

LEGISLATURE OF NEBRASKA  
 ONE HUNDRED THIRD LEGISLATURE  
 FIRST SESSION  
**LEGISLATIVE BILL 140**

Introduced by Krist, 10.

Read first time January 11, 2013

Committee: Government, Military and Veterans Affairs

A BILL

1 FOR AN ACT relating to the Airport Zoning Act; to amend sections  
 2 3-301, 3-302, 3-303, 3-304, 3-306, 3-307, 3-308, 3-309,  
 3 3-310, 3-311, 3-312, 3-313, 3-314, 3-319, 3-320, 3-324,  
 4 3-329, 3-330, 3-331, and 3-333, Reissue Revised Statutes  
 5 of Nebraska; to provide airport hazard area dimensions;  
 6 to change provisions relating to airport hazard area  
 7 zoning regulations, the board of adjustment, and judicial  
 8 review; to define and redefine terms; to change a  
 9 penalty; to eliminate provisions relating to appeal of  
 10 zoning regulations, the board of adjustment, and judicial  
 11 review; to repeal the original sections; and to outright  
 12 repeal sections 3-315, 3-316, 3-317, 3-318, 3-321, 3-322,  
 13 3-325, 3-326, and 3-327, Reissue Revised Statutes of  
 14 Nebraska.

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

1           Section 1. Section 3-301, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           3-301 For purposes of the Airport Zoning Act, unless the  
4 context otherwise requires:

5           (1)(a) Airport means ~~any~~an area of land or water  
6 ~~designed and set aside that is used or intended to be used for the~~  
7 ~~landing and taking off takeoff of aircraft and utilized or to be~~  
8 ~~utilized in the interest of the public for such purposes;~~ includes  
9 any related buildings and facilities.

10           (b) Airport includes only public use airports with state  
11 or federally approved airport layout plans and military airports with  
12 military service-approved military layout plans;

13           (2) Airport hazard means any structure or tree or use of  
14 land which obstructs the airspace required for the flight of aircraft  
15 in landing or ~~taking off takeoff~~ at an airport or is otherwise  
16 hazardous to such landing or ~~taking off takeoff~~ of aircraft;

17           (3) Airport hazard area means any area of land or water  
18 upon which an airport hazard might be established if not prevented as  
19 provided in the act, but such area shall not extend in any direction  
20 a distance in excess of ~~three miles from the adjacent boundary of an~~  
21 ~~airport;~~ the limits provided for approach, operation, transition, and  
22 turning zones;

23           (4) Airport layout plan means a scaled drawing of  
24 existing and proposed land, buildings, and facilities necessary for  
25 the operation and development of an airport prepared in accordance

1 with state rules and regulations and federal regulations and  
2 guidelines;

3 (5) Approach zone means a zone that extends from the end  
4 of each operation zone and is centered along the extended runway  
5 centerlines. Approach zone dimensions are as follows:

6 (a) For an existing or proposed instrument runway:

7 (i) An approach zone extends ten miles from the operation  
8 zone, measured along the extended runway centerline. The approach  
9 zone is one thousand feet wide at the end of the zone nearest the  
10 runway and expands uniformly to sixteen thousand eight hundred forty  
11 feet wide at the farthest end of the zone; and

12 (ii) The height limit of an approach zone begins at the  
13 elevation of the runway end for which it is the approach and rises  
14 one foot vertically for every fifty feet horizontally, except that  
15 the height limit shall not exceed one hundred fifty feet above the  
16 nearest existing or proposed runway end elevation within three miles  
17 of the end of the operation zone at that runway end. At three miles  
18 from such operation zone, the height limit resumes sloping one foot  
19 vertically for every fifty feet horizontally and continues to the  
20 ten-mile limit; and

21 (b) For an existing or proposed visual runway:

22 (i) An approach zone extends from the operation zone to  
23 the limits of the turning zone, measured along the extended runway  
24 centerline. The approach zone is five hundred feet wide at the end of  
25 the zone nearest the runway and expands uniformly so that at a point

1 on the extended runway centerline three miles from the operation  
2 zone, the approach zone is three thousand seven hundred feet wide;  
3 and

4 (ii) The height limit of an approach zone begins at the  
5 elevation of the runway end for which it is the approach and rises  
6 one foot vertically for every forty feet horizontally, except that  
7 the height limit shall not exceed one hundred fifty feet above the  
8 nearest existing or proposed runway end elevation within three miles  
9 of the end of the operation zone at that runway end;

