

AN ACT

ENTITLED, An Act to revise and repeal certain provisions regarding the regulation of aeronautics.

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

Section 1. That § 50-1-1 be amended to read as follows:

50-1-1. Terms as used in this title mean:

- (1) "Aeronautics," the act or practice of the art and science of transportation by aircraft, and operation, construction, repair, or maintenance of aircraft, airports, or air navigation facilities;
- (2) "Aircraft," any powered contrivance used or designed for navigation of, or flight in, the air;
- (3) "Airport," any area, either of land or water, which is used, or intended for use, for the landing and take-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, together with all airport buildings and facilities located thereon;
- (4) "Civil aircraft," any aircraft other than a public aircraft;
- (5) "Commission," the South Dakota Aeronautics Commission;
- (6) "Department," the Department of Transportation;
- (7) "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;
- (8) "Private airport," any airport that is open to and available for use only by the owner and the owner's invitees;
- (9) "Public aircraft," any aircraft used exclusively in the governmental service, including

military and naval aircraft, or of any state or territory thereof;

- (10) "Public airport," any airport, whether publicly or privately owned, that is open to and available for use by the flying public.

Section 2. That § 50-2-1.1 be amended to read as follows:

50-2-1.1. The commission shall continue within the department, and all its functions shall be performed by the department as provided by § 1-44-11.

The commission shall provide advice and expertise to state agencies regarding the purchase, transfer and disposition of state owned and operated aircraft including those owned or operated by any state institution.

Section 3. That § 50-2-2.1 be amended to read as follows:

50-2-2.1. The commission may promulgate rules pursuant to chapter 1-26 regarding:

- (1) The design, layout, location, construction, operation, equipping, and use of all public airports;
- (2) The establishment, location, maintenance, and operation of all air markings, air beacons and other navigation facilities; and
- (3) The operation of aerial applicators or operators including minimum standards, class definitions, and safety requirements.

Section 4. That § 50-2-4 be amended to read as follows:

50-2-4. On or before the thirty-first day of December, in each year, the commission shall make, to the Governor, a full report of its proceedings for the year ending the thirtieth day of June preceding and may submit with the report any recommendations pertaining to the commission's affairs as seem to the commission to be desirable.

Section 5. That § 50-2-5 be amended to read as follows:

50-2-5. The commission shall foster air commerce within the State of South Dakota. The

commission shall supervise the aeronautical activities and facilities within the state, including supervision and control over all airports, air marking, air beacons, and all other air navigation facilities.

Section 6. That § 50-2-12 be amended to read as follows:

50-2-12. The commission shall approve the expenditure and disbursement of moneys appropriated and available for matching purposes and for the construction, development, operation, marking, and maintenance of airports, and air navigation facilities.

Section 7. That § 50-2-13 be amended to read as follows:

50-2-13. The rules promulgated by the commission under the authority of § 50-2-2.1, shall be as consistent as possible with federal law and regulations governing aeronautics.

Section 8. That § 50-2-15 be amended to read as follows:

50-2-15. The commission, when its state aircraft are not being used in the conduct of the necessary activities of the Department of Transportation, may operate the aircraft for other departments of the state government of South Dakota. The rate of reimbursement shall be set by the Board of Finance, to fully defray the cost and expenses of rendering the service.

Section 9. That § 50-2-17 be amended to read as follows:

50-2-17. The department shall maintain separate accounting and limit its expenditures from the special aviation internal service fund so as to in no instance use any sum for a purpose other than that for which it has been appropriated.

Section 10. That § 50-2-22 be repealed.

Section 11. That § 50-2-23 be repealed.

Section 12. That § 50-2-24 be repealed.

Section 13. That § 50-2-25 be repealed.

Section 14. That § 50-2-26 be repealed.

Section 15. That § 50-2-27 be repealed.

Section 16. That § 50-2-28 be repealed.

Section 17. That § 50-2-29 be repealed.

Section 18. That § 50-2-30 be repealed.

Section 19. That § 50-2-31 be repealed.

Section 20. That § 50-4-1 be amended to read as follows:

50-4-1. The department shall assist in the development of aviation and aviation facilities within the state for the purpose of safeguarding the interests of those engaged in all phases of the industry and of the general public, and promoting aeronautics.

Section 21. That § 50-4-2 be amended to read as follows:

50-4-2. The department may, on behalf of and in the name of the state, out of appropriations and other moneys made available for such purposes, construct, improve, maintain, mark, and operate airports and other air navigation facilities either within or without this state and to assist financially counties, municipalities, and organized townships in constructing, improving, maintaining, marking, and operating airports and other air navigation facilities within or without the state. For such purposes the department may exercise all of the powers and authority conferred upon municipal corporations by this title.

Section 22. That § 50-4-3 be amended to read as follows:

50-4-3. The department may cooperate with the government of the United States, and any agency or department thereof, in the acquisition, construction, improvement, maintenance, and operation of airports and other navigation facilities in this state.

