

CHAPTER 174.

[S. B. 243.]

REGULATION OF AERONAUTICS.

AN Act relating to aeronautics; empowering and directing municipalities and other political subdivisions to promulgate, administer, and enforce airport zoning regulations limiting the height of structures and objects of natural growth, and otherwise regulating the use of property, in the vicinity of airports; authorizing the acquisition, by purchase, grant, or condemnation, of air rights and other interests in land; and providing penalties and remedies for violations of this act or of any ordinance or regulation made under the authority conferred herein.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. *Definitions.* As used in this act, unless the context otherwise requires:

Regulation of aeronautics.

(1) "Airports" means any area of land or water designed and set aside for the landing and taking-off of aircraft and utilized or to be utilized in the interest of the public for such purposes.

Airports.

(2) "Airport hazard" means any structure or tree 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.

Hazards.

(3) "Airport hazard area" means any area of land or water upon which an airport hazard might be established if not prevented as provided in this act.

Hazard areas.

(4) "Political subdivision" means any county, city, town, port district or other municipal or quasi-municipal corporation authorized by law to acquire, own or operate an airport.

Political subdivision.

(5) "Person" means any individual, firm, co-partnership, corporation, company, association, joint stock association or body politic, including the state and its political subdivisions, and includes any trustee, receiver, assignee, or other similar representative thereof.

Person.

Structure.

(6) "Structure" means any object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks, and overhead transmission lines.

Tree.

(7) "Tree" means any object of natural growth.

Airport
hazards
contrary to
public
interest.

SEC. 2. *Airport Hazards Contrary to Public Interest.* 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. Accordingly, it is hereby 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; (b) 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; and (c) that this should be accomplished, to the extent legally possible, by exercise of the police power, without compensation. It is further declared that both the prevention of the creation or establishment of airport hazards and the elimination, removal, alteration, mitigation, or marking and lighting of existing airport hazards are public purposes for which political subdivisions may raise and expend public funds and acquire land or property interests therein.

SEC. 3. *Power to Adopt Airport Zoning Regulations.*

(1) In order to prevent the creation or establishment of airport hazards, every political subdivision having an airport hazard area within its territorial limits may adopt, administer, and enforce, under the police power and in the manner and upon the conditions hereinafter prescribed, airport zon-

ing regulations for such airport hazard area, which regulations may divide such area into zones, and, within such zones, specify the land uses permitted and regulate and restrict the height to which structures and trees may be erected or allowed to grow.

(2) Where an airport is owned or controlled by a political subdivision and any airport hazard area appertaining to such airport is located outside the territorial limits of said political subdivision, the political subdivision owning or controlling the airport and the political subdivision within which the airport hazard area is located may, by ordinance or resolution duly adopted, create a Joint Airport Zoning Board, which Board shall have the same power to adopt, administer and enforce airport zoning regulations applicable to the airport hazard area in question as that vested by subsection (1) in the political subdivision within which such area is located. Each such joint board shall have as members two representatives appointed by each political subdivision participating in its creation and in addition a chairman elected by a majority of the members so appointed.

Powers to adopt zoning regulations.

SEC. 4. *Relation to Comprehensive Zoning Regulations.*

Relation to comprehensive plan.

(1) Incorporation. In the event that a political subdivision has adopted, or hereafter adopts, a comprehensive zoning ordinance regulating, among other things, the height of buildings, any airport zoning regulations applicable to the same area or portion hereof, may be incorporated in and made a part of such comprehensive zoning regulations, and be administered and enforced in connection therewith.

(2) Conflict. In the event of conflict between any airport zoning regulations adopted under this act and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, the use of land, or any other matter, and whether such other regulations

were adopted by the political subdivision which adopted the airport zoning regulations or by some other political subdivision, the more stringent limitation or requirement shall govern and prevail.

Procedure.

SEC. 5. Procedure for Adoption of Zoning Regulations.

(1) Notice and Hearing. No airport zoning regulations shall be adopted, amended, or changed under this act except by action of the legislative body of the political subdivision in question, or the joint board provided for in section 3(2), after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least 15 days' notice of the hearing shall be published in an official paper, or a paper of general circulation, in the political subdivision or subdivisions in which is located the airport hazard area to be zoned.

Zoning commission.

(2) Airport Zoning Commission. Prior to the initial zoning of any airport hazard area under this act, the political subdivision or joint Airport Zoning Board which is to adopt the regulations shall appoint a Commission, to be known as the Airport Zoning Commission, to recommend the boundaries of the various zones to be established and the regulations to be adopted therefor. Such Commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and the legislative body of the political subdivision or the joint Airport Zoning Board shall not hold its public hearings or take other action until it has received the final report of such Commission. Where a city plan commission or comprehensive zoning commission already exists, it may be appointed as the Airport Zoning Commission.

Requirements.

SEC. 6. Airport Zoning Requirements.