10 (6) Electric facility means an overhead electrical line,  
11 including poles or other supporting structures, owned or operated by  
12 an electrical supplier as defined in section 70-1001.01, for the  
13 transmission or distribution of electrical power to the electric  
14 supplier's customers;

15 (7) Existing runway means an instrument runway or a  
16 visual runway that is paved or made of turf that has been constructed  
17 or is under construction;

18 (8) Instrument runway means an existing runway with  
19 precision or nonprecision instrument approaches as developed and  
20 published by the Federal Aviation Administration or an existing or  
21 proposed runway with future precision or nonprecision instrument  
22 approaches reflected on the airport layout plan. After the effective  
23 date of this act, an airport shall not designate an existing or  
24 proposed runway as an instrument runway if the runway was not  
25 previously designated as such without the approval of the airport's

1 governing body after a public hearing on such designation;

2 (9) Operation zone means a zone that is longitudinally  
3 centered on each existing or proposed runway. Operation zone  
4 dimensions are as follows:

5 (a) For existing and proposed paved runways, the  
6 operation zone extends two hundred feet beyond the ends of each  
7 runway. For existing and proposed turf runways, the operation zone  
8 begins and ends at the same points as the runway begins and ends;

9 (b) For existing and proposed instrument runways, the  
10 operation zone is one thousand feet wide, with five hundred feet on  
11 either side of the runway centerline. For all other existing and  
12 proposed runways, the operation zone is five hundred feet wide, with  
13 two hundred fifty feet on either side of the runway centerline; and

14 (c) The height limit of the operation zone is the same as  
15 the height of the runway centerline elevation on an existing or  
16 proposed runway or the surface of the ground, whichever is higher;

17 ~~(4) Political subdivision means any municipality, city,~~  
18 ~~village, or county;~~

19 ~~(5)-(10) Person means any individual, firm, partnership,~~  
20 ~~limited liability company, corporation, company, association, joint-~~  
21 ~~stock association, or body politic and includes any trustee,~~  
22 ~~receiver, assignee, or other similar representative thereof;~~

23 (11) Political subdivision means any municipality, city,  
24 village, or county;

25 (12) Proposed runway means an instrument runway or a

1 visual runway that has not been constructed and is not under  
2 construction but that is depicted on the airport layout plan that has  
3 been conditionally or unconditionally approved by, or has been  
4 submitted for approval to, the Federal Aviation Administration;

5 (13) Runway means a defined area at an airport that is  
6 prepared for the landing and takeoff of aircraft along its length;

7 ~~(6)–(14)~~ Structure means any object constructed or  
8 installed by man, including, but without limitation, buildings,  
9 towers, smokestacks, and overhead transmission or distribution lines;  
10 and

11 (15) Transition zone means a zone that extends outward at  
12 a right angle to the runway centerline and upward at a rate of one  
13 foot vertically for every seven feet horizontally. The height limit  
14 of a transition zone begins at the height limit of the adjacent  
15 approach zone or operation zone and ends at a height of one hundred  
16 fifty feet above the highest elevation on the existing or proposed  
17 runway;

18 ~~(7)–(16)~~ Tree means any object of natural growth; -

19 (17) Turning zone's outer limit means the area located at  
20 a distance of three miles as a radius from the corners of the  
21 operation zone of each runway and connecting adjacent arcs with  
22 tangent lines, excluding any area within the approach zone, operation  
23 zone, or transition zone. The height limit of the turning zone is one  
24 hundred fifty feet above the highest elevation on the existing or  
25 proposed runway; and

1           (18) Visual runway means a runway intended solely for the  
2 operation of aircraft using visual approach procedures, with no  
3 straight-in instrument approach procedure and no instrument  
4 designation indicated on an airport layout plan approved by the  
5 Federal Aviation Administration, a military service-approved military  
6 layout plan, or any planning documents submitted to the Federal  
7 Aviation Administration by a competent authority.