Section 23. That § 50-4-4 be amended to read as follows:

50-4-4. The department may accept and receive federal moneys and other moneys either public or private, for and on behalf of the state, counties, or municipalities, for the acquisition, construction,

improvement, maintenance, and operation of airports and other air navigation facilities, whether the work is to be done by the state, counties, or municipalities, or jointly, aided by grants of aid from the United States.

Section 24. That § 50-4-5 be amended to read as follows:

50-4-5. The department shall act as an agent of any county or municipality of this state upon the request of the county or municipality, in accepting, receiving and receipting for any moneys 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 moneys. The governing body of the county or municipality shall designate the department as its agent for such purposes and to enter into an agreement with the department prescribing the terms and conditions of the agency.

Section 25. That § 50-4-7 be amended to read as follows:

50-4-7. 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 county or municipality, shall be made pursuant to the laws of this state governing the making of like contracts.

Section 26. That § 50-4-8 be amended to read as follows:

50-4-8. All moneys accepted for disbursement by the department pursuant to §§ 50-4-3 to 50-4-7, inclusive, shall be deposited in the state treasury, and, unless otherwise prescribed by the authority from which the money is received, 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. All such moneys are hereby appropriated for the purposes for which the same were made available, to be expended in accordance with those sections. The department may, whether acting for this state or as the agent of any of its counties or municipalities, or if requested by the United States government

or any agency or department thereof, disburse the moneys for the designated purposes, but this does not preclude any other authorized method of disbursement.

Section 27. That § 50-4-14 be amended to read as follows:

50-4-14. The state aeronautics fund and the accumulations to the fund as appropriated by the Legislature may be used for the following purposes:

- (1) The construction, development, lighting, marking, and maintenance of publicly owned airports;
- (2) The lighting, marking, and maintenance of runways, taxiways and parking areas of privately owned and operated airports licensed by the commission, in proportion to the amount of the aircraft fuel tax paid on the aircraft fuel purchased for resale for use in aircraft at each privately owned and operated airport, as nearly as practicable, as to each airport it appears to the satisfaction of the commission that the airport is operated and maintained in accordance with the laws of this state, the rules of the commission, and the standard established for the airport by any agency of the United States, and the unrestricted use of the airport, is at all times available to the general public for the taking off and landing of aircraft;
- (3) The matching of any funds made available by the United States, this state, or any of the political subdivisions of this state for the purchase of sites for airports, and for the construction, lighting, and marking of such airports, in amounts as the commission may determine; and
- (4) The paying of salaries, office expenses, traveling, and other expenses of the commission and the department staff to carry out the responsibilities defined in chapter 50-2.

Section 28. That § 50-4-16 be amended to read as follows:

50-4-16. The commission shall make an allocation of a portion of the aircraft fuel tax collected

pursuant to §§ 10-47B-1 and 10-47B-4, to each eligible airport. The allocation shall be determined by the department from the monthly reports required by § 50-4-12, and be based as nearly as practicable upon the amount of aircraft fuel tax collected on retail sales of aircraft fuel sold at each eligible airport for use in general aviation aircraft. The amount of aircraft fuel tax collected on aircraft fuel sales to regular airlines shall be allocated separately by the department. All remaining aircraft fuel tax collected pursuant to §§ 10-47B-1 and 10-47B-4, shall be placed in the aeronautics fund and be used by the commission as provided in § 50-4-14.

Section 29. That § 50-4-17 be amended to read as follows:

50-4-17. The department shall approve vouchers and the state auditor shall issue warrants to expend the funds appropriated by § 50-4-14. The funds shall be expended as provided in § 50-4-14.

Section 30. That § 50-5-1.1 be amended to read as follows:

50-5-1.1. The approval requirements of § 50-5-1 do not apply to temporary airports used only by aircraft while engaged in providing emergency medical services or other emergency services.

Section 31. That § 50-5-7 be amended to read as follows:

50-5-7. If the commission deems it necessary, the commission may order the closing of any airport, or order any other air navigation facility to cease operations until it complies with the requirements established by the commission.

Section 32. That § 50-5-8 be amended to read as follows:

50-5-8. The commission or the commission's agent may inspect and examine at reasonable hours, to carry out the provisions of this title, any premises, and the buildings and other structures thereon, where the airports or other air navigation facilities are operated.

Section 33. That § 50-5-9 be repealed.

Section 34. That § 50-5-10 be amended to read as follows:

50-5-10. Except as otherwise provided, no person, without the express or implied consent of the

owner or operator of any airport which has been approved by the commission for public use by aircraft, may enter, trespass on, or occupy any runway or other portion of the airport which will interfere, restrict, impede, or endanger the use of the airport by another person or the operator of an aircraft. A violation of this section is a Class 1 misdemeanor.

Section 35. That § 50-6-1 be repealed.

Section 36. That §§ 50-6-3 to 50-6-17, inclusive, be repealed.

