

**REPORT AND RECOMMENDATIONS
RELATING TO AVIATION**

**NEW JERSEY LAW REVISION COMMISSION
15 Washington Street
Newark, New Jersey 07102
(201)648-4575
June, 1992**

CHAPTERS 41, 42 AND 43

AERONAUTICS, AIRPORT SAFETY FUND AND AIRPORT HAZARDS

INTRODUCTION

In 1989, in conjunction with the Department of Transportation, the Commission began a project to revise the laws of New Jersey relating to the subject of transportation. The project is large, involving consideration of Titles 27 (Highways) and 6 (Aviation), as well as parts of other titles; it includes statutes on subjects as diverse as the construction and operation of state highways, and the regulation of billboards, railroads, buses, and aviation. The result of the project will be a new Title 27A containing a revision of the law on transportation.

This Report on Aviation is the first completed part of the project. The three chapters in the report, chapters 41 through 43 of Title 27A, replace all of Title 6, Aviation. The first contains the general state law regulating aeronautics. It replaces an accumulation of statutes on aviation dating back to the 1920's and 1930's. The second and third chapters are substantial re-enactments of the New Jersey Air Safety and Hazardous Zoning Act of 1983 (as amended) and the New Jersey Airport Safety Act of 1983.

27A:41-1. Definitions

When used in chapters 41, 42 and 43:

a. "Aeronautics" means aviation; air instruction; the operation, repair or maintenance of aircraft, aircraft power plants and accessories; and the design, construction, repair, maintenance, operation or management of airports, and other aviation facilities.

b. "Aviation" means the operation, directing, or managing of aircraft in or through the air and on the ground or water.

c. "Aircraft" means any contrivance now known or hereafter invented, used or designed for flight in the air. However, a seaplane, while at rest on water and while being operated on or immediately above water, shall be governed by rules regarding water navigation, but while being operated through the air otherwise than immediately above water shall be treated as an aircraft.

d. "Public aircraft" means an aircraft used exclusively in the service of any government or of any political subdivision thereof, including the government of the United States, or of its states, territories, possessions or districts, but not including any government-owned aircraft engaged in carrying for hire persons or goods.

e. "Civil aircraft" means any aircraft other than a public aircraft.

f. "Airport" means any area of land, water, or both, which is used or made available for the landing and take-off of aircraft.

g. "Fixed base operator" means a person engaged in giving, or holding himself out as giving, instruction in aviation to the public, or a person operating a flying club; sport parachute center; aircraft maintenance or repair shop; intrastate air carrier; air taxi, scheduled or charter; or engaging in aerial advertising, aerial photography, pipe or power line patrol, fish spotting, dusting, spraying and seeding by aircraft, or parachute repair and rigging; but, the term "fixed base operator" shall not include air carriers operating under a certificate of public convenience and necessity issued by an agency of the federal government.

Source: 6:1-21.

Comment

These definitions are substantially identical to its source. Other definitions in the source sections, 6:1-2, 6:2-1 and 6:5-1 were duplicative or unnecessary.

27A:41-2. Purpose

The purpose of this chapter is to provide in the interest of public safety and of aeronautic progress for the regulation of aviation in this State; to require that aviation facilities and persons engaged in aviation in this State, conform to standards of safety and sound practice as prescribed by the laws and rules of this State, and for uniformity with the laws and rules of the United States Government.

Source: 6:1-1; 6:1-20.

Comment

This section is substantially identical to its sources.

27A:41-3. Powers and duties of the commissioner; adoption of rules

Except as otherwise specifically provided by law, the Commissioner shall promote progress and education in and shall have supervision over aeronautics within this State, including, but not limited to, aviation, the establishment, maintenance, and use of airports, sport parachuting centers, air markings and other aeronautical facilities, and the establishment, operation, management and equipment of fixed base operators. The commissioner may adopt rules for air traffic and establishing minimum standards for aircraft, pilots, fixed base operators, airports, sport parachuting centers, air markings and aeronautical facilities within the State, establish standards to protect the safety of persons operating or using aircraft and of persons and property on the ground, and to develop and promote aeronautics within this State. The commissioner may adopt rules to effectuate the purposes of this chapter in the interest of public safety and the development of aeronautics in this State.

The rules of the commissioner shall be in conformity with the laws and rules of the United States Government concerning aeronautics. The commissioner, the administrators of any divisions or bureaus assigned duties under this chapter, the supervisory inspector and other designated members of those divisions and bureaus shall be peace officers and

have authority to make arrests and file complaints for violations of the provisions of this chapter, or of any rules established under it.

Source: 6:1-9; 6:1-29.

Comment

This section is substantially identical to its sources.