8           Sec. 2. Section 3-302, Reissue Revised Statutes of  
9 Nebraska, is amended to read:

10           3-302 It is hereby found that an airport hazard endangers  
11 the lives and property of the users of an airport and occupants of  
12 land in its vicinity and also, if of the obstruction type, in effect  
13 reduces the size of the area available for the landing, ~~taking off~~  
14 takeoff, and maneuvering of aircraft, thus tending to destroy or  
15 impair the utility of the airport and the public investment therein.  
16 Accordingly, it is hereby declared: (1) That the creation or  
17 establishment of an airport hazard is a public nuisance and an injury  
18 to the community served by the airport in question; (2) that it is  
19 ~~therefor~~ necessary in the interest of the public health, public  
20 safety, and general welfare that the creation or establishment of  
21 airport hazards be prevented; and (3) that ~~this~~ the prevention of  
22 airport hazards should be accomplished, to the extent legally  
23 possible, by the exercise of the police power, without compensation.  
24 It is further declared that both the prevention of the creation or  
25 establishment of airport hazards and the elimination, removal,

1 alteration, mitigation, or marking and lighting of existing airport  
2 hazards are public purposes for which political subdivisions may  
3 raise and expend public funds and acquire land or property interests  
4 therein.

5           Sec. 3. Section 3-303, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7           3-303 In order to prevent the creation or establishment  
8 of airport hazards, every political subdivision that ~~has adopted a~~  
9 ~~comprehensive plan and zoning regulations and~~ has an airport hazard  
10 area within the area of its zoning jurisdiction, shall adopt,  
11 administer, and enforce, under the police power and in the manner and  
12 upon the conditions hereinafter prescribed, airport zoning  
13 regulations for such airport hazard area, which regulations shall  
14 meet the minimum regulations as prescribed by the Department of  
15 Aeronautics ~~for the airport classifications for each airport and~~ may  
16 divide such area into zones and, within such zones, specify the land  
17 uses permitted and regulate and restrict the height to which ~~the~~  
18 ~~structures and trees~~ may be erected ~~or~~ and trees allowed to grow. The  
19 authority of a political subdivision to adopt airport zoning  
20 regulations shall not be conditional upon prior adoption of a  
21 comprehensive development plan or a comprehensive zoning ordinance.

22           Sec. 4. Section 3-304, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24           3-304 ~~Where~~ If an airport is owned or controlled by a  
25 political subdivision and any airport hazard area appertaining to

1 such airport is located outside the ~~area regulated by zoning~~  
2 ~~regulations adopted pursuant to section 3-303, of the political~~  
3 subdivision's zoning jurisdiction, the political subdivision owning  
4 or controlling the airport and the zoning jurisdiction of any  
5 political subdivision within which ~~the~~ an airport hazard area is  
6 located may, by ordinance or resolution duly adopted, create a joint  
7 airport zoning board, which board shall have the same power to adopt,  
8 ~~administer, and enforce~~ by resolution approved by a majority of the  
9 board, airport zoning regulations applicable to ~~the~~ an airport hazard  
10 area ~~in question as that vested by section 3-303 in the~~ any political  
11 subdivision within whose ~~area of zoning jurisdiction~~ such area is  
12 located. ~~Each such joint board shall have two representatives~~  
13 ~~appointed by each political subdivision participating in its creation~~  
14 ~~as members thereof and also a chairperson elected by a majority of~~  
15 ~~the members so appointed. The term of each member shall be four~~  
16 ~~years, except as otherwise provided in this section. Board members~~  
17 ~~who have served more than two years as of March 1, 1984, shall~~  
18 ~~continue to serve for two more years. Board members who have served~~  
19 ~~less than two years as of March 1, 1984, shall continue to serve for~~  
20 ~~four more years. Any airport zoning regulation, or any amendment~~  
21 thereto, adopted by a joint airport zoning board shall be filed with  
22 the official or administrative agency responsible for the enforcement  
23 of zoning regulations in each of the political subdivisions  
24 participating in the creation of the joint airport zoning board and  
25 shall be enforced as provided in section 3-319.

1           Sec. 5. If a joint airport zoning board is created  
2 pursuant to section 3-304, such board shall have two representatives  
3 appointed by each political subdivision participating in its creation  
4 as members thereof and also a chairperson elected by a majority of  
5 the members so appointed. The term of each member shall be four  
6 years.

7           Sec. 6. Section 3-306, Reissue Revised Statutes of  
8 Nebraska, is amended to read:

9           3-306 In the event of any conflict between any airport  
10 zoning regulations adopted under ~~sections 3-301 to 3-333~~ the Airport  
11 Zoning Act and any other regulations applicable to the same area,  
12 whether the conflict be with respect to the height of structures or  
13 trees, the use of land, or any other matter, and whether such other  
14 regulations were adopted by the political subdivision which adopted  
15 the airport zoning regulations or by some other political  
16 subdivision, the more stringent limitation or requirement shall  
17 govern and prevail.

