



Compilation of State Airport Authorizing Legislation

DETAILS

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CONTENTS

Introduction, 3

I. Organizing and Empowering Airport Entities, 3

A. Common Structures Used for Airport Entities, 3

B. State Empowerment Provisions, 6

II. Establishing State Policies for Airports, 9

A. State Aeronautics Agencies, 10

B. Licensing Airports, 11

C. Channeling Federal Funds, 11

D. State Assistance, 12

E. Other State-Authorized Assistance for Airports, 13

F. Tax Measures at Airports, 14

III. State Protections for Airport Resources, 16

A. Statutory Protection of Airport Revenues and Assets, 16

B. Antitrust Immunity, 17

C. Immunity from Other Liabilities, 19

IV. Airport Lands and Land Use, 21

A. Planning, 21

B. Intermodal Concerns, 22

C. Acquisitions and Dispositions, 23

D. Zoning, 24

E. Environmental Concerns, 28

F. Summary of Challenges to Airport Land Use, 29

V. Airport Management and Operations, 32

A. Finance and Administration, 32

B. Police and Security, 36

C. Operations, 36

D. Passenger and Terminal Services, 37

E. Ground Transportation, 38

F. Airport Criminal Offenses, 38

Conclusion, 39

Appendix A: State Codes, 40

Appendix B: Questionnaire Responses, 45

Appendix C: Uniform Aeronautical Regulatory Act of 1935, 50

Appendix D: Uniform Airports Act of 1935, 65

Appendix E: Uniform State Law for Aeronautics of 1922, 74

Appendix F: Uniform Air Licensing Act of 1930, 82

Appendix G: Uniform Aircraft Financial Responsibility Act of 1954, 89

COMPILATION OF STATE AIRPORT AUTHORIZING LEGISLATION

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INTRODUCTION

State law provides the means to empower actions taken by an airport operator. State statutes also set local aviation policy, protect airport functions, and regulate some of the public and private interests that converge at an airport. This study compiles broad areas of state law that are enacted specifically to address airport functions. Each section identifies an area where states enact legislation to govern airports, and the text discusses common legal approaches and variations. To provide context for these areas, the study also notes some of the significant federal laws that relate to a given area and includes examples of cases interpreting these state laws in the courts.

I. ORGANIZING AND EMPOWERING AIRPORT ENTITIES

Most United States airports are government entities, and as such, state laws provide the means to create an airport entity and to authorize its operating powers. An airport entity's local powers are essential to allow it to operate and meet its federal obligations. The federal government recognizes the importance of these state powers. As a part of the grant assurance agreements that airport entities must enter to obtain federal funds, these entities must agree to protect their local powers and not permit any action that would deprive them of the rights and powers necessary to conduct airport operations.¹

The laws of all states provide for a number of common governmental structures that may be used to own and operate an airport. The government unit that is the airport's proprietor determines the choice of structure. State laws then enumerate the powers that an airport proprietor may exercise under each such structure. This section reviews the common structures under which airport entities may be organized, and it then reviews how states typically empower airports to operate.

¹ Under Assurance No. 5, Preserving Rights and Powers, an airport must

not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor.

Grant Assurance No. 5, http://www.faa.gov/airports/aip/grant_assurances/media/airport_sponsor_assurances.pdf.

A. Common Structures Used for Airport Entities

State laws create a variety of structures under which units of government can conduct airport operations. Some of these structures, such as a city or county, are designed to conduct general government, and the operation of an airport constitutes one activity among many that the entity pursues. Other structures are instead designed to provide for the operation of a specific activity. The common state structures under which airport entities may be organized are summarized below.

Direct State Ownership and Operations. In most states, the state itself may directly own and operate airports. States typically grant this power to a state department of transportation, a state aeronautics agency (which may be a part of a department of transportation), or a department of public works. While most states give themselves this power, state laws may or may not prioritize direct airport ownership by the state.

In a few states, such as Alaska and Hawaii, state laws make the state, acting directly through one of its departments, a primary means for owning and operating airports within the state. Other provisions of state law also can help facilitate state ownership. For example, Connecticut's state laws give the state a right of first refusal to purchase privately owned, public-use airports.² In Vermont, the law expressly gives the state the ability to acquire or lease airports that are no longer being operated, including by condemnation.³ Illinois statutes allow the state to own and control airports in an adjoining state if the adjoining state provides reciprocal rights.⁴ These laws thus enhance a state's ability to acquire and operate airports.

Policies regarding state involvement, however, can differ. For example, Colorado statutes do not address direct action by the state, but provide that the state can combine with cities, towns, or counties to create airport authorities.⁵ Other states' laws permit the state to create autonomous airport authorities or corporations.⁶ State policies regarding ownership by the state may

² See CONN. GEN. STAT. § 13b-50a (through 2010 Feb. Reg. Sess., June Sp. Sess., and July Sp. Sess.).

³ See VT. STAT. ANN. tit. 5, § 804 (through 2009–2010 Adj. Sess.).

⁴ See, e.g., 620 ILL. COMP. STAT. ANN. 5/25.02 to 5/25.04 (through 2010 Reg. Sess., P.A. 96-1496).

⁵ See COLO. REV. STAT. ANN. § 41-3-102 (through 2010 2d Reg. Sess.).

⁶ For example, see R.I. GEN. LAWS § 42-64-4 (through 2010 Jan. Sess., ch. 320) (creating corporate entity to own and operate airports for the state).

extend to other aeronautical facilities as well, such as those for air navigation or for state military purposes.⁷

State Authorities and Corporations. Some state laws allow the state to create an airport authority or corporation that can own and operate airports on behalf of the state. These entities are political subdivisions of the state that are empowered to act independently from other state agencies. These laws often specifically name the entities that they create, such as the Virginia Aviation Board⁸ or the Rhode Island Airport Corporation.⁹ The law may give these entities authority to act as the proprietor for airports across the state, or it may empower an authority to operate in a specific area, such as the Metropolitan Airports Commission in Minneapolis or the San Diego County Regional Airport Authority.

Local policy on the use of state authorities varies. Some states do not adopt express acts providing for the creation of an airport authority. Others adopt these acts and include additional specific policies. For example, in Idaho, the law creates regions within the state in which airport authorities are authorized to develop and operate an airport.¹⁰ Michigan and California legislation also provide for the creation of authorities and allow the transfer of an airport, or operational jurisdiction for an airport, into the new authority.¹¹ Conversely, Alaska state law imposes restrictions on transferring specified state airports into an authority structure.¹²

State Compacts. In limited circumstances, states enter compacts creating multi-state authorities to own and operate an airport that serves a number of states. These compacts are generally codified as a part of state law, and they specify the airport entity's powers and jurisdictional limitations. Examples include the Delaware-New Jersey Compact, the Quad Cities Interstate

Metropolitan Authority, the Port Authority of New York and New Jersey, and arrangements for the Metropolitan Washington Airports Authority (MWAA). Arrangements for MWAA may be unique in how they involve the federal government. MWAA is created as an airport authority under Virginia law, and it exercises powers conferred by both Virginia and the District of Columbia in accordance with federal legislation (the federal government is the facility's landlord). Consistent with a multistate authority structure, however, MWAA's management is independent of Virginia, its local governments, the District of Columbia, and the United States Government.¹³

Municipal Airports. States differ when defining what constitutes a "municipality." Some use the term to refer only to a city, while others use it to refer to cities, towns, counties, and other political subdivisions that provide general government over a locale. All states except Hawaii and Rhode Island empower municipalities (defined broadly) to own and operate airports.

Airport operations are normally just one component of a municipality, and the statutes providing for airports are normally included as part of a broader municipal empowerment act. Some of these laws, however, address specific aspects of municipal airport ownership. For example, state statutes often specify that municipalities may own and operate airports within or without their own territorial limits or the limits of the state. A few also restrict how an airport can be owned and operated, such as by designating a specific department or division that must operate the airport or specifying that the municipality may so designate.¹⁴

Municipal Delegations. States, when empowering municipalities to act as airport entities, also normally empower them to delegate management responsibilities for a municipal airport to an officer, board, body, or commission.¹⁵ Municipalities do not create a political subdivision when making this delegation; they only transfer some of their own airport management powers. When making such a delegation, the municipality is the airport's owner and is responsible for airport expenses.

A municipal delegation creates a management structure for the airport's development, operations, and regulation, and it may include a delegation of authority to establish fees and charges at the airport as well. Generally under such a delegation the municipality must prescribe the powers and duties of the person or body receiving the delegation. State laws may allow a municipality to delegate additional powers as well. For

⁷ For example, see MASS. GEN. LAWS ANN. ch. 90, § 39A (through 2011 1st Ann. Sess., ch. 56) (regarding air navigation facilities).

⁸ See VA. CODE ANN. § 5.1-2.1 (through 2010 Reg. Sess.).

⁹ See R.I. GEN. LAWS § 42-64-4 (through 2010 Jan. Sess., ch. 320); In re Advisory Opinion to Governor, 627 A.2d 1246 (R.I. 1993) (the Rhode Island Airport Corporation is a public corporation that operates state airports as a subsidiary of the state's Port Authority and Economic Development Corporation).

¹⁰ IDAHO CODE ANN. § 21-802 (through 2010 2d Reg. Sess.).

¹¹ See *Wayne County Bd. of Comm'rs v. Wayne County Airport Auth.*, 253 Mich. App. 144, 658 N.W.2d 804 (Mich. Ct. App. 2002) (Michigan adopted an Airport Authority Act that permits the transfer of an airport's operational jurisdiction from the local government owning the airport to an airport authority that is an instrumentality of such local government; at one airport where evidence of mismanagement had been found, the Act automatically transferred such jurisdiction and the Act was upheld against challenges under state constitutional clauses regarding special legislation and impairment of contracts and claims that the new entity's powers could not exceed those of the local government owner). See also CAL. PUB. UTIL. CODE § 170000 *et seq.* (through 2011 Reg. Sess., ch. 28 and 2011–2012 1st Ex. Sess., ch. 2) (creating San Diego County Regional Airport Authority).

¹² See ALASKA STAT. § 29.35.722 (through 2010 Reg. Sess.).

¹³ 49 U.S.C.A. § 49106; VA. CODE ANN. § 5.1-153 (through 2010 Reg. Sess.).

¹⁴ See MO. ANN. STAT. §§ 305.170, 305.240 (through 2010 1st Ex. Sess.); KAN. STAT. ANN. §§ 3-114 and 3-126 (through 2010 Reg. Sess.) (requiring operation of certain airports through a municipality's board of park commissioners or board of public utilities). See also App. A: State Codes (noting state statutory sections governing airports).

¹⁵ See, e.g., ARK. CODE ANN. § 14-361-110 (through 2010 Fis. Sess., incl. ARK. CODE REV. COMM. to Sept. 30, 2010).

example, Washington statutes allow the recipient of the delegation to manage a separate industrial or commercial development at the airport.¹⁶

Municipal Authorities. States may permit a municipality not only to delegate management functions for an airport, but also to create a separate entity in which the municipality vests its airport interests. Unlike a municipal delegation (or joint airport ownership, as described below in this section), an airport authority created by a municipality is a political subdivision of the state, and it constitutes a corporate entity that generally is solely responsible for operating the airport. Municipally created authorities typically exercise their own executive and legislative powers.

State law also may specify additional terms to govern these municipally created entities. In general, the law may permit their creation by one municipality or by several municipalities acting together. It also may require these entities to make use of a specified format. For example, Arkansas requires the use of a public corporation incorporated to exercise airport powers, Kansas requires these authorities to be created by a municipality's ordinances, and Nebraska requires a jointly created authority to be formed by an interlocal agreement.¹⁷ States also may prescribe requirements to govern such an entity's operations or procedures to govern its board. Other powers may apply as well. For example, Colorado allows these entities to be a special purpose district having the power to levy a tax.¹⁸

Special Purpose Districts. State laws may allow municipalities to create special purpose districts to operate an airport and may designate those districts by describing them as airport districts, transportation districts, or development districts. These districts may extend across multiple jurisdictions within the state. They are political subdivisions that function as municipalities for a specific purpose rather than to provide general government. A special purpose district normally has the same power to acquire, develop, and operate an airport as other airport entities. It also may have the power to collect taxes and issue bonds as a municipality.¹⁹ A special purpose district is usually described as being "dependent" or "independent" to specify its degree of

autonomy when acting in relation to another jurisdiction.²⁰

Port Authorities. Port authorities or districts generally oversee maritime functions, although an entity designated as a port authority or district may be used for other purposes as well. These entities are usually created using the basic structures described above in this section. Some port authorities are specifically empowered to own and operate an airport, such as the Massachusetts Port Authority or the Port of Portland. Others are empowered to operate an airport as one of many port powers, such as ports created under Illinois statutes that routinely authorize airport ownership.²¹ The actual airport operations conducted by a port authority or district may vary. When these entities operate an airport, those operations generally constitute a smaller function within the port structure.

Universities. Some state higher education institutions, such as the Oklahoma State System of Higher Education, are specifically empowered to own and operate airports.²² When universities have this authority, the state may allow them to operate the airport for more than educational purposes. For example, Purdue University has authority to declare portions of its airport to be a public airport.²³ The University of North Carolina is empowered to create an airport authority that is a political subdivision for its facility.²⁴ The state may authorize these airport entities to pursue development activities as well. For example, the University of Illinois is empowered to enter agreements for federal airport funding or to enter trust indentures or other engagements in connection with airport development.²⁵

Joint Ownership. State laws may allow airport entities to operate an airport as joint owners. Normally this occurs when two airport entities agree to jointly exercise or delegate their management powers over an airport. State laws sometimes specify what entities may participate as joint owners of an airport by expressly authorizing them to include municipalities, the State,

¹⁶ See WASH. REV. CODE ANN. § 14.08.120 (through 2011, chs. 1 & 2). See also App. A: State Codes (noting state statutory sections governing airports).

¹⁷ See ARK. CODE ANN. §§ 14-138-101, 14-138-102 (through 2010 Fis. Sess., incl. ARK. CODE REV. COMM. to Sept. 30, 2010) (incorporate public corporation); KAN. STAT. ANN. § 3-162 (through 2010 Reg. Sess.) (establish authority by ordinance); NEB. REV. STAT. § 3-702 (through 2010 2d Reg. Sess.) (create authority by interlocal agreement).

¹⁸ See COLO. REV. STAT. ANN. §§ 41-3-104, 41-3-105 (through 2010 2d Reg. Sess.). See also App. A: State Codes (noting state statutory sections governing airports).

¹⁹ For example, see LA. REV. STAT. ANN. §§ 2:311, 2:312 (through 2010 Reg. Sess.) (power to tax and issue bonds).

²⁰ See *Berry v. Milliken*, 234 S.C. 518, 109 S.E.2d 354 (S.C. 1959) (upholding state's ability to use special purpose districts for airport operations without regard to availability of other types of structures). See also App. A: State Codes (noting state statutory sections governing airports).

²¹ See 70 ILL. COMP. STAT. ANN. 1801/20 to 1865/4.6 (through 2010 Reg. Sess., P.A. 96-1496).

²² See OKLA. STAT. ANN. tit. 70, § 4305 (through 2011 1st Reg. Sess.) (authority to accept grants of federal airport property and hold and operate the same).

²³ See IND. CODE ANN. § 21-31-7-1 (through 2010 2d Reg. Sess.) (allowing Purdue University to declare all or part of its airport public).

²⁴ N.C. GEN. STAT. ANN. § 116-11 (through 2010, ch. 18) (University of North Carolina Board of Governors may create airport authority).

²⁵ See 110 ILL. COMP. STAT. ANN. 400/1 (through P.A. 97-615, with the exception of P.A. 97-333 and P.A. 97-597, of the 2011 Reg. Sess.) (power to seek grant to develop airports).

or the United States.²⁶ Joint owners typically enter an agreement to specify the extent of each party's financial or other participation for the airport. For example, Oklahoma state law requires that joint airport owners create a joint board to conduct operations, and it discusses the terms to be included in an agreement.²⁷ A joint board (or other designated operator) normally may exercise all the airport powers of the participating entities.

Private Operators. State law may allow government entities to lease a public airport to a private operator to conduct operations. The law may impose public procurement requirements in connection with obtaining such a lease and may authorize development activities for public purposes. In general, state laws require leased airports to be maintained as public airports, and business arrangements at these airports must be consistent with what the state would have undertaken.²⁸ When the airport is open to the public, Arizona considers the lessee to be an agent or instrumentality of government and makes additional police powers available to the private operator.²⁹ West Virginia state law also provides that airport development may be undertaken through a public-private partnership.³⁰

Secondary Airport Powers. State laws may give to entities that do not own airports the authority to exercise specified powers in connection with an airport. Typically these entities consist of special purpose districts and authorities that have been formed mainly for other purposes, including development authorities, finance authorities or funds, improvement districts or economic development entities for transportation or other purposes, transit or transportation districts or authorities, redevelopment authorities overseeing the closure of military bases, and utility districts. While they do not own airports, these entities may have authority to assist with an airport's development, financing, or other activities.

B. State Empowerment Provisions

Airport entities, as units of government, only have the authority to act that they receive from the State, and statutes providing that authority are drafted to address a variety of needs. These statutes empower specific airport activities and address common governmental issues. State empowerment provisions tend to contain similar language, which reflects common issues as well as an early uniform law that some states used

as a model.³¹ The basic parameters of state empowerment provisions are discussed below.

Public Purpose. State empowerment provisions for airport entities typically contain an express provision stating that the operation of an airport is a public purpose. At the outset of aviation, local communities challenged whether owning and operating an airport constituted an activity that was conducted for a public purpose and thus an activity on which government could expend public resources. Those cases uniformly determined that airport activities had a public purpose. Airports are now firmly established as a lawful pursuit of government.³²

States can also declare by statute that one or more specific airport functions have a public purpose. When enumerated by the legislature, those functions can include matters such as the planning, acquisition, establishment, improvement, equipping, and operation of airports; airport property and airport protection privileges; eliminating airport hazards; rights-of-way for highways and railroads providing airport access; airport noise mitigation efforts; and airport bonds.³³ The law may also provide that specific airport entities have a public purpose or that a type of airport entity has a public purpose. Similarly, it may declare a public purpose for state programs, such as state financial assistance for airports or a state aeronautics act.³⁴ State approaches vary but these express declarations establish the public nature of an airport and protect its ability to operate as a part of government.

An established public purpose provides other benefits to airport entities as well. For example, public entities typically operate under a tax exempt status, and when otherwise authorized by state law, airport entities have the ability to support their operations from tax revenues (as discussed in Section 2.F). They also may benefit from immunity provisions that can shield government entities from liability (as discussed in Section 3). This declaration of public purpose also supports an entity's ability to exercise rights of eminent domain to condemn private property when otherwise authorized by state law (as discussed in Section 4.C). This basic provision in most airport empowering acts thus serves a variety of purposes.

²⁶ For example, see UTAH CODE ANN. 72-10-304 (2010 Gen. Sess.) (various entities noted).

²⁷ See OKLA. STAT. ANN. tit. 3, § 65.15 (through 2010 2d Reg. Sess. ch. 479) (stating terms to be included in joint ownership agreement and requiring use of a joint board).

²⁸ For example, see, e.g., NEV. REV. STAT. ANN. § 494.100 (through 2009 Reg. Sess. & 2010 Sp. Sess.).

²⁹ See ARIZ. REV. STAT. ANN. § 28-8424 (through Jan. 11, 2011, 1st Reg. Sess.).

³⁰ W. VA. CODE ANN. §§ 17-27-2 (through 2010 2d Ex. Sess.).

³¹ See also App. A: State Codes (noting uniform law influences).

³² See *McClintock v. Rosenberg*, 127 Or. 698, 273 P. 331 (1929) (a public airport is for the benefit of the community, not any particular individuals, and it is therefore a public enterprise); *Fine Airport Parking, Inc. v. The City of Tulsa*, 2003 OK 27, 71 P.3d 5 (2003) (what constitutes a public purpose is generally a legislative matter).

³³ For example, see HAW. REV. STAT. § 261-11 (through 2010 Reg. & Sp. Sess.) (listed functions have public purpose); MD. CODE ANN., TRANSP. § 5-102 (through 2010 Reg. Sess.) (airport functions have public purpose).

³⁴ For example, see MINN. STAT. ANN. §§ 360.011 and 473.655 (through 2010 2d Sp. Sess.) (aeronautics act has public purpose).

Extent of Jurisdiction. Airport properties and operations may cross a variety of local boundary lines, and as such the jurisdiction of airport entities may raise conflicts with neighboring municipalities. Empowerment acts generally address these concerns by discussing the scope of the airport entity's jurisdiction. States may permit an airport entity to exercise control over its facilities whether they are located within or outside of the airport entity's own physical boundaries, the boundaries of adjoining municipalities, or state boundaries. Some provide that a given airport entity is under the exclusive jurisdiction of the political subdivision controlling it and that no other political subdivision has authority over the airport, regardless of where the airport is located.³⁵ State statutes have also addressed concerns for overlapping jurisdiction by limiting the annexation powers of jurisdictions surrounding an airport so that the airport cannot be made a part of a neighboring entity.³⁶

States sometimes address overlapping jurisdiction by requiring joint action or imposing consent requirements. For example, state laws may allow both an airport entity and a neighboring local government to exercise authority over roadways near the airport. If an airport is located within another entity's jurisdiction, some state laws require that the airport entity obtain the other jurisdiction's consent for certain actions. States also may address the power of a neighboring jurisdiction to impose fees or taxes on activities at the airport; some expressly prevent those measures, while others expressly allow them.³⁷

State laws also may address concerns for autonomy and oversight.³⁸ For example, Massachusetts retains a degree of oversight authority for airport entities by requiring that rules and regulations be approved by the state aeronautics agency.³⁹ Montana state law recognizes that impact and provides that an airport entity's actions and regulations must be consistent with federal requirements.⁴⁰

³⁵ For example, see DEL. CODE ANN. tit. 2, § 912 (through 2010, 77 Laws, chs. 1–476 and 2010 tec. corr.).

³⁶ For example, see KAN. STAT. ANN. § 3-307d (through 2010 Reg. Sess.).

³⁷ For examples, see NEB. REV. STAT. § 3-236 (through 2010 2d Reg. Sess.) (powers over roads and generally); VA. CODE ANN. § 5.1-31 (through 2010 Reg. Sess.) (requiring consent of neighboring jurisdiction and generally); WASH. REV. CODE ANN. § 14.08.330 (through 2011, chs. 1 & 2) (powers over roads, fees, and generally).

³⁸ In a survey of airport entities, many viewed their management functions as largely autonomous from other government entities. Among those reporting that another entity imposed constraints, some reported strong control by another government entity but many referred to specific areas, such as the adoption of a budget, where the airport entity was obligated to obtain another entity's approval. See App. B: Questionnaire Responses.

³⁹ See MASS. GEN. LAWS ANN. ch. 90, § 51J (through 2010 Ann. Sess., ch. 392).

⁴⁰ See MONT. CODE ANN. § 67-10-301 (2009).

Drafting Influences. When most states create airport empowerment statutes, they enumerate the various powers that an airport entity can exercise. This approach derives from early municipal law principles under which the courts strictly construed a statutory grant of government power in favor of the state. That principle of construction, known as "Dillon's Rule," originated in an 1868 case in which Justice John Dillon determined that "[M]unicipal corporations owe their origin to, and derive their powers and rights wholly from, the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so may it destroy. If it may destroy, it may abridge and control."⁴¹ Justice Dillon went on to write one of the earliest treatises on municipal law,⁴² which provided that while state powers are plenary (except as limited by state or federal constitutions), municipalities have only the powers that the state expressly grants to them.

Dillon's Rule required that municipal powers be specifically enumerated in state law during the early 20th century, when many local airport empowerment provisions were originally drafted. Most states later modified that rule in favor of broadly construing grants of state power to municipalities (subject to state imposed restrictions on those powers).⁴³ Regardless of when they were drafted, however, state empowerment provisions for airport entities tend to reflect this style of specifically enumerating authorized activities.

State empowerment provisions for airport entities also tend to reflect the Uniform Airports Act produced by the National Conference of Commissioners on Uniform State Laws ("National Conference").⁴⁴ The National Conference produced a Uniform Airports Act in 1935 that was formally adopted in two states, and its basic provisions are reflected in many state laws.⁴⁵ In particular, states incorporate the Uniform Act's broad general provision that "[m]unicipalities, counties, and other political subdivisions" [may] "separately or

⁴¹ *Clinton v. Cedar Rapids and the Mo. River R.R.*, 24 Iowa 455, 475, Iowa Sup. LEXIS 45,*12, 30 (June 1868).

⁴² JOHN F. DILLON, MUNICIPAL CORPORATIONS (1872).

⁴³ See *State v. Hutchinson*, 624 P.2d 1116 (Utah 1980) (rejecting Dillon's Rule); Frayda S. Bluestein, *Article: Do North Carolina Local Governments Need Home Rule?*, N.C. L. REV. (2006) (discussing the application of Dillon's Rule in North Carolina).

⁴⁴ The National Conference promulgated the Aeronautical Regulatory Act in 1935 (App. C, reprinted with permission of the National Conference of Commissioners on Uniform State Laws), the Aeronautics Act in 1922 (App. E, reprinted with permission of the National Conference of Commissioners on Uniform State Laws), the Air Licensing Act in 1930 (App. F, reprinted with permission of the National Conference of Commissioners on Uniform State Laws), and the Aircraft Financial Responsibility Act in 1954 (App. G, reprinted with permission of the National Conference of Commissioners on Uniform State Laws). Its aviation acts were withdrawn, however, as the federal government began regulating more extensively.

⁴⁵ See App. A: State Codes (noting uniform law influences by state).

jointly...acquire, establish, construct, expand, own, lease, control, equip, improve, maintain, operate, regulate and police airports and landing fields for the use of aircraft, either within or without the geographical limits of such municipalities, counties and other political subdivisions....⁴⁶

The Uniform Airports Act addresses a variety of other subjects as well that have influenced current state laws. It provides that airport lands are “acquired, owned, leased, controlled or occupied for public, governmental and municipal purposes.”⁴⁷ Airport property can be acquired by “grant, purchase, lease, or other means” if the parties can agree, and “otherwise by condemnation.”⁴⁸ The price to acquire property can be paid by “appropriation...[or] proceeds from the sale of bonds.”⁴⁹ It allows a municipality to vest authority for airport operations and development in an “officer, board or body,” but expenses remain the municipality’s responsibility.⁵⁰

The Uniform Airports Act also empowers airport entities to adopt regulations and fix penalties for violations; establish fees and charges and liens to enforce payment; and lease airports or portions of airports for limited periods of time, provided the public is not deprived of its rightful, equal, and uniform use thereof.⁵¹ It provides that local government may appropriate money for airports and cause that money to be raised by taxation, and allows airport entities to operate using money derived from airport operations.⁵² It empowers airport operators to purchase, lease, or condemn air rights to ensure safe approaches, as well as rights or easements (for a term of years or perpetually) to place suitable navigational marking and lighting in surrounding areas.⁵³ It also provides that when a municipality owns an airport outside its geographical limits, it can adopt and enforce police regulations for the airport.⁵⁴

Consistent with its purpose, the Uniform Airports Act states that its provisions are to be interpreted in accordance with other applicable laws and consistent with other states adopting its provisions.⁵⁵ Its influence has promoted common provisions of law regardless of whether a state has formally adopted the Uniform Airports Act.⁵⁶ These historic approaches under Dillon’s

Rule and the Uniform Airports Act continue to influence the detailed approach of many states when empowering airport operations.

Specific State Provisions. State empowerment provisions tend to implement a variety of common powers in addition to those mentioned in the Uniform Airports Act. Powers typically include the authority to establish fees; impose liens to secure payment; adopt reasonable rules, regulations, and airport minimum standards (regardless of where the airport is located); enter contracts; borrow money; issue bonds; pledge revenues to pay for bonds; hire employees and consultants; determine policy; participate in pension plans; prepare budgets; expend funds; lease or otherwise dispose of real property; grant concessions in airport facilities for commercial purposes or to supply goods and services; grant concessions to make available services that the municipality or its agent will furnish; appoint airport guards or police; fix penalties for violations of legal requirements; receive grants and gifts; obtain loans; make surveys and plans; condemn or otherwise acquire real or personal property; equip airports; cooperate with the federal government; develop projects; purchase materials; use municipal services; and exercise other incidental powers.⁵⁷ Some of these powers are discussed in more detail elsewhere in this digest.

In addition to these common powers, some powers of an airport entity also derive from the structure under which it is organized. For example, airport authorities (or corporations) typically have perpetual succession and the power to sue and be sued.⁵⁸ When airports are operated by municipalities and special districts (and sometimes by other entities), the airport entity often has authority to levy and collect taxes for the airport.

Individual states address a variety of other topics as well in state empowerment provisions. Some elaborate on the financial powers that an airport entity may exercise in addition to a general authorization to collect rates and charges or issue bonds. For example, many states impose, or may empower airport entities to impose and collect, a tax on aviation fuel.⁵⁹ In Alabama and Washington, statutes specifically authorize airport entities to impose customer facility charges in connection with rental cars or passenger facility charges pursuant to the federal program.⁶⁰ Kentucky state law specifies measures for addressing financial risks at

⁴⁶ Uniform Airports Act of 1935 § 1 (withdrawn 1943). Reprinted with permission of the National Conference of Commissioners on Uniform State Laws in this digest at App. D.

⁴⁷ *Id.* § 2.

⁴⁸ *Id.* § 3.

⁴⁹ *Id.* § 4.

⁵⁰ *Id.* § 5(a).

⁵¹ *See id.* § 5(b) and (c).

⁵² *See id.* § 6.

⁵³ *See id.* §§ 7–8.

⁵⁴ *See id.* § 6.

⁵⁵ *See id.* §§ 10–12.

⁵⁶ *See App. A: State Codes* (noting uniform law influences by state).

⁵⁷ *See App. A: State Codes* (noting citations for state empowerment provisions). For an example of how these provisions may be drafted, *see GA. CODE ANN.* § 6-4-7 (through 2010 Reg. Sess.).

⁵⁸ For example, *see ARK. CODE ANN.* § 14-362-104 (through 2010 Fis. Sess., incl. ARK. CODE REV. COMM. to Sept. 30, 2010).