27A:41-4. Hearings; information; investigations

The commissioner may hold public hearings on matters affecting aeronautics; conduct investigations, inquiries and hearings concerning matters covered by the provisions of this chapter; advise the Legislature upon legislation and recommend legislation for the improvement of aeronautical safety and the promotion of aeronautical progress; co-operate with the Federal authorities and the authorities of other States; collect and disseminate information concerning aeronautics and the safeguarding of the interests of the general public and of those engaged in all phases of aeronautics; advise communities and groups in preparing and prosecuting projects for the development of aviation, airports and all other facilities for the promotion of aeronautics within this State; advise law enforcement agencies in the enforcement of aeronautical laws and rules; investigate accidents or injuries arising out of the operation of aircraft within this State; and keep a record of proceedings and official acts.

Source: 6:1-31.

Comment

This section is similar to its source, but is phrased in permissive rather than mandatory terms.

27A:41-5. Periodic inspections

The commissioner may adopt rules providing for the periodic inspection of aircraft, airports, fixed base operators and other aeronautical facilities, aircraft power plants, accessories and other equipment. The rules may require disclosure concerning the design and the calculations upon which the design is based and of the materials and methods used in the construction and operation of such aircraft, airports, fixed base operators or other aeronautical facilities, aircraft power plants, accessories and other equipment.

Source: 6:1-48.

Comment

This section is substantially identical to its source.

27A:41-6. Aircraft exempt from taxation

All aircraft, whether or not required to be registered under State or federal law, shall be exempt from taxation under chapters 4 and 11A of Title 54 of the

Revised Statutes or any other law of this State which imposes a personal property tax.

Source: 6:1-97.

Comment

This section is substantially identical to its source.

27A:41-11. Licenses; aeronautic facilities and temporary landing areas

The commissioner shall provide for the licensing of airports, temporary landing areas and or other aeronautical facilities by rules adequate to protect the public health and safety and the safety of those participating in aviation activities; provided, however, that the continued use and of airports, and other aeronautical facilities, in use for which an application for a license has been filed within the time fixed by the commissioner, shall be permitted, pending the granting or rejection of the applications; and provided further, that the application for a license for any airport, or other aeronautical facility in use shall be granted, unless the commissioner finds that the airports, or other aeronautical facilities are not constructed, equipped and operated in accordance with the standards and requirements fixed by rules. Whenever the commissioner rejects any application for license under the provisions of this section, the commissioner shall state in writing the reasons for rejection.

Source: 6:1-44.

Comment

This section is substantially identical to its source.

27A:41-12. Licenses; aeronautical activities

The commissioner may provide for the licensing of specific aeronautical activities or persons engaged in specific types of aeronautical activities, or operations by rules adequate to protect the public health, safety and welfare and the safety of those participating in aeronautics. Licenses or certificates (except those issued on a temporary basis) required by rule for the operation of aeronautical facilities and fixed base operations are issued for a period of one year. Licenses shall be annually renewed, upon satisfaction of requirements set by the rules appropriate to the license or certificate sought. Licenses or certificates issued on a temporary basis shall be valid for a period of less than one year and continue in effect until a specified expiration date or until terminated by order of the commissioner.

Source: 6:1-44.1.

Comment

This section is substantially identical to its source.

27A:41-13. Aircraft licenses

The commissioner may provide for the licensing of civil aircraft by reasonable rules adequate to protect the public safety and the safety of those participating in aviation and to ensure the satisfactory and safe performance of aircraft in accordance with their design or contemplated use.

Source: 6:1-35.

Comment

This section is substantially identical to its source.

27A:41-14. Licenses; aerial exhibitions

It shall be unlawful to conduct an air meet, air race or aerial exhibition or to operate a civil aircraft in an air meet, air race or aerial exhibition in this State without a license or permit for the air meet, air race or aerial exhibition issued by the commissioner.

Source: 6:1-17; 6:1-42.

Comment

This section is substantially identical to its sources.

27A:41-15. Fees and procedure for licenses and certificates

Procedures, application fees, and fees for licenses and certificates shall be established by the commissioner by rule. All fees shall be paid to the State Treasurer by the department for deposit in the Airport Safety Fund established by chapter 42 of this title.

Source: 6:1-44.1.

Comment

This section is substantially identical to the relevant portions of its source.

27A:41-16. Licenses: modification; suspension; revocation

Any license issued pursuant to the provisions of this chapter may be modified, suspended or revoked in the interest of public safety or the safety of those participating in aeronautical activities, or for violation of any provision of this chapter or any rule issued under it.

Source: 6:1-45.

Comment

This section is substantially identical to its source.

27A:41-17. Licenses of operators of aircraft; aircraft

a. No person may operate a civil aircraft in this state without all licenses or permits required by this chapter, by rules issued under it, or by applicable federal law. A certificate of the license shall be kept in the personal possession of the licensee while operating aircraft in this state, and must be presented for inspection upon demand of the Commissioner, the Commissioner's representative, any police officer of this state, or any official, manager or person in charge of any airport used by the aircraft.

b. No person shall operate a civil aircraft in this State unless the aircraft has all licenses or permits required by this chapter, by rules issued under it, or by applicable federal law, and unless the aircraft properly displays its appropriate identification , license, or registration numbers.

