cooperative agreements--Airport improvements--Reimbursement.

The department, on behalf of the commission, may enter into cooperative agreements with the governing body of a governmental agency, whereby, the initial expenditures for making authorized airport improvements may be paid from any state aeronautics fund moneys that may be available to the commission and the governmental agency's share of the expenditure may be reimbursed to the commission over a period of three years. The reimbursements shall be paid into the state aeronautics fund and used for airport improvement purposes. Any governmental agency may enter into a cooperative financing agreement upon the adoption of a resolution authorizing the governing body to enter into the agreement.

Section 11. That § 50-7-17 be AMENDED:

50-7-17. Airport system expansion and improvement--Project applications--Prior approval--Federal funds--Requirements.

No governmental agency in this state, whether acting alone or jointly with another governmental agency, may submit to the Federal Aviation Administration any project application under the provisions of any act of Congress which provides airport planning, construction, and development funds or other funds for the expansion and improvement of the airport system as the act shall pertain to the State of South Dakota, unless the project application has been first approved by the department. No governmental agency may directly receive or disburse any funds granted by the United States under the act, but the governmental agency shall designate the department as its agent to receive and disburse the funds. The governmental agency shall enter into an agreement with the department prescribing the terms and conditions of the agency in accordance with federal laws and regulations and applicable laws of this state. The moneys paid over by the United States government shall be retained by the state or paid over to the governmental agency under such terms and conditions as may be imposed by the United States government making the grant.

Section 12. That § 50-7-18 be AMENDED:

50-7-18. Indemnification agreements--Lands subject to mineral rights or oil and gas leases.

The department may in cases where federal funds are channeled through the department, pursuant to the provisions of § 50-7-17, enter into contracts and agreements binding on this state with the administrator of the Federal Aviation Administration to indemnify the United States for federal funds contributed to the State of South Dakota, or any governmental agency, used for the purchase of land as the site of a public airport or for the construction of airport improvements on the airport within this state where the title to the land is subject to mineral rights or oil and gas leases, the release or subordination of which is determined by the administrator of the Federal Aviation Administration not to be practicable.

Section 13. That § 50-7-19 be AMENDED:

50-7-19. Indemnification agreements--Limitations.

The indemnifying agreements authorized in §§ 50-7-17 and 50-7-18 are limited:

- (1) To agreements which obligate the department, acting for and on behalf of the State of South Dakota, to refund to the United States of America as represented by the

administrator of the Federal Aviation Administration, a sum equal to the full amount of federal funds contributed for the purchase of land or construction of airport improvements thereon; or

- (2) At the option of the administrator, to provide and construct at state expense and without further contributions by the federal government, an airport facility equivalent to that developed with the aid of federal funds and located as near as practicable to the site of the existing facilities on land with good title satisfactory to the administrator of the Federal Aviation Administration as prescribed by the provisions of section 9 of the Federal Airport Act (Public Law 377, 79th Congress, 2nd session as amended to January 1, 2014).

Section 14. That a NEW SECTION be added:

50-9-14. Airport hazard--Public nuisance--Prevention.

The creation or establishment of an airport hazard is a public nuisance and an injury to the community or the United States served by the airport and shall be prevented in accordance with this title.

Section 15. That a NEW SECTION be added:

50-9-15. Removal of airport hazards--Public purpose--Public funds.

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 the political subdivisions may raise and expend public funds and acquire land or a property interest.

Section 16. That § 50-10-6 be AMENDED:

50-10-6. Airport layout--Zones--Permitted land uses--Runway protection zone--Exclusions.

The regulations required by § 50-10-5 shall divide the airport layout into zones, and, within each zone, specify the land uses permitted, regulate and restrict the height to which structures and obstructions may be erected or allowed to grow, prohibit the obstruction by lights, smoke, electronic devices, or any other means, of the safe operation of aircraft near airports, and impose other restrictions and requirements as may be necessary for the protection of the airport. The existing and ultimate runway protection

zone as depicted on the airport layout plan shall be zoned to exclude homes and structures that constitute a concentration of people.

Section 17. That § 50-10-9 be AMENDED:

50-10-9. Regulations--Limitations.

No airport zoning regulation adopted under this chapter may be unreasonable. No regulation may require the removal, lowering, or other change or alteration of any structure or obstruction not conforming to the regulation when adopted or amended, or otherwise interfere with the continuance of any nonconforming use, except as provided in § 50-10-28.

Section 18. That § 50-11-21 be AMENDED:

50-11-21. Promulgation of rules--Additional registration tax--Aeronautics fund.

The commission may prescribe forms and promulgate rules pursuant to chapter 1-26 for the ascertainment, assessment, collection, or return of the additional original registration tax imposed by § 50-11-19. Upon receipt of the original registration tax, the department shall pay it to the state treasurer to be credited to the aeronautics fund.