⁵⁹ For example, *see ARK. CODE ANN.* § 14-362-109 (through 2010 Fis. Sess., incl. ARK. CODE REV. COMM. to Sept. 30, 2010).

⁶⁰ For example, *see ALA. CODE* § 4-2A-6 (through 2010 1st Sp. Sess.) (passenger facility charges); *WASH. REV. CODE ANN.* § 14.08.120 (2011 Leg., May 31, 2011) (customer facility charge).

airports, by stating that airport entities may procure insurance or become a self-funded insurer.⁶¹

Other state provisions elaborate on an airport entity's operational authority. For example, Vermont state law provides that some airports may be operated seasonally.⁶² California and New York state laws expressly authorize airport entities to regulate commercial aircraft maintenance or repairs on their premises or to buy and sell fuel, aircraft parts, and repair services.⁶³ Alabama provides for an airport entity to operate a sewage system or other utility system in furtherance of the airport.⁶⁴

Some state empowerment provisions elaborate on an airport's role in regulating or developing surface transportation to access the airport. Airport entities generally have authority to enforce traffic rules and maintain intermodal access to some degree. Under Mississippi law some airports have the authority to control all streets within a fixed distance from the airport or construct necessary facilities in areas surrounding the airport.⁶⁵ Airport entities also may have authority to operate other types of transportation facilities for passengers or cargo or both, such as railways and bus systems.⁶⁶

Many states specifically empower an airport entity to pursue commercial activities in addition to its airport operations.⁶⁷ For example, in various states the laws provide that an airport entity can pursue manufacturing plants, industrial plants, retail shopping areas, exhibits, and exhibitions; warehouse distribution facilities and facilities for training, offices, and other support; hotels and factories; public parks and restaurants; parking lots, motels, and gas stations; space for recreation, trade, sporting events, and public meetings; access toll roads; the selling of water services; the operation of water and sewage utility systems; educational institutions; and residential structures. Some laws also provide for the ability to maintain a foreign trade zone at or near the airport or pursue leases for

agriculture or oil and gas development.⁶⁸ States also may prohibit some of these commercial activities, and private providers can challenge whether the airport entity has authority to conduct activities in competition with them.⁶⁹

All of these elements—the airport's public purpose and other governmental attributes, the scope of its jurisdiction, traditional legislative drafting styles, and specific airport-related policies—create the grant of state powers that an airport entity may exercise. That grant is essential; while courts may interpret it broadly, statutory authority must still support an airport entity's actions or they will be considered void. Government entities have no power to act if a power has not been granted or if their actions contravene state law requirements. Thus the airport entity must conduct its operations and comply with federal obligations based on the scope of its empowering legislation.⁷⁰

II. ESTABLISHING STATE POLICIES FOR AIRPORTS

In many areas that relate to interstate transportation, federal legislation now preempts state regulation over airports. Yet that federal policy does not supplant a state's ability to establish a variety of local policies and priorities for its airports. State laws assert these interests through a state aeronautics agency that administers aviation policy in varying degrees. The agency's roles can include an oversight function for airports, investigation, licensing, authority to direct the flow of federal funds to local airports, and administering local funding mechanisms to complement federal support. This state authority can preempt the powers of local airport entities. States may assert aviation policies through other laws as well. Most commonly, states advance such interests through tax measures addressing airports and businesses that benefit from airports.

⁶¹ See KY. REV. STAT. ANN. § 183.120 (2010).

⁶² See VT. STAT. ANN. tit. 5, § 808 (2009–2010 Adj. Sess.) (seasonal operations).

⁶³ See CAL. GOV'T CODE § 50474.5 (2010 Reg. Sess., 2009–2010 1st–8th Ex. Sess.) (repairs); N.Y. GEN. MUN. LAW § 352 (McKinney, L.2010) (parts and services).

⁶⁴ For example, see ALA. CODE § 4-3-11 (through 2011 Reg. Sess.) (sewage and utility systems).

⁶⁵ See MINN. STAT. ANN. § 360.038 (through 2010 2d Sp. Sess.) (roadways).

⁶⁶ For example, see MISS. CODE ANN. § 61-3-15 (through 2010 Reg. & 1st & 2d Ex. Sess.) (development of intermodal facilities for passengers and cargo).

⁶⁷ Forty-four out of 46 airports responding to the survey at App. B reported that they have the legal authority to award concessions for business activities at the airport that may compete with other businesses in the vicinity. State authorizing provisions for these activities are contained in the code sections set forth at App. A: State Codes (noting citations for state empowerment provisions).

⁶⁸ For example, see MASS. GEN. LAWS ANN. ch. 91 App., § 1-3 (through 2010 Ann. Sess., ch. 392) (foreign trade zone); KAN. STAT. ANN. § 27-320 (through 2010 Reg. Sess.) (oil and gas).

⁶⁹ For example, see *Brown Flying School, Inc. v. Terre Haute Int'l Airport Auth.*, 911 N.E.2d 735 (Ind. App. Aug. 21, 2009) (flying school's complaint that airport entity lacked statutory authority to operate competing flight school dismissed on procedural grounds). See also § 3.B, *infra* (regarding antitrust issues).

⁷⁰ For example, see *Airport Auth. of City of St. Marys v. City of St. Marys*, 297 Ga. App. 645, 678 S.E.2d 103 (2009) (city's statutory authority allowed it to exclude airport authority from discussions concerning relocation of airport, and as such city did not violate any law or contract). See also § 3, *infra*, regarding the effect of empowerment provisions on an airport entity's liabilities and immunities; *Comair, Inc. v. Lexington-Fayette Urban County Airport Corp.*, 295 S.W.3d 91 (Ky. 2009) (examining in part powers conveyed by airport board's state authorizing statutes to determine whether board entitled to sovereign immunity to protect against tort liability in crash of commuter jet).

A. State Aeronautics Agencies

Most states have created a state agency or department that, to varying degrees, oversees aeronautics and administers aviation policies statewide. Similar to empowering provisions for airport entities, empowering provisions for state aeronautics agencies also reflect common drafting influences. In particular, many of these statutes are patterned on a uniform law produced by the National Conference, the Uniform Aeronautical Regulatory Act of 1935.⁷¹ This Act was adopted in three states, but its influence can be seen in the laws of many states.⁷²

The Uniform Act establishes the basic role of an aeronautics agency. It first defines many aeronautics terms and offers guidance for forming a state aeronautics function, such as by providing methods for appointing a board and specifying its powers.⁷³ It then provides that an aeronautics agency has authority to supervise aeronautics generally within the state, which includes the location and establishment of airports and other air navigation facilities. The Uniform Act allows an aeronautics agency to adopt rules and regulations, establish minimum aeronautical standards consistent with federal law, enforce its own requirements, and in general develop and promote aeronautics.⁷⁴

The Uniform Act also gives an aeronautics agency other specific powers and duties. The agency can conduct investigations and hold hearings concerning aviation using procedures as stated in the Uniform Act. Aeronautics employees and all municipal law enforcement officers have the authority to enforce the Act, including by injunction. They are authorized to conduct inspections of airport facilities at reasonable hours. A person who violates the Act, or any rules, regulations, or orders promulgated under it, is guilty of a misdemeanor and subject to fines and imprisonment. As with other uniform laws, the Act is to be interpreted in a manner consistent with the other states that adopt it.⁷⁵

The aeronautics laws of many states reflect the broad powers and specific responsibilities established in the Uniform Act.⁷⁶ Typically, a state aeronautics agency can exercise regulatory powers and supervise state aeronautics activities (whether or not it can own and operate airports) by issuing rules, regulations, minimum standards, and orders. Aeronautics agencies generally have the ability to work with federal and local government to foster air commerce and oversee a statewide system of airports (in coordination with the federal system). Aeronautics agencies may draft legisla-

tion regarding aeronautics and participate in aeronautics litigation and agency hearings.

State aeronautics agencies often may conduct investigations and hearings on aeronautics issues and have authority to inspect airport facilities. They are empowered to enforce state aeronautics requirements by police power (through designated employees) or by obtaining an injunction, and violations of a state's aeronautics act are normally a misdemeanor. Often these agencies may publish charts and airport directories, regulate safety, conduct studies, issue reports, enter contracts, employ personnel and consultants, purchase materials, and impose charges. These agencies are usually funded through appropriations, grants, gifts, and fees. Some states also give their aeronautics agencies authority to condemn or acquire lands and airport protection privileges, or to assist municipalities with those measures and with local zoning requirements.

State statutes have been known to include other specific powers within the role of an aeronautics agency as well. For example, some statutes provide aeronautics agencies with specific authority to help develop air service through the use of air marketing grants, feasibility studies, and statewide marketing programs; authorize them to create partnerships with military and aerospace industries; or empower them to provide financial assistance to support industrial and other compatible development at airports.⁷⁷ States may also give their aeronautics agencies a role in regulating specific activities, such as airport emergency plans, civil defense activities, spaceports, airport snow removal, or input on security plans at airports.

These statewide powers over aeronautics can substantially impact an airport entity. They can have a preemptive effect on actions by local government similar to the way that federal aviation regulations can preempt both state and local action. Federal regulation is preemptive when federal statutes expressly so provide, or when preemption can be implied because state and local laws would either conflict with the federal regulation or the federal regulation occupies the field to the point that it leaves no room for the exercise of concurrent powers.⁷⁸ Statewide aviation powers create a role for the state and normally local legislation cannot contradict the terms and policy of state legislation. Local actions are preempted to the extent that they conflict with broad state powers.⁷⁹

⁷¹ Reproduced in App. C with permission of the National Conference of Commissioners of Uniform Laws.

⁷² See App. A: State Codes (noting states with aeronautics act provisions).

⁷³ See Unif. Aeronautical Regulatory Act § 1.

⁷⁴ See *id.* §§ 1 and 5.

⁷⁵ See *id.* § 16.

⁷⁶ See App. A: State Codes (noting state aeronautics act provisions and uniform law influences).

⁷⁷ For example, see MINN. STAT. ANN. § 360.0151 (through 2010 2d Sp. Sess.) (marketing programs); FLA. STAT. ANN. § 332.006 (2011 1st Reg. Sess.) (industrial uses).

⁷⁸ See *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 112 S. Ct. 2608, 120 L. Ed. 2d 407 (1992).

⁷⁹ See *Garden State Farms, Inc. v. Bay*, 146 N.J. Super. 438, 370 A.2d 37, 39 (1977) (“[a] municipality may not contradict a policy the Legislature establishes”); *Township of Readington v. Solberg Aviation Co.*, 409 N.J. Super. 282, 976 A.2d 1100 (2009) (state aviation act could have a preemptive effect on conflicting local legislation); *City of Burbank v. Burbank-Glendale-Pasadena Airport Auth.*, 113 Cal. App. 4th 465, 6 Cal. Rptr. 3d 367 (2003) (determining that local restrictions

State aeronautics agencies thus provide the state with a means of asserting state policy and oversight in areas that involve local concerns, although in practice, an agency's actual operations may vary.⁸⁰ Aeronautics agencies may be most active in asserting state policy under their roles related to licensing and funding airports.

B. Licensing Airports

State licensing statutes often reflect the influence of the previously mentioned Uniform Aeronautical Regulatory Act of 1935.⁸¹ Under the Uniform Act, an aeronautics agency may license airports⁸² and may prohibit landings at locations other than at an airport.⁸³ The Act also imposes a licensing process under which airport entities must submit a license application to the agency.⁸⁴ The aeronautics agency may reject an airport entity's license application, or it may issue orders requiring or prohibiting certain things to be done.⁸⁵ The agency also may order that an airport be closed until its requirements are met. The Uniform Act provides that an aeronautics agency must state the reasons for its licensing actions and disclose any acts that an airport entity must take in order to obtain a license approval (or the modification of an agency order). It also includes an appeal process.⁸⁶

States typically include a licensing role within their state aeronautics agency that reflects the Uniform Act's basic structure.⁸⁷ Normally a state aeronautics agency must initially approve the site for an airport by issuing a certificate of approval. State statutes may include criteria to govern the agency's evaluation of a site, such as the degree to which it conforms to a statewide plan, location, master plan considerations, future expansion ability, and the nature of the site's terrain, noise issues, and proximity to other airports.⁸⁸

imposed on airport by voter initiative not effective because state aeronautics legislation determined to relate to a matter of statewide concern, thus precluding initiative measures on the subject); *Somerset Air Service v. Township of Bedminster*, 2007 WL 1774058 (N.J. Super. A.D. June 21, 2007) (state statute makes local zoning regulations inoperative so far as inconsistent with state act).

⁸⁰ See App. A: State Codes (noting state aeronautics act provisions). Two of the respondents to the survey at App. B: Questionnaire Responses noted that their state aeronautics acts are currently under revision.

⁸¹ Reproduced in App. C with permission of the National Conference of Commissioners of Uniform Laws.

⁸² Uniform Aeronautical Regulatory Act of 1935 § 9.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.* § 10.

⁸⁶ *Id.* §§ 11–13.

⁸⁷ The Uniform Aeronautical Regulatory Act contained these powers and influenced the laws in many states. See App. A: State Codes (noting states with aeronautics act provisions).

⁸⁸ For example, see IOWA CODE ANN. § 328.19 (through 2011 Reg. Sess., July 5, 2001).

State laws then often empower an aeronautics agency to issue an operating license and take other licensing actions, such as renewals and revocations. The aeronautics agency may be required to conduct a public hearing when taking these licensing actions. State laws also may specify criteria for revocation actions, such as failure to comply with state regulations, site abandonment, or a determination of unsafe conditions. Consistent with the Uniform Act, in most states if an aeronautics agency determines to deny an application or issue a revocation, it must state its reasons for taking the action and disclose any requirements to be met to reverse the action. Some states also exempt specific airports from licensing requirements, such as private airports, federal airports, public airports holding federal certificates, or agricultural airports.

States may express a variety of other policies in their licensing provisions as well. For example, West Virginia state law expands the role of its aeronautics agency in connection with making rules for an airport's design, location, construction, and operation.⁸⁹ States may empower their aeronautics agencies to close an airport runway or taxiway, or allow landing areas on beaches, or oversee a specific airport development such as the O'Hare Modernization Program.⁹⁰ State agencies may also retain authority to license heliports or establish emergency landing fields.⁹¹ As previously noted, these licensing powers prevail over any conflicting actions by local government.⁹² The state thus implements local aviation policy through its various licensing actions.⁹³

C. Channeling Federal Funds

Federal grants constitute an important source of funding for airport entities. While the federal government provides the funds, however, states can promote local policies by empowering a state aeronautics agency (or other state agency) to direct how local airport enti-

⁸⁹ W. VA. CODE ANN. § 29-2A-3 (through 2010 2d Ex. Sess.).

⁹⁰ See description of O'Hare Modernization Program at <http://www.cityofchicago.org/city/en/depts/doa/provdrs/omp.html>. For another example, see CAL. PUB. UTIL. CODE § 21605 (through 2010 Reg. Sess., 2009–2010 1st–8th Ex. Sess.) (runways and taxiways).

⁹¹ For example, see CONN. GEN. STAT. § 13b-46 (through Jan. 1, 2011, Gen. St., Rev.) (heliports and other functions).

⁹² See § 2.A, *infra*; See also *Garden State Farms, Inc. v. Mayor Louis Bay II*, 146 N.J. Super., 438, 370 A.2d 37 (1977).

⁹³ Federal law recognizes a state's licensing powers over airport locations. For example, federal grant assurance obligations require that local airport plans be "reasonably consistent" with the plans of public agencies authorized by the state where an airport project is located. See Grant Assurance No. 6, http://www.faa.gov/airports/aip/grant_assurances/media/airport_sponsor_assurance.pdf. However, typically the federal government has not permitted local governments that are not airport proprietors to exercise control over an airport's aeronautical activities through licensing measures; instead such actions may be considered preempted by federal law. See *Tweed-New Haven Airport Auth. v. Town of East Haven*, 582 F. Supp. 2d 261 (D. Conn. 2008).

ties may apply for and receive federal grants. In states taking this approach, these acts, known as “channeling acts,” often require that airport entities first obtain state approval to apply for the grant and then receive the funding through the state.

State channeling laws typically give an aeronautics agency authority to approve what projects may be submitted for federal grant funding as well as authority to approve the grant application itself. Normally they empower both the state and the agency to enter the federal agreements required to obtain the funding. The airport entity also enters an agreement with the aeronautics agency, and the state then acts as the airport entity’s agent to seek and disburse the funds. States with channeling acts may also empower the aeronautics agency to enter construction contracts on behalf of an airport entity and to supervise the work performed at the airport. The aeronautics agency normally must conduct these activities in compliance with state contracting laws except as otherwise prescribed by federal authorities.

States that adopt channeling acts may also make an exception for specific airport entities within the state, allowing them to apply for federal grants directly, such as for specified commercial service airports, regional airport authorities, airports certificated under 14 Code of Federal Regulations (C.F.R.) Part 139,⁹⁴ or reliever airports.⁹⁵ In these states, if an airport entity is empowered to pursue federal funding as the principal, it usually also has the option to appoint the state aeronautics agency as its agent. When a state acts as an airport entity’s agent to receive federal funds, the state might also be empowered to assume liabilities for the airport entity to some extent, such as by entering an indemnity agreement on behalf of the airport entity concerning the title to affected land.⁹⁶ States that have adopted channeling acts include some or all of these powers. Actual practices vary, but to the extent the state exercises this power, its aeronautics agency can act as a statewide administrator of federal funding to help implement state planning and policy objectives.

D. State Assistance

States also empower an aeronautics agency (or other state agency) to provide state resources to local airport entities. The revenues to fund these programs may come from state appropriations or from other revenues that the state receives, such as revenues from aviation fuel taxes and taxes on flight property; revenues from the operation of state facilities or services, the sale of seized or abandoned aircraft, and from state registration and licensing programs; the payment of penalties and sales of surplus property; the issuance of bonds; and gifts and donations. In addition to providing funding to local airports, state laws also authorize state

aeronautics agencies to provide engineering and other technical assistance (with or without charge).⁹⁷

Under a state grant program, an aeronautics agency may offer applicants independent state grants or “matching funds” in support of federal grant requirements. When determining whether to make these funds available to an airport entity, state laws require state agencies to consider specific eligibility criteria. For example, the law may limit the amount of funding available for a single project or for a given type of airport based on its size. States may indicate available uses for matching funds, or they may mandate the useful life of an airport receiving funding. States may also expressly allocate portions of this state funding to the airport where the revenues originated.⁹⁸

State grant programs generally focus on funding for airport development, but they also may fund other airport activities. For example, in various states, the law makes funding available for airport access projects, noise mitigation projects, programs for aviation safety and education, and airport planning projects. State law also may make local grants available in support of an airport entity’s air service and marketing activities, such as grants for air carrier recruitment programs, marketing activities, and air service subsidy programs for small communities.⁹⁹

Similar to federal grant programs, state grant programs may impose conditions on funding recipients. For example, in Illinois, state grant covenants obligate airport entities to remain open for public use for 20 years.¹⁰⁰ In Wyoming, the law allows the aeronautics agency to enforce proper maintenance at an airport receiving a state grant.¹⁰¹ In Tennessee, the state aeronautics agency may supervise a project funded by a local grant, or construction may be subject to the state’s technical design coordination and approval.¹⁰² Local grants may be conditioned on the airport entity acquiring title to property, establishing zoning authority to protect the airport, or charging landing fees on an equal basis to all airport users. Washington state law requires

⁹⁷ For example, *see* OR. REV. STAT. ANN. § 836.010 (through 2010 Sp. Sess.).

⁹⁸ For examples, *see* UTAH CODE ANN. § 72-10-202 (through 2010 Gen. Sess.) (size); FLA. STAT. ANN. § 332.006 (through 2010 2d Reg. Sess., ch. 274 & 2010 Sp. A. Sess., ch. 283) (uses stated); N.H. REV. STAT. ANN. § 422:36 (through 2010 Reg. Sess., ch. 381 & 2010 Sp. Sess., ch. 1) (where revenues originate).

⁹⁹ For example, *see* 20 ILL. COMP. STAT. ANN. 3958/15 and 3958/25 (through 2010 Reg. Sess., P.A. 96-1496) (recruitment); ME. REV. STAT. ANN. tit. 6, § 19 (through 2009 2d Reg. Sess.) (air service).

¹⁰⁰ *See* 620 ILL. COMP. STAT. ANN. 5/34 (through 2010 Reg. Sess., P.A. 96-1496).

¹⁰¹ *See* WYO. STAT. ANN. § 10-3-201 (through 2010 Bud. Sess.).

¹⁰² *See* TENN. CODE ANN. § 42-2-203 (through 2010 1st Ex. Sess. & 2010 Reg. Sess.).

⁹⁴ http://www.faa.gov/airports/airport_safety/part139_cert/.

⁹⁵ For example, *see* TEX. TRANSP. CODE ANN. § 21.114 (Vernon, through 2011 Reg. Sess., ch. 41) (reliever airports).

⁹⁶ For example, *see* S.D. CODIFIED LAWS § 50-7-19 (through 2010 Reg. Sess.).

the repayment of state assistance as a penalty for some violations of state grant covenants.¹⁰³

State assistance programs may also include a revolving loan program giving airport entities access to a specific fund. Under these programs, loans may be subject to stated durations, interest rates, and other requirements, and if airport entities do not repay loans as required, the state may be empowered to withhold those funds from other amounts that the state may be obligated to pay to the airport entity. As with state grant programs, state aeronautics agencies may impose eligibility requirements on revolving loan programs and limit the entities and projects on which funds may be expended. Other application requirements may be specified as well.¹⁰⁴

E. Other State-Authorized Assistance for Airports

Laws in every state support airport development and operations by authorizing airport entities to obtain funding from a variety of other sources. Some of those sources are not expressly reserved for aviation purposes. For example, state laws generally authorize municipalities to assist airport entities by gift, lease, loan, appropriation, or by issuing bonds, whether or not the municipalities own an airport. The law may authorize municipalities to enter cost-sharing agreements with airport entities as well.¹⁰⁵ State laws also typically provide that when municipalities participate in an airport authority, they may make contributions to the authority (or are obligated to levy taxes on its behalf).

Airport entities may also have access to funding through development or finance authorities created for purposes such as industrial development, economic development, or transportation. Funding through these agencies may rely primarily on the issuance of bonds.¹⁰⁶ The state also may provide airport entities with access to funds created for specific reasons, such as funds maintained to support the fishing industry, a ‘counter-cyclical’ stabilization fund, or specific disaster relief funds. In some instances, states also may provide for the use of public-private partnerships to carry out airport projects.¹⁰⁷ Among other examples, states may require certain airport entities to assist other airports by distributions of unneeded equipment. State law may

allow an adjoining state to provide funding for airport development or operations.¹⁰⁸

State laws also authorize airport entities to generate their own revenues or implement other funding measures.¹⁰⁹ Airport entities can collect rents and charges and use their own revenues to support airport development and operations. The state may also give some airport entities authority to levy taxes and spend tax proceeds for airport purposes. These airport entities may be municipalities with general government responsibilities, including taxing authority, or state laws may provide that an airport entity is a special district or other entity that has an independent authority to levy taxes and issue bonds.¹¹⁰

State laws typically authorize airport entities to obtain financing by issuing bonds as well. Government bonds are subject to detailed legal requirements, but in general, airport entities are authorized to incur debt, issue obligations, and give security for those obligations. Airport entities generally issue revenue bonds (secured by airport revenues) or general obligation bonds (secured by taxes), but state laws often expressly allow them to participate in other types of debt obligations as well, such as refunding bonds, notes, warrants, tax or grant anticipation notes, revenue certificates, interest rate swaps, hedges, credit enhancement facilities, loan contracts, and other obligations. California state law also provides that airport entities have access to private sector investment capital.¹¹¹

State laws can permit a variety of options for securing bond obligations. Typically obligations may be secured by airport revenues, and in connection with that commitment states may also provide that the airport entity cannot change its fixed contract revenues while the commitment is in effect.¹¹² General obligation bonds issued for the benefit of an airport are secured by a general tax levy, and they typically rely on the credit of a larger municipality. A state also may allow bonds to be secured by a mortgage on airport facilities, and in such a case, the bondholders may have a right to foreclose in the event of a default and petition the court to

¹⁰³For example, *see* KY. REV. STAT. ANN. § 183.764; MINN. STAT. ANN. § 360.021 (zoning requirements); WASH. REV. CODE ANN. § 47.68.090 (through 2011, May 31, 2011) (repayment).

¹⁰⁴For example, *see* IND. CODE ANN. §§ 8-21-11-8 (through 2010 2d Reg. Sess.).

¹⁰⁵For example, *see* WASH. REV. CODE ANN. § 14.08.310 (through 2011, ch. 1 & 2).

¹⁰⁶For example, *see* ARIZ. REV. STAT. ANN. §§ 35-701, 41-4501 (through Jan. 11, 2011, 1st Reg. Sess.).

¹⁰⁷For example, *see* N.J. STAT. ANN. § 34:1B-7.13 (through L.2011 c. 140 and J.R. No. 8) (providing for certain public-private partnerships).

¹⁰⁸For example, *see* ARIZ. REV. STAT. ANN. § 28-8422 (through Jan. 11, 2011, 1st Reg. Sess.) (adjoining state); COLO. REV. STAT. ANN. § 43-10-110.7 (through 2011 1st Reg. Sess.) (city and county of Denver to convey unneeded equipment to aeronautics division for redistribution).

¹⁰⁹Passenger facility charges are a significant source of revenue to some airports, but as a federal program they are not discussed in this study. Customer facility charges used to fund car rental facilities are discussed in § 5, *infra*.

¹¹⁰For example, *see* GA. CODE ANN. § 48-8-111 (through 2010 Reg. Sess.) (raising revenues through sales and use taxes); W. VA. CODE ANN. § 7-11B-3 (through 2010 2d Ex. Sess.) (airport participation in state tax increment financing act); 70 ILL. COMP. STAT. ANN. 5/13 (through 2010 Reg. Sess., P.A. 96-1496) (providing taxing authority to airport).

¹¹¹CAL. GOV'T CODE § 5956.2 (through 2010 Reg. Sess., 2009–2010 1st–8th Ex. Sess.).

¹¹²For example, *see* TENN. CODE ANN. § 42-5-115 (through 2010 1st Ex. Sess. & 2010 Reg. Sess.).

appoint a receiver to operate the airport. Conversely, a state may expressly prohibit an airport entity from mortgaging airport property in connection with bonds.¹¹³

State laws may impose a number of requirements on bonds issued for an airport. These bonds are typically tax-free under state law, but some states impose specific taxes such as transfer or franchise taxes.¹¹⁴ States typically place limitations on how much debt a government entity may incur, and airport bond issuances may or may not be subject to limitations on authorized indebtedness.¹¹⁵ State laws may impose covenants on airport entities concerning the issuance of bonds, such as covenants requiring them to procure insurance or maintain adequate rentals. Many other common requirements apply to issuing government bonds. Airport-specific laws regarding issuing bonds normally are construed consistent with a state's other applicable laws.¹¹⁶

State laws may expressly authorize airport entities to use bond issuances for a specific purpose. For example, states may permit airport entities to issue special facility bonds, which finance a tenant facility based on entering a long-term lease. The law may impose additional requirements. Under Minnesota state law, when these bonds are issued for the benefit of an airline, the airline must maintain its headquarters in that location and take other steps to expand its facilities and services, prevent job loss, promote economic activity, and ensure growth and diversification of the tax base.¹¹⁷ Special facility bonds may be issued for a variety of revenue-producing facilities at airports, but their use may be less common under recent case law.¹¹⁸

In some instances, state laws may allow an airport division to use resources that are generated by the other operations of its parent entity. For example, Kan-

sas state law authorizes a municipality to pay for airport operations from the revenues of a public utility. The municipality may pay for airport expenses from the earnings of its water and electric plants when revenues are not needed for those operations, and the municipality may adjust water and electric rates to pay for airport costs and bonds.¹¹⁹ Other financing alternatives may be available to airports, and in general, state laws tend to provide a broad range of alternatives to support airport development and operations.

F. Tax Measures at Airports

States also express their aviation policies through tax measures. When addressing tax issues for the airport entity itself, states generally recognize the governmental nature of the entity and promote airport activities by exempting airport property and income from state and local taxes. Generally this is true even when an airport is owned by an adjoining state. If an airport entity owns property that it does not use for the purposes of a public airport, however, such as property used for residential, commercial, or industrial purposes, that portion of the property may be subject to taxation.¹²⁰ State laws also may make an airport entity subject to payments in lieu of taxes, such as payments in connection with school districts.¹²¹

The state may implement a variety of other airport-specific policies through the tax law that it applies to airport entities. For example, in Wyoming, state airport property may only be tax exempt when charges for the use of airport facilities do not exceed the cost of operations and maintenance.¹²² Privately owned airports may be subject to taxation, or state laws may permit tax exemptions based on a local vote, or for specific areas such as runways and taxiways, or when a privately owned, public-use airport is available for use without charge.¹²³ State laws typically exempt an airport entity's purchases from sales and use taxes.¹²⁴ In general, state tax policies normally remove tax burdens from public airports.¹²⁵

¹¹³ See N.M. STAT. ANN. § 3-39-13 (through 2010 2d Reg. Sess. & 2d Sp. Sess.) (permitting foreclosure); IND. CODE ANN. § 8-21-9-26 (through 2011 Pub. Law, June 28, 2011) (prohibiting mortgage).

¹¹⁴ For example, see W. VA. CODE ANN. § 13-2D-12 (through 2011 2d Extra Sess.) (airport development bond revenues exempt from taxation except transfer and other specified taxes).

¹¹⁵ For example, see OHIO REV. CODE ANN. § 133.05 (through 2010, filed with Sec. of State Jan. 26, 2011).

¹¹⁶ For example, see S.D. CODIFIED LAWS § 50-8-12 (through 2010 Reg. Sess.); S.C. CODE ANN. § 55-9-20 (2010 Reg. Sess.).

¹¹⁷ See MINN. STAT. ANN. § 473.6021 (through 2010 2d Sp. Sess.).