Source: 6:1-12; 6:1-13; 6:1-34; 6:1-37; 6:1-38; 6:1-40.

Comment

Subsection (a) amalgamates the requirements of 6:1-12, 6:1-38 and 6:1-40. Subsection (b) amalgamates the requirements of 6:1-13, 6:1-34 and 6:1-37.

27:41-21. Aerobatic stunts; low flying; dropping objects.

a. It shall be unlawful for any person to operate an aircraft to engage in aerobatic flying, or in any acrobatic feat while in flight over an inhabited area or over a gathering of persons.

b. It shall be unlawful for any person to operate an aircraft at such a low level as to endanger the persons on the surface beneath except while landing or taking off.

c. It shall be unlawful for any person to drop any object from an aircraft except loose sand or water ballast.

Source: 6:2-11.

Comment

This section is substantially similar to its source but penalizes only the operator of the aircraft, not passengers.

27A:41-22. Use of emergency or government or unlicensed facility

a. Except as provided for in this chapter or in the rules issued pursuant to it, it shall be unlawful for any person operating an aircraft to use any airport or other aviation facility intended for use only in the case of emergency or intended for the exclusive use of public aircraft of the Government of the United States.

b. Except as provided for in department rules or in the case of an emergency, it shall be unlawful for any person operating an aircraft to land or take off from any area of land or water, unless that area is licensed or approved for that activity.

Source: 6:1-43.

Comment

This section is substantially identical to the relevant portions of 6:1-43.

27A:41-23. Safety devices and facilities; markings; hazards to aviation

To protect the public safety and the safety of those participating in aeronautical activities, the commissioner may adopt reasonable rules requiring safety devices and other aviation facilities for aircraft and airports; and require obstructions which may be hazardous to aviation to be suitably marked by lights, signs or otherwise as the commissioner may provide. The commissioner may proceed by appropriate legal action to cause any obstruction to flight in and about any airport or other aeronautical facility to be removed or abated.

Source: 6:1-32.

Comment

This section is substantially identical to its source.

27A:41-24. Interference with aviation facilities

It shall be unlawful for any person purposely to interfere or tamper with any aircraft, airport or any other aviation facility, or its equipment.

Source: 6:1-49.

Comment

This section continues the prohibition of 6:1-49 as an administrative violation under the jurisdiction of the Department of Transportation. The forbidden activity is made criminal by 2C:17-3.

27A:41-25. Killing of birds and animals from aircraft

It shall be unlawful for a person, while on an aircraft in flight in this state, purposely to kill or to attempt to kill any birds or animals. This section should not be construed to forbid the aerial application of pesticides.

Source: 6:2-12.

Comment

This section continues the prohibition of 6:2-12.

27A:41-26. Operating aircraft while under influence of alcohol or controlled substance

No person shall operate an aircraft while under the influence of or using intoxicating liquor or controlled dangerous substance as defined by L.1970, c.226, §2 (C. 24:21-2)

Source: 6:1-18.

Comment

This section is broader than its source in that it includes all controlled dangerous substances, and narrower in that it does not apply to passengers.

27A:41-31. Investigations and hearings

The Department may conduct investigations, and hearings concerning the safety of aeronautical facilities and accidents or injuries incident to the operation of aircraft occurring within this State, and for this purpose the department may take possession of any wreckage or aircraft damaged in accidents and hold it until it releases possession or unless any properly authorized paramount Federal agency requests possession. In investigations and hearings, the commissioner shall have the power to administer oaths, compel the attendance and testimony of witnesses and the production of papers, books, and documents. If any person fails to comply with an order issued under authority of this section, the commissioner may suspend any license issued to that person by the department, bar the person from the use of any airport licensed by the department, or bring an action, *exparte*, in the Superior Court to compel compliance.

Source: 6:1-51; 6:1-62.

Comment

This section is similar in substance to its source sections, but it has been focused on matters concerning safety and accidents. Hearing as to other matters are covered by 27A:41-4.

27A:41-32. Evidence regarding safety of methods of operation of aircraft and airports

Any person who operates an aircraft or causes an aircraft to be operated or otherwise engages in aeronautics in this State thereby submits himself to the authority of the State to investigate the safety of the methods of operation of aircraft and airports within the State and agrees to appear and testify at any investigation or hearing held by the commissioner in connection with the safety of the operation of any aircraft or airport within this State and further agrees to produce any books and records, which may be relevant to the subject matter of the investigation, after reasonable notice given in person or by registered mail, which notice shall designate the person or persons required to appear and testify and the books and records required to be produced.

Source: 6:1-61.

Comment

This section is substantially identical to its source.

