

ACT 140

A Bill for an Act Providing for Airport Zoning and the Repeal of Chapter 17, Revised Laws of Hawaii 1955.

Be it Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Revised Laws of Hawaii 1955, as amended, is hereby further amended by adding a new chapter to be appropriately numbered and to read as follows:

**“CHAPTER —
AIRPORT ZONING ACT**

Section -1. **Definitions.** As used in this chapter, unless the context otherwise requires:

(a) ‘Airport’ 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;

(b) ‘Airport hazard’ means any structure or tree which obstructs the air space required for the flight of aircraft in landing or taking-off at an airport, or any use of land which creates a dangerous condition, including the placement of strong lights which blind pilots during such operations;

(c) ‘Airport protection’ means protection against an airport hazard;

(d) ‘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 chapter;

(e) ‘Director’ means the director of transportation or his authorized representative;

(f) ‘Department’ means the department of transportation;

(g) ‘Person’ means any individual, partnership, corporation, unincorporated association, joint stock association, or any trustee, receiver, assignee, or other similar representative thereof; or the State or any of its political subdivisions, or agencies thereof;

(h) ‘Structure’ means any object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks, chimneys and overhead transmission lines;

(i) ‘Tree’ means any object of natural growth.

Section -2. **Airport hazards contrary to public interest.** It is hereby found that an airport hazard endangers the lives and property of users of an airport and of occupants of land in its vicinity, and 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 an airport and the public investment therein. Accordingly, it is hereby declared: (a) that the creation, maintenance 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, maintenance or establishment of airport hazards be prevented; and (b) that the prevention of the creation, maintenance or establishment of airport hazards 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, maintenance or establishment of airport hazards and the elimination, removal, alteration, mitigation, or marking and lighting of existing airport hazards are public purposes.

Section -3. **Power to adopt airport zoning regulations.** In order to prevent the creation or establishment of airport hazards, the director may adopt, amend, repeal, administer and enforce, under the police power and in the manner and upon the conditions prescribed in this chapter, airport zoning regulations for any airport hazard area in the State, which regulations may divide each area into zones, and, within such zones, specify the land uses permitted and regulate and restrict the height to which structures may be erected and trees allowed to grow, subject to the provisions of section -6.

Section -4. **Relation to comprehensive zoning regulations.** In the event of conflict between any airport zoning regulations adopted under this chapter and any ordinances or 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 or under the authority of the State or by or under the authority of a county, the more stringent limitation or requirement shall govern and prevail.

Section -5. **Procedure for adoption of zoning regulations.** (a) The director shall adopt airport zoning regulations in accordance with chapter 6C.

(b) At least ninety days prior to the public hearing on the initial zoning of any airport hazard area, the director shall notify the appropriate State and county planning agencies and any boards or commissions of a similar nature which may be concerned, and thirty days before such public hearing such agencies, boards and commissions may file with the director their recommendations as to the boundaries of the various zones to be established and the regulations to be adopted therefor. The director shall give due consideration to recommendations so filed.

Section -6. **Airport zoning regulations.** (a) All airport zoning regulations adopted under this chapter shall have the force and effect of law. Such regulations shall be reasonable and none shall impose any requirement or restriction which is not reasonably necessary to

effectuate the purposes of this chapter. In determining what regulations he may adopt, the director 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.

(b) Non-conforming uses. No airport zoning regulations adopted under this chapter 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.

Section -7. Permits, hazard markings and lighting. (a) Permits. Any airport zoning regulations adopted under this chapter may require that before any new structure, tree or use may be constructed, planted or established, and before any existing use, tree or structure may be substantially changed, replanted or substantially altered or repaired, a permit be obtained authorizing such construction, planting, establishment, change, replanting, alteration, or repair. In any event, all such regulations shall provide that before any non-conforming structure or tree may be replaced, substantially altered or repaired, rebuilt, or replanted, a permit must be secured from the department authorizing such replacement, alteration, repair, rebuilding or replanting. No permit shall be granted that would allow the establishment, maintenance or creation of an airport hazard. Except as provided herein, all applications for permits shall be granted.

(b) Hazard markings and lighting. In granting any permit under this section, the director may, if he deems such action advisable to effectuate the purposes of this chapter and reasonable under the circumstances, so condition such permit as to require the owner of the structure or tree in question to permit the State, at its own expense, to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to operators of aircraft the presence of an airport hazard.

Section -8. Appeals. Any person aggrieved by any order, requirement, determination, or decision of the director made in the adoption, amendment, repeal or administration of airport zoning regulations may appeal his grievance to the appropriate circuit court in accordance with chapter 6C.

Section -9. Application. In any case in which airport zoning regulations adopted under this chapter, although generally reasonable, are finally held to interfere with the use or enjoyment of a particular structure or parcel of land to such an extent as to be in violation of the State Constitution or the Constitution of the United States, such holding shall not affect the application of such regulations to other structures and parcels of land.

Section -10. Enforcement and remedies. Any person who willfully violates subsection (a) of section -7 or any regulations, orders, or rulings promulgated or made pursuant to this chapter, shall for each violation, be fined not more than \$1,000 or imprisoned not more than ninety days, or both. In addition the director may institute, in

any court of competent jurisdiction, an action in the name of the State to prevent, restrain, correct or abate any violation of this chapter, or of airport zoning regulations adopted under this chapter, or of any order or ruling made in connection with their administration or enforcement, and the court shall adjudge to the State 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 chapter and of the regulations adopted and orders and ruling made pursuant thereto.

Section -11. **Acquisition of air rights.** In any case in which (a) it is desired to remove, lower or otherwise terminate a non-conforming structure or use; or (b) the approach protection necessary cannot, because of constitutional limitations, be provided by airport zoning regulations under this chapter; or (c) it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations, the director, on behalf of the State may acquire, by purchase, grant, or condemnation in the manner provided by chapter 8, such air right, navigation easement, or other estate or interest in the property or nonconforming structure or use in question as may be necessary or proper to effectuate the purposes of this chapter, including acquisition of a fee simple estate."

SECTION 2. Repeal. Chapter 17, Revised Laws of Hawaii 1955, is hereby repealed.

SECTION 3. Preservations of rights and liabilities. The repeal shall not affect any act done, ratified or confirmed or any right accruing or accrued or established, or any action, suit or proceedings had or commenced in any civil cause, prior to the repeal, and all rights and liabilities under any statute embraced in or repealed by this Act shall continue and may be enforced in the same manner and with the same effect as if the repeal had not been made.

SECTION 4. Application of statutes of limitations. No statute of limitations, whether applicable to civil causes or proceedings, or to the prosecution of offenses, or for the recovering of penalties or forfeiture, embraced in, or repealed by this Act shall be affected thereby, and all suits, proceedings and prosecutions, whether civil or criminal, for causes arising or acts done or committed prior to the repeal may be commenced and prosecuted with the same effect as if the repeal had not been made.

SECTION 5. Preservation of penalties for offenses, etc. The repeal shall not affect any offense committed or any punishment, penalty or forfeiture incurred, prior to the repeal, under any statute embraced in or repealed by this Act, and every such offense may be prosecuted and punished, and every punishment, penalty or forfeiture imposed and enforced, in the same manner and with the same effect as if the repeal had not been made.

SECTION 6. Severability. The provisions of this Act are declared to be severable and, if any word, sentence or section of this

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Act or the application thereof to any person, circumstance or property is held invalid for any reason, the validity of the remainder of this Act or the application of such portion to other persons, circumstances or property shall not be affected.

SECTION 7. Effective date. This Act shall take effect upon its approval.

(Approved June 16, 1965.) **H.B. 1171.**