¹¹⁸ See *Wilmington Trust Co. v. County of Allegheny*, 2005 U.S. Dist. LEXIS 19618 (W.D. Penn. Sept. 9, 2005) (holding airport entity terminated lease subject to special facility financing based on provisions allowing termination in the event of bankruptcy filing, and determining that while a subsequent lease was entered without providing for payment to bondholders, plaintiff did not have a Section 1983 action for deprivation of a property interest; related state claims were dismissed for lack of jurisdiction); *Wilmington Trust Co. v. County of Allegheny*, 640 F. Supp. 2d 643 (W.D. Pa. 2009) (denying bondholder claims based on trespass, contract, and duty to bondholders in connection with special facility financing).

¹¹⁹ See KAN. STAT. ANN. § 3-127 (through 2010 Reg. Sess.).

¹²⁰ For example, see NEV. REV. STAT. ANN. § 361.157 (through 2009 Reg. Sess. & 2010 Sp. Sess.).

¹²¹ For example, see N.H. REV. STAT. ANN. § 423:9 (through 2010 Reg. Sess., ch. 381 & 2010 Sp. Sess., ch.1).

¹²² See WYO. STAT. ANN. § 39-11-105 (through 2010 Bud. Sess.).

¹²³ For example, see TENN. CODE ANN. § 67-5-219 (through 2011 1st Reg. Sess.) (exempting runway and apron areas of private public-use airports).

¹²⁴ For example, see N.D. CENTURY CODE § 57-43.1-08 (through 2009 Reg. Sess.) (fuel used in construction subject to tax refund).

¹²⁵ This policy also is consistent with federal requirements that prohibit an airport entity from diverting airport revenues to nonairport uses, and the federal government gives closer scrutiny to an airport entity's transfers to other government entities. See 49 U.S.C.A. §§ 47107(l) and 47113; Policy and Procedures Concerning the Use of Airport Revenue, 64 Fed. Reg. 7696 (Feb. 16, 1999).

State tax policies regarding airports can also affect a variety of private interests that benefit from airport operations. These private interests may be subject to state or local taxes or charges, or they may benefit from tax immunities or exemptions. For example, states may impose a tax on airport tenants' real and personal property and on the privilege of using public airport property under a lease agreement.¹²⁶ They may expressly tax some commercial functions at an airport, such as tie down spaces or leasehold improvements, and they also may require airport tenants to make payments in lieu of taxes (especially when development is not aviation-related).¹²⁷ Some states, however, exempt tenant leased property from privilege taxes if the property is being used for public purposes, such as with concessionaires providing services to the public or fixed base operators providing aeronautical services.¹²⁸

States also generally impose personal property taxes on privately owned aviation equipment, such as by imposing airline flight property taxes, a utility tax or excise tax on aircraft, or taxes on aircraft that are based in the state.¹²⁹ Various states may create specific exemptions as well, such as for equipment used in making transient use of the airspace, government aircraft, collector and recreational aircraft, agricultural aircraft, hot air balloons, and other specifically identified operations. State laws also may impose taxes on other private activities at airports, such as providing parking facilities at or near the airport, use of the airport by ground transportation vehicles, and car rental charges at air-

¹²⁶ For example, see MINN. STAT. ANN. § 360.521 (through 2010 2d Sp. Sess.) (tax on airline aircraft).

¹²⁷ For example, see CONN. GEN. STAT. § 12-19a (through 2011 Jan. Reg. Sess., June Sp. Sess. and Oct. Sp. Sess.) (requiring certain payments in lieu of taxes).

¹²⁸ For example, see UTAH CODE ANN. § 59-4-101 (through 2010 Gen. Sess.) (concessionaire exemption); MINN. STAT. ANN. § 272.01 (through 2010 2d Sp. Sess.) (FBO exemption). See, e.g., *Lehigh-Northampton Airport Auth. v. Lehigh County Bd. of Assessment*, 585 Pa. 657, 889 A.2d 1168 (2005) (hangar space used by commercial service airlines was within airport authority's governmental purpose and immune from property taxation; immunity from property taxation was assumed unless authority acted outside of its authorized governmental purposes); *City of York v. York County Bd. of Equalization*, 266 Neb. 297, 664 N.W.2d 445 (2003) (city land leased as buffer zone for airport and incidentally used for agriculture was exempt from taxation); *In re Board of Property Assessment*, 797 A.2d 414 (Pa. Cmwlth. 2002) (subleased facilities selling candy and alcoholic beverages reasonably necessary for efficient operation of airport and thus exempt from taxation); *City of Little Rock v. McIntosh*, 319 Ark. 423, 892 S.W.2d 462 (1995) (leases for car rental facilities and aircraft service centers at airports did not exclusively serve public purpose and thus property subject to ad valorem taxes; federal law did not dictate the analysis in state tax cases); *Charleston County Aviation Auth. v. Wasson*, 277 S.C. 480, 289 S.E.2d 416 (S.C. 1982) (lease of property to airlines, car rentals, ground transportation, gift shop, etc., fell within exemption from ad valorem taxes).

¹²⁹ For example, see UTAH CODE ANN. §§ 59-2-404 and 72-10-116 (through 2010 Gen. Sess.).

ports.¹³⁰ Local taxes generally apply as well, and in some cases, state law allows both the airport entity and the jurisdiction where an airport is located to impose taxes such as occupation and business activity taxes.¹³¹

Some states impose a tax on aviation fuels, including jet fuel and aviation gasoline.¹³² Many also create aviation fuel tax exemptions or rebates that reflect local aviation policies. For example, Michigan state law makes airlines eligible to receive refunds when they operate scheduled intrastate service, and Kentucky law permits refunds for all aircraft transporting persons or property.¹³³ In Utah, refunds are structured based on what airports an airline uses.¹³⁴ State policies also may exempt specific operations from these taxes, such as charitable flights, air ambulance services for low-income patients, or agricultural flying.

States also may use their tax policies to promote airport development or specific kinds of aviation activity. At least one state court found such statutes to be constitutionally permissible due to existing federal aviation legislation.¹³⁵ For example, among various states, local laws may create tax benefits to promote airline development at a hub facility (or other capital investments); to promote purchases of aircraft parts and material by a hub or commuter airline; for specific airline invest-

¹³⁰ For example, see N.D. CENTURY CODE § 40-57.3-01.2 (through 2009 Reg. Sess.).

¹³¹ For example, see TENN. CODE ANN. § 42-4-116 (through 2010 1st Ex. Sess. & 2010 Reg. Sess.). While federal law does not preempt local taxation of these interests, where that taxation conflicts with federal policy, preemption may be found to prohibit a local tax. See *Township of Tinicum v. U.S. Dep't of Transp.*, 582 F.3d 482 (3d Cir. 2009) (a nonproprietor local government could not assert taxing authority over the landing of aircraft, even where landings occurred on the nonproprietor's land).

¹³² In the survey at App. B: Questionnaire Responses, 9 out of 46 respondents reported using tax revenues at their airports and referred to fuel tax revenues that were used to fund state grant programs.

¹³³ See MICH. COMP. LAWS ANN. § 259.203 (through P.A. 2010, No. 266, Reg. Sess.) (intrastate service); KY. REV. STAT. ANN. § 138.341 (through 2010) (transporting persons or property).

¹³⁴ See UTAH CODE ANN. §§ 59-13-401 and 59-13-402 (through 2010 Gen. Sess.).

¹³⁵ See WIS. STAT. ANN. § 70.11 (through 2009 Act 406, pub. June 2, 2010) (incentives). See also *Nw. Airlines, Inc. v. Wis. Dep't of Revenue*, 293 Wis. 2d 202, 717 N.W.2d 280 (2006) (finding that because 49 U.S.C.A. 40116 specifically authorizes states to impose ad valorem taxes on airline property, it precludes a dormant Commerce Clause challenge to a state tax exemption for airline hub property due to this clear and unambiguous authorization to tax transportation property (provided tax rates or ratios did not exceed those of comparison group); also finding a rational basis for tax classification under equal protection challenge). Varying circumstances, however, may alter the legal analysis. See *West Lynn Creamery, Inc. v. Jonathan Healy*, 512 U.S. 186; 114 S. Ct. 2205; 129 L. Ed. 2d 157 (1994) (invalidating state tax assessed on milk produced out of state and distributed to in-state dairy farmers).

ments and gross wages within the state; for cargo operators involved in importing or exporting; for entering leases covering certain acreage; for flying specific types of routes; or for development within a designated airport development zone.¹³⁶ Tax benefits can take different forms, such as assessing equipment at a lower percentage of its value or applying tax benefits to materials consumed during flight.

States also may use tax policies to address the effects of flight in communities surrounding an airport. For example, in a few states, property may be eligible for a tax credit within certain federally established noise-affected areas, or job tax credits may be available for businesses in areas adversely impacted by airport expansion.¹³⁷ State tax policy can vary widely, but the examples in this section illustrate the scope of the policy interests that states pursue through their tax codes to promote air transportation and airport operations.

III. STATE PROTECTIONS FOR AIRPORT RESOURCES

State laws typically demonstrate a policy of protecting airport entities, and this section will review common protections enacted by states. Since these entities are a part of state or local government, protecting them against loss and liability is primarily a function of the state. Federal law provides airport entities with few such protections, but it does not preempt such protections. Some state protections are financial in nature, such as requirements for accounting measures and lien rights to protect airport revenues. Others provide legal protections for airport business activities against antitrust liability. Many states also have enacted express immunity provisions covering other potential claims against airports.

A. Statutory Protection of Airport Revenues and Assets

States may allow or obligate airport entities to maintain their revenues in a segregated fund that is held in trust for airport purposes.¹³⁸ This approach reflects federal requirements that prohibit airport revenues and

assets from being diverted to nonairport uses.¹³⁹ It also reflects the governmental structure that is applicable to some airport entities. As revenue-generating components of government, airports are generally considered to be an “enterprise” activity of government, and for accounting purposes they are typically maintained in a fund that is not commingled with the other revenues of a parent entity.

States may impose other requirements governing the use of airport revenues as well. They may provide that revenues be used first for operating expenses, then to pay bond expenses, and then to finance airport improvements.¹⁴⁰ State law also may expressly prohibit a specific use, such as a law prohibiting airport participation in the construction or operation of a public transit system using rail.¹⁴¹ State law may require that airport entities be periodically audited, and it may impose penalties if an entity refuses to comply with audit requirements or in connection with the misuse of funds.¹⁴² States also may require airport entities to file financial reports with other branches of government.¹⁴³

Some state laws address lien rights that affect property at an airport. Most states include statutes that provide airport entities with a lien to help them collect revenues owed by airport tenants and users.¹⁴⁴ Airport entities typically can assert a lien against aircraft to secure payment for the cost or reasonable value of supplies, space, facilities, or services furnished by the airport entity. Some also expressly allow a lien on aircraft for the payment of landing fees.¹⁴⁵ State laws extend these lien rights for use by airport tenants as well (or allow the airport entity to so extend them) or to persons furnishing fuel to aircraft. These state laws may also allow a lien against an aircraft to the extent that the aircraft causes damage.¹⁴⁶ General laws regarding governmental entities also may protect airport property from being placed under a lien, such as for the tax defi-

¹³⁶ For examples, see N.C. GEN. STAT. ANN. § 105-164.13 (through 2010 Reg. Sess.) (parts for hub airline); KY. REV. STAT. ANN. § 144.110 (through 2010) (airline investments); MISS. CODE ANN. 27-7-22.25 (through 2010 Reg. & 1st & 2d Ex. Sess.) (cargo operators); LA. REV. STAT. ANN. § 47:3204 (through 2010 Reg. Sess.) (parts and equipment purchased by domiciled commuter airline); MINN. STAT. ANN. § 270.074 (through 2010 2d Sp. Sess.) (incentives for certain levels of intrastate service to small or medium-sized communities); HAW. REV. STAT. § 239-6 (through 2010 Reg. & Sp. Sess.) (incentives for providing discounted fares to school groups).

¹³⁷ For example, see MD. CODE ANN., Tax-Prop. § 9-216 (through 2011 Reg. Sess. and 2011 Sp. Sess.) (noise-related tax credit).

¹³⁸ For example, see N.H. REV. STAT. ANN. § 423:6 (through 2011 Reg. Sess., ch. 269).

¹³⁹ See 49 U.S.C.A. §§ 47107(1) and 47113; Policy and Procedures Concerning the Use of Airport Revenue, 64 Fed. Reg. 7696 (Feb. 16, 1999).

¹⁴⁰ For example, see ARK. CODE ANN. § 14-362-122 (through 2010 Fis. Sess., incl. ARK. CODE REV. COMM. to Sep. 30, 2010).

¹⁴¹ See UTAH CODE ANN. § 72-10-215 (through 2010 Gen. Sess.).

¹⁴² For example, see ALA. CODE § 23-1-362 (through 2010 1st Sp. Sess.). See also *City of Chicago v. Holland*, 206 Ill. 2d 480, 795 N.E.2d 240 (2003) (state auditor general could not conduct compliance and management audits under new law permitting audits of airports where none of city’s affected airports received any money from the state treasury).

¹⁴³ For example, see IOWA CODE ANN. § 330.22 (through 2011 Reg. Sess.).

¹⁴⁴ Lien rights were included in the Uniform Airports Act that influenced laws in many states. See App. B: State Codes (noting uniform law influences by state).

¹⁴⁵ For example, see CAL. CIV. PROC. CODE § 1208.61 (through 2010 Reg. Sess., 2009–2010 1st–8th Ex. Sess.).

¹⁴⁶ For example, see NEV. REV. STAT. ANN. § 493.060 (through 2009 Reg. Sess. and 2010 Sp. Sess.).

ciencies of a tenant or in connection with airport construction work.

State laws sometimes help airport entities enforce their lien rights as well. For example, states may prioritize an airport entity's liens above all others except tax liens. In Wisconsin, statutes allow an airport entity to retain possession of an aircraft to enforce its lien rights by prohibiting the aircraft's removal after the airport entity has served or posted notice of the lien, or by permitting the airport entity to create regulations for taking possession of and selling the aircraft. State laws may give an airport entity broad power to attach a debtor's equipment and assist it with pursuing a lawsuit.¹⁴⁷

State statutes also may assist airport entities by imposing liability on parties that damage an airport. Many states have implemented portions of the Uniform State Law for Aeronautics of 1922,¹⁴⁸ which provided laws focusing on liability for flying an aircraft.¹⁴⁹ Among provisions that may benefit an airport entity, states adopting these laws may provide that an aircraft owner and lessee are both strictly liable for injuries to persons or property on the surface caused by flight or by falling objects (unless caused by the negligence of the injured person). These laws also provide that if an aircraft damages a party, the party possesses a lien on the aircraft to the extent of the damage caused. Through these various means, state laws protect airport assets and revenues and facilitate an airport entity's ability to pursue claims.

B. Antitrust Immunity

Airports conduct business activities for a public purpose. The private sector, however, may be capable of performing some of those same business activities, and airports actions also might disrupt competition in the private sector by imposing regulations or by entering contracts for exclusive dealings. Some of these actions have been challenged as violating antitrust prohibitions. The federal Sherman Antitrust Act prohibits contracts or combinations in restraint of trade and trade monopolies, and states generally enact similar prohibitions.¹⁵⁰

Courts often find that challenges alleging antitrust violations fail, particularly those based on contracts for exclusive dealings, because the actions alleged do not violate the laws by displacing or damaging competition

in a definable market. For example, in *Capital City Cab Service, Inc. v. Susquehanna Area Regional Airport Auth.*, a court found that the plaintiff had not alleged an antitrust violation when claiming that an airport's exclusive cab service agreement violated federal antitrust laws because the airport did not constitute the overall market for cab services, and thus the restrictions did not damage the market.¹⁵¹ If a plaintiff does not adequately plead harm to a definable market, the airport entity may move to dismiss an antitrust action for failing to state a claim.

If an antitrust action is well-pleaded, airport entities may seek immunity from the application of federal antitrust laws.¹⁵² Actions by state legislatures, governors, and highest courts have absolute immunity from these laws under federalism principles. The courts have found that these laws did not intend to displace state sovereignty.¹⁵³ State agencies and local government may also benefit from this immunity when they are acting pursuant to a clearly articulated and affirmatively expressed state policy under which displacing competition in a given market is a foreseeable consequence.¹⁵⁴ This "state action" or

¹⁵¹ See *Cap. City Cab Serv., Inc. v. Susquehanna Area Reg'l Airport Auth.*, 2007 U.S. Dist. LEXIS 28527 (M.D. Pa. 2007) (an earlier decision determined that the Harrisburg airport was not immune from federal antitrust prohibitions because state statutes did not authorize it to displace competition in the cab industry, but this court found that the plaintiff had not stated an antitrust claim because the airport did not constitute the market for local cab services, and thus competition in the market was not damaged by an exclusive dealing agreement).

¹⁵² For example, see *Delta Turner, Ltd. v. Grand Rapids-Kent County Convention/Arena Auth.*, 600 F. Supp. 2d 920 (W.D. Mich. 2009) (discussing pleading requirements, and finding that a claimed antitrust violation regarding a marketing agreement's effect on local music venues survived a motion to dismiss). Courts have also considered immunity issues without addressing the initial question of whether an antitrust claim was properly pled. For example, see *Scott Aviation, Inc. v. DuPage Airport Auth.*, 393 F. Supp. 2d 638 (N.D. Ill. 2005) (focusing on antitrust immunity rather than the elements required to allege a cause of action, and finding no basis for immunity in exclusive fueling arrangements).

¹⁵³ See *Parker v. Brown*, 317 U.S. 341, 350–351, 63 S. Ct. 307, 314, 87 L. Ed. 315 (1943) (the federal Antitrust Act is designed to "suppress combinations to restrain competition and attempts to monopolize by individuals and corporations...[not] to restrain a state or its officers or agents from activities directed by its legislature").

¹⁵⁴ See *Town of Hallie v. City of Eau Claire*, 471 U.S. 34, 42, 105 S. Ct. 1713, 1714, 85 L. Ed. 2d 24 (1985) (finding state legislation sufficient to provide immunity where it authorized city's sewage treatment practices in a manner that had a foreseeable anticompetitive effect; "the legislature need not expressly state in the statute or in the legislative history that it intends for the delegated action to have anticompetitive effects"). See also *Deak-Perera Hawaii, Inc. v. Dep't of Transp.*, 745 F.2d 1281 (9th Cir. 1984) (state DOT was a department of state government's executive branch and as such entitled to state action immunity equal to that of a state legislature and supreme court; state DOT met tests for extending immunity

¹⁴⁷ For examples, see ALA. CODE § 4-4-9 (through 2010 1st Sp. Sess.) (priority); WIS. STAT. ANN. § 779.43 (through 2009 Act 406, pub. June 2, 2010) (retain possession of aircraft).

¹⁴⁸ Reprinted herein at App. E by permission of the National Conference of Commissioners of Uniform State Laws.

¹⁴⁹ See App. A: State Codes (noting uniform law influences by state).

¹⁵⁰ See 15 U.S.C.A. §§ 1 and 2 (through P.L. No. 112-23 approved June 29, 2011). The Clayton Act also prohibits specific anti-competitive acts and permits treble damages for violations under that Act and the Sherman Act. See 15 U.S.C.A. §§ 12-27 (through P.L. No. 112-106, approved Apr. 5, 2012).

“Parker” immunity doctrine may also shield private participants in the action if the state actively supervises their implementation of the state’s expressed policy.¹⁵⁵ The Supreme Court has clearly established these immunity doctrines for government regulatory actions, but it noted that the doctrines may not always shield government if it acts as a market participant.¹⁵⁶

State empowerment legislation thus plays an important role in helping an airport entity obtain immunity from antitrust liability. Legislation must be sufficient to make the anticompetitive effects of an action foreseeable. State statutes also may expressly endorse anticompetitive actions. For example, Rhode Island statutes state that an airport entity is authorized to impose charges on rental car customers regardless of whether those charges have an anticompetitive effect.¹⁵⁷ States also may expressly authorize airport entities to displace or limit competition, whether directly or through the grant of an exclusive franchise, when conducting activities such as leasing motor vehicles, licensing concessions, and in ground transportation matters.¹⁵⁸

If state legislation is not adequate to provide federal antitrust immunity to an airport entity, these entities will nonetheless have immunity from monetary awards under the Local Government Antitrust Act of 1984.¹⁵⁹ Pursuant to that Act, local government (and officials and employees acting in their official capacity) are not liable for damages, interest on damages, costs, or attorney’s fees for violations of federal antitrust laws, and actions pursuing those claims must be dismissed.¹⁶⁰ This Act does not, however, protect airport entities

under “state action” doctrine as well, although the court believed such a test was not appropriate for this agency); *Rectrix Aerodome Centers, Inc. v. Barnstable Mun. Airport*, 534 F. Supp. 2d 201, 203 (D. Mass. 2008) (fixed base operator brought federal antitrust claim regarding application of airport fuel policies, but court found state authorizing legislation foreseeable would result in anticompetitive effects, and no market participant exception applied).

¹⁵⁵ See *Cal. Retail Liquor Dealer’s Ass’n v. Midcal Aluminum, Inc.*, 445 U.S. 97, 100 S. Ct. 937, 63 L. Ed. 2d 233 (1980).

¹⁵⁶ See *City of Columbia v. Omni Outdoor Adver., Inc.*, 499 U.S. 365, 111 S. Ct. 1344, 113 L. Ed. 2d 382 (1991) (city billboard zoning exempt from antitrust laws).

¹⁵⁷ See R.I. GEN. LAWS § 1-2-1.1 (through 2010 Jan. Sess., ch. 320).

¹⁵⁸ For examples, see NEV. REV. STAT. ANN. §§ 244.187, 244.188 (through 2009 Reg. Sess. & 2010 Sp. Sess.) (taxicabs and concessions); CAL. PUB. UTIL. CODE §§ 21690.8 to 21690.10 (through 2010 Reg. Sess., 2009–2010 1st–8th Ex. Sess.) (airport regulations and agreements may displace competition and create monopoly services).

¹⁵⁹ 15 U.S.C.A. §§ 34-36 (through P.S. 112-23 approved June 29, 2011).

¹⁶⁰ See *Montauk-Caribbean Airways, Inc. v. Hope*, 784 F.2d 91 (2d Cir. 1986) (Local Government Antitrust Act barred airline antitrust action seeking damages based on town’s refusal to allow airline to operate carrier and fixed-base operator services year round).

against actions for injunctive or declaratory relief under federal law.

Cases have considered a variety of circumstances at airports under federal antitrust challenges. For example, in *Commonwealth of Pennsylvania v. Susquehanna Area Regional Airport Authority*, a joint airport authority faced an antitrust challenge when it exercised eminent domain in a manner that effectively eliminated the only other provider of airport parking. Its state authorizing legislation expressly prohibited the authority from interfering with existing businesses by establishing competitive enterprises. A court determined, however, that the authority’s condemnation power was entitled to federal antitrust immunity because state law empowered municipalities to displace existing competition when exercising eminent domain.¹⁶¹

Courts sometimes find that broad state authorizing legislation is sufficient to permit immunity for an airport entity’s actions, but broad language is subject to judicial analysis and ambiguities can add complexity. For example, in *Rectrix Aerodome Centers v. Barnstable Municipal Airport*, a court found that a municipal airport commission’s fueling policies were immune from the federal antitrust laws after finding that their adoption was sufficiently empowered by general state authorizing legislation granting regulatory powers.¹⁶² In *Cedarhurst Air Charger, Inc. v. Waukesha County*, a federal court determined that an airport’s broad state empowerment language did not authorize anticompetitive actions and that the airport could not require aircraft owners to use a single fuel supplier. Subsequently, however, a state court considering taxicab issues in that jurisdiction found that airport actions taken under broad state empowerment provisions generally would not give rise to state antitrust liability.¹⁶³

Courts can extend state action immunity to protect the actions of airport concessionaires in some

¹⁶¹ *Commonwealth of Pennsylvania v. Susquehanna Area Reg’l Airport Auth.*, 423 F. Supp. 2d 472 (M.D. Pa. 2006) (noting it was clear that eminent domain contemplated that government might displace a private entity vying for the same property).

¹⁶² See *Rectrix Aerodome Centers, Inc. v. Barnstable Mun. Airport*, 534 F. Supp. 2d 201 (D. Mass. 2008) (state enabling legislation sufficient to allow municipality to adopt rules and regulations for the use of municipal airports; legislation elaborated on ability to determine charges, uses, and conditions for services).

¹⁶³ See *Cedarhurst Air Charger, Inc. v. Waukesha County*, 110 F. Supp. 2d 891 (E.D. Wis. 2000) (citing state antitrust statutes as one basis for determining that by broadly empowering the airport to establish fees and adopt regulations, the legislature did not authorize anticompetitive conduct); *County of Milwaukee v. Williams*, 2007 WI 69, 301 Wis. 2d 134, 732 N.W.2d 770 (2007) (finding that county ordinance prohibiting taxis without airport permits from making prearranged pickups was invalid because it conflicted with statutory requirement that the public have equal access to airport services, but ordinance did not raise antitrust concerns).

circumstances. For example, in *Zimora v. Alamo Rent-A-Car*, a city ordinance required rental car companies to collect a daily user fee at an airport. The plaintiff challenged the companies' ability to impose collections as an antitrust violation, and a court found that the companies were entitled to the benefit of state action immunity because state laws authorized the airport entity to implement the fee requirement, and the companies were complying with the law. The companies had lobbied in support of adopting the law, but the court found their lobbying efforts were protected from antitrust liability under the Noerr-Pennington doctrine, which recognizes that antitrust law addresses trade restraints, not political activity.¹⁶⁴

States may enact antitrust laws as well, and when airport actions are challenged under a state antitrust law, state empowerment provisions may again help an airport entity avoid liability. State statutes can specifically exempt an airport entity from state antitrust requirements.¹⁶⁵ Courts also may determine that state antitrust statutes do not override airport empowerment provisions under principles of statutory construction. For example, in *Fine Airport Parking v. City of Tulsa*, a court considered whether a municipal airport could fix rates at an airport parking facility under state antitrust requirements. It first determined that the airport entity was not entitled to state immunity under federal antitrust immunity doctrines. It then weighed a statute that expressly made municipalities subject to the state antitrust act against another that empowered municipalities to fix charges at airports. Based on the express airport empowerment provision, and provisions declaring the airport's operations to be a public and governmental function, the court determined that a municipality, like the state itself, could fix airport parking rates even though doing so may have an anticompetitive effect under state antitrust laws.¹⁶⁶

Adequate state empowerment provisions are essential to avoiding antitrust liability for airport business activities. A challenger must first plead a

proper antitrust violation by demonstrating that an airport entity's regulations or contracts damage a competitive market. Where an antitrust claim can withstand a motion to dismiss, however, the strength of an airport entity's state authorizing legislation will determine whether it can claim immunity from federal antitrust requirements or, under state challenges, whether airport powers can prevail over a claimed antitrust restriction. If immunity fails, the Local Government Antitrust Act protects against monetary (but not injunctive) awards in federal claims, but antitrust litigation can nonetheless involve significant expense.

C. Immunity from Other Liabilities

States can extend statutory immunity to protect airport entities from liability in a number of areas. Immunity from any liability is entirely a function of the laws of a given state, and state approaches vary. States typically adopt general immunity provisions that apply to governmental entities, including many airport entities, but the structure of those statutes and the entities or activities to which they may apply can differ significantly.¹⁶⁷

One traditional approach to creating governmental immunity is rooted in the common law, and it requires a court to analyze whether an entity or an activity is "governmental" or "proprietary" in nature. A state's governmental immunity statutes may codify this traditional concept to some extent, but this approach also may exist at common law within the state where state statutes have not otherwise expressly waived government immunity.¹⁶⁸ This approach reflects a policy determination that government, when engaging in an activity that a private person could pursue as well, should not be treated differently from a private person for liability purposes.

States can apply this traditional approach in different ways. The courts may initially consider the nature of the airport entity itself to determine whether it constitutes a government agency, or whether it is "governmental" or "proprietary" in nature, and thus is subject to the application of the immunity statutes.¹⁶⁹

¹⁶⁴ See *Zimora v. Alamo Rent-A-Car*, 111 F.3d 1495 (10 Cir. 1997) (Noerr-Pennington doctrine exempted from antitrust liability lobbying efforts by car rental companies to convince airport entity to enact ordinance imposing uniform daily use fee in connection with car rental facilities); *E. R.R. Presidents Conf. v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 81 S. Ct. 523, 5 L. Ed. 2d 464 (1961) (recognizing protections for lobbying activities); *City of Columbia v. Omni Outdoor Adver., Inc.*, 499 U.S. 365, 111 S. Ct. 1344, 113 L. Ed. 2d 382 (1991) (discussing political activity). Tenants have also argued that the Local Government Antitrust Act should give them immunity from damages claims.

¹⁶⁵ For example, see 740 ILL. COMP. STAT. ANN. 10/11 (through 2010 Reg. Sess., P.A. 96-1496) (units of local government not subject to state antitrust act).

¹⁶⁶ See *Fine Airport Parking, Inc. v. City of Tulsa*, 2003 OK 27, 71 P.3d 5 (2003) (court resolved conflicting statutes by ascertaining legislative intent from text because more specific provisions authorized fixing rates).

¹⁶⁷ At App. B: Questionnaire Responses, many survey respondents reported that they do not assert governmental immunity, and some comments noted that state provisions do not provide that protection to the entity.

¹⁶⁸ For example, see TEX. CIV. PRAC. & REM. CODE ANN. § 101.0215 (Vernon, through 2009 Reg. & 1st Called Sess.); *Gregg v. City of Kansas City*, 272 S.W.3d 353 (Mo. Ct. App. 2008) (considering immunity under the public duty doctrine in connection with shooting by airport security officer).