27A:41-33. Examination and inspection; pilots and aircraft

The commissioner may examine and inspect any pilot, aircraft, airport, fixed base operator or other aeronautical facility, and upon finding a violation of any of the provisions of this chapter or of the rules issued pursuant to it, may prevent aviation or

operation of an aeronautical facility by any person until the violation is removed. Within twenty-four hours after the taking of action the commissioner shall file a written report setting forth the reasons for it. Any person aggrieved by the action may demand a hearing before the commissioner. The hearing shall be held within five days from the receipt of a demand for it.

Source: 6:1-46.

Comment

This section is substantially identical to its source.

27A:41-34. Police and departmental operation

It shall be the duty of all departments of state or local government and all officers charged with the enforcement of State and municipal laws to assist in the enforcement of the provisions of this chapter and the rules issued pursuant to it. Airport regulations adopted by any local subdivisions operating an airport shall be inoperative in so far as the regulations are inconsistent with the provisions of this chapter or with the Department rules issued pursuant to it.

Source: 6:1-33.

Comment

This section is substantially identical to its sources.

27A:41-35. Penalties

Any person violating any provisions of this chapter or any rule issued pursuant to it shall be liable to a penalty of up to \$1,000.00, which may be enforced in an action by the Commissioner in the name of the State in the Superior Court or in any municipal court in accordance with the procedure prescribed in the "penalty enforcement law" (N.J.S. 2A:58-1 et seq.). All penalties and costs collected shall be credited to the Airport Safety Fund established by chapter 42 of this title.

Source: 6:1-59, 6:1-59.1.

Comment

This section is similar in substance to its sources.

27A:41-41. Liability for injuries to person or property; lien on aircraft

The owner of an aircraft which is operated in this State is absolutely liable for injuries to persons or property on the land or water beneath, caused by the take off, landing or flight of the aircraft, or the dropping or falling of any object from it, whether the owner was negligent or not, unless the injury is caused by the negligence of the person injured, or of the owner or bailee of the property injured. If the aircraft is leased at the time of the injury to person or property, both owner and lessee shall be liable, and they may be sued jointly or separately. The operator of an aircraft who is not the owner or

lessee shall be liable only for the consequences of his own negligence. The injured person, or owner or bailee of the injured property, shall have a lien on the aircraft causing the injury to the extent of the damage caused by the aircraft or object falling from it. A chattel mortgagee, conditional vendor or trustee under an equipment trust, of any aircraft, not in possession of the aircraft, shall not be deemed an owner within the provisions of this section.

Source: 6:2-7.

Comment

This section is substantially identical to its source.

27A:41-42. Service of process on nonresidents extended

This chapter shall be construed as providing for additional methods of service of process upon nonresidents, and not as limiting any other lawful manner for service.

Source: 6:5-2.

Comment

This section is substantially identical to its source.

27A:41-43. Secretary of State as agent for acceptance of process

Any person or corporation, not a resident of this State, not incorporated under the laws of this State and not duly authorized to transact business in this State, who operates or causes to be operated in this State, an aircraft, which is not registered in this State, constitutes the Secretary of State as agent for the acceptance of process in any civil action against the person arising out of any accident occurring in this State in which the aircraft is involved.

Source: 6:5-3.

Comment

This section is similar in substance to its sources.

27A:41-44. Manner of service upon Secretary of State; notice

Service of process upon the Secretary of State shall be made by leaving the original and a copy of the summons and 2 copies of the complaint, with a fee of \$20.00 with the Secretary of State. That service shall be sufficient on the nonresident, if:

a. notice of service and a copy of the summons, with a copy of the complaint, are forthwith sent by registered or certified mail to the defendant by the Secretary of State, and defendant's return receipt and the affidavit of the Secretary of State, or a person acting for the Secretary of State, of the compliance with the requirements of this section, including a statement of the date of mailing and of the receipt of the return card, are appended to the original of the summons and filed with the complaint in the office of the clerk of the court where the action is pending; or

b. two copies of notice of service, the summons, and the complaint, are forthwith sent by registered mail by the Secretary of State, or a person acting for the Secretary of State, to the sheriff or other process server in the jurisdiction in which the defendant resides, with directions that the sheriff or process server cause them to be served on the defendant in the same manner as that in which service is legally effected in that jurisdiction, and the return of the sheriff or process server, or the person acting for the sheriff or process server is appended to or endorsed on a copy of the summons and complaint, and returned to the Secretary of State, and thereafter filed with the clerk of the court where the action is pending in this State; or

c. notice of service and a copy of the summons and complaint are served on the defendant, personally, by an official or private individual, wherever service may be made, and an affidavit of the person effecting service, showing the person served and the time and place of service, is appended to the summons and complaint, and returned to the Secretary of State, and be thereafter filed with the clerk of the court where the action is pending in this State; or

d. notice of service and a copy of the summons and complaint are served on the defendant in any other manner which the court where the case is pending finds sufficient and expedient.