Section 37. That § 50-6A-1 be amended to read as follows:

50-6A-1. Terms used in this chapter mean:

- (1) "Air navigation facility," any facility, other than one owned and operated by the United States, used in, available for use in, or designed for use in the 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, or any combination of any or all of such facilities;
- (2) "Airport authority" or "authority," any regional airport authority created pursuant to the provisions of this chapter;
- (3) "Airport hazard," 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;
- (4) "Bonds," any bonds, notes, interim certificates, debentures, or similar obligations issued by an authority pursuant to this chapter;
- (5) "Governing body," the official or officials authorized by law to exercise ordinance or other lawmaking powers of a political subdivision;

- (6) "Person," a person as defined by subdivision 2-14-2(18) as well as any joint stock association, or body politic; and includes any trustee, receiver, assignee, or other similar representative thereof;
- (7) "Political subdivision" or "subdivision," any county, municipality, or other public body of this state;
- (8) "Project," any airport operated by an authority, including all real and personal property, structures, machinery, equipment and appurtenances or facilities that are part of the 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; and
- (9) "Real property," 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.

Section 38. That § 50-6A-2 be amended to read as follows:

50-6A-2. Any subdivision may by resolution, create a public body, corporate and politic, to be known as a regional airport authority. That authority shall be authorized to exercise its functions upon the issuance by the secretary of state of a certificate of incorporation.

Section 39. That § 50-6A-5 be amended to read as follows:

50-6A-5. Upon the appointment and qualification of the commissioners first appointed to a regional airport authority, the regional airport authority shall submit, to the secretary of state, a certified copy of each resolution adopted pursuant to § 50-6A-2 by the subdivisions included in the regional authority, and upon receipt of the copy the secretary of state shall issue a certificate of

incorporation to the regional airport authority.

Section 40. That § 50-6A-28 be amended to read as follows:

50-6A-28. An authority may designate the department as the authority's 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. The authority shall designate the department as the authority's 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 shall enter into an agreement with the department prescribing the terms and conditions of the agency in accordance with any 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 department shall be accepted and transferred or expended by the department upon any terms and conditions as are prescribed by the United States.

All moneys received by the department pursuant to this section shall be deposited in the state treasury, and unless otherwise prescribed by the agency from which the moneys were received, shall be kept in separate funds designated according to the purposes for which the moneys were made available, and shall be held by the state in trust for such purposes.

Section 41. That § 50-6A-38.1 be amended to read as follows:

50-6A-38.1. A regional airport authority may pay compensation to a regularly scheduled commercial air carrier to provide basic or enhanced air service as provided in the Airport and Airway Safety and Capacity Expansion Act of 1987 and may provide compensation to a regularly scheduled air carrier. Funds provided by a regional airport authority to pay compensation for such air service shall be budgeted pursuant to chapter 50-6A.

Section 42. That § 50-7-1 be amended to read as follows:

50-7-1. For the purposes of this chapter, the term, municipalities, includes organized townships and organized counties and like power and authority is hereby conferred upon organized townships and organized counties as now exists in municipalities. For the purposes of this chapter, the term, governmental agency, means any municipality, county, public corporation, or other public agency.

Section 43. That § 50-7-2 be amended to read as follows:

50-7-2. 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. Any municipality situated at or near the boundary line of an adjoining state may exercise the power and jurisdiction over real property and persons, for such purposes in the adjoining state and may maintain actions in the corporate name in the courts of the adjoining state for the exercise or protection of any rights authorized by this chapter. The governing boards of a county or a municipality may by resolution create an airport board.

Section 44. That § 50-7-2.1 be repealed.

Section 45. That § 50-7-3 be amended to read as follows:

50-7-3. Any governmental agency may lease an airport or any portion of an airport or any airport facility for operating purposes to any person or corporation upon terms and conditions for a term of not to exceed twenty-five years as the governing body may approve. No governmental agency nor the governing agency is liable for the negligent maintenance or operation of any airport building, or other facility leased to an operator or erected by an operator upon a leased site.

Section 46. That § 50-7-4 be amended to read as follows:

50-7-4. Any lands acquired, owned, controlled, or occupied by a governmental agency for the

purposes enumerated in § 50-7-3 shall and are hereby declared to be acquired, owned, controlled, and occupied for a public purpose and as a matter of public necessity. The governmental agency has the right to acquire public or private real property for such purposes by purchase from the owner if agreement on the terms can be made and if not by condemnation in the manner provided by law under which the governmental agency is authorized to acquire real property for public purposes. If there be no such law, in the manner provided generally for the condemnation of property for public use, the governmental agency has the right to exchange lands owned by the governmental agency for other lands of like character and value within the county or an abutting county whether privately owned or owned by the United States, the State of South Dakota, or any of its political subdivisions. The exchange shall be authorized by resolution of the governing body directing the execution of the necessary conveyance or conveyances. Any conveyance shall be signed by the presiding officer of the governing body and attested by the auditor or clerk.