¹⁶⁹ See *Coleman v Windham Aviation, Inc.*, 2005 R.I. Super. LEXIS 119, C.A. No. K.C. 2004-0985 (R.I. Super. Oct. 19, 2006) (Rhode Island corporation determined to be a public agency entitled to claim available immunity if act complained of was not proprietary in nature); *Comair, Inc. v. Lexington-Fayette Urban County Airport Corp.*, 295 S.W.3d 91 (Ky. 2009) (city-county determined to be parent of airport board and its related entities (which were an airport corporation created by

Others may focus on the nature of an activity performed at the airport to determine whether the airport entity has acted in a governmental or proprietary capacity in a particular case. For example, a court may determine that the state's sovereign immunity attaches to the operation and maintenance of a police force or does not attach to the maintenance of a runway.¹⁷⁰ Judicial analysis of these traditional principles is subject to varying tests and applications from state to state and even within a state.¹⁷¹ These analyses can produce varying results, and some courts have questioned the use of these common law principles.¹⁷²

Under another approach to governmental immunity, states may not focus exclusively on governmental and proprietary distinctions but instead may provide that government entities can obtain immunity when their actions fall within specific statutory grants of immunity. Typically these types of statutes provide for immunity if the action in question is a "discretionary function" of the government entity. A "discretionary function" involves decisions that a government entity is not required to undertake that address matters of policy, such as how to allocate limited airport resources among competing needs. While these discretionary decisions receive immunity, ministerial ("day-to-day") actions and acts that fulfill a legal duty generally are not given immunity.¹⁷³

the board and airport board members sued in their official capacities) because it retained significant control, and airport board determined to be exercising a government function integral to state government and thus entitled to immunity).

¹⁷⁰ See *Gregg v. City of Kansas City*, 272 S.W.3d 353 (Mo. Ct. App. 2008) (airport security a governmental function); *Alpine Air, Inc. v. Metro. Wash. Airports Auth.*, 62 Va. Cir. 215 (Fairfax County, Va. Cir. Ct. June 30, 2003) (in case regarding aircraft damage caused by debris on runway, airport was subject to Virginia's governmental immunity statutes; statutes provided municipalities were liable for torts involving proprietary, but not governmental functions, and airport found liable because past cases supported determination that routine runway maintenance, like routine street maintenance, was a proprietary function).

¹⁷¹ See *Comair, Inc. v. Lexington-Fayette Urban County Airport Corp.*, 295 S.W.3d 91 (Ky. 2009) (finding past confusion in judicial analysis of governmental immunity within the state).

¹⁷² See *Cauley v. City of Jacksonville*, 403 So. 2d 379 (Fla. 1981) (noting statutory scheme had replaced governmental immunity distinctions based on governmental and proprietary functions); *North Bay Constr. Inc. v. City of Petaluma*, 143 Cal. App. 4th 552, 49 Cal. Rptr. 3d 455 (Cal. Ct. App. 2006) (governmental distinctions are without foundation when considering immunity questions); *D.C. Water and Sewer Auth. v. Delon Hampton & Assoc.*, 851 A.2d 410 (D.C. 2004) (governmental proprietary distinction is a fine one); *Colowyo Coal v. City of Colorado Springs*, 879 P.2d 438 (Colo. App. 1994) (governmental/proprietary distinction is no longer critical in tort liability in Colorado because of Governmental Immunity Act, but remains important in other contexts).

¹⁷³ See *Cessna Aircraft Co. v. Metro. Topeka Airports Auth.*, 23 Kan. App. 2d 1038, 940 P.2d 84 (1997) (considering a num-

Specific statutory grants of immunity may simply provide that specified airport entities constitute local government entities that are subject to a state's governmental immunity provisions.¹⁷⁴ Statutory grants also expressly extend immunity to specific airport activities. For example, Wisconsin statutes protect against liability for providing or failing to provide airport police services.¹⁷⁵ Express statutory grants of immunity may also address specific actions such as protecting airport entities from lawsuits if airport police officers enter private property without a warrant or make an arrest based on probable cause for trespassing in a secure area, or if airport employees detain a person for improperly entering the airport or take an abandoned aircraft into custody.¹⁷⁶

Among the states, general governmental immunity provisions and specific immunity provisions for airport entities can produce varying results. For example:

- In *Burchfiel v. Gatlinburg Airport Auth., Inc.*,¹⁷⁷ a Tennessee court determined that state government immunity statutes did not protect an airport entity against trespass actions or from actions in equity seeking an injunction. Tennessee statutes prohibit suits that involve airport construction, operations, or management, whether the airport is a public or private facility.¹⁷⁸

- Texas and Mississippi state laws provide airport entities with some immunity for contract liability in addition to tort liability.¹⁷⁹

ber of state provisions, but determining that immunity did not shield airport entity from liability in connection with fire at hangar because legal duty to provide services existed, and discretionary function exception not applicable where legal duty exists).

¹⁷⁴ For example, see WYO. STAT. ANN. § 1-39-103 (through 2010 Bud. Sess.). See also *Anderson v. Jackson Mun. Airport Auth.*, 419 So. 2d 1010 (Miss. 1982) (under existing law, municipal airport authorities were expressly extended sovereign immunity; no such language placed in a separate airport authorities law, however, and those authorities not immune for suits arising from proprietary or corporate functions).

¹⁷⁵ See WIS. STAT. ANN. § 893.80 (through 2009 Act 406, pub. June 2, 2010) (providing immunity).

¹⁷⁶ For examples, see FLA. STAT. ANN. § 901.15 (through 2010 2d Reg. Sess., ch. 274 & 2010 Sp. A. Sess., ch. 283) (trespass); R.I. GEN. LAWS § 1-4-10.3 (through 2010 Jan. Sess., ch. 320) (taking custody of aircraft).

¹⁷⁷ 2006 Tenn. App. LEXIS 747 (Nov. 28, 2006) (considering airport placement of sign in right of way).

¹⁷⁸ See TENN. CODE ANN. § 42-2-103 (through 2010 1st Ex. Sess. & 2010 Reg. Sess.).

¹⁷⁹ See *San Jacinto County v. Nunn*, 203 S.W.3d 905 (Tex. Ct. App. 2006) (finding immunity, since contract was executed before effective date of a later statute that waived sovereign immunity for suits arising from contract for engineering, architectural, or construction services); *City of Jackson v. Estate of Stewart*, 908 So. 2d 703 (Miss. 2005) (tort claims act grants immunity for any breach of implied term or condition of warranty or contract).

- In *McGrath v. City of Gautier*,¹⁸⁰ a Mississippi court determined that purchasing insurance for damages exceeding a statutory cap did not waive sovereign immunity, while in *Gregg v. City of Kansas City*,¹⁸¹ a Missouri court found immunity waived to the extent of coverage under an insurance policy.

- Michigan statutes provide for some airport entities to defend and indemnify their employees.¹⁸²

- Wyoming statutes expressly provide that an airport entity is liable for damages resulting from the negligence of airport employees acting within the scope of their duties.¹⁸³

- Maine statutes provide that an airport entity is liable for a lack of repair on a runway.¹⁸⁴

- In *Anderson v. Alberto-Culver USA, Inc.*,¹⁸⁵ a negligence action relating to a plane crash, an Illinois court found that the federal standards applicable to airfield maintenance constituted the airport entity's standard of care.¹⁸⁶

- State efforts to address liability for noise may be preempted by federal law in many instances.¹⁸⁷

¹⁸⁰ 794 So. 2d 983 (Miss. 2001) (purchase of insurance by a government entity covered claims in excess of the statutory cap; it did not waive sovereign immunity).

¹⁸¹ 272 S.W.3d 353 (Mo. Ct. App. 2008) (immunity waived to extent of insurance policy coverage).

¹⁸² See MICH. COMP. LAWS ANN. § 259.116 (through P.A. 2011 (except 62), of 2011 Reg. Sess.). See also *Davis v. Lambert-St. Louis Int'l Airport*, 193 S.W.3d 760 (Mo. 2006) (finding officer involved in car crash protected by official immunity while airport not shielded from vicarious liability for officer's negligence); *McMahon Helicopter Servs., Inc. v. United States*, 2006 U.S. Dist. LEXIS 51819 (E.D. Mich. July 28, 2006) (an airport director does not owe a personal duty to all airport users).

¹⁸³ See WYO. STAT. ANN. § 1-39-107 (2010 Bud. Sess.).

¹⁸⁴ See ME. REV. STAT. ANN. tit. 14, § 8104-A (through 2009 2d Reg. Sess.).

¹⁸⁵ 740 N.E.2d 819 (Ill. App. Ct. 2001) (determining that acceptance of federal and state funding mandated safety standards in FAA advisory circular and established airport's duty of reasonable care).

¹⁸⁶ See also *Glass v. North Airlines, Inc.*, 686 F. Supp. 2d 770 (W.D. Tenn. 2010) (facts pled against airport were sufficient where they asserted that airport was responsible for day to day operations of the facility, that airport employees or contractors were negligent in failing to provide wheelchair, and that airport failed to train employees properly about how to handle disabled passengers); *Peters v. Haymarket Leasing, Inc.*, 835 N.E.2d 628 (Mass. App. Ct. 2005) (airport's failure to enforce speed limits in taxi pooling area did not subject it to liability to pedestrian, and taxi driver not an independent contractor of airport).

¹⁸⁷ The federal government has regulated certain actions affecting noise under the Airport Noise and Capacity Act of 1990, which also provides limited statutory immunity to airport proprietors at the federal level in connection with noise if they follow specified requirements. See also 49 U.S.C. §§ 47506, 47527 (limiting damages in certain circumstances involving traffic changes if the airport proprietor has submitted a Noise Exposure Map, and providing that if the federal

State approaches to immunity for airport entities can differ widely from state to state and even within a state. Factors affecting immunity can include the nature of the airport entity, the nature of its specific actions, specific measures adopted under statutes and cases, and federal preemption issues. When immunity protections are available, they typically are also subject to procedural requirements that may further protect the airport entity, such as notice requirements and caps on damages. These measures can offer substantial protections for airport entities, but the laws governing an airport entity's liability are distinct within each state, and they can raise complex issues.

IV. AIRPORT LANDS AND LAND USE

State statutes grant an airport entity the power to acquire and manage real property. Such powers reflect a number of state policies that address planning efforts, acquiring or disposing of property interests, zoning efforts, and environmental concerns. Some state policies are aimed at helping an airport obtain additional space to provide services to the public. States provide many of these powers to protect the airport's ongoing operations as well. Many of these measures also protect the airport's airspace and help establish an environment around the airport that can support the impact of airport operations. This section will review basic aspects of state legislation affecting airport lands and land use. It will then briefly consider the effect of challenges in those areas from surrounding communities.

A. Planning

States play a prominent role in planning airport locations, and to some extent they provide for involving a variety of local government entities in airport planning processes.¹⁸⁸ The state typically has primary responsi-

government disapproves a proprietor's proposed noise-related restrictions, it assumes subsequent liability to the extent that a taking occurs as a direct result of the disapproval); *Owen v. City of Atlanta*, 157 Ga. App. 354, 277 S.E. 2d 338 (1981) (determining that federal law did not preempt liability for nuisance actions based on aircraft flight).

¹⁸⁸ Federal law imposes a variety of planning requirements on airport entities, but it provides for taking local planning into account. For example, see Grant Assurance Nos. 6, 7, 8, and 29, http://www.faa.gov/airports/aip/grant_assurances/media/airport_sponsor_assurances.pdf (obligating airport proprietors to make airport plans "reasonably consistent" with the plans of authorized agencies within the state where the project is located, give "fair consideration" of the interests of nearby communities, and conduct "reasonable consultations" with affected parties using the airport); 49 U.S.C.A. § 40101(8) (federal policy for secondary airports). Airport planning also must comply with a variety of federal requirements, such as requirements to maintain an Airport Layout Plan and real property map. See FAA Airport Compliance Manual, FAA Order 5190.6B, ch. 7 generally, and §§ 7-18, 7-19 (Sept. 30, 2009) (explaining various airport property obligations), available at

bility to coordinate airport development on a statewide basis and prepare a plan for a statewide system of airports.¹⁸⁹ With respect to a given airport, however, the state may limit its planning authority or expressly impose planning limitations on a given airport entity. For example, Maryland law prohibits expansion at a specific airport until requirements are met for noise and high-way improvements.¹⁹⁰

State laws typically give local government agencies planning responsibilities involving airports. They generally empower metropolitan or regional planning agencies to incorporate recommendations for airports in their plans and authorize them to study airport needs.¹⁹¹ Local government entities, whether or not they own airports, also have this planning authority under state law, and in some instances may be authorized to meet planning requirements by using information provided by a local airport.¹⁹² State empowering statutes normally give broad planning responsibilities to airport entities as well. The state may impose specific requirements, such as obligating airport entities to adopt a 5-year capital improvement program.¹⁹³

States generally also require planning coordination among local agencies, and they may obligate local governments to accommodate an airport layout plan or airport approach plan. For example, Michigan statutes obligate airport entities to share copies of their master plans with affected government units.¹⁹⁴ Washington statutes require that preliminary subdivision plats near airports be filed with the state aeronautics agency, allowing that agency to become informed of potential land-use issues.¹⁹⁵ States may establish planning crite-

http://www.faa.gov/airports/resources/publications/orders/compliance_5190_6/. However, while the federal government is involved in many of the technical aspects of determining an airport's site and planning its development, deciding whether to pursue airport development is a decision made by a local airport proprietor and is subject to state requirements. See *Hoagland v. Town of Clear Lake, Ind.*, 415 F.3d 693, 698 (7th Cir. 2005) (while many aspects of local aviation regulation are preempted by federal regulation, "the issue of where a local governing body chooses to site an airport is different...the agency [FAA] leaves the decision not to allow a landing strip to the discretion of the local government" and an airfield proponent "must comply with local laws.").

¹⁸⁹ For example, see MASS. GEN. LAWS ANN. ch. 6C, §§ 30 and 39A (through 2010 Ann. Sess., ch. 392).

¹⁹⁰ See MD. CODE ANN., TRANSP. § 5-413 (through 2010 Reg. Sess.) (limit on runway expansion).

¹⁹¹ For example, see IOWA CODE ANN. § 28I.4 (through 2010 Reg. Sess.).

¹⁹² For example, see FLA. STAT. ANN. §§ 163.3177, 163.3180, 189.428 (through 2010 2d Reg. Sess., ch. 274 & 2010 Sp. A. Sess., ch. 283) (allowing use of airport's master plan).

¹⁹³ For example, see 70 ILL. COMP. STAT. ANN. 5/13.2 (through 2010 Reg. Sess., P.A. 96-1496).

¹⁹⁴ See MICH. COMP. LAWS ANN. § 125.3203 (through P.A. 2010, No. 266, Reg. Sess.) (requiring local government to incorporate certain plans).

¹⁹⁵ See WASH. REV. STAT. ANN. § 58.17.080 (through 2011, ch. 1 & 2).

ria for privately owned airport entities as well. By involving state and local agencies in planning responsibilities, the state thus provides for a range of input to guide local airport development.

States may implement additional policy objectives through their airport planning requirements. For example, Missouri state law promotes airport development within the state by withholding funding for planning efforts that advocate construction outside the state.¹⁹⁶ Among various states, measures may reflect policies such as exploring wayport airport concepts to address capacity constraints, determining the use of lands acquired under a federal noise abatement program, and determining land uses among competing public purposes. States may enforce compliance with state or federal policies by prohibiting development that fails to meet their requirements.¹⁹⁷ States also may leave policy decisions to local planning agencies.¹⁹⁸ Specific airport planning laws help the state oversee airport development and prioritize the state's policy interests.

B. Intermodal Concerns

States commonly implement planning and development policies that promote interconnectivity between airports and forms of surface transportation. For example, Ohio state law empowers airport entities to acquire land near the airport for ingress and egress and to connect with highways, waterways, and railroads.¹⁹⁹ States may extend that acquisition authority so that airport entities can acquire property for (and operate) other types of transportation facilities as well, such as bus systems, docks, and wharves.²⁰⁰ North Carolina state law specifically addresses the needs of cargo facilities at or near an airport in order to facilitate an interface with various forms of transportation.²⁰¹ States also may permit transportation districts to facilitate intermodal planning involving airports.

States may promote the development of specific forms of surface transportation in an effort to reduce surface congestion at airports and increase their utility.

¹⁹⁶ See MO. ANN. STAT. § 251.032 (through 2010 1st Ex. Sess.).

¹⁹⁷ For example, see NEB. REV. STAT. § 18-1507 (through 2010 2d Reg. Sess.).

¹⁹⁸ For example, see *Citizens for Planning Responsibility v. County of San Luis Obispo*, 176 Cal. App. 4th 357, 97 Cal. Rptr. 3d 636 (Cal. App. 2d Dist. 2009) (state aeronautics act did not fully occupy field of land-use regulations near airports such as to preempt initiative measure amending county's general plan and zoning regulations to permit mixed use development near airport).

¹⁹⁹ See OHIO REV. CODE ANN. § 717.01 (through 2010, filed with Sec. of State Jan. 26, 2011).

²⁰⁰ For example, see MISS. CODE ANN. § 61-3-15 (through 2010 Reg. & 1st & 2d Ex. Sess.) (development of intermodal facilities for passengers and cargo).

²⁰¹ See N.C. GEN. STAT. ANN. § 63A-3 (through 2010 Reg. Sess.).

For example, states may support the development of intercity rail services to link airports or airport access by bus feeder linkages, high speed rail, shared-ride transportation, or mass transit.²⁰² Florida state law establishes road and rail transportation corridors connecting airports with ports and economic regions.²⁰³

States also may pursue innovative methods for reducing local surface traffic. For example, laws may be aimed at reducing congestion created by airport employees, such as a law promoting airport bicycle transportation facilities. States also can address surface congestion near an airport by extending airport functions out into the community, such as by establishing at a remote location an intermodal transportation terminal that includes airline ticket offices and direct transportation to and from airports.²⁰⁴ While the federal government addresses congestion in the airspace, the states have primary responsibility to enhance the utility of their airports through connections to surface transportation.

C. Acquisitions and Dispositions

While federal law can impact property actions, an airport entity's fundamental power to take those actions is provided by the state. State laws empower airport entities to acquire real property by various means, such as by gift, lease, purchase, or by exercising eminent domain. Through these actions airport entities can obtain land, public waters, or submerged lands. State laws often authorize airport entities to acquire or construct supporting infrastructure as well, such as causeways, roads, and bridges.²⁰⁵

States also give most airport entities the power to exercise eminent domain if a needed property interest cannot be acquired through a voluntary purchase. Under eminent domain principles, private land may be taken for a public purpose and as a matter of public necessity. There must be a need for the land in the relatively near future, and the government entity must first negotiate in good faith to purchase the property. State empowering statutes help establish the public purpose needed for eminent domain actions. The courts will evaluate this and other aspects of a condemnation action to determine compliance with a state's eminent domain requirements.²⁰⁶

²⁰² For example, see CAL. GOV'T CODE §§ 14036.7, 185010, 65081.1 (through 2010 Reg. Sess., 2009–2010 1st–8th Ex. Sess.).

²⁰³ See FLA. STAT. ANN. §§ 332.006, 332.115, 339.1371 (through 2011 1st Reg. Sess., June 27, 2011).

²⁰⁴ See MASS. GEN. LAWS ANN. ch. 90E, § 2 and 121B, § 46 (through 2010 Ann. Sess., ch. 392) (bikes and remote terminal).

²⁰⁵ For example, see NEB. REV. STAT. § 3-220 (through 2010 2d Reg. Sess.).

²⁰⁶ For example, see *Kansas City v. Hon*, 972 S.W.2d 407 (Mo. Ct. App. 1998) (under the Missouri constitution the courts determine whether a condemnation has a public purpose, and there was sufficient public purpose to condemn land for a present use in attracting industrial development and future use in airport expansion); *City of Bowling Green v. Cooksey*, 858

States generally provide airport entities with authority to exercise eminent domain for a broad range of purposes. They may acquire property for use as an airport, for other air navigation facilities, for aviation easements and other interests in air space, for mitigating hazards to the surrounding airspace, for airport protection privileges (placing navigational marking and lighting), and for abating encroachments on airport protection privileges.²⁰⁷ Individual state policies may vary. For example, Nebraska law gives airports authority to condemn areas significantly affected by airport noise.²⁰⁸

State condemnation laws may create expansive powers favoring airports that, in effect, prioritize airport land uses. For example, states may allocate condemnation powers to the state aeronautics agency as well as to airport entities, thus giving the aeronautics agency an affirmative power to pursue airport land use across the state. States also may provide an airport entity with the authority to exercise eminent domain both within and without its territorial limits, which may require the consent of another jurisdiction. They may provide airport entities from adjoining states with the authority to condemn airport lands if the adjoining state provides reciprocal rights.²⁰⁹ States may create favorable procedural requirements to facilitate airport condemnation actions as well.

States also may prioritize airport land uses by preventing jurisdictions near the airport from condemning those lands. For example, Illinois state law limits the condemnation powers of both O'Hare Airport and its surrounding jurisdictions.²¹⁰ State courts also may find that a state aeronautics act limits the condemnation powers of jurisdictions surrounding an airport entity. For example, in *Township of Readington v. Solberg Aviation Co.*,²¹¹ a New Jersey court found that the state

S.W.2d 190 (Ky. Ct. App. 1992) (no public purpose to take a fee interest in land to create an airport buffer zone when acquiring easements would serve same purpose and leave landowners in place). See also *Broward County v. Ellington*, 622 So. 2d 1029 (Fla. Dist. Ct. App. 1993) (discussing necessity element of eminent domain for taking by airport entity).

²⁰⁷ Due to the influence of uniform laws on state legislation, states commonly include these powers within their state aeronautics acts or zoning provisions. See App. B: State Codes (noting uniform law influences).

²⁰⁸ See NEV. REV. STAT. ANN. § 496.030 (through 2009 Reg. Sess. & 2010 Sp. Sess.) (authorizing condemnation for a variety of purposes).

²⁰⁹ For examples, see ALA. CODE § 4-4-5 (through 2010 1st Sp. Sess.) (condemnation outside territorial limits); IND. CODE ANN. § 8-22-5-2 (through 2010 2d Reg. Sess.) (condemnation by municipalities of adjoining states).

²¹⁰ See 620 ILL. COMP. STAT. ANN. 65/20 and 65/21 (through 2011 Reg. Sess., P.A. 97-615, except P.A. 97-597) (regarding O'Hare Airport).

²¹¹ 409 N.J. Super. 282, 976 A.2d 1100 (2009) (local authority to regulate land use at airport not entirely preempted, but narrowly circumscribed because it must conform with state regulations; transportation commissioner had authority to

aeronautics act effectively preempted a municipality's condemnation action when it sought to condemn an airport based on a stated need for open space and to protect a species of bird.²¹² Federal law may have a preemptive effect as well if a neighboring jurisdiction tries to prevent land from being used for aeronautical purposes.²¹³

Privately owned airport entities may or may not benefit from laws facilitating airport condemnation actions. For example, Nebraska state law expressly prohibits condemnation powers from being used for the benefit of a privately owned airport, even when operated for public use.²¹⁴ States also may view the role of private operators more expansively if their operations support public transportation and may delegate limited eminent domain authority to them. For example, Nevada state law permits corporations to acquire or appropriate land for airports by means of a special legal proceeding that is determined by a commission, and land is deemed appropriated for public use.²¹⁵

Airport entities that displace local property owners must comply with the Uniform Relocation Assistance Act.²¹⁶ This federal Act establishes uniform policies aimed at fairly compensating people who are displaced by state and local government actions that are federally funded. The Act is implemented through a federally certified state program. States typically adopt comparable acts at the state level that may be applicable when federal funding is not present. When applicable, an airport entity must pay to relocate eligible property owners in accordance with the requirements and financial limitations of these acts, including the cost of purchasing equivalent property and moving costs. Under the federal program, the airport entity seeks federal funding to reimburse these costs.

override local zoning decisions contrary to purposes of state act).

²¹² See also *City of Washington v. Warren County*, 899 S.W.2d 863 (Mo. 1995) (county asserted that area zoned by county as a flood plain could not be condemned for airport expansion; when examining city's state-delegated condemnation power and county's state-authorized zoning power, court found that in this instance, the condemnation power had constitutional nexus and so prevailed over the zoning power, which did not); *City of Euless v. Dallas/Fort Worth Int'l Airport Bd.*, 936 S.W.2d 699 (Tx. Ct. App. 1996) (legislature granted express jurisdiction to exercise eminent domain in specified areas to airport board, and adjoining home-rule cities could not conflict with that power).

²¹³ See *Tweed-New Haven Airport Auth. v. Town of East Haven, Conn.*, 582 F. Supp. 2d 261 (D. Conn. 2008) (Federal Aviation Act preempts efforts by an entity that is not the proprietor of an airport to limit the expansion of an airport's aeronautical areas; in this case, a cease and desist order issued by a Wetlands Commission was preempted when it interfered with a runway development project).

²¹⁴ See NEB. REV. STAT. § 3-144 (through 2010 2d Reg. Sess.).

²¹⁵ See NEV. REV. STAT. ANN. §§ 495.070 to 495.210 (through 2009 Reg. Sess. & 2010 Sp. Sess.).

²¹⁶ See 42 U.S.C.A. § 4601 *et seq.*

Federal and state laws affecting government property also affect how an airport entity may dispose of real property. Airport entities must comply with federal requirements to obtain a release of the federal obligations that apply to a given piece of property.²¹⁷ In addition, state policies can create a variety of other requirements. Airport real property is subject to the same state formalities and restrictions imposed on other government-owned real property, such as requirements for the sale of surplus property or former military property.²¹⁸ States may impose other restrictions as well on the disposition of government real property, such as restrictions on transfer by adverse possession, sales of previously condemned property, or sales disposing of mineral rights.²¹⁹ An airport entity's real property transactions thus tend to be heavily regulated by state and local laws and are subject to federal requirements as well.

D. Zoning

The statutes of nearly all states address land-use measures near an airport.²²⁰ In most instances they empower local municipalities to adopt appropriate zoning, and they may also allow the state to pursue zoning measures if local zoning is not adequate. While the federal government creates standards for limiting heights near airports to protect airspace, it does not impose local zoning measures or provide tools to enforce such measures. It relies instead on state and local governments to protect the airspace surrounding an airport consistent with the federal standards.²²¹

Airport entities that accept federal funds, however, assume a contractual obligation to implement both airspace protections and compatibility zoning for the air-

²¹⁷ See 49 U.S.C.A. § 47152 (Surplus Property Act requirements); 14 C.F.R. Pt. 155 (Release of Airport Property from Surplus Property Disposal Restrictions); FAA Airport Compliance Manual, FAA Order 5190.6B § 22.1 (Sept. 30, 2009).

²¹⁸ For examples, see ARK. CODE ANN. § 14-357-105 (through 2010 Fis. Sess., incl. ARK. CODE REV. COMM. to Sept. 30, 2010); KAN. STAT. ANN. §§ 3-142, 27-316 (through 2010 Reg. Sess.).

²¹⁹ For example, see *City of Gainesville v. Gilliland*, 718 S.W.2d 553 (Mo. Ct. App. 1986) (as a general rule, a municipality's rights in real estate cannot be extinguished by adverse possession regardless of whether owned in a proprietary or governmental capacity).

²²⁰ See App. B: State Codes (noting state zoning provisions).

²²¹ See *Hoagland v. Town of Clear Lake, Ind.*, 415 F.3d 693, 698 (7th Cir. 2005) ("the FAA leaves land use issues primarily to local governments"); *Davidson County Broad., Inc. v. Rowan County Bd. of Comm'rs*, 186 N.C. App. 81, 649 S.E.2d 904, 911 (2007) (noting that the majority of courts have held that "federal aviation law does not preempt all local or state land use regulations which may affect aviation" and that according to the FAA, airspace protections "must be exercised at the local and/or state level as the federal government does not have the power to protect that airspace...It is important that local communities recognize these assets [airspace] and provide the necessary protection both in terms of land usages and height restrictions.")

port. These entities must commit to take “appropriate action” to protect terminal airspace (by mitigating existing hazards and preventing future hazards from being established) and to adopt zoning laws that restrict land use in the vicinity of the airport to compatible uses.²²² State laws empowering land use measures thus play a central role in protecting an airport’s ability to operate.

Airspace—Model Airport Zoning Ordinance. Most state laws contain an “airport zoning act” that empowers local governments to restrict heights on lands surrounding an airport. Many of these state acts reflect a model airport zoning ordinance promulgated by the Federal Aviation Administration (FAA).²²³ Under Advisory Circular No. 150/5190-4A, A Model Zoning Ordinance to Limit Height of Objects Around Airports,²²⁴ the FAA offers guidelines for establishing zones and height limitations around an airport that can help prevent obstructions in the airspace. Consistent with the federal government’s role in this area, the model ordinance does not mandate requirements but relies on local government to act.

Under the FAA’s model ordinance, it is a public nuisance to establish an airspace obstruction. The model states that it is in the interest of the general welfare to prevent the creation of hazards to air navigation and that doing so should be accomplished, to the extent legally possible, by the exercise of police power without compensation. It also provides that removing (or marking) airspace obstructions constitutes a public purpose on which public funds may be expended. The model ordinance defines many aeronautical terms, and it recommends establishing zones surrounding an airport that are consistent with the airspace standards contained in 14 C.F.R. Part 77, Subpart C, Standards for Determining Obstructions to Air Navigation or Navigational Aids or Facilities.²²⁵

Under the model ordinance, no person may maintain a structure or tree in excess of the height limits applicable to an established zone. If there is a preexisting use in such a zone that does not conform to the height limitations, the ordinance does not require that the preexisting nonconforming use be removed. Instead it provides for the installation, operation, and maintenance of navigational marking and lighting at the expense of either the land owner or the airport entity. The ordinance also prohibits uses in these zones that would create electrical interference with navigational signals or radio communications between the airport and aircraft

or that would result in visual interference or endanger an aircraft.²²⁶

Under the model ordinance, permit applications for constructing structures within an airport zone will be granted when they are in compliance with ordinance requirements, and the ordinance includes a process for seeking a variance. It specifies, however, that no permit may allow a nonconforming use to become a greater hazard to the airspace than on the date when the regulations were enacted, and if a nonconforming use is abandoned (or is more than 80 percent torn down or deteriorated), a subsequent permit for that use may not deviate from the zoning regulations.²²⁷

Variance applications under the model ordinance are submitted to a Board of Adjustment (with a copy to the state aeronautics agency), and they must be accompanied by a determination from the FAA as to the effect of the proposal on airspace. The Board of Adjustment will grant a variance upon making a finding that the literal application of the regulations will result in unnecessary hardship and that the relief granted will not be contrary to the public interest.²²⁸ The ordinance allows local government to require that a property owner install navigational marking or lighting when reasonable in connection with any variance or permit, which may be at the expense of the owner or the airport entity. The Board of Adjustment also hears appeals from airport zoning orders under specified procedures. Aggrieved persons may appeal a decision from the Board of Adjustment to the courts.²²⁹

Under the model ordinance, it is a misdemeanor to violate airport zoning regulations. The ordinance provides that if there is a conflict between airport zoning regulations and other regulations, the more stringent limitation prevails.²³⁰ The FAA’s model ordinance contemplates that local government will adopt and enforce its requirements using police power granted by the state for that purpose. Many states have used the model ordinance as a template for legislation at the state level.²³¹

Airspace—State Airport Zoning Acts. Zoning legislation at the state level has an important impact on airport protections within the state. As previously noted, state legislation can have a preemptive effect on the actions that may be taken by local government. State zoning requirements thus can establish parameters that local government must comply with, whether by imposing affirmative obligations on local government or by creating a framework that local ordinances cannot contradict. Most states have adopted airport zoning

²²² See Grant Assurance Nos. 20 and 21, http://www.faa.gov/airports/aip/grant_assurances/media/airport_sponsor_assurances.pdf.