If, by direction of plaintiff, notice of service is given as provided by subsection (b) of this section, plaintiff shall, in addition to the fee of \$20.00 required by this section, deposit with the Secretary of State sufficient money to effectuate service. If notice of service is given as provided by subsection d) of this section, plaintiff shall pay the cost that service.

Source: 6:5-4.

Comment

This section is substantially identical to its sources, but has been reorganized in the interest of clarity.

27A:41-45. Fee

The fee of \$20.00 paid by the plaintiff to the Secretary of State at the time of service and the cost of giving notice shall be taxed as costs if the plaintiff prevails in the action.

Source: 6:5-6.

Comment

This section is substantially identical to its source.

27A:41-46. Record of processes served

The Secretary of State shall keep a record of processes served pursuant to the provisions of this act showing the day and hour of service.

Source: 6:5-7.

Comment

This section is substantially identical to its source.

27A:41-47. Continuances

If process is served on a nonresident by any of the methods provided in this chapter, the court in which the action is pending may order continuances necessary to afford the defendant reasonable opportunity to defend the action.

Source: 6:5-5.

Comment

This section is substantially identical to its sources.

27A:41-48. Service of process upon nonresident owner of aircraft involved in accident

Civil process in any civil action arising out of an accident involving an aircraft owned by a nonresident may be served upon the nonresident owner by service in this State on an operator of any aircraft owned by that nonresident owner. Process may be also lawfully served on a nonresident owner by posting a copy of process in a conspicuous place on the aircraft and serving it on any person, over the age of fourteen years, who has custody of the aircraft, whether the person is operating the aircraft or holding it as security.

Source: 6:5-9.

Comment

This section is substantially identical to its source, but it has been reorganized in the interest of clarity.

27A:42-1. Definitions

When used in this chapter:

a. "Unrestricted public use airport" means any facility for the take-off and landing of aircraft, either publicly or privately owned, that does not have restrictive covenants on operational use by the general public for reasons other than safety.

b. "General aviation airport" means any area of land or water, or both, used or made available for the landing and take-off of civil aircraft, licensed for that purpose, and which has further been determined by the Commissioner not to be an international airport either by classification or service characteristics.

c. "Turbine fuel" means any liquid or gaseous fuels used for the propulsion of jet or turbo-shaft aircraft through the air, as determined by the Commissioner.

Source: 6:1-91.

Comment

These definitions are substantively identical to definitions in the source section. Other definitions in the source section were duplicative or unnecessary.

27A:42-2. Legislative findings and declarations

a. The Legislature finds and declares that:

(1) New Jersey's public use, general aviation airports are an integral part of the State's transportation network and promote mobility and economic activities of common public benefit. These public use, general aviation transportation facilities are deteriorating and must be improved as to safety in order to realize their full public benefit.

(2) There is a growing need to upgrade the safety of general aviation airports, which require such improvements and equipment as radar, instrument landing aids and weather-reporting equipment to enable them to safely handle modern general aviation aircraft.

(3) Many publicly owned, general aviation airports are unable to obtain all of the federal funds available to them for airport development because they are unable to raise money for their local matching requirements.

(4) Many privately owned, public use, general aviation airports which are essential to the State's economic development are in danger of conversion to nonaviation uses, and it is in the public interest to provide State assistance to county and municipal efforts to preserve these airports, through acquisition or other means.

(5) Users of general aviation airports have contributed substantial amounts to the State treasury through fees and fuel taxes, and this money should henceforth be used to establish an airport assistance program.

b. The Legislature therefore finds and declares that it is in the public interest to establish an Airport Safety Fund, impose a two cent per gallon tax on fuel distributed to general aviation airports, and authorize the Commissioner of Transportation to establish assistance programs to improve the safety of general aviation airports.

Source: 6:1-90.

Comment

This section is substantially identical to its source.

27A:42-3. Airport safety fund

a. There is established in the general fund a separate special account to be known as the "Airport Safety Fund." Notwithstanding any provisions of law to the contrary and except as otherwise provided in this act, revenues from the taxes imposed on the sale of fuel used in aircraft, pursuant to chapter 39 of Title 54 of the Revised Statutes, revenues from the taxes imposed on the sale of aircraft fuels sold for distribution to general aviation airports, pursuant to this chapter, and fees related to aviation imposed under this title shall be credited to the fund.

b. Money shall be appropriated from the fund, notwithstanding the provisions of P.L.1976, c. 67 (C. 52:9H-5 et seq.).

c. Money in the fund shall be appropriated to the department and shall be used only for authorized activities related to aeronautics.

d. All revenue generated by the taxes imposed on the sale of aircraft fuels, pursuant to chapter 39 of Title 54 of the Revised Statutes; the taxes imposed on the sale of aircraft fuels sold for distribution to general aviation airports, pursuant to this chapter, and fees related to aviation imposed under the provisions of this title shall be collected and invested by the Treasurer. Earnings received from the investment or deposit of revenues in the fund shall become part of the fund.

e. Any revenue credited to the fund but not appropriated to the department shall remain in the fund exclusively for the purposes set forth in this chapter.

f. The Director of the Division of Budget and Accounting may transfer funds from the fund necessary to compensate the Division of Taxation for the cost incurred in administering the tax provisions in this chapter.