Section 47. That § 50-7-5 be amended to read as follows:

50-7-5. Any power granted by this chapter to counties and municipalities may be exercised jointly by the county and municipalities located in the county or abutting county. In the case of any existing airport owned by a municipality, the county in which the municipality is located, or an abutting county, may purchase from the municipality an interest in the airport. In the case of any airport operated by a county, a municipality in the county or abutting county may purchase from the county an interest in the airport and may appropriate money and do all other things necessary to share in the operation expense as if the airport was owned and operated solely by the county or municipality. In case of a jointly owned and operated airport the management of the airport shall be in accordance with regulations adopted by the governing boards of the county and municipality not inconsistent with other provisions of this chapter, and the governing boards of the county and municipality may by resolutions of their respective governing bodies create an airport board.

Section 48. That § 50-7-7 be amended to read as follows:

50-7-7. 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 for Governor at the last general election 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 49. That § 50-7-10 be amended to read as follows:

50-7-10. The governing body of any governmental agency shall designate the department as the body's agent to accept, receive, and receipt for federal moneys in the body's behalf for airport purposes, and to contract for the acquisition, construction, enlargement, improvement, maintenance, equipment, or operation of airports, or other air navigation facilities. The governmental agency may enter into an agreement with the department prescribing the terms and conditions of the agency. The federal moneys shall be paid to the municipality or county under such terms and conditions as may be imposed by the United States government in making the grant.

Section 50. That § 50-7-11 be amended to read as follows:

50-7-11. Any contract for the acquisition, construction, enlargement, improvement, maintenance, equipment, or operation of any airport or any other air navigation facility, made by the governmental agency itself, or through the agency of the department, shall be made pursuant to the laws of this state governing the making of like contracts.

Section 51. That § 50-7-12 be amended to read as follows:

50-7-12. The governmental agency that has established an airport and acquired, leased, or set apart real property for such purpose may construct, improve, equip, maintain, and operate the same and may lease or sublet the property for airport purposes. The expenses of the construction, improvement, equipment, maintenance, and operation shall be a municipality or county charge as the case may be.

Section 52. That § 50-7-13 be amended to read as follows:

50-7-13. The governmental agency that has established an airport and acquired, leased, or set apart real property for such purpose may vest jurisdiction for the construction, improvement, equipment, maintenance, and operation of the airport, in any suitable officer, board, or body of the governmental agency. The governmental agency may create by ordinance a board whose sole purpose shall be to improve, regulate and supervise the operation and management of air facilities.

Section 53. That § 50-7-14 be amended to read as follows:

50-7-14. The governmental agency may adopt regulations and establish charges for the use of such airport, or may authorize an officer, board, or body of the governmental agency having jurisdiction to adopt regulations and establish charges, subject, however, to the approval of the governing body before the regulations or charges take effect.

Section 54. That § 50-7-15 be amended to read as follows:

50-7-15. 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 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 special aviation internal service fund created by § 50-2-16 and used for airport improvement purposes, or shall be

paid into the specific fund used to make the initial expenditures. 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 55. That § 50-7-16 be amended to read as follows:

50-7-16. The commission shall charge a governmental agency simple interest at the Category A rate of interest established in § 54-3-16 on the amount of money subject to reimbursement under § 50-7-15 from the date of the expenditure to the date of payment.

Section 56. That § 50-7-17 be amended to read as follows:

50-7-17. No governmental agency in this state, whether acting alone or jointly with another governmental agency, may submit to the administrator of 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 such 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 such 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 57. That § 50-7-18 be amended to read as follows:

50-7-18. 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 58. That § 50-7-19 be amended to read as follows:

50-7-19. 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 59. That § 50-9-1 be amended to read as follows:

50-9-1. Any person or organization who intends to construct or alter a structure shall submit an application and obtain an approval permit from the commission for any construction or alteration that:

- (1) Exceeds two hundred feet above ground level;

- (2) Is within twenty thousand feet of a state approved public airport or military airport that has at least one runway more than three thousand two hundred feet in actual length and the construction or alteration exceeds a one hundred to one surface ratio from any point on the runway;
- (3) Is within ten thousand feet of a state approved public airport or military airport that has its longest runway no more than three thousand two hundred feet in actual length and the construction or alteration exceeds a fifty to one surface ratio from any point on the runway;
- (4) Is within five thousand feet of a state approved public heliport and the construction or alteration exceeds a twenty-five to one surface ratio; or
- (5) Is a highway, railroad, or other traverse way that the prescribed adjusted height exceeds the standards provided in this section.

No application is needed if the construction or alteration of a structure would be shielded by an existing structure of a permanent and substantial character within the corporate limits of a municipality or by natural terrain or topographic features of equal or greater height. It must be evident beyond any reasonable doubt that the construction or alteration of the structure so shielded does not adversely affect safety in air navigation. For the purposes of this section, the term, structure, means any object constructed by human action.