²²³ See App. A: State Codes (noting state zoning provisions and model code influences).

²²⁴ See FAA Advisory Circular 150/5190-4A, A Model Zoning Ordinance to Limit Height of Objects Around Airports, § 5.i (Dec. 14, 1987), http://www.faa.gov/documentLibrary/media/advisory_circular/150-5190-4A/150_5190_4A.PDF.

²²⁵ See *id.* at App. 1, Preamble and §§ I to III.

²²⁶ See *id.* at App. 1, §§ IV to VI.

²²⁷ See *id.* at App. 1, § VII.

²²⁸ The FAA recognizes that “not all obstructions (objects whose height exceeds an obstruction surface) are a hazard to air navigation.” See *id.* at § 3.a.

²²⁹ See *id.* at App. 1, §§ VII to XI.

²³⁰ See *id.* at App. 1, §§ XII and XIII.

²³¹ See App. A: State Codes (noting state zoning provisions and model code influences).

measures at the state level, and the state's general right to adopt such measures has been upheld.²³²

When states follow the guidelines of the FAA's model ordinance they typically adopt the purpose statements found in the model ordinance regarding the nuisance created by airspace obstructions and the need to protect the general welfare. Some also note that airport hazards endanger lives and property and reduce the capacity of an airport, thus impairing its utility and the public's investment in the facility.²³³

State laws commonly provide for establishing an area surrounding an airport where local governments may enact airport zoning regulations. State statutes may identify a commission that must determine those areas by examining surrounding lands and airport approach plans.²³⁴ Whether the law gives this responsibility to a commission or permits a municipality to take similar action, states typically identify factors that local airport zoning must take into account, such as the nature of the terrain and the nature of flying operations.²³⁵ In general, state laws do not attempt to incorporate the technical standards for zones that are provided in the FAA's model ordinance. Consistent with the model ordinance, state laws usually require that airport zoning regulations be administered and enforced by a local administrative agency using stated procedures. These procedures provide for a Board of Adjustments process and for an ultimate appeal to the courts.²³⁶

State laws allow an airport entity and local jurisdictions to adopt airport zoning regulations, whether as an independent regulation or by incorporating airport requirements into comprehensive zoning regulations. As in the model ordinance, state laws typically provide that if there is a conflict among the regulations adopted

²³² See App. A: State Codes. See also *Patzau v. N.J. Dep't of Transp.*, 271 N.J. Super. 294, 638 A.2d 866 (1994) (upholding state airport zoning acts similar to FAA model provisions against facial challenges that claimed they were unconstitutional and took property without just compensation; also upholding distribution of aviation fuel tax to general aviation airports against facial challenge claiming this was unconstitutional lending of credit or donation for benefit of private interests); *Schmidt v. City of Kenosha*, 214 Wis. 2d 527, 571 N.W.2d 892 (Wis. 1997) (upholding constitutionality of grants to municipalities of extraterritorial zoning power to ensure the safety of aerial approaches to airports).

²³³ For examples, see N.C. GEN. STAT. ANN. § 63-30 (through 2010, ch. 18); N.D. CENTURY CODE § 2-04-02 (through 2011 Reg. Sess.). See also App. A: State Codes (noting state zoning provisions and model code influences).

²³⁴ For examples, see S.D. CODIFIED LAWS § 50-10-3 (through 2011 Sp. Sess.); R.I. GEN. LAWS § 1-3-4 (through 2011 Jan. Sess., ch. 407).

²³⁵ For examples, see OKLA. STAT. ANN. tit. 3, § 106 (through 2011 1st Reg. Sess.); OHIO REV. CODE ANN. § 4563.07 (through 2011–2012, files 1–47, 49 & 52).

²³⁶ See App. A: State Codes (noting state zoning provisions and model code influences). For examples, see NEB. REV. STAT. § 3-311 (through 2011 1st Reg. Sess.); MISS. CODE ANN. § 61-7-17 (through 2011 Reg. Sess.).

by various jurisdictions, the more stringent regulations prevail. Many states also address concerns for competing regulations by empowering an airport entity and municipalities to create a joint zoning board that can adopt and enforce airport zoning regulations over multiple jurisdictions.²³⁷

Consistent with the model ordinance and common zoning law, states usually prohibit airport zoning regulations from requiring changes to preexisting nonconforming uses except in connection with new permits and variances. Airport zoning laws require landowners to obtain a permit before erecting any new structure or changing the height of any use. They provide for granting permit applications in a manner consistent with the requirements of the model ordinance. Many state procedures for variance applications and approvals are also generally consistent with the terms of the model ordinance. While most states have adopted some form of the model ordinance, some have not used this model or do not have extensive airport zoning provisions at the state level.²³⁸

States vary when addressing some provisions contained in the model ordinance. For example, while many state laws allow local government to condition the issuance of a permit or variance on the installation and operation of navigational marking and lighting, they differ on who must bear those expenses. Some include a provision addressing preexisting uses that have been torn down or have become deteriorated based on varying percentages of decay. When included, states sometimes also give local government the power to compel the owner of the destroyed use to remove it. Typically states do not adopt the model ordinance's requirements limiting uses that would create electrical interference with navigational signals or radio communications or that would result in visual interference or endanger aircraft.²³⁹

States may require local governments to adopt airport zoning regulations. They may obligate municipalities to adopt these regulations if hazard areas exist within their boundaries and provide that, if the municipality does not, the state aeronautics agency may impose regulations (or airport entities may impose them by court order).²⁴⁰ Some states also make clear that local municipal zoning authority does not extend to regu-

²³⁷ See App. A: State Codes (noting state zoning provisions and model code influences). For examples, see MINN. STAT. ANN. § 360.063 (through 2011 Reg. Sess.); MICH. COMP. LAWS ANN. §§ 259.443 to 259.444 (through P.A., 2011, No. 244 of 2011 Reg. Sess.).

²³⁸ See App. A: State Codes (noting state zoning provisions and model code influences).

²³⁹ See App. A: State Codes (noting state zoning provisions and model code influences).

²⁴⁰ For examples, see CONN. GEN. STAT. § 15-91 (through 2010 Feb. Reg. Sess., June Sp. Sess. and July Sp. Sess.) (state may impose); IOWA CODE ANN. § 329.4 (through 2010 Reg. Sess.) (court may establish); NEB. REV. STAT. § 3-303 (through 2011 1st Reg. Sess.) (political subdivisions containing airport hazard areas must adopt).

lating an airport's runway or in other specified areas, and some require municipalities to notify airport entities if they enact changes in zoning regulations for surrounding areas.²⁴¹

A state also may empower an aeronautics agency to retain zoning authority over certain areas or to approve local zoning regulations.²⁴² State requirements also exempt some areas and address others more specifically.²⁴³ States thus enact a range of state powers (and grants of municipal power) to provide for basic zoning functions to help protect airspace.

Airspace—Tall Towers Acts. In addition to these general zoning measures, states may enact specific laws to address concerns for tall objects surrounding an airport. These “tall towers” regulations generally enhance the protections of local zoning measures by creating an additional step at the state level. Under these laws, a land owner must obtain a permit from the state aeronautics agency before constructing any structure that will exceed a specific height stated in the statute or penetrate a specified imaginary surface.²⁴⁴

Tall towers regulations may include other requirements as well. For example, states may mandate that electric utilities cannot construct overhead transmission lines within a specified proximity to the ends of an airport's runways unless federal or state authorities (or both) determine that the improvements will not constitute a hazard to air navigation. They also may impose maximum height limitations near an airport. Preexisting towers may be grandfathered under some of these laws, and height restrictions may not apply to specified facilities (normally those administered by the Federal Communications Commission).²⁴⁵

Compatibility Zoning. In addition to regulating the height of structures and trees near an airport, local governments have the responsibility to implement zoning regulations that establish compatible land uses surrounding an airport.²⁴⁶ As with height regulations, the

federal government does not mandate local requirements; however, the FAA provides guidance regarding land use compatibility near airports under Advisory Circular 150/5020-1, Noise Control and Compatibility Planning for Airports,²⁴⁷ which addresses noise concerns in particular. Rather than provide a model ordinance for compatible land use, the advisory circular explains concepts applicable to airport noise, provides a table of compatible uses for specified noise levels surrounding an airport, and explains other methods by which an airport entity and local, state, and federal government agencies can work to reduce noise impacts.

State approaches to compatibility zoning near an airport can differ. States may not dictate specific requirements for the types of uses permissible near an airport but instead empower local jurisdictions to make those decisions. States also offer guidance by requiring that local land-use decisions near an airport take specific factors into account, such as discouraging residential and noise-sensitive uses near airports and minimizing the danger of potential crashes, or requiring that local ordinances consider population density and the use of buildings for airports and approaches.²⁴⁸ States may address specific concerns as well by prohibiting or limiting certain land uses near airports.

States also may enact specific measures for land-use compatibility near military airports. For example, Arizona state law requires municipal plans to identify the boundaries of high noise or “accident potential zones” near military airports and compatible land uses. The law obligates these municipalities to incorporate sound attenuation standards in their plans for these zones.²⁴⁹ Utah statutes provide that if a federal airport infringes on the use of private property, a property owner that has continuously owned the land from the time when the statute was enacted may request to exchange the property for state land outside of the affected area.²⁵⁰

States may expressly permit some land uses near an airport based on state policies concerning specific local conditions. For example, Minnesota state law protects existing residential neighborhoods in urban areas.²⁵¹ Other state laws expressly protect uses near an airport for agriculture and animal husbandry (where airport hazards would not result), or public utilities or railroads, or school district use in conducting aviation pro-

²⁴¹ For example, see OR. REV. STAT. ANN. § 836.608 (through 2010 Sp. Sess.) (limiting local authority to impose limitations on most airports).

²⁴² For examples, see ALA. CODE §§ 23-1-412 to 23-1-415 (through 2010 1st Sp. Sess.) (requiring state permit under specified conditions) MASS. GEN. LAWS ANN. ch. 90, § 40A (through 2010 Ann. Sess., ch. 392) (requiring state commission approval).

²⁴³ For example, see MO. ANN. STAT. §§ 67.1224 and 305.400 to 305.410 (2011 1st Reg. Sess., June 22, 2011) (exempting specified counties and creating specific requirements for others).

²⁴⁴ For example, see MICH. COMP. LAWS ANN. §§ 259.482 to 259.493 (through P.A. 2010, No. 266, Reg. Sess.).

²⁴⁵ For examples, see MD. CODE ANN., PUB. UTIL. § 7-207 (through 2010 Reg. Sess.) (overhead transmission lines); N.H. REV. STAT. ANN. §§ 422-B:3 to 422-B:8 (through 2011 Reg. Sess., June 6, 2011) (specifying height limitations).

²⁴⁶ The survey at App. B: Questionnaire Responses demonstrates that airport entities are most concerned with the actions of surrounding jurisdictions when those actions involve land use and environmental regulation.

²⁴⁷ FAA Advisory Circular 150/5020-1, Noise Control and Compatibility Planning for Airports, http://www.faa.gov/documentLibrary/media/advisory_circular/150-5020-1/150_5020_1.pdf.

²⁴⁸ For example, see COLO. REV. STAT. ANN. § 24-65.1-202 (through 2010 2d Reg. Sess.) (crashes and noise sensitive areas); S.C. CODE ANN. § 6-29-710 (through 2010 Reg. Sess.) (population density).

²⁴⁹ See ARIZ. REV. STAT. ANN. § 28-8481 (through 2011 1st Reg. Sess., April 28, 2011) (military zone requirements).

²⁵⁰ See UTAH CODE ANN. § 72-10-414 (through 2010 Gen. Sess.) (land exchanges).

²⁵¹ See MINN. STAT. ANN. § 360.062 (through 2010 2d Sp. Sess.) (protecting built-up urban areas).

grams; or for use as wetlands, game, and wildlife areas.²⁵² The diverse measures that states use to address land-use compatibility near an airport reflect the complexities involved in making local land-use decisions that balance the public interest in aviation with the interests of property owners.

All of these basic zoning laws are aimed at providing airport entities, neighboring communities, and the state with the ability to protect airport operations by addressing the key elements essential to that protection. They control heights to protect the airspace necessary for an airport's operations. They also provide zoning authority to control the environment surrounding an airport to promote land uses that are compatible with the noise and other effects that naturally accompany aviation. These measures serve as a primary tool for protecting airport operations.

E. Environmental Concerns

States sometime implement measures at and near airports to address environmental issues with a particular focus on noise. A state's ability to act in this area may be limited, however, due to significant federal legislation that can preempt local actions affecting the flight of aircraft. Aircraft noise is governed to a significant degree by the Federal Airport Noise and Capacity Act of 1990,²⁵³ which establishes national noise policy and imposes specific requirements. Thus while states, local governments, and airport entities work to address aircraft noise using various methods, this federal statute may have a preemptive effect on some of those local efforts.

When states enact measures to address noise that are consistent with federal policies, they seek to address communities surrounding specific airports. For example, California law provides that a specific airport entity may not increase the size of noise impacted areas, and

the airport must conduct noise monitoring.²⁵⁴ Maryland law establishes noise zones in local communities near certain airports and requires permits for new or altered uses generating noise within the zone.²⁵⁵ In Massachusetts a specific airport entity must notify the surrounding public of potential changes in airport noise by advertising any request for a significant alteration in flight patterns.²⁵⁶ An airport in Nevada is obligated to provide communities with a method for reporting aircraft noise incidents.²⁵⁷

In several instances states also have made a policy decision to provide for specific noise mitigation measures in a given community. For example, in a Minnesota community the airport entity must budget funding for noise mitigation measures based on a Part 150 noise compatibility program.²⁵⁸ Missouri state law requires airport entities to purchase areas surrounding an airport where noise levels have a rating of 75 Ldn or greater.²⁵⁹ State law may also protect airport entities against liability from noise. For example, Alaska state law protects private airports against noise complaints by limiting nuisance actions based on noise for ordinary operations at the airport and by preventing local municipalities from regulating airport noise.²⁶⁰

In addition to regulatory efforts addressing noise, airport entities are subject to a variety of other state and federal environmental laws. Some of these laws apply generally to property owners and types of activities. For example, airport entities, like all property owners, have responsibilities under federal environmental laws such as the Clean Air Act and Clean Water Act.²⁶¹ They also have responsibilities under general state laws, such as requirements for lead abatement and asbestos removal, coastal act requirements for airports in affected areas, and recycling program requirements. This study does not address these laws of general applicability, even though they represent

²⁵² For examples, see OHIO REV. CODE ANN. § 4563.10 (through 2010, filed with Sec. of State Jan. 26, 2011) (allowing farming, dairy, railroad uses); IOWA CODE ANN. § 297.7 (through 2010 Reg. Sess.) (school programs); ALASKA STAT. §§ 16.20.034, 16.20.600, 16.20.630 (through 2010 Reg. Sess.) (wildlife refuge).

²⁵³ See 49 U.S.C. § 47523 *et seq.* See also *City of Naples Airport Auth.*, 366 U.S. App. D.C. 161, 409 F.3d 431 (2005) (final in a series of actions that ultimately upheld an airport entity's ability to limit certain aircraft at its airport when acting in compliance with the provisions of the Airport Noise and Capacity Act of 1990); *Am. Airlines Inc. v. Dep't of Transp.*, 202 F.3d 788 (5th Cir. 2000) (one of a number of cases commenting on the scope of an airport proprietor's rights to affect aircraft flight); *City of Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624, 93 S. Ct. 1854, 36 L. Ed. 2d 547 (1973) (establishing that airport proprietors have greater authority to act to address aircraft noise than government entities that are not airport proprietors); 49 U.S.C. §§ 47503 and 47504 (the Airport Safety and Noise Abatement Act of 1979 promoting compatible land-use planning as a means of addressing aircraft noise concerns).

²⁵⁴ See CAL. GOV'T CODE § 6546.1 (through 2010 Reg. Sess., 2009–2010 1st–8th Ex. Sess.) (noise zones).

²⁵⁵ See MD. CODE ANN., TRANSP. § 5-810 (through 2010 Reg. Sess.) (noise zones).

²⁵⁶ See MASS. GEN. LAWS ANN. ch. 91, App., § 1-3A (through 2010 Ann. Sess., ch. 392) (advertising altered flight patterns).

²⁵⁷ See NEV. REV. STAT. ANN. § 244.418 (through 2009 Reg. Sess. & 2010 Sp. Sess.) (requiring entity establish toll free phone number for reporting).

²⁵⁸ See MINN. STAT. ANN. § 473.661 (through 2010 2d Sp. Sess.) (mitigating areas subject to a 14 C.F.R. Pt. 150 noise study).

²⁵⁹ See MO. ANN. STAT. § 305.630 (through 2010 1st Ex. Sess.) (purchases in 75 Ldn areas). "Ldn" stands for "average day-night sound level," and it is the Federal Aviation Administration's standard metric for determining the cumulative exposure of individuals to noise. See also *Noise Control and Compatibility Planning for Airports*, Federal Aviation Administration AC 150/5020-1 (Aug. 5, 1983).

²⁶⁰ See ALASKA STAT. §§ 34.75.010 to 34.75.030 (through 2010 Reg. Sess.) (some conditions apply).

²⁶¹ See 42 U.S.C.A. § 7401 *et seq.* and 33 U.S.C.A. § 1251 *et seq.*

significant concerns for airport entities. The policies that these laws express do not differ significantly whether they are being applied at an airport or at another location.

States may regulate a variety of other specific concerns, however, for the environment surrounding airports. For example, in various states, laws regulate emissions from airport vehicles or shuttles providing transportation to airports, require air quality monitoring in the vicinity of an airport, or restrain some airport activities during air pollution episodes.²⁶² States may address other issues as well, such as how small wind energy systems can be operated near airports.²⁶³

States generally exempt airport entities from some environmental requirements. For example, normally light pollution requirements do not apply to airport navigational lighting systems.²⁶⁴ Other exemptions may apply as well in connection with specific airport operations, reflecting policy decisions about the importance of airport operations despite environmental policies.²⁶⁵

F. Summary of Challenges to Airport Land Use

State statutes empower an airport entity's planning actions, property acquisitions, zoning, and environmental measures in an effort to protect its operations, but these measures can face a number of challenges. Landowners near an airport sometimes claim that these protective regulations have the effect of taking their property rights. At times residents also challenge government's authority to impose these regulations or its ability to acquire airspace easements and other protective rights. Residents near airports also have raised claims that the environmental effects of flight have created a harmful nuisance. These challenges can have the effect of undermining the state empowerment provisions that are meant to protect an airport.

Landowners who believe that airport zoning regulations have taken their property rights may pursue an "inverse condemnation" claim against the entity that enacted the regulations. The U.S. Supreme Court estab-

lished a cause of action for inverse condemnation based on use of the airspace in *United States v. Causby*.²⁶⁶ In that case, the U.S. Supreme Court considered whether by increasing federal use at an airport, the government had taken a property interest over adjacent land. The Court established that "[f]lights over private land are not a taking, unless they are so low and so frequent as to be a direct and immediate interference with the enjoyment and use of the land."²⁶⁷ Thus the law presumes a taking has not occurred unless specific circumstances can be proven.

In *Causby*, the federal government had abruptly commenced wartime training missions over property adjacent to a runway and had essentially destroyed the value of a resident's home and poultry business. The Court found that the federal government was liable for a taking in that fact setting, finding that it had continuously invaded the superadjacent airspace in a manner so immediate and direct that this use subtracted from the property owner's full enjoyment and exploitation of the property. The Court later applied these principles to a state's use of the airspace as well.²⁶⁸

The federal government, however, has exclusive sovereignty of the airspace where the public has a right of transit.²⁶⁹ After *Causby*, the FAA declared by regulation altitudes where flight may occur and that constitute navigable airspace that is a part of the public domain. It stated that except when necessary for takeoff or landing, minimum altitudes for flight are 500 ft over non-congested areas and 1,000 ft over congested areas.²⁷⁰ The federal courts then determined that there is a presumption of nontaking for flights occurring within the navigable airspace. That presumption can only be overcome by proof of specific circumstances that destroy or substantially impair the property.²⁷¹ Most federal cases only determine that a taking has occurred when aircraft are physically present in the "superjacent airspace" (the airspace that the owner reasonably occupies for his own use).²⁷² Federal cases involving only noise, or involving only flight in the navigable airspace, have rarely resulted in a taking.

When inverse condemnation claims are filed in state court, the states often look to the standards established

²⁶² For example, see R.I. GEN. LAWS § 1-7-1 (through 2010 Jan. Sess., ch. 320) (air quality monitoring program).

²⁶³ For example, see N.H. REV. STAT. ANN. § 674:64 (through 2011 Reg. Sess., June 6, 2011) (small wind energy systems).

²⁶⁴ For example, see N.M. STAT. ANN. § 74-12-7 (through 2011 1st Reg. Sess.) (exempting airport safety lighting from Night Sky Protection Act).

²⁶⁵ Environmental measures at airports also can give rise to noncompliance actions and liability claims. Liability for noise is discussed in the following section, and environmental regulations may give rise to other claims as well. For example, in *United States ex rel. Nguyen v. City of Cleveland, Ohio*, 2005 U.S. Dist. LEXIS 22103, 35 ELR 20200 (N.D. Ohio Sept. 30, 2005), the relator (Nguyen) brought a qui tam action under the False Claims Act, 31 U.S.C. § 3729 *et seq.*, against 70 airports across the country alleging that their deicing operations violated the Clean Air Act and that as a result, these airports had not made accurate certifications in connection with their federal grant assurances (which require that airports be in compliance with all applicable environmental laws).

²⁶⁶ 328 U.S. 256, 66 S. Ct. 1062, 90 L. Ed. 1206 (1946).

²⁶⁷ *Id.* at 266.

²⁶⁸ *Griggs v. Allegheny Co.*, 369 U.S. 84, 82 S. Ct. 531, 7 L. Ed. 2d 585 (1962) (permitting assertion of claim for inverse condemnation against state).

²⁶⁹ States commonly assert sovereignty in airspace where it has not been assumed by the United States.

²⁷⁰ See 49 U.S.C. § 40103; 14 C.F.R. § 91.119.

²⁷¹ See *Aaron v. United States*, 160 Ct. Cl. 295, 311 F.2d 798 (1963) (establishing presumption); *Stephens v. United States*, 11 Cl. Ct. 352 (Cl. Ct. 1986) (determining presumption applied; property owners failed to establish that noise or character of overflights in navigable airspace decreased value of their land).

²⁷² See, e.g., *Branning v. United States*, 228 Ct. Cl. 240, 654 F.2d 88 (1981) (the great weight of federal authority supports this conclusion).

in federal cases to determine whether a taking involving airspace has occurred. Those federal standards directly address airspace issues and essentially presume that no taking has occurred unless the circumstances of the case establish a substantial impairment or destruction of the property. State courts also may consider the general standards established under federal law for “regulatory takings” claims, under which courts first determine whether government was regulating in pursuit of a valid public purpose, and then examine the regulation’s economic impact on the specific claimant and the extent to which it interferes with reasonable, investment-backed expectations in the property.²⁷³

For example, in *Biddle v. BAA Indianapolis, LLC*,²⁷⁴ the Indiana Supreme Court considered an inverse condemnation claim involving airspace and noted that the federal standards were consistent with the analysis used under the law of the state. A regulatory taking under Indiana law required a showing of “special injury” peculiar to an individual’s real estate that went beyond mere inconvenience. After considering the federal standards, the court adopted them as the more precise test to measure the degree of harm that may be involved in airspace claims and in order to provide for more consistent decisions.²⁷⁵

Approaches to inverse condemnation, however, have varied from the general approach. For example, in *McCarran Int’l Airport v. Sisolak*,²⁷⁶ the Nevada Supreme Court has determined that the Nevada Constitution protects a property interest in the “useable” airspace of the subadjacent land to a greater extent than under the U.S. Constitution. It further found that Nevada statutes create a public right of flight and protect an ownership interest in the usable portions of airspace above an owner’s property up to 500 ft.

The court found that ordinary zoning actions will not give rise to a taking of airspace in Nevada. Under Nevada law, however, an ordinance limiting heights for the passage of aircraft can result in a permanent physical invasion of airspace that otherwise could have been used. To the extent a court determines that this occurs, such an ordinance excludes the landowner from that area and effects a per se, “categorical” taking, a narrow type of taking in which a regulation creates a permanent physical exclusion.²⁷⁷ Thus in Nevada, excluding

an owner from airspace that otherwise could have been used may result in an inverse condemnation action to compensate for the specific lost use.

In *DeCook v. Rochester Int’l Airport Joint Zoning Board*,²⁷⁸ the Minnesota Supreme Court has determined that the Minnesota Constitution also contains more extensive protections for airspace than the U.S. Constitution. That court drew a distinction between government regulations that were “arbitration” regulations (or comprehensive land-use plans that provided reciprocal benefits and burdens to all landowners) and “enterprise” regulations (or regulations designed to benefit a specific public or governmental enterprise). It determined that airport zoning measures were “enterprise” regulations, and that such regulations require paying compensation to landowners if they cause a substantial and measurable decline in market value.

Under this ruling, the court determined that a taking will only occur if the diminution in a property’s market value is found to be “substantial.” The court noted that whether a diminution in value has occurred, and its extent, are questions of fact, but whether or not a diminution is “substantial” is a question of law for the court.²⁷⁹ Thus an initial trial on valuation may be necessary to establish whether or not a taking has occurred.

In many instances, courts reject local efforts to erode the regulations that protect airports. For example, residents may raise a challenge to airport regulations by questioning whether a local zoning ordinance is valid, meaning whether state statutes adequately empower an airport entity or other entity to adopt the ordinance. An ordinance that fails to comply with state empowering statutes is invalid. In general, however, courts broadly interpret a general statute authorizing airport zoning actions to support a wide range of local regulation.²⁸⁰

Landowners also have challenged airport zoning ordinances as being “void for vagueness.” Under this claim, landowners may assert that an ordinance’s height and land-use restrictions are not sufficiently detailed to provide adequate notice of its requirements and guard against arbitrary enforcement. Courts construing lawful ordinances, however, generally defer to the actions taken by legislative bodies as long as those actions are not arbitrary and capricious. For example, a Kansas court determined that where an ordinance did

²⁷³ See *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528, 125 S. Ct. 2074, 161 L. Ed. 2d 876 (2005); *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 112 S. Ct. 2886, 120 L. Ed. 2d 798 (1992); *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 98 S. Ct. 2646, 57 L. Ed. 2d 631 (1978) (establishing regulatory taking action if regulation unfairly singles out a property owner by depriving owner of economic use of the property in order to bear a burden that should be borne by the public as a whole).

²⁷⁴ 860 N.E.2d 570 (Ind. 2007).

²⁷⁵ *Id.* at 580 (adoption of federal analysis).

²⁷⁶ 122 Nev. 645, 137 P.3d 1110 (2006).

²⁷⁷ *Id.* at 666 (also determining that ability to obtain a variance was only material to amount of damages); See also *Hsu v.*

County of Clark, 123 Nev. 625, 173 P.3d 724 (2007) (further clarifying concepts from *McCarran Int’l Airport v. Sisolak*).

²⁷⁸ 796 N.W.2d 299 (Minn. 2011)

²⁷⁹ *Id.* at 307 (determining that amount of diminution established by jury, \$170,000, qualified as substantial and thus a taking had occurred).

²⁸⁰ See *North Props. v. Outagamie County*, 223 Wis. 2d 483, 589 N.W.2d 683 (1998) (ordinance restricted housing density in airport overlay district to no more than one residence per acre; court determined from plain language of statute that ordinance was authorized under state law, and also upheld ordinance against equal protection challenge).

not include precise height restrictions, but provided a means to determine them and a means to further review them, the airport zoning ordinance was not void for vagueness.²⁸¹

Challenges to airport actions may also focus on an airport entity's powers to acquire property interests. Airport entities typically may purchase real property to expand, control certain locations affected by noise, or where airspace obstructions or other incompatible uses have been established.²⁸² States may also empower airport entities to establish an airport district on lands near the airport in which the entity can acquire easements for development rights and require that the land be used for agricultural or other specified purposes.²⁸³ Airport entities and local government may acquire air rights and avigation easements as well, which normally convey rights to the airport entity to permit flight, aircraft noise, and other effects. Since these rights encumber title to the property, avigation easements also provide notice of the nature of the property to future purchasers.²⁸⁴

Avigation easement rights may give rise to a number of challenges. For example, in *McCarran*, the court found that where avigation easements were conveyed as a condition of obtaining a building permit, they were overly broad (by simply permitting overflights without specific height limitations) and constituted an unconstitutional "exaction" under standards established by the U.S. Supreme Court. *McCarran* focused primarily on a height limitation ordinance, however, and in that context the court determined that the broadly drafted easement would not provide a defense to an inverse condemnation claim. When petitioning to the U.S. Supreme Court, the airport entity noted that the avigation easement had never been found to violate the U.S. Su-

preme Court's standards regarding unconstitutional exactions.²⁸⁵

Airport entities have at times asserted a right to obtain avigation easement rights by prescription, a claim that the airport entity has acquired an easement due to its use of longstanding flight patterns over a specified area. Courts determine whether a prescriptive easement exists based on the laws of each state. In general, however, to acquire a prescriptive right, the airport entity must show that it made open and notorious use of the property in a manner adverse to the landowner for a continuous and uninterrupted number of years (as established by statute). Some courts have recognized prescriptive avigation easements in favor of airport entities, but in general airport entities have found it difficult to establish easements by prescription in support of their flight paths.²⁸⁶

State statutes also frequently authorize airport entities and other government entities to acquire airport protection privileges, such as rights to cut trees or mark airspace obstructions in areas surrounding the airport. States may expressly provide that encroachments on airport protection privileges are unlawful and constitute a public nuisance and authorize airport entities to enter private lands to remove encroachments without liability.²⁸⁷ Some airport entities also have asserted that prescriptive easements rights allow them to enter lands and cut trees that create an obstacle. These assertions have again been met with mixed results in the courts.²⁸⁸

²⁸¹ See *Kimberlin v. City of Topeka*, 238 Kan. 299, 710 P.2d 682 (Kan. 1985) citing *United States v. Causby*, 328 U.S. 256, 66 S. Ct. 1062, 90 L. Ed. 1206 (1946) and *Penn Cent. Transp. Co. v. New York City*, 438 U.S. 104, 98 S. Ct. 2646, 57 L. Ed. 2d 631 (finding ordinance definition of "airport hazard" not unconstitutionally vague because specific requirements could be determined by officials with expertise and were subject to subsequent review).