18           Sec. 7. Section 3-307, Reissue Revised Statutes of  
19 Nebraska, is amended to read:

20           3-307 No airport zoning regulations shall be adopted,  
21 amended, or changed under ~~sections 3-301 to 3-333~~ the Airport Zoning  
22 Act except by the action of the legislative body of the political  
23 subdivision in question, or the joint airport zoning board provided  
24 for in section 3-304, after a public hearing in relation thereto, at  
25 which parties in interest and citizens shall have an opportunity to

1 be heard. At least ~~fifteen~~ten days' notice of the hearing shall be  
2 published in an official paper, or a paper of general circulation, in  
3 the political subdivision or subdivisions in which ~~is located~~ the  
4 airport hazard area ~~to be zoned.~~ is located.

5 Sec. 8. Section 3-308, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7 3-308 Prior to the initial zoning of any airport hazard  
8 area under ~~sections 3-301 to 3-333,~~ the Airport Zoning Act, the  
9 political subdivision or joint airport zoning board which is to adopt  
10 the regulations shall appoint a commission, to be known as the  
11 airport zoning commission, to recommend the boundaries of the various  
12 zones to be established and the regulations to be adopted therefor.  
13 Such commission shall make a preliminary report and hold public  
14 hearings thereon before submitting its final report. The legislative  
15 body of the political subdivision or the joint airport zoning board  
16 shall not hold its public hearings or take other action until it has  
17 received the final report of such commission. ~~Where~~If a city or  
18 county planning commission or ~~comprehensive zoning~~ a joint or  
19 interjurisdictional planning commission already exists, it may be  
20 appointed as the airport zoning commission.

21 Sec. 9. Section 3-309, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23 3-309 All airport zoning regulations adopted under  
24 ~~sections 3-301 to 3-333~~ the Airport Zoning Act shall be reasonable  
25 and not impose any requirement or restriction which is not reasonably

1 necessary to effectuate the purposes of ~~sections 3-301 to 3-333.~~ the  
2 act. In determining what regulations it may adopt, each political  
3 subdivision and joint airport zoning board shall consider, among  
4 other things, the character of the flying operations expected to be  
5 conducted at the airport, the nature of the terrain within the  
6 airport hazard area, the character of the neighborhood, and the uses  
7 to which the property to be zoned is put and adaptable. If an airport  
8 layout plan has been submitted for approval to the Federal Aviation  
9 Administration with a proposed instrument runway depicted thereon and  
10 such airport layout plan is conditionally or unconditionally approved  
11 without such proposed instrument runway, the political subdivision  
12 shall adopt or revise, as necessary, airport zoning regulations to  
13 protect any approach zone for a visual runway only.

14 Sec. 10. Section 3-310, Reissue Revised Statutes of  
15 Nebraska, is amended to read:

16 3-310 (1) No airport zoning regulations adopted under  
17 sections 3-301 to 3-333 the Airport Zoning Act shall require the  
18 removal, lowering, or other change or alteration of any existing  
19 structure or tree not conforming to the regulations when adopted or  
20 amended or otherwise interfere with the continuance of any  
21 nonconforming use, except as provided in section 3-313. 3-311.

22 (2) Any electric facility that has not yet been  
23 constructed but that has received, prior to August 1, 2013, zoning  
24 approval from the political subdivision exercising zoning  
25 jurisdiction over such electric facility and, if required, a permit

1 pursuant to section 3-403, may be constructed and shall thereafter be  
2 considered an existing structure for purposes of this section.

3           Sec. 11. Section 3-311, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5           3-311 (1) Airport zoning regulations, adopted under  
6 ~~sections 3-301 to 3-333, the Airport Zoning Act,~~ may require that a  
7 permit be obtained before any new structure or use may be constructed  
8 or established and before any existing use or structure may be  
9 substantially changed, altered, or repaired. ~~In any event, however,~~  
10 Except as provided in subsection (2) of this section, all such  
11 regulations shall provide that before any nonconforming structure or  
12 tree may be replaced, substantially altered or repaired, rebuilt,  
13 allowed to grow higher, or replanted, a permit authorizing any  
14 replacement, alteration, repair, reconstruction, growth, or  
15 replanting must be secured from the administrative agency authorized  
16 to administer and enforce the regulations. ~~, authorizing such~~  
17 ~~replacement, change or repair.~~ No permit shall be granted that would  
18 allow the establishment or creation of an airport hazard or permit a  
19 nonconforming structure, tree, or nonconforming use to be made,  
20 become higher, or become a greater hazard to air navigation than it  
21 was when the applicable regulation was adopted or than it is when the  
22 application for a permit is made. ~~Except as provided herein, all~~  
23 ~~applications for permits shall be granted.~~ No permit shall be  
24 required for repairs to a nonconforming structure necessitated by  
25 fire, explosion, act of God, or the common enemy or if the repairs do