Any person or organization, who intends to construct or alter a structure that exceeds two hundred feet above ground level and that is outside the zones described in this section and who has obtained a Federal Aviation Administration determination of no hazard, may provide that determination to the commission prior to the start of construction in lieu of the application and permit required by this chapter.

Section 60. That § 50-9-2 be amended to read as follows:

50-9-2. The commission shall promulgate rules, pursuant to chapter 1-26, covering the requirements that shall be met by any applicant to obtain the approval for the construction or alteration of any structure which is not exempt from the requirements of § 50-9-1.

Section 61. That § 50-9-3 be amended to read as follows:

50-9-3. The commission may, in its discretion, approve the application filed, as required by § 50-9-1 without a hearing. However, if the commission deems the erection of the structure to create a hazard to the safe use of an airport by aircraft, or a public danger, or the department finds the erection to be in violation of any of the rules authorized by § 50-9-2, the commission shall assign the application for hearing upon reasonable notice to the applicant. The commission may order and require the applicant to cease and desist from erecting the structure except in conformity to plans and specifications relating to height thereof, approved by the commission.

Section 62. That § 50-9-5 be amended to read as follows:

50-9-5. The erection or alteration of any structure covered by § 50-9-1 without the approval of the commission is a Class 1 misdemeanor.

Section 63. That § 50-9-6 be repealed.

Section 64. That § 50-9-7 be repealed.

Section 65. That § 50-9-8 be repealed.

Section 66. That § 50-9-9 be repealed.

Section 67. That § 50-10-1 be amended to read as follows:

50-10-1. Terms used in this chapter mean:

- (1) "Airport hazard," any structure, or tree, or use of land, which obstructs an aerial approach of such an airport or is otherwise hazardous to its use for landing or taking off;
- (2) "Person," any individual, firm, copartnership, corporation, company, limited liability company, association, joint stock association or body politic, including any trustee,

receiver, assignee, or other similar representative;

- (3) "Publicly owned," an airport is publicly owned if the portion of the airport used for the landing and taking-off of aircraft is owned by a governmental body, political subdivision, public agency, or other public corporation;
- (4) "Structure," any object constructed by human action;
- (5) "Tree," any object of natural growth.

Section 68. That § 50-10-2 be amended to read as follows:

50-10-2. 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. It is hereby declared:

- (1) That 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 in question; and
- (2) 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.

Section 69. That § 50-10-3 be repealed.

Section 70. That § 50-10-4 be repealed.

Section 71. That § 50-10-5 be amended to read as follows:

50-10-5. Each municipality, county, or other political subdivision that has an airport layout plan, shall take measures for the protection of airport approaches, and shall adopt, administer, and enforce, under the police power and in the manner and upon the conditions prescribed by this chapter, airport zoning regulations applicable to the area.

Section 72. That § 50-10-6 be amended to read as follows:

50-10-6. The regulations required by § 50-10-5 shall divide the area into zones, and, within the

zones, specify the land uses permitted, regulate and restrict the height to which structures and trees 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 such other restrictions and requirements as may be necessary to effectuate the layout plan for the airport. The existing and ultimate runway protection zone as depicted on the airport layout plan shall be zoned to exclude homes and structures which constitute a concentration of people unless otherwise approved by the Federal Aviation Administration.

Section 73. That chapter 50-10 be amended by adding thereto a NEW SECTION to read as follows:

If the local zoning authority does not require compliance with the requirements for proper zoning at an airport pursuant to § 50-10-6, the commission may withhold future funding.

Section 74. That § 50-10-8 be amended to read as follows:

50-10-8. Any zoning or other regulations shall be consistent with an airport layout plan. Measures shall be taken for the protection of airport approaches, including not only any airport zoning regulations adopted under this chapter but any zoning or other regulations dealing with the same or similar matters, that have been or may be adopted under authority other than that conferred by this chapter, and shall be consistent with, and conform to, the airport layout plan for such area. The regulations shall be amended as may be necessary to conform to any revision of the airport layout plan.

Section 75. That § 50-10-11 be amended to read as follows:

50-10-11. Any person desiring to erect any structure, to increase the height of any structure, to permit the growth of any tree, or to otherwise use the person's property, in violation of airport zoning regulations adopted under this chapter, may apply to the board of appeals, as provided in § 50-10-15, for a variance from the zoning regulations in question. A variance may be allowed if a literal

application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but would do substantial justice and be in accordance with the spirit of the regulations.

Section 76. That § 50-10-28 be amended to read as follows:

50-10-28. In any case in which:

- (1) It is desired to remove, lower, or otherwise terminate a nonconforming use;
- (2) The approach protection necessary according to the airport layout plan 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;

the political subdivision within which the property or nonconforming use is located, the political subdivision owning the airport or served by it, shall 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 an air right, easement, or other estate or interest in the property or nonconforming use in question as may be necessary to effectuate the purposes of this chapter.