²⁸² State laws also generally give airport entities authority to seek an injunction to address airspace obstructions.

²⁸³ For example, see MD. CODE ANN., TRANSP. § 5-4A-01 (through 2010 Reg. Sess.) (power to establish airport district rights); N.J. STAT. ANN. § 6:1-95 (through L.2010 c. 118, 121, 123 & J.R. No. 6) (airport entity acquiring such development rights obligated to covenant that the airport will remain unrestricted, public-use airport).

²⁸⁴ See *Biddle v. BAA Indianapolis, LLC*, 860 N.E.2d 570 (Ind. 2007) (purchasers with notice of airport noise bought property at reduced price that took that fact into account and could not demonstrate interference with distinct investment-backed expectations). Statutes in a number of states also address concerns for notice to property owners by imposing a duty on a real property seller to disclose the existence of a nearby airport or by requiring such a disclosure in connection with subdivision offerings.

²⁸⁵ See *McCarran Int'l Airport v. Sisolak*, 122 Nev. 645, 137 P.3d 1110 (2006), citing *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825, 832, 107 S. Ct. 3141, 97 L. Ed. 2d 677 (1987) (arguing in a subsequent petition to the U.S. Supreme Court that easements allowing passage of aircraft were never found to violate the nexus and proportionality requirements of *Nollan v. Cal. Coastal Comm'n* and *Dolan v. City of Tigard*, 512 U.S. 374, 114 S. Ct. 2309, 129 S.E.2d 304 (1994)). See also Jay M. Zitter, Annotation, *Zoning Regulations Limiting Use of Property near Airport as Taking of Property*, 18 A.L.R. 4th 542 § 3[a] cum. supp. (orig. pub. 1982).

²⁸⁶ See *Baker v. Burbank-Glendale-Pasadena Airport Auth.*, 220 Cal. App. 3d 1602, 270 Cal. Rptr. 337 (1990) (under facts of this case, recognizing airport entity had acquired an avigation easement by prescription). See also *McCarran Int'l Airport v. Sisolak*, 122 Nev. 645, 137 P.3d 1110 (Nev. 2006) (under facts of this case involving an overflight easement without height restrictions, airport entity could not properly require avigation easement as a condition to development without compensation).

²⁸⁷ For examples, see COLO. REV. STAT. ANN. § 41-4-109 (through 2011 1st Reg. Sess.); WIS. STAT. ANN. § 114.135 (through 2009 Act 406, pub. June 2, 2010) (also imposing 6-month statute of limitations).

²⁸⁸ For example, see *County of Chester v. Comm'r of Transp.*, 9 F.3d 242 (2d Cir. 1993) (facts did not establish prescriptive avigation easement under Connecticut law to cut trees on neighboring land); *Ventres v. Goodspeed Airport, LLC*, 275 Conn. 105, 881 A.2d 937 (2005) (under facts of case, airport entity had established a prescriptive easement to enter land and cut trees to protect airport approaches).

Landowners near an airport may also assert that airport operations constitute a nuisance, meaning that an ordinary person would consider flight impacts such as noise, vibration, and lighting to interfere with an owner's use of property to such a degree that the interference requires a remedy. State statutes can help airport entities defend these claims. States typically provide that an airport is not a "nuisance per se," and state statutes may preclude or limit nuisance claims to some extent, particularly when based on a claim of "public nuisance," a claim that airport operations are subversive to general public rights.²⁸⁹

Residents may assert claims of "private nuisance" as well, or claims that the airport is creating a private harm that is specific to a given resident rather than having a broader, general impact. Courts may find that the ordinary operations of an airport cannot result in a claim of private nuisance, and generally courts also do not allow such a claim to be based on a plaintiff's subjective preferences about his or her environment. If a court does find in a given case that the evidence demonstrates a nuisance, courts do not enjoin or abate a public airport in response to a nuisance claim.²⁹⁰

Local claims that challenge the real property and land-use actions of an airport entity can have the effect of eroding the powers that states provide to protect airport operations. In most instances, these claims do not succeed, and courts find that the law supports an airport's ordinary activities. Strong and specific state laws, however, can help prevent challenges to ordinary airport activities and support the public interest in air transportation.

V. AIRPORT MANAGEMENT AND OPERATIONS

States typically enact a variety of laws that regulate management and operational activities occurring at an airport. In some instances, these laws arise from the governmental nature of the airport entity. Other laws are aimed at establishing policy for commercial or other specific activities at the airport. This section will review common airport-specific laws in this area.

A. Finance and Administration

State laws regulating finance and administration functions at an airport tend to reflect a number of policies. States tend to give airport entities discretion to

operate the airport in a way that supports its commercial needs. These laws also balance the needs of business activities with the governmental nature of the entity. In general, administrative functions at an airport that could be performed by any government entity are regulated by laws that address government actions, but state laws that address airport commercial activities, such as concessions and leasing, depart from those governmental requirements to varying degrees.

Setting Airport Charges. Federal laws impose requirements on charges set by airports that restrict the scope of permissible state and local policies. Significant federal requirements focus on airport charges for the use of airfield facilities. The federal government prohibits a "head tax" on passengers at any airport, and at federally assisted airports, airport rate formulas for the use of airfield facilities must comply with federal regulations.²⁹¹ Federal grant assurances also create significant requirements for federally assisted airport entities. Among them, airport entities cannot engage in economic discrimination. They must make the airport available on reasonable terms and without unjust discrimination to all types of aeronautical activities. The grant assurances also obligate these airport entities to make their facilities available without charge (in many instances) for use by aircraft owned by the federal government, and they must furnish land for certain federal facilities without charge.²⁹² Other federal requirements apply as well. For example, if an airport entity uses passenger facility charge funding to construct terminal facilities, it must comply with certain requirements regarding the rents for those facilities.²⁹³

Federal law, however, expressly provides that an airport entity may require "reasonable rental charges, landing fees, and other service charges from aircraft operators...."²⁹⁴ Federal grant assurances also obligate federally-assisted airport entities to "maintain a fee and rental structure for the facilities and services at the airport that will make the airport as self-sustaining as possible under the circumstances existing at the particular airport...."²⁹⁵ Thus states may regulate airport charges when not preempted by federal law, and a state's empowerment provisions and statutory obligations can have a substantial impact on an airport entity's practices.

Airport entities are normally considered to be government "enterprises" that may generate revenues

²⁸⁹ For examples, see IND. CODE ANN. § 32-30-6-10 (through 2011 1st Reg. Sess.); *Thrasher v. Atlanta*, 178 Ga. 514, 173 S.E. 817 (Ga. 1934) (airports not nuisance per se).

²⁹⁰ See *Town of Hull v. Mass. Port Auth.*, 441 Mass. 508, 806 N.E.2d 901 (Mass. 2004) (finding no claim for public nuisance based on noise because airport operations were legislatively sanctioned and town made no allegation that airport had exceeded its statutory authority or violated federal regulations; also finding against claim of private nuisance because evidence did not implicate a property right of the town and action not supported by precedent). See also Jack L. Litwin, Annotation, *Airport Operations or Flight of Aircraft as Nuisance*, 79 A.L.R. 3d 253 (orig. pub. 1977).

²⁹¹ See 49 U.S.C. § 40116; Policy Regarding Airport Rates and Charges, 61 Fed. Reg. 31994 (June 21, 1996); *Air Transport Ass'n of Am. v. Dep't of Transp.*, 129 F.3d 625, 327 U.S. App. D.C. 133 (D.C. Cir. 1997) (vacating portions of the Policy Regarding Airport Rates and Charges).

²⁹² See Grant Assurance Nos. 23, 27, and 28, http://www.faa.gov/airports/aip/grant_assurances/media/airport_sponsor_assurances.pdf.

²⁹³ See 14 C.F.R. Pt. 158, App. A, § B.8.

²⁹⁴ 49 U.S.C.A. § 40116(e)(2).

²⁹⁵ Grant Assurance No. 24, http://www.faa.gov/airports/aip/grant_assurances/media/airport_sponsor_assurances.pdf.

through business activities to support their overall operations. This approach differs from that of entities engaged in conducting general government. General government entities raise revenues by collecting taxes, and may only impose charges for services on a “cost recovery” basis to recover their expenses.²⁹⁶ As a government “enterprise,” an airport entity has discretion to set a charge that will be revenue producing based on market factors without regard to the entity’s actual costs for providing a given commercial activity.²⁹⁷

Concession activities, for example, represent one important source of funding for many airport entities. Airport entities award concessions to private businesses to conduct a commercial activity at the airport that provides services to the public. In return, the airport entity is funded by receiving a percentage of the concession’s gross revenues because it has allowed the business to profit from access to the airport’s customers. A number of industries have challenged an airport entity’s ability to impose charges based on a percentage of gross revenues (including car rental, ground transportation, and off-airport parking), but courts have consistently upheld airport concession charges imposed on this basis.

For example, in *Seattle-Tacoma International Taxi Association v. Port of Seattle*,²⁹⁸ a taxicab association challenged an airport entity’s ability to issue a Request for Proposals that required the chosen provider to pay the greater of a percentage of gross revenues or a minimum annual guaranteed amount for the privilege of operating at the airport. The court found that these charges did not violate the state’s Revised Airports Act, which required the airport’s charges to be reasonable and uniform for the same class of service and be established with due regard to a person’s use of property and improvements and the airport’s expense of operation. Under this standard, the court observed that taxicabs were a distinct “class of service,” that the airport’s charge supported its overall operations, and that taxicabs would have access to the overall benefit of the facility rather than just specific roadways. The court found these factors to support concession fees based on a percentage of gross revenues.²⁹⁹

²⁹⁶ See, e.g., *Denver Street LLC v. Town of Saugus*, 78 Mass. App. Ct. 526, 939 N.E.2d 1187 (2011) (a government entity’s charges will constitute a permissible fee, and avoid being categorized as an impermissible tax, when they are charged to an individual in exchange for a particular service, they are paid voluntarily (because an individual may choose not to use the service), and they are not collected to raise revenues but to compensate the government entity for the cost of providing the service).

²⁹⁷ For example, see *Riemers v. State*, 731 N.W.2d 620 (N.D. App. 2007) (distinguishing fees set for permit or license and fees set by a government enterprise); *Coleman v. Kootsillas*, 575 N.W.2d 527 (Mich. 1998) (government conducting activity for purpose of producing a profit).

²⁹⁸ 156 Wash. App. 1025, unpublished (June 7, 2010).

²⁹⁹ *Id.*, citing *Branson v. Port of Seattle*, 152 Wash. 2d 862, 101 P.3d 67 (2004) (port has broad discretionary power to set concession fees in the manner it chooses so long as the result-

Other charges at an airport are intended to generate revenue as well, such as leasing hangar space or other commercial functions. States often do not address these fee setting measures. They may, however, discuss some of the factors or standards that airport entities must consider when calculating rates and charges. For example, in Maine, municipal airport rates and charges must make use of methodologies that are reasonably related to the use of airport property or services, such as square footage, gross receipts, or landing fees.³⁰⁰

States also may impose “governmental” kinds of procedures in connection with airport charges. For example, Kentucky state law provides a remedy for persons aggrieved by an airport entity’s charges, creating a right of appeal to a governmental review process.³⁰¹ States also address concerns for fairness and due process through notice requirements, such as by requiring an airport entity to provide public notice before setting certain charges, or requiring it to comply with solicitation requirements before entering its contracts.³⁰²

In a few instances, states may prohibit or restrict the imposition of specific airport charges. For example, Alaska state law provides that airport entities must permit military uses without charge, and it prohibits imposing some charges on a percentage of gross revenue basis.³⁰³ State laws prohibit imposing a charge for landing fees except on aircraft used in commercial activities or aircraft above a specified weight.³⁰⁴ Nevada state law prohibits new fees or taxes on the sale of aviation fuel after a specified date.³⁰⁵ Thus while in general airport entities have broad authority to determine rates and charges, their authority is shaped by specific federal and state requirements.

ing fees comply with the basic limitations set forth in state statute; the fee that a taxi company must pay under a concession agreement derives both from the burden of the taxi company’s use of airport property and the benefit that the port bestows on the taxi company by providing it with exclusive access to a market of potential customers). See also § 5.E, *infra*, regarding car rental issues.

³⁰⁰ See ME. REV. STAT. ANN. tit. 30-A § 5405 (through 2009 2d Reg. Sess.). See also HAW. REV. STAT. § 261-7 (through 2010 Reg. & Sp. Sess.) (specifying various fee requirements to provide for airport expenses).

³⁰¹ See KY. REV. STAT. ANN. § 183.133 (through 2010) (providing right of appeal to aggrieved parties).

³⁰² For examples, see ALASKA STAT. § 02.15.090 (through 2010 Reg. Sess.) (notice when setting customer facility charges); DEL. CODE ANN. tit. 2, § 933 (through 2011, 78 Laws, chs. 1–203) (procurement requirements).

³⁰³ See ALASKA STAT. § 02.15.090 (through 2010 Reg. Sess.).

³⁰⁴ For example, see N.M. STAT. ANN. § 64-1-16 (through 2010 2d Reg. Sess. & 2d Sp. Sess.) (airports receiving state funds may only charge landing fees on commercial aircraft); TENN. CODE ANN. § 42-2-107 (through 2010 1st Ex. Sess. & 2010 Reg. Sess.) (prohibiting landing fees on aircraft 12,500 lbs or less).

³⁰⁵ NEV. REV. STAT. ANN. § 365.210 (through 2009 Reg. Sess. & 2010 Sp. Sess.) (includes exceptions).

Leasing Airport Lands. As with airport charges, leasing airport lands is generally subject to a variety of federal and state requirements that reflect both the commercial and governmental aspects of airport activities. Federal regulations are imposed primarily on a contractual basis through airport grant assurances and property deeds.³⁰⁶ Among them, airport entities may not enter leases or other arrangements for aeronautical activities that convey exclusive rights, and arrangements must be on reasonable terms and without unjust discrimination.³⁰⁷ FAA considers an aeronautical lease term that exceeds 50 years to be a prohibited disposal of property, and airport entities cannot enter exclusive long-term leases with airlines (defined as 5 years or more) for facilities that have been funded using Passenger Facility Charges.³⁰⁸ In general, however, federal regulations support an airport entity's ability to enter commercial arrangements for the use of its land.³⁰⁹

State laws impose similar policy requirements on airport entities. In general, state laws give these entities the power to lease airport lands for airport purposes (and sometimes for nonairport purposes). State laws commonly make airport leases subject to broad prohibitions against depriving the public of its equal and uniform use of the airport and against granting exclusive rights.³¹⁰ States may further express broad

³⁰⁶ See 49 U.S.C.A. § 47107 (requiring contractual grant assurances in exchange for federal assistance); FAA Airport Compliance Manual, FAA Order 5190.6B § 1.9 (Sept. 30, 2009) (listing sources of an airport sponsor's federal obligations, including grant assurances and property deeds).

³⁰⁷ Grant Assurance Nos. 22 and 23, http://www.faa.gov/airports/aip/grant_assurances/media/airport_sponsor_assurances.pdf.

³⁰⁸ See FAA Airport Compliance Manual, Order 5190.6B, § 12.3.b(3); 14 C.F.R. § 158.3 and App. A at B.5–B.6 (lease requirements). Other federal policies may apply to an airport's leasing practices as well. For example, FAA discourages “through-the-fence” arrangements, in which tenants that do not lease airport land have access to airport facilities. See FAA Airport Compliance Manual, FAA Order 5190.6B § 12.7 (Sept. 30, 2009); Grant Assurance No. 5.g, http://www.faa.gov/airports/aip/grant_assurances/media/airport_sponsor_assurances.pdf (prohibiting through-the-fence arrangements involving residential uses). It also imposes requirements on providing airlines with competitive access to facilities. See Grant Assurance No. 39, http://www.faa.gov/airports/aip/grant_assurances/media/airport_sponsor_assurances.pdf.

³⁰⁹ For example, see FAA Airport Compliance Manual, Order 5190.6B, § 10.2 (supporting an airport entity's use of minimum standards to impose conditions on airport land uses and commercial arrangements); Grant Assurance No. 39, http://www.faa.gov/airports/aip/grant_assurances/media/airport_sponsor_assurances.pdf (requiring tenants constructing hangars to enter terms and conditions that the airport entity imposes).

³¹⁰ These provisions were a part of the Uniform Airports Act, which influenced the laws of many states. See App. A: State Codes (noting uniform law influences by state). For example, see, e.g., WASH. REV. CODE ANN. §§ 47.68.130, 47.68.140 (through 2011, chs. 1 & 2) (imposing these common requirements).

goals for airport leases, such as by directing airport entities to manage facilities and grant concessions in furtherance of the development of commerce and tourism or to provide for diverse services.³¹¹

State requirements may relate to particular types of leases on airport property. For example, most state laws empower airport entities to lease an entire airport facility.³¹² Some states impose requirements for tenant investments on airport property.³¹³ Some also address specific facilities, such as requiring that a concession for “in-bond” (duty free) merchandise be exclusive, that airport leases comply with minimum standards issued by the state aeronautics agency, or that airport entities comply with laws making vending space opportunities available to the blind.³¹⁴

Airport lease durations are a common area of state regulation. A state may address durations generally, such as by requiring that airport leases have an adequate duration to assure permanence and stability to a tenant using an airport for an aeronautical business.³¹⁵ A state also may impose specific requirements in addition to maximum durations, such as by requiring that the airport entity also obtain a reversion of title for tenant-constructed improvements; requiring a specified minimum level of investment; distinguishing types of leases when imposing maximum durations; extending lease term requirements to renewal periods; and requiring periodic adjustments in rent in connection with lengthy terms.³¹⁶ Maximum permitted durations vary, such as terms of 20–30 years when tenants construct improvements or as few as 10 years for any airport lease.³¹⁷

³¹¹ For example, see CAL. PUB. UTIL. CODE § 21690.7 (through 2011 Reg. Sess., ch. 745, and 2011–2012 1st Ex. Sess.).

³¹² These provisions were a part of the Uniform Airports Act, which influenced the laws of many states. See App. A: State Codes (noting uniform law influences by state).

³¹³ For example, see LA. REV. STAT. ANN. § 2:135.1 (through 2010 Reg. Sess.) (allowing extensions of lease term for specified tenant investments); UTAH CODE ANN. § 72-10-207 (minimum investment required for certain long-term leases).

³¹⁴ For examples, see ALASKA STAT. §§ 02.15.091 and 02.15.090 (through 2010 Reg. Sess.) (exclusive concessionaire required and specific requirements for tenant improvements); HAW. REV. STAT. § 102-14 (through 2011 Reg. Sess.) (requirements for public buildings).

³¹⁵ For example, see N.H. REV. STAT. ANN. § 422:18 (through 2010 Reg. Sess., ch. 381 & 2010 Sp. Sess., ch. 1).

³¹⁶ For examples, see KAN. STAT. ANN. § 13-1348b (through 2010 Reg. Sess.) (reversion of title); UTAH CODE ANN. § 72-10-207 (through 2010 Gen. Sess.) (specified minimum investment); MO. ANN. STAT. § 305.310 (through 2010 1st Ex. Sess.) (nonaeronautical leases limited to 20 years); IND. CODE ANN. § 8-22-2-5 (through 2010 2d Reg. Sess.) (different maximum durations apply both for initial and extended lease terms and for both existing and tenant-investment facilities); WASH. REV. CODE ANN. § 36.34.180 (through 2011, ch. 1 & 2) (requiring rent adjustments every 5 years).

³¹⁷ For examples, see MISS. CODE ANN. § 61-5-91 (through 2010 Reg. & 1st & 2d Ex. Sess.) (maximum of 25 years with

Airport leases also are subject to a number of “governmental” kinds of requirements due to the nature of airport entities. These leases are subject to state laws that apply to all government contracts (as discussed in the following section). “Governmental” issues may also affect leasehold rights and remedies. For example, if government regulations result in closing premises subject to an airport lease, in some circumstances an airport tenant might assert a takings claim.³¹⁸ Also, federal grant assurances relating to airport leasing practices may not protect an airport entity from subsequent state claims for damages under a lease.³¹⁹

Other Administrative Requirements. Many laws apply to government contracts, and as such they impact the activities that airport entities conduct. Among general legal principles, government cannot enter a contract that would have the effect of nullifying a state law (including an airport entity’s enabling statutes). Such contracts are void, and parties are assumed to understand this risk when contracting with government.³²⁰ Government contracts also must be executed in accordance with specific technical requirements. A failure to follow those requirements normally will render a contract void.³²¹ Government contracts must have a public purpose as well. Raising revenue for an enterprise function is considered to be a public purpose.³²²

State constitutions also normally prohibit government contracts from “lending credit” to a private entity. In other words, government cannot assume a financial liability that in effect creates government debt for the benefit of a private enterprise, such as by agreeing to pay the debt of a potentially defaulting party or to be-

investment); DEL. CODE ANN. tit. 2, § 705 (through 2010, 77 Laws, chs. 1–476 and 2010 tec. corr.) (maximum of 10 years).

³¹⁸ See *Love Terminal Partners v. United States*, 97 Fed. Cl. 355 (2011) (regulatory taking occurred when Wright Amendment Reform Act prohibited use of portions of airport in which plaintiffs held long-term leases).

³¹⁹ See *Asheville Jet, Inc. v. City of Asheville*, 689 S.E.2d 162 (N.C. Ct. App. 2010) (federal leasing requirements imposed on airports did not preempt state action for damages on the lease).

³²⁰ See *SC Testing Tech., Inc. v. Dep’t of Env. Protection*, 688 A.2d 421 (Maine 1996) (contractor built inspection facilities after entering state contract to provide emissions testing; state then terminated contract when legislature repealed testing requirements, nullifying subject matter of contract, and court found contractor assumed that risk).

³²¹ See *Cherry Creek Aviation, Inc. v. City of Steamboat Springs*, 958 P.2d 515 (Colo. Ct. App. 1998) (noting that in Colorado, a governmental/proprietary distinction no longer determined governmental immunity but affected other issues, including validity of a contract entered to obtain a Fixed Base Operator; the city’s failure to comply with governmental execution formalities rendered the contract void).

³²² See *Brody v. City of Millville*, 114 N.J. Super. 94, 274 A.2d 849 (1971) (finding city could finance expansion of tenant’s leased facility because airport lease had adequate public purpose when entered for aircraft engine repair business).

come responsible to another party’s creditors.³²³ As with private contracts, government contracts also are subject to a covenant of good faith and fair dealing. This covenant requires that when parties exercise discretion during the performance of a contract, they do so in good faith to accomplish the contract’s objectives and not act to undermine the contract’s performance.³²⁴

Public procurement laws also may affect airport contracts. Under these laws, airport contracts may be subject to public solicitation requirements, and contracting actions normally cannot be arbitrary or capricious.³²⁵ Federal procurement requirements can supersede an airport entity’s local requirements for projects receiving federal funding, and other specific requirements may apply.³²⁶ Other administrative areas at an airport typically must conform to common governmental requirements as well. For example, airport-specific laws may address areas such as meetings or recordkeeping, concerns for protecting privacy in airport records and data, and marketing actions to promote the airport.³²⁷

Government employment is subject to many common legal requirements, but states may enact specific provisions addressing airports. For example, Michigan state law requires airport managers to obtain a license from the state aeronautics agency.³²⁸ Among various states, laws also may create airport-specific requirements relating to salary limitations, employment age requirements, labor negotiations, strike requirements, discrimination monitoring requirements for concessionaires, workers compensation requirements, and requirements for airport and business employees.³²⁹

³²³ *Jackson-Shaw Co. v. Jacksonville Aviation Auth.*, 510 F. Supp. 2d 691 (M.D. Fla. 2007) (airport entity’s long-term lease of property to private development company did not violate entity’s empowering statutes, it had a public purpose to raise revenue, and it did not constitute a lending of credit where airport entity was merely a lessor that shared in profits).

³²⁴ See *Airis SFO, LLC v. City and County of San Francisco*, 2010 Cal. App. Unpub. LEXIS 8283 (Oct. 20, 2010) (finding officials breached covenant); *Hunting Aircraft, Inc. v. Peachtree City Airport Auth.*, 281 Ga. App. 450, 636 S.E.2d 139 (2007) (airport had implied duty of good faith to consent to request to assign rights under easement agreement).

³²⁵ See *Jackson-Shaw Co. v. Jacksonville Aviation Auth.*, 510 F. Supp. 2d 691 (M.D. Fla. 2007) (arbitrary and capricious standard applies when other procurement requirements do not).

³²⁶ See, e.g., ALA. CODE § 23-1-358 (through 2010 Reg. Sess.) (federal requirements may supersede state).

³²⁷ For examples, see MINN. STAT. ANN. § 473.685 (through 2011 Reg. Sess.) (data); FLA. STAT. ANN. § 331.20 (through 2010 2d Reg. Sess., ch. 274 & 2010 Sp. A. Sess., ch. 283) (permitting advertising and promotions, including hospitality).

³²⁸ See MICH. COMP. LAWS ANN. § 259.86 (through P.A. 2010, No. 266, Reg. Sess.) (airport manager license).

³²⁹ For examples, see MINN. STAT. ANN. § 15A.0815 (through 2010 2d Sp. Sess.) (salary); COLO. REV. STAT. ANN. § 8-3-108 (through 2010 2d Reg. Sess.) (unfair labor practice to obstruct airport access); MICH. COMP. LAWS ANN. § 259.114 (through P.A. 2010, No. 266, Reg. Sess.) (ethics).

B. Police and Security

State laws authorize police and security functions at airports. The Transportation Security Administration (TSA) performs some security functions at airports under federal law, but as presently implemented, the TSA does not exercise police powers and relies on local officers to take police actions.³³⁰ When state laws empower airport police officers, they generally provide full peace officer authority, but many also limit jurisdiction.³³¹

Common jurisdictional limitations include requiring that airport police officers act only on the airport's premises and be engaged in their airport employment when acting.³³² States normally permit these officers to exercise authority over any property of the airport entity. However they also may permit officers to pursue offenders leaving the airport, respond to a request for assistance from other agencies, or exercise authority over roadways in close proximity to the airport.³³³ States may authorize airports to use limited enforcement officers as well (such as parking enforcement officers), and a state may provide that specified airport officers are not police officers.³³⁴ States may address other aspects of an airport officer's duties as well, such as training requirements, whether or not airport officers can conduct investigations, whether a local agency must authorize them to carry firearms, and whether they must display a badge while on duty.³³⁵

State laws also may address concerns involving the enforcement jurisdiction of other agencies. Airport entities may be empowered to contract for police officers with neighboring municipalities or use such contracts to expand their police officers' jurisdiction. Officers from surrounding jurisdictions may need to obtain an airport entity's permission to access restricted airport areas, or airport entities may be empowered to enter mutual aid arrangements with other jurisdictions. In addition, the

law may give others enforcement powers at airports. For example, most states empower their state aeronautics agencies to designate employees who can exercise police power when enforcing the state's aeronautics act.³³⁶ State laws also may empower pilots or airport managers to restrain persons who are interfering with aircraft operations until a police officer arrives.³³⁷

States may address airport security measures as well. Among various states, laws may extend security protections to aviation fuel facilities located off of the airport; authorize measures to detect weapons and explosives; establish security zones on waters surrounding an airport; designate air freight security areas at an airport; require that officers be present at passenger screening checkpoints; impose restrictions on aircraft keys; implement pilot identification requirements; exempt airport documents from public disclosure requirements; or require airport managers to participate in antiterrorism training.³³⁸ State homeland security programs may have authority to assess airport security risks and coordinate activities, and in Florida certain airport entities must file a security plan meeting state requirements.³³⁹

C. Operations

Many airfield operations at an airport are governed by federal requirements, and as such, in many areas federal law may be preemptive.³⁴⁰ The state, however, provides the airport entity's fundamental power to act, and some state laws address specific operational concerns. For example, states may address aeronautical matters such as launching rockets near an airport, helicopter touring, aerial pesticide application, and the re-

³³⁰ 49 U.S.C. § 114(q) (TSA may designate law enforcement officers—it currently has not exercised that designation to create such officers for airports).

³³¹ In the survey at App. B: Questionnaire Responses, percentages were relatively even between airports employing a police force and those using a force not directly under the control of airport management.

³³² For example, see ALA. CODE § 4-2A-6 (through 2010 1st Sp. Sess.) (providing for powers and jurisdiction).

³³³ For example, see IND. CODE ANN. § 8-22-3-34 (through 2011 1st Reg. Sess.).

³³⁴ For examples, see OKLA. STAT. ANN. tit. 3, § 65.8 (through 2010 2d Reg. Sess. ch. 479) (officers enforce ordinance on any airport properties); 70 ILL. COMP. STAT. ANN. 5/8.12 (through 2010 Reg. Sess., P.A. 96-1496) (security force not deemed regularly constituted police department); FLA. STAT. ANN. § 316.640 (through 2010 2d Reg. Sess., ch. 274 & 2010 Sp. A. Sess., ch. 283) (airport parking enforcement officers).