Source: 6:1-92.

Comment

This section is substantially identical to its source.

27A:42-4. Assistance to general aviation airports from airport safety fund

The commissioner may provide assistance to general aviation airports from the Airport Safety Fund established by this chapter, for the following purposes:

a. To provide grants to publicly and privately owned, unrestricted, public use airports to obtain federal funds for airport assistance. The commissioner is authorized to provide up to 50% of the required local match; except that the commissioner is authorized to provide up to 100% of the required local match, when an emergency situation exists.

b. To provide grants or loans, or both, to publicly owned and private, unrestricted, public use airports for safety projects, including but not limited to engineering, planning, construction and rehabilitation of lighting, runways, aprons, airport approach aids and obstruction removals.

c. To provide grants or loans, or both, to publicly owned airports or counties or municipalities to acquire airports or lands, rights in land and easements, including aviation easements necessary for clear zones or clear areas, which are owned, controlled or operated, or to be owned, controlled or operated by municipalities, counties or other political subdivisions of this State.

d. To acquire lands or rights in lands adjacent to privately owned, public use airports, which are found necessary for airport or air safety purposes, and while retaining title to that land or rights in land, the commissioner may lease those lands or rights to airports or airport authorities for use in the furtherance of airport, air safety, or air

transportation purposes. The commissioner shall establish terms in any lease to protect the State's interest in the promotion of aviation and the State's investment in lands and property.

Source: 6:1-93.

Comment

This section is substantially identical to its source.

27A:42-5. Qualifications for assistance from airport safety fund

Any airport, to qualify for assistance under this chapter, shall not be an international airport, either by classification or service characteristics, as determined by the Commissioner of Transportation, and shall be included in the New Jersey State Airport System Plan, as prepared or revised from time to time by the department.

In considering an application for financial assistance, the commissioner shall consider, in addition to the requirements of eligibility under the provisions of this chapter and other eligibility criteria that the commissioner may promulgate by rule to effectuate the purposes this chapter, the scope and cost of the improvement required, availability of local funds for airport development, the capture of federal funds, the relative value of that improvement to the other needs of the particular airport, the present and future public service levels in regard to operations, based aircraft, passenger service, freight service, Statewide distribution of services, and local and State economic development, the impact on the area surrounding the airport, the extent to which the improvement will contribute to the welfare of the citizens of the State and the local area, and the relative value to the State airport system as a whole.

The commissioner shall also establish certification requirements to ensure that:

a. The airport will be publicly owned or will be effectively controlled, operated, repaired and maintained adequately during the improvement's full useful life, for the benefit of the public;

b. In connection with the operation of the airport, during the improvement's full useful life, the public will not be deprived of its rightful, fair, equal and uniform use of the airport;

c. The airport will adhere to State and federal laws and rules. If an airport received financial assistance under this chapter and ceases operations or fails to continue to comply with the provisions of this section before the predetermined life of the financially assisted improvements, as the life is determined by the commissioner at the time the financial assistance is granted, the State shall be reimbursed for the unused portion of the predetermined life and, if not fully reimbursed, the claim shall be a first lien on the airport property to the extent of the unpaid balance; and

d. If a county or municipality or other public body received financial assistance under this chapter for acquisition of real property, that property shall not be sold or used for any nonaviation purpose without the approval of the commissioner.

Source: 6:1-94.

Comment

This section is substantially identical to its source.

27A:42-6. Department of Transportation approval

No county, municipality, public agency, authority or private airport owner in this State, whether acting alone or jointly with another shall submit to the Administrator of the Federal Aviation Administration of the United States any project application for federal funding under the provisions of section 501 of the Act of Congress approved September 3, 1982, being Public Law 248, 97th Congress, known as the " Airport and Airway Improvement Act of 1982," or any amendment thereof and supplement thereto, or under any other federal law, unless the project and the project application have been first approved by the Commissioner. No grant offer or amended grant offer shall be accepted by an airport sponsor without approval by the Commissioner.

Source: 6:3-1.

Comment

This section is substantially identical to its source.

27A:42-7. Powers of commissioner

The commissioner may acquire airports or lands or rights therein, including aviation easements necessary for clear zones or clear areas when it is deemed to be necessary for the safe operation of the airport and the general public safety or necessary for the continued operations of an airport which is deemed to be necessary for a safe and efficient air transportation system in the State. The commissioner may contract for the operation of these facilities on a temporary basis or retain ownership of the facilities without operating them. The commissioner may also sell any airport or airport land so acquired to a county, municipality or other public body on the condition that it operate the facility as an airport and that it not sell the land without the commissioner's approval.