Section 77. That § 50-11-1 be repealed.

Section 78. That § 50-11-2 be repealed.

Section 79. That § 50-11-3 be repealed.

Section 80. That § 50-11-4 be repealed.

Section 81. That § 50-11-5 be amended to read as follows:

50-11-5. The aircraft registration certificate shall at all times be conspicuously posted within the aircraft so as to be readily seen by passengers and inspectors. The department shall provide a decal bearing the same identification number as the registration certificate. The aircraft owner shall display

the decal in a location easily visible from the right outside of the aircraft. A violation of this section is a Class 2 misdemeanor.

Section 82. That § 50-11-6 be amended to read as follows:

50-11-6. The aircraft registration certificate shall be presented for inspection upon demand. A violation of this section is a Class 2 misdemeanor.

Section 83. That § 50-11-7 be repealed.

Section 84. That § 50-11-8 be amended to read as follows:

50-11-8. Unless otherwise expressly provided by the provisions of this chapter, the federal certificate of each civil aircraft owned and operated within this state shall be registered by the aircraft owner annually with the department in the manner prescribed in §§ 50-11-9 to 50-11-31, inclusive. The required fee shall be paid by the aircraft owner to the department at the time of registration. A violation of this section is a Class 2 misdemeanor.

Section 85. That § 50-11-9 be amended to read as follows:

50-11-9. The owner or lessee of an aircraft to be operated within this state shall, except as otherwise expressly provided, file with the department on a form furnished by the department, an application for registration of the aircraft. A person who fails to register an aircraft within thirty days after it is operated in this state is guilty of a Class 2 misdemeanor. A person who makes a false statement of a material fact in the application is guilty of a Class 6 felony.

Section 86. That § 50-11-10 be amended to read as follows:

50-11-10. On receipt of the application, the department shall file it. Upon determining that an aircraft is entitled to registration by the applicant, and that the original registration tax required by § 50-11-19 has been paid in full, the department shall register it and forward to the applicant a registration certificate and decal bearing a distinctive number together with such other identifying matter as the commission shall prescribe. If the aircraft is not entitled to registration or the applicant

is not entitled to register the aircraft, the department shall immediately notify the applicant.

Upon receipt of the registration fee, the department shall pay it to the state treasurer to be credited to the aeronautics fund.

Section 87. That § 50-11-16 be amended to read as follows:

50-11-16. The department may not approve an application for any aircraft which should have been previously registered or taxed under the laws of this state, without collecting all past-due registration fees or taxes.

Section 88. That § 50-11-19.1 be amended to read as follows:

50-11-19.1. For the purposes of this chapter, the purchase price is:

- (1) For an aircraft purchase, sale, or transfer, the total consideration for the aircraft whether received in money or otherwise less the value of any aircraft taken by the seller as trade, if the aircraft traded was registered in South Dakota. The purchaser of the aircraft shall submit to the department an application for original registration supplied by the department. If no proof of purchase price is provided, the price shall be the current fair market value of the aircraft at the time of registration less the value of any South Dakota registered aircraft taken by the seller in trade;
- (2) For an aircraft acquired by gift, bequest, purchase, or transfer for a nominal consideration, the price shall be considered to be the current fair market value of the aircraft at the time registration is due;
- (3) For an aircraft manufactured by any person other than a bona fide manufacturer, commonly referred to as, homebuilt, the amount expended for materials and other properly allocable costs of manufacture or in the absence of actual expenditures for the manufacture of a part or all of the aircraft, the reasonable value of the completed aircraft based on current fair market value; and

- (4) For a rebuilt aircraft, upon its initial registration, the total consideration for the salvage aircraft, the amount expended for materials and other properly allocable costs to repair the aircraft to an airworthy condition, whether received in money or otherwise. In the absence of actual expenditures for the reconstruction of the aircraft, the market value of the aircraft at the time registration is due based on current fair market value.

Section 89. That § 50-11-20 be amended to read as follows:

50-11-20. The provisions of § 50-11-19 apply to all aircraft not previously registered in this state, except:

- (1) Aircraft, owned by a person coming into this state from another state for the purpose of making the person's home within this state, and registered in the other state, are exempt from the additional original registration tax of this state to the extent of a similar additional original registration tax previously paid in the other state upon the purchase price of the aircraft. However, this exception applies only to the extent that under the law of the state of the person's residence like exemptions and privileges are granted to aircraft duly registered under the laws and owned by the residents of this state;
- (2) Aircraft purchased by a resident of this state upon which the original registration tax of this state has previously been paid;
- (3) Aircraft duly registered and certificated under chapter 50-12; or
- (4) Aircraft owned or leased by a person coming into this state for the purposes of seasonally operating the person's aircraft licensed and operating pursuant to § 38-21-20 or applying commercial fertilizer, and if the aircraft has been duly registered or licensed in such other state, are exempt from the additional registration tax. However, this exception applies only to the extent that under the law of the state of such person's residence like exemptions and privileges are granted to aircraft duly registered under laws and owned

by the residents of this state.