1 not involve expenditures exceeding more than sixty percent of the  
2 fair market value of the nonconforming structure, so long as the  
3 height of the nonconforming structure is not increased over its  
4 preexisting height.

5 (2) An electric facility made nonconforming by the  
6 adoption of airport zoning regulations pursuant to the act may,  
7 without a permit or other approval by the political subdivision  
8 adopting such regulations, repair, reconstruct, or replace such  
9 electric facility if the height of such electric facility is not  
10 increased over its preexisting height. Any construction, repair,  
11 reconstruction, or replacement of an electric facility, the height of  
12 which will exceed the preexisting height of such electric facility,  
13 shall require a permit from the political subdivision adopting such  
14 regulations. The permit shall be granted only upon a showing that the  
15 excess height of the electric facility will not establish or create  
16 an airport hazard or become a greater hazard to air navigation than  
17 the electric facility that previously existed.

18 Sec. 12. Section 3-312, Reissue Revised Statutes of  
19 Nebraska, is amended to read:

20 3-312 Any person desiring to erect any structure,  
21 increase the height of any structure, permit the growth of any tree,  
22 or otherwise use his or her property in violation of a manner  
23 inconsistent with the airport zoning regulations adopted under  
24 sections 3-301 to 3-333 the Airport Zoning Act may apply to the board  
25 of adjustment for a variance from the zoning regulations in question.

1 Such variances shall be allowed only where a ~~literal application or~~  
2 ~~enforcement of the regulations would result in practical difficulty~~  
3 ~~or unnecessary hardship and the relief granted would not be contrary~~  
4 ~~to the public interest but would do substantial justice and be in~~  
5 ~~accordance with the spirit of the regulations and sections 3-301 to~~  
6 ~~3-333; Provided, that any~~ the board of adjustment makes the same  
7 findings for the granting of variances generally as set forth in  
8 subsection (2) of section 19-910. Any variance may be allowed subject  
9 to any reasonable conditions that the board of adjustment may deem  
10 necessary to effectuate the purposes of ~~sections 3-301 to 3-333.~~ the  
11 act.

12           Sec. 13. Section 3-313, Reissue Revised Statutes of  
13 Nebraska, is amended to read:

14           3-313 In granting any permit under or variance ~~under~~  
15 ~~sections 3-311 to 3-313, from any airport zoning regulation adopted~~  
16 pursuant to the Airport Zoning Act, the administrative agency or  
17 board of adjustment may, if it deems ~~such action~~ it advisable to  
18 effectuate the purposes of ~~sections 3-301 to 3-333~~ the act and  
19 reasonable in the circumstances, so condition such permit or variance  
20 as to require the owner of the structure or tree in question to  
21 permit the political subdivision, at its own expense, to install,  
22 operate, and maintain thereon such markers and lights as may be  
23 necessary to indicate to flyers the presence of an airport hazard.

24           Sec. 14. Section 3-319, Reissue Revised Statutes of  
25 Nebraska, is amended to read:

1           3-319 All airport zoning regulations adopted under  
2 ~~sections 3-301 to 3-333~~ the Airport Zoning Act shall provide for the  
3 administration and enforcement of such regulations by an  
4 administrative agency which may be an agency created by such  
5 regulations or any official, board, or other existing agency of the  
6 political subdivision adopting the regulations. In the case of  
7 airport zoning regulations adopted by a joint airport zoning board,  
8 each ~~or of one~~ of the political subdivisions which participated in  
9 the creation of the joint airport zoning board ~~adopting the~~  
10 ~~regulations, if satisfactory to that political subdivision, but in no~~  
11 ~~case shall such administrative agency be or include any member of the~~  
12 ~~board of adjustment.~~ shall create or designate an official or an  
13 administrative agency to administer and enforce the airport zoning  
14 regulations within its respective zoning jurisdiction. The duties of  
15 any official or administrative agency designated pursuant to ~~sections~~  
16 ~~3-301 to 3-333~~ the act shall include that of hearing and deciding all  
17 reviewing and acting upon all applications for permits under section  
18 ~~3-311, the airport zoning regulations,~~ but such agency shall not have  
19 or exercise any of the powers herein delegated to the board of  
20 adjustment. In no event shall such official or administrative agency  
21 be or include any member of the board of adjustment.