³³⁵ For examples, see MONT. CODE ANN. § 7-32-303 (2011) (training); NEV. REV. STAT. ANN. § 171.1223 (through 2009 Reg. Sess. & 2010 Sp. Sess.) (investigations). CAL. PENAL CODE § 830.33 (through 2011 Reg. Sess., ch. 745, and 2011–2012 1st Ex. Sess.) (carrying firearms); W. VA. CODE ANN. § 8-29B-4 (through 2011 2d Extra Sess.) (firearms and badge).

³³⁶ The Uniform Aeronautical Regulatory Act contained these powers and influenced the laws in many states. See App. A: State Codes (noting states with aeronautics act provisions).

³³⁷ For example, see VA. CODE ANN. § 5.1-21.1 (through 2010 Reg. Sess.) (empowering airport manager).

³³⁸ For examples, see ARIZ. REV. STAT. ANN. § 41-4271 (through 2011, 1st Reg. Sess. and 3d Sp. Sess.) (fuel facilities); GA. CODE ANN. § 38-3-22.2 (through 2010 Reg. Sess.) (requiring antiterrorism training); OHIO REV. CODE ANN. § 4563.30 (through 2011–2012, files 1–47, 49 & 52) (keys, pilot identification, other matters); W. VA. CODE ANN. § 8-29B-6 (through 2011 2d Extra. Sess.) (officer at checkpoint).

³³⁹ See FLA. STAT. ANN. § 330.30 (through 2010 2d Reg. Sess., ch. 274 & 2010 Sp. A. Sess., ch. 283) (requiring plans from certain general aviation airports).

³⁴⁰ See 14 C.F.R. Pt. 139; In the Matter of the City of Santa Monica, Final Agency Decision and Order, FAA Docket No. 16-02-08, 2009 (FAA July 8, 2009), available at <http://part16.airports.faa.gov/pdf/16-02-08.pdf> modified in part by In the Matter of the City of Santa Monica, Final Decision and Order Granting Clarification of Final Agency Decision (Sept. 3, 2009) (FAA states that in cases involving airport proprietors, no court has yet found that local authority determinations regarding aviation safety not preempted.)

removal of crashed aircraft once investigative processes are complete.³⁴¹

States may address ground conditions as well. For example, they may exempt airfield vehicles from licensing requirements, prohibit unauthorized snowmobiles and recreational vehicles, and require the owners of livestock and fowl to keep them from entering an airport.³⁴² In nonaeronautical areas, states may authorize an airport entity to control vehicle and pedestrian traffic or impose parking conditions, such as by specifying requirements for handicapped parking or free parking.³⁴³

States also may empower airports to address emergency or dangerous conditions. For example, in Texas an airport entity has authority to declare a local state of disaster within the boundaries of an airport that it controls; Minnesota allows some airports to be designated as checking stations for aircraft flying into wilderness areas; and Alaska authorizes shelter cabins and comfort stations containing stoves and other suitable facilities as needed at airports.³⁴⁴

Most airport operational requirements are a product of federal law, but states regulate in some areas. Whether state or federal, these regulations define an airport entity's compliance obligations, and they also can have the effect of establishing a standard of care in connection with liability actions against the airport entity.³⁴⁵

D. Passenger and Terminal Services

States may regulate the local services that passengers receive in airport terminal buildings (in general, federal laws do not regulate these activities). For example, states typically regulate liquor licensing and require airport concessionaires to obtain special licenses. In various states, laws may permit the sale of travel insurance by airport vending machines, impose requirements on foreign currency exchanges, permit the operation of slot machines, or regulate telecommunica-

tions and utilities at airports.³⁴⁶ States may be preempted, however, from enacting passenger service regulations that directly affect air transportation.³⁴⁷

State or local requirements may address speech at airports. Airports are considered nonpublic forums for First Amendment purposes, and thus airport entities may limit charitable solicitation activities in their facilities.³⁴⁸ This ability to regulate the time, place, and manner of speech, however, has not been found to support a total ban on newspaper racks inside of a terminal building. The Fourth Circuit Court of Appeals found that a total ban on newspaper racks significantly restricts a publisher's ability to distribute newspapers, and the airport entity's interests in aesthetics, preserving airport revenue, preventing congestion, and maintaining security were not found sufficient to justify the burden of a total ban.³⁴⁹

Similarly, the Eleventh Circuit Court of Appeals found that even in a nonpublic forum, where an airport entity may regulate content, its regulations must be reasonable and viewpoint neutral. As such, the court determined that an airport entity could not charge an advertising affiliation for ads placed on newspaper racks, and that the entity's discretion to cancel licenses should be subject to nondiscriminatory standards. It upheld, however, the airport entity's ability to charge a

³⁴⁶ For examples, see KY. REV. STAT. ANN. § 304.9-240 (2011) (insurance); MINN. STAT. ANN. § 325F.51 (through 2011 Reg. Sess.) (foreign currency exchanges); NEV. REV. STAT. ANN. § 463.177 (through 2009 Reg. Sess. & 2010 Sp. Sess.) (slot machines).

³⁴⁷ See *Air Transport Ass'n of Am., Inc. v. Cuomo*, 520 F.3d 218 (2d Cir. 2008) (finding New York law regarding the rights of delayed air passengers preempted; state statute later repealed). The federal government subsequently issued a "passenger bill of rights" establishing certain protections. See *Enhancing Airline Passenger Protections*, 74 Fed. Reg. 68983-01 (Dec. 30, 2009); *Enhancing Airline Passenger Protections*, 75 Fed. Reg. 45562-01 (Aug. 3, 2010); *Enhancing Airline Passenger Protections*, 76 Fed. Reg. 23110-01 (Apr. 25, 2011).

³⁴⁸ See *Int'l Soc. for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 112 S. Ct. 2701, 120 L. Ed. 2d 541 (1992) (airport terminal is nonpublic forum for First Amendment purposes, and prohibition on solicitation of contributions satisfied reasonableness requirement); *Int'l Soc. for Krishna Consciousness of Cal., Inc. v. City of Los Angeles*, 48 Cal. 4th 446, 227 P.3d 395, 106 Cal. Rptr. 3d 834 (2010) (determining that whether or not airport was a public forum for free expression under the California Constitution, ordinance prohibiting solicitation at airport was valid as a reasonable time, place, and manner restriction of expressive rights to the extent it prohibited soliciting the immediate receipt of funds).

³⁴⁹ See *The News and Observer Publishing Co. v. Raleigh-Durham Airport Auth.*, 597 F.3d 570 (4th Cir. 2010) (when airport concession plan limited newspaper sales to retail outlets, plan found unreasonable and not upheld; in nonpublic forum, government may reserve the forum for its intended purposes in addition to time, place, and manner regulations, but regulation must be reasonable and viewpoint neutral, and a total ban was not reasonable).

³⁴¹ For examples, see CAL. PUB. UTIL. CODE § 21646 (through 2011 Reg. Sess., ch. 745, and 2011–2012 1st Ex. Sess.) (rockets); TENN. CODE ANN. § 42-1-301 (through 2011 1st Reg. Sess.) (helicopter touring); LA. REV. STAT. ANN. § 2:135.3 (through 2011 1st Extra Sess.) (pesticides); WIS. STAT. ANN. § 287.81 (through 2011 Act 46, pub. Nov. 15, 2011) (crash).

³⁴² For examples, see MICH. COMP. LAWS ANN. § 324.82119 (through P.A. 2011, No. 224, Reg. Sess.) (snowmobiles); ALA. CODE § 23-1-385 (through 2011 Reg. Sess.) (livestock and fowl).

³⁴³ For example, see WYO. STAT. ANN. § 31-5-501 (through 2010 Bud. Sess.) (handicapped and other parking).

³⁴⁴ See TEX. GOV'T CODE § 418.108 (Vernon, through 2009 Reg. & 1st Called Sess.) (local state of disaster); MINN. STAT. ANN. § 84.46 (through 2011 Reg. Sess., ch. 19) (requiring transportation commissioner to designate checking stations at three airports and requiring specific responsibilities); ALASKA STAT. § 18.40.010 (through 2010 2d Reg. Sess.) (shelter cabins).

³⁴⁵ See also § 3, *supra*.

profit-conscious fee for these licenses.³⁵⁰ Another court considering advertising issues determined that an airport entity may adopt a policy disallowing a competing parking lot from placing advertisements in airport facilities.³⁵¹

State efforts to regulate airport services also may focus on airport buildings. For example, states may prohibit smoking in airports or permit certain airports to operate separately ventilated smoking areas.³⁵² The Wisconsin state legislature has adopted a restroom equity act requiring airports to maintain adequate facilities to ensure that women have the same speed of access to toilets as men.³⁵³ Laws in various states may impose requirements for the placement of art, litter receptacles, automated external defibrillators, or public pay phones with communications devices for communication-impaired persons.³⁵⁴

E. Ground Transportation

States may enact laws addressing car rental companies and ground transportation providers in areas of concern to airport entities.³⁵⁵ As previously discussed, airport contracts for car rental concessions typically charge a fee based on a percentage of gross receipts, and when challenged, courts have upheld the use of these fees, whether applied to on or off-airport locations.³⁵⁶ State statutes may address other aspects of airport car rental activities as well. For example, laws in Wisconsin and Nevada regulate how car rental companies may notify customers of charges imposed by the

airport,³⁵⁷ and California law authorizes the use of customer facility charges by imposing detailed requirements on their use.³⁵⁸ States may choose, however, to allow local government to regulate customer facility charges. Airport entities implement these charges in a variety of ways based on their state powers to impose charges.³⁵⁹

States also may address commercial ground transportation at airports (such as taxicabs and shuttles), and they may expressly authorize airport entities to regulate “for hire” vehicles. States may prohibit an airport entity from granting any exclusive rights for these services, and they may make clear that every ground transportation provider has a right to discharge passengers at the airport.³⁶⁰ States also may allow an airport entity to establish an airport concession for taxicab or other ground transportation operations. When airport entities establish a concession, the courts have upheld their ability to require concession fees using a gross receipts model.³⁶¹ A state may permit criminal history background checks as well for ground transportation drivers who provide service to an airport.³⁶²

F. Airport Criminal Offenses

State criminal law codes typically contain a range of offenses that relate to actions at airports. In general, these crimes relate to airport administration matters, weapons at airports, airport safety and security, and airport operations.

State laws may address enforcement issues as well. For example, in Indiana purchasing a ticket to board an aircraft constitutes consent for an airline to search a

³⁵⁰ See *Atlanta Journal and Constitution v. City of Atlanta Dep’t of Aviation*, 322 F.3d 1298 (11th Cir. 2003) (city could not require publishers selling newspapers to associate with certain soft drink advertisers having relationship with city).

³⁵¹ See *Park Shuttle N Fly, Inc. v. Norfolk Airport Auth.*, 352 F. Supp. 2d 688 (E.D. Va. 2004) (upholding privilege fee calculated on percentage of gross receipts that airport imposed on facility, and upholding airport advertising policy that disallowed placement of ads by off-airport lot).

³⁵² For example, see *COLO. REV. STAT. ANN. § 25-14-203* (through 2011 1st Reg. Sess.).

³⁵³ See *WIS. STAT. ANN. § 101.128* (through 2009 Act 406, pub. June 20, 2010) (restroom equity).

³⁵⁴ For examples, see 410 *ILL. COMP. STAT. ANN. 55/3.1* and 415 *ILL. COMP. STAT. ANN. 105/10* (through 2011 Reg. Sess., P.A. 97-615 except P.A. 97-597) (litter and telecommunications); *NEV. REV. STAT. ANN. § 4508.600* (through 2009 Reg. Sess. & 2010 Sp. Sess.).

³⁵⁵ For a summary of ground transportation requirements at specific airports, see *SURVEY OF LAWS AND REGULATIONS OF AIRPORT COMMERCIAL GROUND TRANSPORTATION* (Airport Cooperative Research Program Legal Research Digest 3, Transportation Research Board, 2008), http://onlinepubs.trb.org/onlinepubs/acrp/acrp_lrd_003.pdf.

³⁵⁶ See *Alamo Rent-A-Car, Inc. v. Sarasota-Manatee Airport Auth.*, 906 F.2d 516 (11th Cir. 1990) (upholding 10 percent gross receipts charge); *Enterprise Leasing Co. v. Metro. Airports Comm’n*, 250 F.3d 1215 (8th Cir. 2001) (upholding off-airport car rental gross receipts charge). See also § 5.A, *supra*.

³⁵⁷ For example, see *WIS. STAT. ANN. § 100.53* (through 2009 Act 406, pub. June 2, 2010) (advertising requirements); *NEV. REV. STAT. ANN. § 482.31575* (through 2009 Reg. Sess. & 2010 Sp. Sess.) (amended to permit rental car companies to impose concession fees as a surcharge). See also *Sobel v. Hertz Corp.*, 698 F. Supp. 2d 1218 (D. Nev. 2010) (former Nevada statute prohibiting car rental companies from separately disclosing airport concession recovery fee was not an unconstitutional regulation of commercial speech).

³⁵⁸ See *CAL. GOV’T CODE § 50474.1* (through ch. 745 of 2011 Reg. Sess. and all 2011–2012 1st Ex. Sess.). See also *Speyer v. Avis Rent a Car System, Inc.*, 415 F. Supp. 2d 1090 (S.D. Cal. 2005) (determining California customer facility charge legislation did not extend to transactions outside California).

³⁵⁹ See App. B: Questionnaire Responses, Question 1.

³⁶⁰ See *N.Y. GEN. BUS. LAW § 396-w* (McKinney, through L. 2010) (right to discharge passengers and prohibition on unauthorized business).

³⁶¹ See *Seattle-Tacoma Int’l Taxi Ass’n v. Port of Seattle*, 156 Wash. App. 1025 (2010) (allowing gross receipts fee for taxicab concession); *Toye Bros. Yellow Cab Co. v. Irby*, 437 F.2d 806 (5th Cir. 1971) (allowing gross receipts fee for limousine and bus service even though motel courtesy cars and local transit system transports only charged a flat fee).

³⁶² See *UTAH CODE ANN. § 72-10-601* (through 2011 2d Sp. Sess.).

person or his belongings.³⁶³ States also may impose civil penalties to enforce violations at airports. Local laws apply in addition to any federal measures, and they allow enforcement by local agencies even if federal penalties apply as well.

CONCLUSION

The airport industry is constantly evolving and innovating in response to the ever changing demands of safety and security, technology, public demand, customer service, government requirements, and tenant needs. State laws reflect a state's efforts over time to address those challenges at the local level and balance competing interests. A broad examination of state airport laws can help airport managers and state leaders craft policy to resolve local concerns and support the public's current and future transportation interests.

³⁶³ See IND. CODE ANN. § 35-47-6-3 (through 2010 2d Reg. Sess.). See also *State v. Hanson*, 97 Haw. 71, 34 P.3d 1 (2001) (discussing bases for administrative searches of bags at airports); James L. Buchwalter, Annotation, *Validity of Airport Security Measures*, 125 A.L.R. 5th 281 (2007).

APPENDIX A: STATE CODES³⁶⁴

STATE	STATE CODE SECTIONS (references are to first sections of chapters)
<i>Alabama</i>	Airports (major sections): Ala. Code §§ 4-2A-1 to 4-4-1 Aeronautics: Ala. Code § 23-1-350 Airport Zoning: Ala. Code § 4-6-1 Uniform Law Influences: Aeronautics, Zoning
<i>Alaska</i>	Airports (major sections): State is primary airport entity. Aeronautics: Alaska Stat. § 02.10.010 Airport Zoning: Alaska Stat. § 02.25.010 Uniform Law Influences: Aeronautics, Zoning
<i>Arizona</i>	Airports (major sections): Ariz. Rev. Stat. Ann. § 28-8400 Aeronautics: Ariz. Rev. Stat. Ann. § 28-8200 Airport Zoning: Ariz. Rev. Stat. Ann. § 28-8461 Uniform Law Influences: Aeronautics
<i>Arkansas</i>	Airports (major sections): Ark. Code Ann. § 14-361-101 to 14-362-101 Aeronautics: Ark. Code Ann. § 27-115-101 Airport Zoning: Ark. Code Ann. § 14-363-101 Uniform Law Influences: Aeronautics
<i>California</i>	Airports (major sections): Cal Gov't Code § 50474 Aeronautics: Cal. Pub. Util. Code § 21001 Airport Zoning: Cal. Gov't Code § 50485 Uniform Law Influences: Aeronautics
<i>Colorado</i>	Airports (major sections): Colo. Rev. Stat. Ann. § 41-4-101 & 41-4-201 Aeronautics: Colo. Rev. Stat. Ann. § 41-1-101 Airport Zoning: Colo. Rev. Stat. Ann. § 41-4-101 Uniform Law Influences: Aeronautics
<i>Connecticut</i>	Airports (major sections): Conn. Gen. Stat. §§ 13b-40 & 15-101 Aeronautics: Conn. Gen. Stat. § 15b-34 Airport Zoning: Conn. Gen. Stat. § 15-89 Uniform Law Influences: Aeronautics, Zoning
<i>Delaware</i>	Airports (major sections): Del. Code Ann. tit. 2, § 901 Aeronautics: Del. Code Ann. tit. 2, §§ 101 & 301 Airport Zoning: Del. Code Ann. tit. 2, § 601 Uniform Law Influences: Aeronautics, Airports
<i>Florida</i>	Airports (major sections): Fla. Stat. Ann. § 332.01 Aeronautics: Fla. Stat. Ann. §§ 330.29 to 332.001 Airport Zoning: Fla. Stat. Ann. § 333.01 Uniform Law Influences: Aeronautics, Zoning
<i>Georgia</i>	Airports (major sections): Ga. Code Ann. § 6-3-20 Aeronautics: Ga. Code Ann. § 6-1-1 Airport Zoning: No major state provisions Uniform Law Influences: Aeronautics

³⁶⁴ In App. A, the category for Uniform Law Influences does not include the Uniform Airports Act. State practices vary. The text of this paper describes characteristics of the uniform laws that are noted in this table as influencing state codes. Links have been given to the introductory page, where available, of the state statutes. In conformity with Blue Book search suggestions, once a link is made to the appropriate code, proceed to the available link for the appropriate chapter and section.

<i>Hawaii</i>	<p>Airports (major sections): Haw. Rev. Stat. § 261-1 Aeronautics: Haw. Rev. Stat. § 261-1 Airport Zoning: Haw. Rev. Stat. § 262-1 Uniform Law Influences: Aeronautics, Zoning</p>
<i>Idaho</i>	<p>Airports (major sections): Idaho Code Ann. § 21-401 & 21-801 Aeronautics: Idaho Code Ann. § 21-101 Airport Zoning: Idaho Code Ann. § 21-501 Uniform Law Influences: Aeronautics, Zoning</p>
<i>Illinois</i>	<p>Airports (major sections): 65 Ill. Comp. Stat. Ann. 5/101-1 & 70 Ill. Comp. Stat. Ann. 5/8 Aeronautics: 620 Ill. Comp. Stat. Ann. 5/27 Airport Zoning: 620 Ill. Comp. Stat. Ann. 25/11 Uniform Law Influences: Aeronautics, Zoning</p>
<i>Indiana</i>	<p>Airports (major sections): Ind. Code Ann. § 8-22-2-1 Aeronautics: Ind. Code Ann. § 8-21-1-1 Airport Zoning: Ind. Code Ann. § 8-21-10-1, 8-22-2-9, & 8-22-3-14 Uniform Law Influences: Aeronautics</p>
<i>Iowa</i>	<p>Airports (major sections): Iowa Code Ann. § 330 & 330A Aeronautics: Iowa Code Ann. § 328 Airport Zoning: Iowa Code Ann. § 329 Uniform Law Influences: Aeronautics, Zoning</p>
<i>Kansas</i>	<p>Airports (major sections): Kan. Stat. Ann. §§ 3-113 & 3-301 Aeronautics: Kan. Stat. Ann. § 3-601 Airport Zoning: Kan. Stat. Ann. § 3-702 Uniform Law Influences: Zoning</p>
<i>Kentucky</i>	<p>Airports (major sections): Ky. Rev. Stat. Ann. §§ 97.252, 183.132, & 183.475 Aeronautics: Ky. Rev. Stat. Ann. §§ 174.502 & 183.011 Airport Zoning: Ky. Rev. Stat. Ann. § 183.861 Uniform Law Influences: Zoning</p>
<i>Louisiana</i>	<p>Airports (major sections): La. Rev. Stat. Ann. § 2:131 Aeronautics: La. Rev. Stat. Ann. § 2:1 Airport Zoning: La. Rev. Stat. Ann. § 2:382 Uniform Law Influences: Aeronautics, Zoning</p>
<i>Maine</i>	<p>Airports (major sections): Me. Rev. Stat. Ann. tit. 6, §§ 18 & 171 Aeronautics: Me. Rev. Stat. Ann. tit. 6, § 1 Airport Zoning: Me. Rev. Stat. Ann. tit. 6, § 241 Uniform Law Influences: Aeronautics, Airports, Zoning</p>
<i>Maryland</i>	<p>Airports (major sections): Md. Code Ann., Transp. § 5-404 Aeronautics: Md. Code Ann., Transp. § 5-204 Airport Zoning: Md. Code Ann., Transp. §§ 5-502 & 5-602 Uniform Law Influences: Aeronautics, Zoning</p>
<i>Massachusetts</i>	<p>Airports (major sections): Mass. Gen. Laws Ann. ch. 90, § 51D & 91 App. 1-2 Aeronautics: Mass. Gen. Laws Ann. ch. 90, § 39 Airport Zoning: Mass. Gen. Laws Ann. ch. 90, § 35A Uniform Law Influences: Aeronautics</p>
<i>Michigan</i>	<p>Airports (major sections): Mich. Comp. Laws Ann. § 259.101 Aeronautics: Mich. Comp. Laws Ann. § 259.1</p>

	Airport Zoning: Mich. Comp. Laws Ann. § 259.441 Uniform Law Influences: Zoning
<i>Minnesota</i>	Airports (major sections): Minn. Stat. Ann. § 360.031 Aeronautics: Minn. Stat. Ann. § 360.011 Airport Zoning: Minn. Stat. Ann. § 360.062 Uniform Law Influences: Aeronautics, Zoning
<i>Mississippi</i>	Airports (major sections): Miss. Code Ann. §§ 61-3-1, 61-5-1 Aeronautics: Miss. Code Ann. § 61-1-1 Airport Zoning: Miss. Code Ann. § 61-7-1 Uniform Law Influences: Aeronautics, Zoning
<i>Missouri</i>	Airports (major sections): Mo. Ann. Stat. § 305.170 Aeronautics: Mo. Ann. Stat. § 305.010 Airport Zoning: Mo. Ann. Stat. § 67.1203 Uniform Law Influences: Zoning
<i>Montana</i>	Airports (major sections): Mont. Code Ann. §§ 67-10-102, 67-11-102 Aeronautics: Mont. Code Ann. § 67-2-101 Airport Zoning: Mont. Code Ann. § 67-7-201 Uniform Law Influences: Aeronautics
<i>Nebraska</i>	Airports (major sections): Neb. Rev. Stat. §§ 3-202, 3-502, 3-608 Aeronautics Neb. Rev. Stat. § 3-102 Airport Zoning: Neb. Rev. Stat. § 3-301 Uniform Law Influences: Aeronautics, Zoning
<i>Nevada</i>	Airports (major sections): Nev. Rev. Stat. Ann. §§ 495.010, 496.010 Aeronautics: Nev. Rev. Stat. Ann. § 493.010 Airport Zoning: Nev. Rev. Stat. Ann. § 497.010 Uniform Law Influences: Zoning
<i>New Hampshire</i>	Airports (major sections): N.H. Rev. Stat. Ann. §§ 424:10, 423:1 Aeronautics: N.H. Rev. Stat. Ann. § 422:4 Airport Zoning: N.H. Rev. Stat. Ann. § 424:1 Uniform Law Influences: Aeronautics
<i>New Jersey</i>	Airports (major sections): N.J. Stat. Ann. § 40:8-2 Aeronautics: N.J. Stat. Ann. § 6:1-20 Airport Zoning: N.J. Stat. Ann. § 6:1-81 Uniform Law Influences: Zoning
<i>New Mexico</i>	Airports (major sections): N.M. Stat. Ann. § 3-39-4 Aeronautics: N.M. Stat. Ann. § 64-1-19 Airport Zoning: N.M. Stat. Ann. § 3-39-18 Uniform Law Influences: Zoning
<i>New York</i>	Airports (major sections): N.Y. Gen. Mun. Law §§ 119-r, 352 Aeronautics: N.Y. Transp. Law § 14 Airport Zoning: N.Y. Gen. Mun. Law § 356 Uniform Law Influences: Zoning
<i>North Carolina</i>	Airports (major sections): N.C. Gen. Stat. Ann. § 63-2 Aeronautics: N.C. Gen. Stat. Ann. § 63-54 Airport Zoning: N.C. Gen. Stat. Ann. § 63-30 Uniform Law Influences: Zoning
<i>North Dakota</i>	Airports (major sections): N.D. Cent. Code § 2-02-01 Aeronautics: N.D. Cent. Code § 2-05-05 Airport Zoning: N.D. Cent. Code § 2-04-02 Uniform Law Influences: Aeronautics, Zoning

<i>Ohio</i>	Airports (major sections): Ohio Rev. Code Ann. §§ 307, 308, 717 Aeronautics: Ohio Rev. Code Ann. § 4561 Airport Zoning: Ohio Rev. Code Ann. §§ 4561, 4563 Uniform Law Influences: Aeronautics, Zoning
<i>Oklahoma</i>	Airports (major sections): Okla. Stat. Ann. tit. 3, §§ 61, 65 Aeronautics: Okla. Stat. Ann. tit. 3, §§ 84, 85 Airport Zoning: Okla. Stat. Ann. tit. 3, § 100 Uniform Law Influences: Aeronautics, Zoning
<i>Oregon</i>	Airports (major sections): Or. Rev. Stat. Ann. §§ 836, 838 Aeronautics: Or. Rev. Stat. Ann. §§ 835, 836 Airport Zoning: Or. Rev. Stat. Ann. § 836 Uniform Law Influences: N/A
<i>Pennsylvania</i>	Airports (major sections): 16 Pa. Cons. Stat. Ann. § 2201 & 53 Pa. Cons. Stat. Ann. § 39201 Aeronautics: 71 Pa. Cons. Stat. Ann. § 511 & 74 Pa. Cons. Stat. Ann. § 5301 Airport Zoning: 74 Pa. Cons. Stat. Ann. § 5912 Uniform Law Influences: Zoning
<i>Rhode Island</i>	Airports (major sections): R.I. Gen. Laws § 42-64-4 Aeronautics: R.I. Gen. Laws § 1-4-11 Airport Zoning: R.I. Gen. Laws § 1-3-3 Uniform Law Influences: Aeronautics, Zoning
<i>South Carolina</i>	Airports (major sections): S.C. Code Ann. § 55-9-30 Aeronautics: S.C. Code Ann. § 55-5-70 Airport Zoning: S.C. Code Ann. § 55-9-80 Uniform Law Influences: Aeronautics
<i>South Dakota</i>	Airports (major sections): S.D. Codified Laws §§ 50-6-9, 50-6A-9, & 50-7-2 Aeronautics: S.D. Codified Laws §§ 50-2-1 & 50-4-1 Airport Zoning: S.D. Codified Laws §§ 50-9-1 & 50-10-1 Uniform Law Influences: Zoning
<i>Tennessee</i>	Airports (major sections): Tenn. Code Ann. §§ 42-3-108, 42-4-106, & 42-5-103 Aeronautics: Tenn. Code Ann. § 42-2-203 Airport Zoning: Tenn. Code Ann. § 42-6-102 Uniform Law Influences: Aeronautics, Zoning
<i>Texas</i>	Airports (major sections): Tex. Transp. Code § 22.011 Aeronautics: Tex. Transp. Code § 21.001 Airport Zoning: Tex. Loc. Gov't Code § 241.001 Uniform Law Influences: Zoning
<i>Utah</i>	Airports (major sections): Utah Code Ann. §§ 10-8-8 & 72-10-203 Aeronautics: Utah Code Ann. § 72-10-102 Airport Zoning: Utah Code Ann. § 72-10-402 Uniform Law Influences: Aeronautics, Zoning
<i>Vermont</i>	Airports (major sections): Vt. Stat. Ann. tit. 5, § 601 Aeronautics: Vt. Stat. Ann. tit. 5, § 204 Airport Zoning: Vt. Stat. Ann. tit. 5, § 1001 Uniform Law Influences: Aeronautics, Zoning
<i>Virginia</i>	Airports (major sections): Va. Code Ann. §§ 5.1-2.1, 5.1-31, 5.1-154 Aeronautics: Va. Code Ann. § 5.1-1.1

	Airport Zoning: Va. Code Ann. § 5.1-25.1 Uniform Law Influences: Aeronautics
<i>Washington</i>	Airports (major sections): Wash. Rev. Code Ann. § 14.08.030 Aeronautics: Wash. Rev. Code Ann. § 47.68.070 Airport Zoning: Wash. Rev. Code Ann. § 14.08.030 Uniform Law Influences: Aeronautics, Zoning
<i>West Virginia</i>	Airports (major sections): W. Va. Code Ann. §§ 8-29-2 & 8-29A-2 Aeronautics: W. Va. Code Ann. § 29-2A-3 Airport Zoning: W. Va. Code Ann. § 8A-7-2 Uniform Law Influences: Aeronautics
<i>Wisconsin</i>	Airports (major sections): Wis. Stat. Ann. §§ 59.52 & 114.14 Aeronautics: Wis. Stat. Ann. § 114.31 Airport Zoning: Wis. Stat. Ann. § 114.135 Uniform Law Influences: N/A
<i>Wyoming</i>	Airports (major sections): Wyo. Stat. Ann. § 10-5-101 & 10-5-202 Aeronautics: Wyo. Stat. Ann. §§ 10-3-101 & 10-3-201 Airport Zoning: Wyo. Stat. Ann. § 10-5-301 Uniform Law Influences: N/A

APPENDIX B: QUESTIONNAIRE RESPONSES

Number of Airport Entities Responding: 46.

Types of Airport Entities Represented: Municipal (city, county); state; airport authority; airport or special district; joint board or commission; transportation district; port; development authority.