(1) Reasonableness. All airport zoning regulations adopted under this act shall be reasonable

and none shall impose any requirement or restriction which is not reasonably necessary to effectuate the purposes of this act. In determining what regulations it may adopt, each political subdivision and joint Airport Zoning Board shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the nature of the terrain within the airport hazard area, the character of the neighborhood, and the uses to which the property to be zoned is put and adaptable.

(2) Non-conforming Uses. No airport zoning regulations adopted under this act shall require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations when adopted or amended, or otherwise interfere with the continuance of any non-conforming use, except as provided in section 7(3).

SEC. 7. *Permits and Variances.*

Permits and
variances.

(1) Permits. Any airport zoning regulations adopted under this act may require that a permit be obtained before any new structure or use may be constructed or established and before any existing use or structure may be substantially changed or substantially altered or repaired. In any event, however, all such regulations shall provide that before any non-conforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted, a permit must be secured from the administrative agency authorized to administer and enforce the regulations, authorizing such replacement, change or repair. No permit shall be granted that would allow the establishment or creation of an airport hazard or permit a non-conforming structure or tree or non-conforming use to be made or become higher or become a greater hazard to air navigation than it was when the applicable regulation was adopted or than it is when the application for a permit is made. Except

as provided herein, all applications for permits shall be granted.

(2) Variances. Any person desiring to erect any structure, or increase the height of any structure, or permit the growth of any tree, or otherwise use his property in violation of airport zoning regulations adopted under this act, may apply to the Board of Adjustment for a variance from the zoning regulations in question. Such variances shall be allowed where 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 do substantial justice and be in accordance with the spirit of the regulations and this act: *Provided*, That any variance may be allowed subject to any reasonable conditions that the Board of Adjustment may deem necessary to effectuate the purposes of this act.

Hazard
marking and
lighting.

(3) Hazard Marking and Lighting. In granting any permit or variance under this section, the administrative agency or Board of Adjustment may, if it deems such action advisable to effectuate the purposes of this act and reasonable in the circumstances, so condition such permit or variance as to require the owner of the structure or tree in question to permit the political subdivision, at its own expense, to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard.

Appeals.

SEC. 8. Appeals.

(1) Any person aggrieved, or taxpayer affected, by any decision of an administrative agency made in its administration of airport zoning regulations adopted under this act, or any governing body of a political subdivision, or any joint Airport Zoning Board, which is of the opinion that a decision or such an administrative agency is an improper application of airport zoning regulations of concern to such governing body or board, may appeal to the Board of

Adjustment authorized to hear and decide appeals from the decisions of such administrative agency.

(2) All appeals taken under this section must be taken within a reasonable time, as provided by the rules of the Board, by filing with the agency from which the appeal is taken and with the Board a notice of appeal specifying the grounds thereof. The agency from which the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.

(3) An appeal shall stay all proceedings in furtherance of the action appealed from, unless the agency from which the appeal is taken certifies to the Board, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would, in its opinion, cause imminent peril to life or property. In such cases proceedings shall not be stayed otherwise than by order of the Board or notice to the agency from which the appeal is taken and on due cause shown. Appeals.

(4) The Board shall fix a reasonable time for the hearing of appeals, give public notice and due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

(5) The Board may, in conformity with the provisions of this act, reverse or affirm wholly or partly, or modify, the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the administrative agency from which the appeal is taken.

SEC. 9. *Administration of Airport Zoning Regulations.* All airport zoning regulations adopted under this act shall provide for the administration and enforcement of such regulations by an administrative Administration.

agency which may be an agency created by such regulations or any official, board, or other existing agency of the political subdivision adopting the regulations or of one of the political subdivisions which participated in the creation of the joint Airport Zoning Board adopting the regulations, if satisfactory to that political subdivision, but in no case shall such administrative agency be or include any member of the Board of Adjustment. The duties of any administrative agency designated pursuant to this act shall include that of hearing and deciding all permits under section 7(1), but such agency shall not have or exercise any of the powers herein delegated to the Board of Adjustment.

Board of
adjustment.

SEC. 10. *Board of Adjustment.*

(1) All airport zoning regulations adopted under this act shall provide for a Board of Adjustment to have and exercise the following powers:

(a) To hear and decide appeals from any order, requirement, decision, or determination made by the administrative agency in the enforcement of the airport zoning regulations, as provided in section 8.

(b) To hear and decide any special exceptions to the terms of the airport zoning regulations upon which such Board may be required to pass under such regulations.

(c) To hear and decide specific variances under section 7(2).

(2) Where a zoning board of appeals or adjustment already exists, it may be appointed as the Board of Adjustment. Otherwise, the Board of Adjustment shall consist of five members, each to be appointed for a term of three years by the authority adopting the regulations and to be removable by the appointing authority for cause, upon written charges and after public hearing.