Source: 6:1-95.

Comment

This section is substantially identical to its source.

27A:42-8. Rules

The commissioner may make rules necessary to effectuate the purposes of this chapter.

Source: 6:1-96.

Comment

This section is substantially identical to its source.

27A:43-1. Definitions

When used in this chapter:

a. "Airport hazard" means (1) any use of land or water, or both, which creates a dangerous condition for persons or property in or about an airport or aircraft during landing or taking-off at an airport, or (2) any structure or tree which obstructs the air space required for the flight of aircraft in landing or taking-off at an airport.

b. "Airport safety zone" means any area of land or water, or both, upon which an airport hazard might be created or established, if not prevented as provided in this chapter.

c. "Structure" means any object constructed or installed by man, including, but not limited to, a building, tower, smokestack, chimney, and overhead transmission line.

Source: 6:1-82.

Comment

These definitions are substantially identical to their sources. Other definitions in the source section were duplicative or unnecessary.

27A:43-2. Legislative findings and declarations

It is found and declared by the Legislature that an airport hazard endangers the lives and property of the users of the airport and of occupants of land in its vicinity, and also, if the hazard is an obstruction, it reduces the size of the area available for landing, taking-off and maneuvering of aircraft, thus tending to destroy or impair the utility of the airport and the public benefit therein. Accordingly, it is declared:

a. That the creation or establishment of an airport hazard is a public nuisance and an injury to the community served by the airport in question; therefore, it is necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of airport hazards be prevented; and

b. That the prevention of the creation or establishment of airport hazards should be accomplished, to the extent legally possible, by the exercise of the police power of the State, without compensation.

Source: 6:1-80.

Comment

This section is substantially identical to its source.

27A:43-3. Airports subject to this chapter

a. The airports subject to this chapter are those, whether publicly or privately owned, which are:

(1) used by the public for the landing and taking-off of fixed wing aircraft, and

(2) licensed by the commissioner as a public use airport or landing strip, or the subject of a complete license application and designated by the commissioner as likely to be licensed as a public use airport or landing strip within one year of this designation.

b. Notwithstanding subsection (a), an airport shall not be subject to this chapter if it is owned and operated by a federal or military authority, or by the Port

Authority of New York and New Jersey, or if it is located within the Port of New York District as defined in R.S. 32:1-3.

Source: 6:1-82.

Comment

This section is substantially identical to its source.

27A:43-4. Rules

After public hearing upon notice, including notice to each affected municipality, and pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.), the commissioner shall adopt rules which delineate airport safety zones for all airports subject to this chapter. The rules shall describe the method used to make the delineation and may delineate subzones.

Source: 6:1-83.

Comment

This section is substantially identical to its source.

27A:43-5. Standards

The commissioner shall adopt rules, pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.), promulgating standards which specify permitted and prohibited land uses, including the specification of the height to which structures may be erected and trees allowed to grow, within airport safety zones. These standards shall be uniform for all airport safety zones, except that, where the commissioner determines that local conditions require it, the commissioner may adopt an amended or special standard. No standard adopted under this chapter shall be construed to require the removal, lowering or other change or alteration of any structure or tree not conforming to the standard when adopted or amended, or otherwise interfere with the continuance of any nonconforming use, except by acquisition of an interest of property rights as provided in this chapter.

Source: 6:1-84.

Comment

This section is substantially identical to its source.

27A:43-6. Notice of zones; Ordinance incorporating standards

a. Each municipality which contains within its boundaries any part of a delineated airport safety zone shall notify, in writing, each owner of record of property within the zone of the boundaries of the zone. The municipality shall file a copy of this notification with the county recording officer for recordation in the same manner as a deed or other instrument of conveyance. No cause of action against the States, a county or a municipality shall arise out of a failure to give the notice required by this subsection.

b. A metes and bounds description of airport safety zones shall be incorporated into the municipal maps used for tax purposes and prepared pursuant to R.S. 54:1-15 and P.L.1939 c.167 (C.40:146-27 et seq.).

c. Each municipality which contains within its boundaries any part of a delineated airport safety zone shall enact an ordinance or ordinances incorporating the standards promulgated by the commissioner pursuant to this chapter and providing for their enforcement. A copy of this ordinance or ordinances, and any amendments, shall be transmitted to the commissioner.

Source: 6:1-85; 6:1-85.1.

Comment

This section is substantially identical to its sources.

27A:43-7. Notice to buyers of property

Any person who sells or transfers a property in an airport safety zone delineated and appearing in a municipal tax map as provided by this chapter, shall notify a prospective buyer that the property is located in an airport safety zone prior to the signing of a contract of sale. Failure to provide notice required by this section by a person subject to the jurisdiction of the New Jersey Real Estate Commission may result in the suspension or revocation of the person's license to engage in real estate sales or in other appropriate disciplinary action by that Commission.