Section 90. That § 50-11-21 be amended to read as follows:

50-11-21. 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 91. That § 50-11-22 be amended to read as follows:

50-11-22. If an aircraft registered in accordance with §§ 50-11-8 to 50-11-21, inclusive, is sold or transferred the person in whose name the aircraft is registered shall complete and sign the endorsement on the back of the certificate of registration as prescribed by the department and shall, within seven working days, forward to the department by mail a notice of the sale or transfer including the date and place thereof and the name and address of the purchaser or transferee. Failure to make the change of registration within the time required by this section is a Class 2 misdemeanor. A person who makes a false statement of a material fact in the certificate of registration is guilty of a Class 5 felony.

Section 92. That § 50-11-23 be amended to read as follows:

50-11-23. The purchaser or transferee described by § 50-11-22 shall, within thirty days, apply to the department for the transfer of the registration of the aircraft to the purchaser's or transferee's name and the issuance of a new certificate of registration. Failure to change registration within the time required by this section is a Class 2 misdemeanor. A person who makes a false statement of a material fact in the application is guilty of a Class 5 felony.

The endorsed certificate of registration is void thirty days after the date of the sale or transfer of such aircraft.

Section 93. That § 50-11-31 be amended to read as follows:

50-11-31. In the event of loss, mutilation, or destruction of a registration certificate or other identifying matter prescribed by the commission and issued under the provisions of this chapter, the registrant may obtain a duplicate certificate by filing with the department an affidavit showing such facts and paying the fee prescribed by the commission. A person who makes a false statement of a material fact in the affidavit is guilty of a Class 5 felony. The affidavit and fee shall be filed and remitted by the department as is required by law. The department shall thereupon issue a duplicate registration certificate or other identifying matter to the applicant.

Section 94. That § 50-11-36 be repealed.

Section 95. That § 50-12-1 be amended to read as follows:

50-12-1. Terms used in this chapter mean:

- (1) "Aircraft dealer," any person, manufacturer, or distributor engaged in the business of buying, selling, exchanging, or acting as a broker of three or more aircraft in any twelve consecutive months except for a business liquidation of used aircraft;
- (2) "Commercial purpose," the use in aviation activities such as flight instruction, charter, air taxi, and rental use but does not authorize substitution of the commercial use stamp in lieu of regular aircraft registration for the promotion of nonaviation business or other purposes;
- (3) "Place of business," a permanent enclosed structure at which a permanent business of bartering, trading, and selling of aircraft will be carried on as such in good faith and not for the purpose of evading this chapter or chapter 50-11. The business name and telephone listing shall indicate it is an aircraft or aviation related place of business. The term does not include residences, tents, temporary stands, or other temporary quarters. The structure shall be used primarily as a place of business for the sale or commercial use of aircraft.

Section 96. That § 50-12-2 be amended to read as follows:

50-12-2. 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 97. That § 50-12-3 be amended to read as follows:

50-12-3. Upon determining that the applicant is entitled to a license, the department shall assign to the applicant a distinctive aircraft dealer license number, and issue the applicant the required number of dealer's certificates bearing the license number. Each licensed dealer shall display the license in a conspicuous place in the dealer's established place of business. Failure to display the license is a Class 2 misdemeanor.

Section 98. That § 50-12-6 be amended to read as follows:

50-12-6. The department at the time of the issuance of the original license, or the renewal of the

license as provided in this chapter, shall issue six aircraft dealer's certificates to an aircraft dealer. Any aircraft dealer may secure additional aircraft dealer's certificates upon application therefor on forms furnished by the department and the payment of the additional fee as required by § 50-12-12.

Section 99. That § 50-12-11 be amended to read as follows:

50-12-11. In the event of loss, mutilation, or destruction of any dealer's license, certificate, commercial use stamps, or other identifying matter issued under the provisions of this chapter, a registered aircraft dealer may obtain a duplicate upon filing with the department an affidavit showing the facts and upon payment of a fee prescribed by the commission.

Section 100. That § 50-12-16 be amended to read as follows:

50-12-16. The department may refuse to issue or renew, or may suspend or revoke, an aircraft dealer's license if the department has reasonable grounds to believe that the dealer has:

- (1) Forged or altered any federal certificate, permit, rating, or license, relating to ownership or airworthiness of an aircraft;
- (2) Sold or disposed of an aircraft which the dealer knows or has reason to know has been stolen or appropriated without the consent of the true owner;
- (3) Willfully misrepresented any material fact in the application for an aircraft dealer's license;
- (4) Willfully withheld or caused to be withheld from a purchaser any document required by the laws of this state, including an affidavit to the effect that there are no liens, mortgages, or encumbrances of any kind on the aircraft other than those noted thereon, if the document or affidavit has been requested by the purchaser;
- (5) Used an aircraft dealer's certificate or a commercial use stamp for any purpose other than those permitted by this chapter, or used any such certificate or commercial use stamp after it has expired;