(3) The concurring vote of a majority of the members of the Board of Adjustment shall be sufficient to reverse any order, requirement, decision, or

determination of the administrative agency, or to decide in favor of the applicant on any matter upon which it is required to pass under the airport zoning regulations, or to effect any variation in such regulations.

(4) The Board shall adopt rules in accordance Rules. with the provisions of the ordinance or resolution by which it was created. Meetings of the Board shall be held at the call of the chairman and at such other times as the Board may determine. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All hearings of the Board shall be public. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall immediately be filed in the office of the Board and shall be a public record.

SEC. 11. *Judicial Review.*

Judicial
review.

(1) Any person aggrieved, or taxpayer affected, by any decision of the Board of Adjustment, or any governing body of a political subdivision or any joint Airport Zoning Board which is of the opinion that a decision of a Board of Adjustment is illegal, may present to the Superior Court of the county in which the airport is located a verified petition setting forth that the decision is illegal, in whole or in part, and specifying the grounds of the illegality. Such petition shall be presented to the Court within 30 days after the decision is filed in the office of the Board.

(2) Upon presentation of such petition the Court may allow a writ of review directed to the Board of Adjustment to review such decision of the Board. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the Court

may, on application, on notice to the Board and on due cause shown, grant a supersedeas.

(3) The Board of Adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

Judicial
review.

(4) The Court shall have exclusive jurisdiction to affirm, modify, or set aside the decision brought up for review, in whole or in part, and if need be, to order further proceedings by the Board of Adjustment. The findings of fact by the Board, if supported by substantial evidence, shall be accepted by the Court as conclusive, and no objection to a decision of the Board shall be considered by the Court unless such objection shall have been urged before the Board, or, if it was not so urged, unless there were reasonable grounds for failure to do so.

(5) Costs shall not be allowed against the Board of Adjustment unless it appears to the Court that it acted with gross negligence, in bad faith, or with malice, in making the decision appealed from.

(6) In any case in which airport zoning regulations adopted under this act, although generally reasonable, are held by a court to interfere with the use or enjoyment of a particular structure or parcel of land to such extent, or to be so onerous in their application to such a structure or parcel of land, as to constitute a taking or deprivation of that property in violation of the Constitution of this state or the Constitution of the United States, such holding shall not affect the application of such regulations to other structures and parcels of land.

Enforcement.

SEC. 12. *Enforcement and Remedies.* Each violation of this act or of any regulations, orders, or rulings promulgated or made pursuant to this act,

shall constitute a misdemeanor, and each day a violation continues to exist shall constitute a separate offense. In addition, the political subdivision or agency adopting zoning regulations under this act may institute in any court of competent jurisdiction, an action to prevent, restrain, correct or abate any violation of this act, or of airport zoning regulations adopted under this act, or of any order or ruling made in connection with their administration or enforcement, and the court shall adjudge to the plaintiff such relief, by way of injunction (which may be mandatory) or otherwise, as may be proper under all the facts and circumstances of the case, in order fully to effectuate the purposes of this act and of the regulations adopted and orders and rulings made pursuant thereto. Remedies.

SEC. 13. *Acquisition of Air Rights.* In any case in which: (1) it is desired to remove, lower, or otherwise terminate a non-conforming structure or use; or (2) the approach protection necessary cannot, because of constitutional limitations, be provided by airport zoning regulations under this act; or (3) it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations, the political subdivision within which the property or non-conforming use is located or the political subdivision owning the airport or served by it may 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 air right, avigation easement, or other estate or interest in the property or non-conforming structure or use in question as may be necessary to effectuate the purposes of this act. Acquisition of air rights.

SEC. 14. *Severability.* If any provision of this act or the application thereof to any person or circum- Severability.

stances is held invalid, such invalidity shall not affect the provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Title. **SEC. 15. *Short Title.*** This act shall be known and may be cited as the "Airport Zoning Act."

Passed the Senate February 25, 1945.

Passed the House March 6, 1945.

Approved by the Governor March 15, 1945.

CHAPTER 175.

[S. B. 245.]

ABOLISHING FISHERIES FUND.

AN ACT abolishing the fisheries fund and transferring all moneys and credits therein, or which by law hereafter should be placed therein, to the General Fund of the state treasury, excepting the Lewis River hatchery fund; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Abolishing
the fisheries
fund.

SECTION 1. The fisheries fund created by section 48, chapter 31, Laws of 1915, as last amended by section 2, chapter 46, Laws of 1943 (section 5700, Rem. Supp. 1943), is hereby abolished, and all moneys placed in or credited to such fund, are hereby transferred to the General Fund of the State Treasury. All moneys, which heretofore have by law been credited to the fisheries fund shall, after the effective date of this act, be credited to the General Fund.

Nothing in this act shall affect the provisions of chapter 123, Laws of 1933, which created the Lewis River hatchery fund.

All appropriations for the Department of Fisheries, and the Fisheries Division of the State Treas-