Section 19. That § 50-11-33 be AMENDED:

50-11-33. Certificate of registration--Permits--Alteration or forgery--Violation as felony.

No person may:

- (1) Alter, forge, or cause to be altered or forged a certificate of registration or permit issued under this chapter;
- (2) Alter, forge, or cause to be altered or forged an assignment or endorsement of a certificate of registration; or
- (3) Permit, or to hold or use a certificate, assignment, or endorsement knowing it has been altered or forged.

A violation of this section is a Class 5 felony.

Section 20. That § 50-12-2 be AMENDED:

50-12-2. Aircraft dealer's license--Application--Contents.

Any person desiring to sell or solicit as a dealer the sale of aircraft within South Dakota shall apply for an aircraft dealer's license to the department. For the original application, the person shall possess one or more aircraft under normal registration. The application shall be made in writing on a form furnished by the department and shall contain the following information:

- (1) The name and physical address of the aircraft dealer;
- (2) The physical address of each owner, director, or principal officer of such aircraft dealer. If the applicant is a foreign corporation, the application shall designate the state of incorporation, and the post office address of the registered office and registered agent of such corporation in South Dakota. Evidence shall be furnished showing that the foreign corporation has been granted authority to do business in South Dakota by the secretary of state. If the applicant is a foreign person or partnership, the application shall set forth the permanent business address in the foreign state; and
- (3) Whether the applicant has previously been an aircraft dealer in South Dakota, and if so, the number of aircraft the applicant has sold within a period of twenty-four months preceding the date of the application.

Section 21. That § 50-12-14 be AMENDED:

50-12-14. Dealer's license--Renewal--Requirements--Appeal--Fees.

Each licensed dealer on or before February first of the second year shall apply for the renewal of the dealer's license. The dealer shall verify having sold or brokered at least six aircraft within the past twenty-four calendar months. However, any dealer not meeting the requirements of this section may appeal to the commission for renewal of a dealer's license if the dealer can demonstrate reasonable cause for not meeting those requirements. The fee for the renewal of a license is the same as that required for an original license. Upon failure to apply for the renewal of the license, and to pay the renewal fee on or before the first day of February of the second year, an additional fee of ten dollars per month, or any fraction thereof, is required before the license shall be issued.

A former dealer may make an application for an original aircraft dealer's license after thirty-six months from the expiration date of the dealer's license.

Section 22. That § 50-13-16 be AMENDED:

**50-13-16. Reckless operation of aircraft--Violation as misdemeanor--
Considerations.**

It is a Class 1 misdemeanor for any person to operate an aircraft in the air or on the ground or water in a careless or reckless manner so as to endanger or be likely to endanger any person or property. In any proceeding for a violation of this section, the court in determining whether the operation was careless or reckless shall consider the standards for safe operation of aircraft prescribed by federal statutes, regulations, or advisories governing aeronautics.

Section 23. That § 50-13-18 be AMENDED:

50-13-18. Tampering with aircraft--Violation as misdemeanor.

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 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.

A violation of this section is a Class 1 misdemeanor.

Section 24. That § 50-15-2 be AMENDED:

50-15-2. Compliance with federal regulations--Exemption from chapter.

Any operation of a drone in the state shall comply with all applicable Federal Aviation Administration regulations. Any drone operating under the authority of the Armed Forces of the United States, including the National Guard, is exempt from this chapter.

Section 25. That § 50-2-5 be REPEALED.

50-2-5. Duties of commission.

Section 26. That § 50-4-1 be REPEALED.

50-4-1. Duties of department.

Section 27. That § 50-7-14.1 be REPEALED.

50-7-14.1. Maximum liability of municipality for accidents or occurrences.

Section 28. That § 50-9-4 be REPEALED.

50-9-4. Appeal of commission action--Procedure.

Section 29. That § 50-10-2 be REPEALED.

50-10-2. Airport hazard as public nuisance--Prevention.

Section 30. That § 50-10-2.1 be REPEALED.

50-10-2.1. Removal of airport hazards as public purpose--Use of public funds.

An Act to revise and repeal provisions regarding aviation.

I certify that the attached Act originated in
the:

House as Bill No. 1066

Received at this Executive Office
this ____ day of _____,
2020 at _____ M.

_____ Chief Clerk

By _____ for the Governor

_____ Speaker of the House

The attached Act is hereby
approved this _____ day of
_____, A.D., 2020

Attest:

_____ Chief Clerk

_____ Governor

STATE OF SOUTH DAKOTA,

ss.

Office of the Secretary of State

_____ President of the Senate

Attest:

Filed _____, 2020
at _____ o'clock __ M.

_____ Secretary of the Senate

_____ Secretary of State

House Bill No. 1066
File No. _____
Chapter No. _____

By _____ Asst. Secretary of State