- (6) Failed to keep and make available for inspection by the department a proper record of all aircraft bought and sold;
- (7) Willfully refused to apply for or pay the fee for a renewal license after an issued dealer's license has expired;
- (8) Failed to maintain an established place of business as required by this chapter;
- (9) Maintained a branch office or subagency for the sale or soliciting of sales of aircraft without applying for and receiving a license for such branch office or subagency;
- (10) Been refused a license, or had a license revoked by the licensing agencies for aircraft in this or any other state;
- (11) Failed to register on or prior to certificate or commercial use stamp expiration date;
- (12) Failed to renew license as required;
- (13) Failed to notify the department upon sale of aircraft;
- (14) Failed to promptly notify the department of an aircraft and place it on a certificate or use stamp or both; or
- (15) Any other violation of this chapter or chapter 50-11 referenced in this chapter.

Section 101. That § 50-12-17 be amended to read as follows:

50-12-17. No license may be revoked or suspended, nor may the renewal of any license be refused until after a hearing by the commission, of which the licensee has ten days' notice of the time and place of the hearing. If any license is revoked or suspended, or its renewal is refused, the person affected by the order may appeal the decision as provided in chapter 1-26.

Section 102. That § 50-12-19 be amended to read as follows:

50-12-19. The department shall prepare the forms and certificates required by this chapter. The department may prescribe the method of and location for the public display of any and all certificates and licenses as are required and in conformity with the provisions of this chapter.

Section 103. That § 50-12-22 be amended to read as follows:

50-12-22. The department may inspect the pertinent books, letters, records, and contracts of any licensed aircraft dealer periodically or relating to specific complaints made against a dealer and which may be in violation of provisions of this chapter.

Section 104. That § 50-13-1 be repealed.

Section 105. That § 50-13-2 be repealed.

Section 106. That § 50-13-5 be amended to read as follows:

50-13-5. The landing of an aircraft on the lands or waters of another, without consent, is a Class 2 misdemeanor, except in the case of a forced landing.

Section 107. That § 50-13-6 be amended to read as follows:

50-13-6. The owner or the pilot, or both, of each aircraft that is operated over lands or waters of this state is liable for injuries or damage 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 from the aircraft in accordance with the rules of law applicable to torts in this state.

As used in this section, the term, owner, includes a person having full title to aircraft and operating it through servants, and also includes a bona fide lessee or bailee of the aircraft, whether gratuitously or for hire. However, the term does not include a bona fide bailor or lessor of the aircraft, whether gratuitously or for hire, or a mortgagee, conditional seller, trustee for creditors of the aircraft, or other person having a security title only.

The owner of the aircraft is not liable if the pilot of the aircraft is in possession of the aircraft as a result of theft or felonious conversion.

The person in whose name an aircraft is registered with the Federal Aviation Administration or the department shall be prima facie the owner of the aircraft within the meaning of this section.

Section 108. That § 50-13-7 be amended to read as follows:

50-13-7. The liability of the owner of one aircraft to the owner of another aircraft, or to pilots or passengers on either aircraft, for damage caused by collision on land or in the air, shall be determined by the rules of law applicable to torts on land.

Section 109. That § 50-13-8 be amended to read as follows:

50-13-8. All crimes, torts, and other wrongs committed by or against a pilot or passenger while in flight over this state are governed by the laws of this state. Any question whether damage occasioned by or to an aircraft while in flight over this state constitutes a tort, crime, or other wrong by or against the owner of the aircraft shall be determined by the laws of this state.

Section 110. That § 50-13-9 be amended to read as follows:

50-13-9. All contractual and other legal relations entered into by pilots or passengers while in flight over this state shall have the same effect as if entered into on the land or water beneath.

Section 111. That § 50-13-11 be repealed.

Section 112. That § 50-13-12 be repealed.

Section 113. That § 50-13-13 be repealed.

Section 114. That § 50-13-14 be repealed.

Section 115. That § 50-13-16 be amended to read as follows:

50-13-16. 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 or regulations governing aeronautics.

Section 116. That § 50-13-17 be amended to read as follows:

50-13-17. It is a Class 1 misdemeanor for any person who is under the influence of an alcoholic beverage or any drug, or the combined influence of an alcoholic beverage and any drug to operate

an aircraft in the air or on the ground or water. No person may operate an aircraft in the air or on the ground or water who has 0.04 percent or more, by weight, of alcohol in that person's blood.

An Act to revise and repeal certain provisions regarding the regulation of aeronautics.

=====

I certify that the attached Act
originated in the

HOUSE as Bill No. 1043

Chief Clerk
=====

Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1043

File No. _____

Chapter No. _____

=====

Received at this Executive Office
this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor
=====

The attached Act is hereby
approved this _____ day of
_____, A.D., 20____

Governor
=====

STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____ , 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State