Source: 6:1-85.2

Comment

This section is substantially identical to its source.

27A:43-8. Nonconforming use

On request by a municipality and submission of required information, if it is in the public interest, the commissioner may issue permits allowing the establishment of a nonconforming use which would be prohibited under the standards promulgated pursuant to this chapter. The commissioner shall adopt rules, providing for the issuing of these permits and setting appropriate fees for their issuance.

Source: 6:1-86.

Comment

This section is substantially identical to its source.

27A:43-9. Injunctions

The commissioner may institute an action in the name of the State, in any court of competent jurisdiction, to prevent or correct any violation of any provision of this act. The court shall grant relief, by way of injunction or otherwise, as is proper in all the circumstances of the case, to effectuate the purposes of this chapter.

Source: 6:1-87.

Comment

This section is substantially identical to its source.

27A:43-10. Acquisition of interest in property on nonconforming structure

In any case in which it is desired to remove, lower, or otherwise terminate a nonconforming use; or in which the necessary protection from an airport hazard cannot, because of constitutional limitations, be provided by zoning regulations; or if it appears advisable that the necessary protection from an airport hazard be provided by acquisition of property rights rather than by zoning regulations, the commissioner may acquire air rights, easements, or any other estate or interest in the property, including a fee simple estate, as may be necessary to effectuate the purposes of this chapter.

Source: 6:1-88.

Comment

This section is substantially identical to its source.

6:1-1	27A:41-2	
6:1-2	deleted	see 27A:41-1
6:1-9	deleted	see 27A:41-3
6:1-11	deleted	see 27A:41-31
6:1-12	27A:41-17	
6:1-13	27A:41-17	
6:1-14	deleted	unnecessary
6:1-15	deleted	see 27A:41-11, 27A:41-22(b)
6:1-16	deleted	see 27A:41-3; 27A:41-23
6:1-17	27A:41-14	
6:1-18	27A:41-26	
6:1-19	deleted	see 27A:41-35
6:1-20	27A:41-2	
6:1-21	27A:41-1	
6:1-29	27A:41-3	
6:1-30	deleted	unnecessary
6:1-31	27A:41-4	
6:1-32	27A:41-23	
6:1-33	27A:41-34	
6:1-34	27A:41-17	
6:1-35	27A:41-13	
6:1-37	27A:41-17	
6:1-38	27A:41-17	
6:1-40	27A:41-1	
6:1-42	27A:41-14	
6:1-43	27A:41-22	see also 27A:41-7
6:1-44	27A:41-11	
6:1-44.1	27A:41-12; 27A:41-15	
6:1-44.2	deleted	unnecessary
6:1-45	27A:41-16	
6:1-46	27A:41-33	
6:1-47	deleted	unnecessary
6:1-48	27A:41-5	
6:1-49	27A:41-24	
6:1-50	deleted	unnecessary
6:1-51	27A:41-31	
6:1-52	deleted	unnecessary
6:1-53	deleted	unnecessary
6:1-59	27A:41-35	
6:1-59.1	27A:41-35	
6:1-60	deleted	unnecessary
6:1-61	27A:41-32	
6:1-62	27A:41-31	
6:1-80	27A:43-2	
6:1-81	deleted	unnecessary
6:1-82	27A:43-1; 27A:43-3	
6:1-83	27A:43-4	
6:1-84	27A:43-5	
6:1-85	27A:43-6	
6:1-85.1	27A:43-6	
6:1-85.2	27A:43-7	
6:1-86	27A:43-8	
6:1-87	27A:43-9	
6:1-88	27A:43-10	

6:1-89	deleted	unnecessary
6:1-90	27A:42-2	
6:1-91	27A:42-1	
6:1-92	27A:42-3	
6:1-93	27A:42-4	
6:1-94	27A:42-5	
6:1-95	27A:42-7	
6:1-96	27A:42-8	
6:1-97	27A:41-7	
6:2-1	deleted	see 27A:41-1
6:2-2	deleted	unnecessary
6:2-3	deleted	unnecessary
6:2-4	deleted	unnecessary
6:2-5	deleted	unnecessary
6:2-6	deleted	unnecessary
6:2-7	27A:41-41	
6:2-8	deleted	unnecessary
6:2-9	deleted	unnecessary
6:2-10	deleted	unnecessary
6:2-11	27A:41-21	
6:2-12	27A:41-25	
6:3-1	27A:42-6	
6:5-1	deleted	see 27A:41-1
6:5-2	27A:41-42	
6:5-3	27A:41-43	
6:5-4	27A:41-44	
6:5-5	27A:41-47	
6:5-6	27A:41-45	
6:5-7	27A:41-46	
6:5-8	deleted	see 27A:41-43
6:5-9	27A:41-48	