22           Sec. 15. Section 3-314, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24           ~~3-314~~ (1) Any person aggrieved, or taxpayer affected, by  
25 any decision of an administrative agency made in its administration

1 of airport zoning regulations adopted under ~~sections 3-301 to 3-333,~~  
2 the Airport Zoning Act, or any governing body of a political  
3 subdivision, ~~or any joint airport zoning board,~~ which is of the  
4 opinion that a decision of such an administrative agency is an  
5 improper application of airport zoning regulations of concern to such  
6 governing body, ~~or board,~~ may appeal to the board of adjustment  
7 authorized to hear and decide appeals from the decisions of such  
8 administrative agency.

9 (2) Any appeal taken under this section shall be taken  
10 within a reasonable amount of time, as provided by the rules of the  
11 board, by filing with the agency from which the appeal is taken and  
12 with the board, a notice of appeal specifying the grounds thereof.  
13 The agency from which the appeal is taken shall forthwith transmit to  
14 the board all the papers constituting the record upon which the  
15 action appealed from was taken.

16 (3) An appeal shall stay any proceeding in furtherance of  
17 the action appealed from, unless the agency from which the appeal is  
18 taken certifies to the board, after the notice of appeal has been  
19 filed with it, that by reason of the facts stated in the certificate  
20 a stay would, in its opinion, cause imminent peril to life or  
21 property. In such cases the proceedings shall not be stayed except by  
22 an order of the board after notice to the agency from which the  
23 appeal is taken and upon due cause shown.

24 (4) The board shall fix a reasonable time for the hearing  
25 of appeals, give public notice thereof, give due notice to the

1 parties in interest, and decide the appeal within a reasonable amount  
2 of time. Any party may appear in person or by an agent or attorney at  
3 the hearing.

4           Sec. 16. Section 3-320, Reissue Revised Statutes of  
5 Nebraska, is amended to read:

6           3-320 (1) All airport zoning regulations adopted under  
7 sections 3-301 to 3-333 the Airport Zoning Act shall provide for a  
8 board of adjustment to have and exercise the following powers: (1) To  
9 hear and decide appeals from any order, requirement, decision, or  
10 determination made by the administrative agency in the enforcement of  
11 the airport zoning regulations; , as provided in sections 3-314 to  
12 3-318; (2) to hear and decide any special exceptions to the terms of  
13 the airport zoning regulations upon which such board may be required  
14 to pass under such regulations; and (3) to hear and decide specific  
15 petitions for variances under section 3-312. from the strict  
16 application of airport zoning regulations. Such board shall consist  
17 of five regular members, each to be appointed for a term of three  
18 years by the political subdivision or joint airport zoning board  
19 adopting the regulations. Any member thereof may be removed by the  
20 appointing authority for cause, upon written charges and after a  
21 public hearing. The concurring vote of four members of the board  
22 shall be necessary to reverse any order, requirement, decision, or  
23 determination of the administrative agency or to decide in favor of  
24 the applicant on any matter upon which the board is required to pass  
25 under the airport zoning regulations or to effect any variation in

1 such regulations.

2 (2) The board of adjustment may, consistent with the act,  
3 reverse or affirm wholly or partly or modify the order, requirement,  
4 decision, or determination appealed from and may make such order,  
5 requirement, decision, or determination as it deems right and proper  
6 under the circumstances.

7 (3) A board of adjustment, board of zoning appeals, or  
8 similar zoning appeals board that exists on the effective date of  
9 this act may be designated as and shall exercise the power of the  
10 board of adjustment for airport zoning regulations as required by  
11 this section.

12 Sec. 17. Section 3-324, Reissue Revised Statutes of  
13 Nebraska, is amended to read:

14 3-324 Any (1) person aggrieved or taxpayer affected by  
15 any decision of a board of adjustment, (2) governing body of a  
16 political subdivision or (3) joint airport zoning board, which is of  
17 the opinion that a decision of a board of adjustment is arbitrary or  
18 capricious, illegal, or unsupported by evidence may present a  
19 ~~verified petition to the district court setting forth that the~~  
20 ~~decision is illegal in whole or in part and specifying the grounds of~~  
21 ~~the illegality. Such a petition shall be presented to the court~~  
22 ~~within thirty days after the decision is filed in the office of the~~  
23 ~~board.~~ obtain judicial review of such decision by filing a petition  
24 in error in the district court of the county in which the structure  
25 or tree that is the subject of the decision is located. The filing of

1 and proceeding on the petition in error shall be in accordance with  
2 sections 25-1901 to 25-1937.

3           Sec. 18. Section 3-329, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5           3-329 In any case in which airport zoning regulations  
6 adopted under ~~sections 3-301 to 3-333,~~ the Airport Zoning Act,  
7 although generally reasonable, are held by a court to interfere with  
8 the use or enjoyment of a particular structure or parcel of land to  
9 such an extent or to be so onerous in their application to such a  
10 structure or parcel of land, as to constitute a taking or deprivation  
11 of that property in violation of the Constitution of ~~this state~~  
12 Nebraska or the Constitution of the United States, such holding shall  
13 not affect the application of such regulations to other structures  
14 and parcels of land.

15           Sec. 19. Section 3-330, Reissue Revised Statutes of  
16 Nebraska, is amended to read:

17           3-330 Each violation of ~~sections 3-301 to 3-333~~ the  
18 Airport Zoning Act or of any regulations, orders, or rulings  
19 promulgated or made pursuant to ~~sections 3-301 to 3-333,~~ the act  
20 shall constitute a Class ~~III~~ IV misdemeanor. Each day a violation  
21 continues to exist shall constitute a separate offense. In addition,  
22 the political subdivision or agency adopting zoning regulations under  
23 ~~sections 3-301 to 3-333~~ the act may institute, in any court of  
24 competent jurisdiction, an action to prevent, restrain, correct, or  
25 abate any violation of (1) ~~sections 3-301 to 3-333,~~ the act, (2)

1 airport zoning regulations adopted under ~~sections 3-301 to 3-333~~ the  
2 act, or (3) any order or ruling made in connection with ~~their~~ the  
3 administration or enforcement of the act or such regulations. The  
4 court in such proceedings shall adjudge to the plaintiff such relief  
5 by way of injunction, which may be mandatory or otherwise, as may be  
6 proper under all the facts and circumstances of the case in order to  
7 fully effectuate the purposes of ~~sections 3-301 to 3-333~~ the act and  
8 of the regulations adopted and orders and rulings made pursuant  
9 thereto.

10           Sec. 20. Section 3-331, Reissue Revised Statutes of  
11 Nebraska, is amended to read:

12           3-331 In any case in which (1) it is desired to remove,  
13 lower, or otherwise terminate a nonconforming structure or use, (2)  
14 the approach protection necessary cannot, because of constitutional  
15 limitations, be provided by airport zoning regulations under ~~sections~~  
16 ~~3-301 to 3-333,~~ the Airport Zoning Act, or (3) it appears advisable  
17 that the necessary approach protection be provided by acquisition of  
18 property rights rather than by airport zoning regulations, the  
19 political subdivision within which the property or nonconforming use  
20 is located or the political subdivision owning or operating the  
21 airport or served by it may acquire by purchase, grant, or  
22 condemnation, such air right, aviation easement, or other estate or  
23 interest in the property or nonconforming structure or use in  
24 question as may be necessary to effectuate the purposes of ~~sections~~  
25 ~~3-301 to 3-333,~~ the act. The procedure to condemn property shall be

1 exercised in the manner set forth in sections 76-704 to 76-724.

2           Sec. 21. Section 3-333, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4           3-333 Sections 3-301 to 3-333 and section 5 of this act  
5 shall be known and may be cited as the Airport Zoning Act.

6           Sec. 22. Original sections 3-301, 3-302, 3-303, 3-304,  
7 3-306, 3-307, 3-308, 3-309, 3-310, 3-311, 3-312, 3-313, 3-314, 3-319,  
8 3-320, 3-324, 3-329, 3-330, 3-331, and 3-333, Reissue Revised  
9 Statutes of Nebraska, are repealed.

10           Sec. 23. The following sections are outright repealed:  
11 Sections 3-315, 3-316, 3-317, 3-318, 3-321, 3-322, 3-325, 3-326, and  
12 3-327, Reissue Revised Statutes of Nebraska.