States Where Airport Entities Located: Alaska, Arizona, Arkansas, California, Colorado, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Massachusetts, Mississippi, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, South Carolina, Texas, Tennessee, Virginia, Washington, West Virginia, Wisconsin.

1. Does your airport impose a Customer Facility Charge (CFC)?

Yes: 34.

No: 12.

Sample Explanations:

CFCs were imposed based on: an airport district's agreements with the rental car companies (with no state legislation); a board resolution of the airport authority based on general state rates and charges legislation; by agreement between the port and rental car operations after initial authorization in state statute; state legislation; the City Council has delegated authority to the aviation department to set a CFC rate; airport authority resolution; state enabling legislation and a port ordinance; state legislation and a city ordinance were required; adopted by a vote of the airport commission; imposed by county ordinance as a rental car facility charge of \$1 per day; imposed by county ordinance; authorization of the airport authority's board of directors; enacted by aviation authority ordinance; imposed by city ordinance; airport rates and charges resolution; authorized by a city bond ordinance; set by the state DOT commission.

2. Are your airport operations fully independent from management and oversight by other governmental entities?

Yes: 27.

No: 18.

Mostly: 1.

Sample areas in which another entity imposes requirements on the airport:

The airport entity is governed by city ordinances. Only the airport's budget must be approved by the City Council. The city appoints airport authority board members and approves the annual budget. The City Council and Mayor provide oversight of aviation department functions, including budgetary matters. An airport authority board is appointed by county leadership. The City Council approves all contracts over \$25,000. The port authority's board is the same as the board of county commissioners, and the airport is a dependent special district of the county even though it is a separate legal entity. The airport authority relies on one of its participating municipalities for fire, police, and construction oversight, and its state enabling legislation is somewhat vague. The airport is a city department tied to the city's finance, purchasing, and legal departments. The airport is a city agency and its powers are specified in city ordinance; the city council

reserves some powers for itself such as bonding, property transactions, and budget approval. The airport is an enterprise fund of a city and county, and the city performs some functions on the airport's behalf such as issuing bonds. The airport director reports to a county manager, who reports to an elected county board.

The airport is subject to state requirements for grants and operating certificates. The state audits the airport. The airport authority coordinates with the state aeronautics division regarding grant issues and is not subject to local control. The airport authority is established by state statute as an independent special district. The state transportation commissioner is the chair of the transportation authority that operates the airport, and the state also provides environmental oversight. The airport authority is independent with the exception of selling property or leases longer than 40 years. FAA rules and regulations.

3. Does your airport make use of any type of local tax revenue, such as property taxes, fuel taxes, privilege taxes, tourism taxes, etc.?

Yes: 9.

No: 37.

Sample types of tax revenue used:

Proceeds from a county-imposed rental car tax. Property tax revenue from a county-wide levy. Property taxes, fuel taxes, and real estate taxes. The airport authority is not yet self sufficient and relies on government member contributions. Aviation fuel taxes and other fuel tax revenues fund state grants for airport construction. An allocated portion of sales taxes on fuel. Real and personal property taxes involving the county and state.

4. Identify significant land use laws that affect your airport's operations, and who imposes them? *(Please give the specific name and citation of each law).*

Sample Explanations:

Zoning and comprehensive plans and land development regulations, building permits of the city and county. State growth management act and state environmental protection act. The city and county each have land use and zoning authority. The airport authority is exempt from local land use laws. By state statute the airport is excluded from any land use laws such as zoning. Municipal general plans that allow incompatible use encroachment and potentially restrict trips under a climate action plan, and a state environmental quality act that allows neighboring cities and residents to potentially functionally veto airport projects. A state environmental policy act and public waterfront act limit the airport authority's eminent domain powers near the airport. All land use issues are decided by the airport commission. Helpful height limitation zoning ordinances. The airport uses military airfield facilities on a joint-use basis. Storm water and other regulations. An intergovernmental agreement restricts types of development on airport property. There is a state/county airport land use committee. Federal laws affecting land use, including sovereignty and use of the airspace, structures interfering with air commerce, and grant assurances, as well as local land use laws.

5. Does your airport assert governmental immunity protection when defending tort litigation?

Yes: 28.

No: 15.

Unknown: 3.

If your response is “Yes,” please describe whether your courts have questioned the application of these laws to your airport, and summarize any significant litigation and the holdings that occurred in recent years.

Sample Explanations:

It would probably be upheld. Sovereign immunity has limitations. An airport authority does not assert governmental immunity. Governmental immunity has never been questioned with respect to airports within the state. In a recent case the courts determined that an airport authority exercised public and governmental functions for a public purpose and as a matter of public necessity, and the airport authority was a governmental entity covered by the state’s tort claims act (the act provides immunity arising from the performance of governmental functions). This state tort act caps damages, but it also provides a limited waiver of the cap to the extent of excess liability insurance purchased (up to the amount of coverage and only for insured risks). An administrative law judge for the Federal Maritime Commission recently held that the state’s 11th Amendment immunity claim was invalid. There is a limited waiver of immunity under state statutes but no issues have arisen; these laws apply to the state, counties, municipalities, and special districts. In all but one case involving claims for injury or police misconduct the defense was successful; one case involved property damage on a runway and is regarded as an aberration. The airport carries general liability insurance despite immunity provisions. Immunity was recognized in a published case to which the airport authority was a party. The airport prevailed in a recent case applying the governmental immunity law and holding the plaintiff failed to meet notice requirements. The city is not protected by a tort claims immunity statute, but there is unqualified immunity for some governmental actions as well as a statute of limitations and notice requirement.

6. What restrictions, if any, does state law impose on your airport’s procurement practices, whether in connection with land, construction, concessions, or otherwise?

Sample Explanations:

Procurement policies are required to be materially consistent with state law. All procurement for concessions and construction must be bid. State laws apply to supplies and equipment and public works. Bonding requirements are restricted by the state. The state government code and fair political practices act. City procurement and land acquisition laws of a home rule city, and state wage and hour laws for construction projects. The airport authority must competitively bid construction under state law and must have its own procurement policy for other items. State purchasing laws apply to commodities, services, printing, public construction, and rentals, but no professional service contracts. State laws govern the section of designers for public buildings and construction awards for different delivery methods. The state is the certifying body for Disadvantaged Business Enterprise firms. The state is the airport’s agent for state or federal grants. State nondiscrimination statutes. For leasing, the lease duration correlates to the value of the improvements made. No state requirements, only local and federal. State law governs all airport procurement (including leases). Some bid requirements and impact agreements.

7. Does your airport have the legal authority to award concessions for business activities on airport property that may compete with other businesses in the vicinity?

Yes: 44.

No: 2.

If your response is “Yes,” have there been impediments (community and/or political pressure) that prevented you from pursuing these concessions? Include in your response whether these impediments continue to exist.

Sample Explanations:

The high cost of doing business at the airport may impose some impediment, but there have been no other real impediments. A city has imposed a broad living wage ordinance and complex regulatory scheme unique to the airport that could be deemed to have a chilling effect on acquiring competitive concessions. Some political pressure occasionally. Some pressure from off-airport rental car companies complaining that the airport's minimum qualifications prevent very small companies from being on the airport (space is constrained). Concessionaires and contractors who have lost bids have contacted the mayor and city directors; they are usually referred back to airport staff and there is an increase in paperwork to provide justifications. We do not offer facilities that are now available. An intergovernmental agreement is involved in these developments and there are other political pressures. Some political pressures apply but the awarding body awards recommended contracts anyway. Community or political pressure has not prevented the city from pursuing concessions; the city uses an anti-lobbying policy when conducting large procurements to ensure a level playing field. Most political pressure applies only to real estate development activities. (Many respondents also answered that they had not experienced political pressure.)

8. Who provides law enforcement officers to your airport? In your response indicate any limitations on the authority of the officers (e.g. lack of full peace officer authority, ability to investigate felonies, presence and type of weapons, etc.)

The airport uses the police officers that are not directly under the airport's control: 20.

The airport uses its own police officers: 26. Some limitations include: authority is limited to the airport's jurisdiction; the county handles investigations and prosecutions; state law is unclear regarding whether the authority may create an independent law enforcement agency and an appropriate adjudication mechanism; officers are security officers only;

9. Has your agency experienced legal issues in recent years involving public access to the airport, or access for ground transportation vehicles (please describe)?

No issues: 38.

Some issues: 8.

Sample Explanations:

Minor issues involving the First Amendment such as lodging, loitering, and protesting on tenant leaseholds. Recent case holding that fees imposed by the authority on bus and other surface transportation entities per trip for stops at the airport did not violate the federal bus statute (49 U.S.C.S. 14505). A past complaint that parking garage facilities did not provide access to disabled patrons (the authority entered a settlement agreement and made changes to signage, including posting real-time information on its website about disabled parking). Occasionally disabled passengers are denied access to shuttle bus service due to inadequate bus operator training or lift device malfunction. When the authority decided to require permits and impose fees for some forms of ground transportation (not taxicabs), the providers questioned its authority to impose fees (resolved without legal action). An airport authority was sued over rental cars coming onto the airport and not compensating the airport. Three unsuccessful lawsuits were brought by taxi operators challenging an airport authority's ability to control commercial access to the airport. An airport entered an intergovernmental agreement to implement a commuter rail project. The Transportation Security Administration's guidelines have led to stricter rules, which have been passed on to ground transportation. Occasional complaints by providers.

10. Do you know whether any state or municipal airport-specific laws are currently under consideration for passage or repeal? If your response is “Yes,” please describe the law.

Yes: 8.

No: 38.

Sample Explanations:

Increased zoning around general aviation airports; updating customer facility charge legislation to allow additional money; an aviation easement that would require additional certification for future building projects to assure height compliance; a transportation finance bill; the aeronautics act is currently under revision; the state is considering removing the state education board’s oversight of flight schools; new municipal zoning affecting the airport.

11. What issue of state law affecting airports have you been most interested to learn more about from the practices of other states?

Sample Explanations:

Most respondents answered this question. Issues include land use, airport zoning, the ability to impose taxes, matters taxes on airports, business incentives, airport procurement, CFC implementation, and other issues regarding restrictions placed on airports.

APPENDIX C: UNIFORM AERONAUTICAL REGULATORY ACT OF 1935

Reprinted by permission of the National Conference of Commissioners on Uniform State Laws

**UNIFORM AERONAUTICAL REGULATORY
ACT**

Drafted by the

**NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS**

and by it

**APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES**

at its

**FORTY-FIFTH ANNUAL CONFERENCE
LOS ANGELES, CALIFORNIA**

JULY 9-15, 1935

**WITH
PREFATORY NOTE**



**APPROVED BY THE AMERICAN BAR ASSOCIATION AT ITS MEETING IN
LOS ANGELES, CALIFORNIA, JULY 15-19, 1935**

The Special Committee which acted for the National Conference of Commissioners on Uniform State Laws in preparing the Uniform Aeronautical Regulatory Act was as follows:

WILLIAM A. SCHNADER, Packard Bldg., Philadelphia, Pa., *Chairman*,
 WILLIAM M. HARGEST, Court House, Harrisburg, Pa., *Chairman*,
Uniform Public Law Acts Section,
 GEORGE G. BOBERT, University of Chicago Law School, Chicago, Ill.,
 WILLIAM M. CROOK, American Natl. Bank Bldg., Beaumont, Tex.,
 W. JEFFERSON DAVIS, 1140 Rowan Bldg., Los Angeles, Cal.,
 NATHAN WILLIAM MACCHESNEY, 30 N. LaSalle St., Chicago, Ill.,
 HENRY C. MACKALL, First Natl.-Soo Line Bldg., Minneapolis, Minn.

Copies of all Uniform Acts and other printed matter issued by the Conference may be obtained from

JOHN H. VOORHEES, *Secretary*,
 1140 North Dearborn Street,
 Chicago, Illinois.

UNIFORM AERONAUTICAL REGULATORY ACT

PREFATORY NOTE

The Uniform Aeronautical Regulatory Act herewith presented was finally adopted by the National Conference of Commissioners on Uniform State Laws at its meeting held in Los Angeles, California, in July, 1935, approved by the American Bar Association, and recommended to the several States, the District of Columbia, and the insular possessions of the United States for enactment.

At the 1922 session of the Conference in San Francisco, California, a Uniform Aeronautics Act covering the right of flight and the liability of aircraft operators and owners for injuries to persons or property on the ground was adopted and recommended for enactment. The act was approved by the American Bar Association at its session immediately following.

At the 1930 meeting of the Conference in Chicago, Illinois, a Uniform Air Licensing Act covering the licensing of airmen and aircraft was similarly adopted and recommended, and was approved by the American Bar Association.

At the 1931 meeting of the Conference in Atlantic City, New Jersey, the Special Committee on Uniform Aeronautics Acts was continued with authority to confer with the Committee on Aeronautical Law of the American Bar Association in an endeavor to iron out differences between the Uniform Aeronautics Act and the Uniform Air Licensing Act on the one hand and a Uniform Aeronautics Act then under consideration by that Committee on the other.

At the 1932 meeting of the Conference in Washington, D. C., the first tentative draft of a Uniform Aeronautical Code was presented by the Special Committee on Uniform Aeronautics Acts to replace both the Uniform Aeronautics Act and the Uniform Air Licensing Act, which had by then been adopted by many States and had been approved by the Committee on Aeronautical Law of

the American Bar Association. No action was taken and leave was granted to the Committee to study the question further.

At the 1933 meeting of the Conference in Grand Rapids, Michigan, the Special Committee on Uniform Aeronautics Acts was continued with authority to confer further with the American Bar Association Committee on Aeronautical Law.

At the Milwaukee, Wisconsin, meeting of the Conference in 1934, upon the joint recommendation of the Special Committee on Uniform Aeronautics Acts, the name of which Committee at that session was changed to Special Committee on Uniform Aeronautical Code, and the Committee on Aeronautical Law of the American Bar Association, it was decided to present the law of aeronautics in three acts, rather than one. The first of these, the Uniform Airports Act covering the acquisition, construction, operation, and regulation of airports and landing fields for the use of aircraft, by municipalities, counties, and other political subdivisions of States, was adopted by the Conference in 1935 and recommended for enactment.

The second act was to cover State regulation of aeronautics, including the licensing of pilots. A second tentative draft of the Uniform Aeronautical Regulatory Act, containing most of the regulatory provisions of the Uniform Aeronautical Code as submitted in 1932 and many new definitions and sections, was presented in 1934. The provisions on right of flight were omitted. The draft was thoroughly considered section by section. The Special Committee on Uniform Aeronautical Code retained jurisdiction of the Act for the purpose of further study of the draft and the consideration of suggestions which were made at the meeting and others which had been made by the Federal Aviation Commission.

The third act on the law of aeronautics, when submitted, will deal with the right of flight and questions of tort liability.

At the meeting of the Conference in Los Angeles, California, in 1935, a completely rewritten third tentative draft of the Uniform Aeronautical Regulatory Act was presented by the Special Committee on Uniform Aeronautical Code. The draft was thoroughly considered by the Conference, and after slight changes had been made in it, was approved and adopted as above stated.

It is important to the steady and orderly development of aeronautics in the United States that uniform laws on the various aspects of aeronautics be adopted by the States as soon as possible.

The Uniform Aeronautical Regulatory Act, as presented in the second tentative draft, has already been adopted by the States of South Dakota and Minnesota.

The Uniform Airports Act, as it appeared in the first tentative draft, has been enacted in the State of Georgia.

The Special Committee on Uniform Aeronautical Code is at present working on the last of the three uniform aeronautics acts, the act covering the important questions of right of flight and all aspects of tort liability.

UNIFORM AERONAUTICAL REGULATORY ACT

[AN ACT PROVIDING FOR THE REGULATION OF AERONAUTICS WITHIN THIS STATE, AND FOR UNIFORMITY IN CERTAIN REGARDS WITH FEDERAL LAWS REGULATING AERONAUTICS, AND TO MAKE UNIFORM THE LAW WITH REFERENCE THERETO.]

Be it enacted, etc. (Use proper enacting clause for the state.)

1 SECTION 1. [*Definitions.*].—When used in this act:

2 (a) "Aeronautics" means transportation by aircraft, air
3 instruction, the operation, repair, or maintenance of aircraft,
4 and the design, operation, repair or maintenance of airports,
5 landing fields, landing strips, or other air navigation facilities.

6 (b) "Aircraft" means any contrivance now known or here-
7 after invented, used, or designed for navigation of, or flight
8 in, the air.

9 (c) "Air Instruction" means the imparting of aeronautical
10 information by any aviation instructor or in any air school
11 or flying club.

12 (d) "Airport" means any area of land, water, or both,
13 which is used or is made available for the landing and take-
14 off, and which provides facilities for the shelter, supply, and
15 repair, of aircraft; which, as to size and design, has (1) at
16 least 1800 feet of effective landing length in all directions,
17 with clear approaches, or (2) landing strips not less than
18 500 feet wide, permitting landing in at least six directions at
19 all times, with at least one landing strip aligned with the
20 general direction of the prevailing wind, the landing strip
21 not to cross or converge at angles of less than 40 degrees, nor
22 any of the landing strips to be less than 1800 feet in effective
23 length, with clear approaches, or (3) two landing strips, one
24 aligned with the general direction of the prevailing wind,
25 permitting at least 4-way landing at all times, with clear
26 approaches, the landing strips to be at least 500 feet wide

27 and at least 2500 feet in effective length, and not to cross
 28 or converge at any angle less than 80 degrees; and which,
 29 as to surface, marking, equipment, and management meets
 30 the minimum requirements established from time to time by the
 31 [.....].¹

¹The appropriate administrative officer, board, or commission should be inserted. The act as originally submitted to the Conference provided for the creation of an administrative board of five members. It was later decided to make no recommendation on this score. However, for the convenience and guidance of any states wishing to adopt this form of administration, the following sections are reprinted:

SECTION [. . . *Aeronautics Commission, Appointment.*]—There is hereby created an aeronautics commission to be known as the [.....] Aeronautics Commission, consisting of five persons to be appointed by the Governor and to serve without compensation, other than for traveling expenses and disbursements as provided in Section [..]; provided, however, that at least two members of the Commission must be, or have been actively engaged in and have had at least three years of practical experience in civil aeronautics. The Governor shall from time to time designate the member of the commission who shall be its chairman and who shall so serve during the term of his appointment. Three of said persons, including the chairman, shall be appointed for a period of four years from and after the [.....] in the [.....] following their appointment, and two for a period of two years from and after the [.....] in the [.....] following their appointment, and upon the expiration of the terms of such respective commissioners the Governor shall appoint their successors, each to serve for a term of four years, and all to serve until their successors are appointed and qualified.

SECTION [. . . *Powers and Duties of Commission, Organization, Seal.*]—The commission shall, within thirty days after its appointment, organize, adopt a seal for the commission and make such rules and regulations for the administration of the commission not inconsistent herewith as it may deem expedient, and may from time to time amend such rules and regulations.

SECTION [. . . *Powers and Duties of Commission, Employees.*]—The commission may employ such clerical and other employees and assistants as it may deem necessary for the proper transaction of its business, and shall fix their salaries. Each commissioner, and the employees of the commission shall be reimbursed for all actual and necessary traveling expenses and disbursements incurred by them in the discharge of their official duties.

SECTION [. . . *Powers and Duties of Commission, Office and Expense.*]—The Secretary of State (or other state official who is charged with the duty

32 (e) "Air School" means any person engaged in giving,
 33 offering to give, or advertising, representing, or holding him-
 34 self out as giving, with or without compensation or other
 35 reward, instruction in aeronautics—in flying, in ground sub-
 36 jects, or in both.

37 (f) "Aviation Instructor" means any individual engaged
 38 in giving, or offering to give, instruction in aeronautics—in
 39 flying, in ground subjects, or in both—either with or with-
 40 out compensation or other reward, without advertising such
 41 occupation, without calling his facilities "Air School" or
 42 any equivalent term, and without employing or using other
 43 instructors.

44 (g) "Civil Aircraft" means any aircraft other than a pub-
 45 lic aircraft.

46 (h) "Flying Club" means any person (other than an in-
 47 dividual) who, neither for profit nor reward, owns, leases, or
 48 uses one or more aircraft for the purpose of instructions,
 49 pleasure, or both.

50 (i) "Landing Field" means any area of land, water, or
 51 both, which is used or is made available for the landing and
 52 take-off of aircraft; which may or may not provide facilities
 53 for the shelter, supply, and repair of aircraft; and which, as
 54 to size, design, surface marking, equipment, and management
 55 meets the minimum requirements established from time to
 56 time by the [.....].

57 (j) "Landing Strip" means any area of land, water, or
 58 both, which is used or is made available for the landing and
 59 take-off of aircraft, having at least 200 feet of land or of
 60 water in its width and at least 1000 feet of land or of water in
 61 its length, the use of which shall, except in case of emergency, be
 62 only as provided from time to time by the [.....].

*of housing state commissions or other similar state bodies) shall provide suitable offices for the commission in the city of [.....] and the commission may maintain offices in any other city in the State of [.....] that the commission may designate, and may incur the necessary expense for office furniture, stationery, printing, incidental expenses, and other expenses necessary for the enforcement of this Act, and the general promotion of aeronautics within the State.

63 (k) "Person" means any individual, or any corporation or
64 other association of individuals.

65 (l) "Public Aircraft" means an aircraft used exclusively in
66 the service of any government or of any political sub-division
67 thereof, including the government of the United States, of the
68 District of Columbia, and of any state, territory, or insular
69 possession of the United States, but not including any gov-
70 ernment-owned aircraft engaged in carrying persons or goods
71 for commercial purposes.

1 SECTION 2. [*Aircraft: Design, Construction, and Air-*
2 *worthiness; Federal licensa.*].—It shall be unlawful for any
3 person to operate, pilot, or navigate, or cause or authorize to
4 be operated, piloted, or navigated within this State any civil
5 aircraft, unless such aircraft has a currently effective license
6 issued by the Government of the United States; but this re-
7 striction shall not apply to aircraft licensed by a foreign
8 country with which the United States has a reciprocal agree-
9 ment covering the operations of such licensed aircraft, or to a
10 non-passenger-carrying flight solely for inspection or test pur-
11 poses authorized by the [.....] to be made without
12 such license.

1 SECTION 3. [*Qualifications of Pilots; Federal License or*
2 *Permit.*].—It shall be unlawful for any person to pilot with-
3 in this State any civil aircraft, unless such person is the
4 holder of a currently effective pilot's license or student's
5 permit issued by the Government of the United States; but
6 this restriction shall not apply to any person operating any
7 aircraft licensed by a foreign country with which the United
8 States has a reciprocal agreement covering the operation of
9 such licensed aircraft.

1 SECTION 4. [*Possession and Display of Licenses or Per-*
2 *mit.*].—The Certificate of the license or permit respectively
3 required of a pilot or a student shall be kept in the personal
4 possession of the licensee or permittee when he is operating
5 an aircraft within this State. The certificate of the license

6 required for an aircraft shall be carried in the aircraft at all
 7 times and shall be conspicuously posted therein in clear view
 8 of passengers. Such certificate of pilot's license, student's
 9 permit, or aircraft license shall be presented for inspection
 10 upon the demand of any passenger, any peace officer of this
 11 State, any authorized official or employee of the [.....],
 12 or any official, manager or person in charge of any airport in
 13 this State upon which it shall land, or upon the reasonable
 14 request of any other person. In any criminal prosecution un-
 15 der any of the provisions of this act, a defendant who relies
 16 upon a license or permit of any kind shall have the burden of
 17 proving that he is properly licensed or is the possessor of a
 18 proper license or permit. The fact of non-issuance of such
 19 license or permit may be evidenced by a certificate signed by
 20 the official having power of issuance, or his deputy, under
 21 seal of office, stating that he has made diligent search in the
 22 records of his office and that from the records it appears that
 23 no such license or permit was issued.

1 SECTION 5. [*General Powers of Adoption and Notice of*
 2 *Rules, Regulations, and Orders.*].—Except as otherwise spe-
 3 cifically provided in this act, the [.....] shall have
 4 supervision over aeronautics within the State,³ including (1)
 5 the establishment, location, maintenance, operation and use
 6 of airports, landing fields, landing strips, air markings, air
 7 beacons and other air navigation facilities, and (2) the estab-
 8 lishment, operation, management and equipment, of all air
 9 schools, flying clubs and other persons giving air instruction.
 10 The [.....] shall adopt and promulgate rules and
 11 regulations establishing minimum standards with which all
 12 air navigation facilities, air schools and flying clubs must
 13 comply, and shall adopt and enforce rules, regulations and

³ Where the state corporation, public service, or utilities commission has jurisdiction over scheduled air transport operations within the state, it will be necessary to make a change—such as the following: “Subject to the provisions of ‘An Act concerning public utilities,’ approved, as amended, and except as otherwise specifically provided in this act, the [.....] shall have supervision”

14 orders to safeguard from accident and to protect the safety of
 15 persons operating or using aircraft and persons and property
 16 on the ground, and to develop and promote aeronautics within
 17 this State. In order to avoid the danger of accident incident
 18 to confusion arising from conflicting rules, regulations and
 19 orders governing aeronautics, the rules, regulations and orders
 20 of the [.....] shall be kept in conformity as nearly
 21 as may be, with the Federal legislation, rules, regulations and
 22 orders on aeronautics, and shall not be inconsistent with para-
 23 mount Federal legislation, rules, regulations and orders on
 24 the subject.

25 Every general rule, regulation, and order of the [.....]
 26 shall be posted for public inspection in the main office of the
 27 [.....] at least [.....] days before it shall become
 28 effective, and shall be given such further publicity, by adver-
 29 tisement in a newspaper or otherwise, as the [.....]
 30 shall deem advisable.

31 Every order applying only to a particular person or persons
 32 named therein shall be mailed to, or served upon, such person
 33 or persons.

34 Every rule, regulation, and order, general or otherwise,
 35 adopted by the [.....] shall be kept on file with the
 36 [Secretary of State].

1 SECTION 6. [*Investigations and Hearings.*].—The [.....
 2] shall have the power to conduct investigations, in-
 3 quiries, and hearings concerning matters covered by the pro-
 4 visions of this act and accidents or injuries incident to
 5 the operation of aircraft occurring within this State. The
 6 [.....] shall have the power to administer oaths and
 7 affirmations, certify to all official acts, issue subpoenas, compel
 8 the attendance and testimony of witnesses and the production
 9 of papers, books, and documents. If any person shall fail to
 10 comply with any subpoena or order issued under authority of
 11 this act, the [.....] may invoke the aid of any [County
 12 or Circuit]¹ Court in this State. The court may thereupon
 13 order such person to comply with the requirements of the sub-

¹It is suggested that the courts to which reference is made in this and subsequent sections shall be those having general nisi prius jurisdiction.

14 pena or order of the [.], or to give evidence upon
 15 the matter in question. Any failure to obey the order of the
 16 court shall be punishable by the court as a contempt thereof.

1 SECTION 7. [*Admissibility in Evidence of Investigations*
 2 *and Hearings; Testimony of the*].—The reports
 3 of investigations or hearings, or any part thereof, shall not be
 4 admitted in evidence or used for any purpose in any suit,
 5 action, or proceeding growing out of any matter referred to
 6 in such investigations or hearings, or in any report thereof,
 7 except in case of criminal or other proceedings instituted by
 8 or in behalf of the [.] under the provisions of
 9 this act; nor shall [the] be required to testify
 10 to any facts ascertained in, or information gained by reason
 11 of, his official capacity. [The] shall not be re-
 12 quired to testify as an expert witness in any suit, action,
 13 or proceeding involving any aircraft or any navigation facility.

1 SECTION 8. [*Enforcement, Cooperation.*].—It shall be the
 2 duty of the [.] and every county and municipal
 3 officer charged with the enforcement of State and municipal
 4 laws, to enforce, and assist in the enforcement of, this act.
 5 The [.] is further authorized in the name of the
 6 [People of the State of] to enforce the pro-
 7 visions of this act by injunction in the [County or Circuit
 8 Courts] of this State. Other departments and political sub-
 9 divisions of this State are authorized to cooperate with the
 10 [.] in the development of aeronautics within this
 11 State.

1 SECTION 9. [*License, Fees.*].—An airport, landing field,
 2 landing strip, air school, flying club, air beacon, or other air
 3 navigation facility shall not be used or operated, unless it is
 4 duly licensed by the [.]. Within sixty days after
 5 the effective date of this act any person who owns or operates
 6 an airport, landing field, landing strip, air school, flying club,
 7 air beacon, or other air navigation facility shall file an appli-
 8 cation with the [.] for a license for such air
 9 navigation facility.

10 Licenses shall be granted whenever they are reasonably
 11 necessary for the accommodation and convenience of the public,
 12 and may be granted in other cases in the discretion of the
 13 [.....]. The [.....] shall issue licenses for
 14 all airports, landing fields, landing strips, air schools, flying
 15 clubs, air beacons, and other air navigation facilities in oper-
 16 ation when this Act becomes effective, unless the [.....]
 17 shall find that the facility is not constructed and equipped in
 18 accordance with the standards promulgated by the [.....]
 19 or that the school or club is not being operated according to
 20 the requirements applicable to those applying for a license to
 21 operate a new air school or flying club.

22 Except in case of emergency, an aircraft shall not land
 23 upon, or take off from, any area in this State other than an
 24 airport, landing field, or landing strip; but a license shall
 25 not be required of, and the rules, orders and regulations
 26 promulgated under the authority of this act shall not apply
 27 to, an airport, landing field, landing strip, air beacon, or other
 28 air navigation facility owned or operated by the government
 29 of the United States.

30 The [.....] is hereby authorized to make the fol-
 31 lowing charges for the issuance of the following types of
 32 license:^a

- 33 For each annual airport license[\$.....]
- 34 For each annual landing field license[\$.....]
- 35 For each annual air school license[\$.....]
- 36 Fees shall not be charged for annual landing strip, flying
 37 club, or air beacon licenses.

1 SECTION 10. [*Refusal of Licenses; Examination of Prem-*
 2 *ises.*—In any case where the [.....] rejects an ap-
 3 plication for permission to operate or establish an airport,
 4 landing field, landing strip, air school, flying club, air beacon,
 5 or other air navigation facility, or in any case where the
 6 [.....] shall pursuant to this act issue any order

^aIn the early period of aeronautical regulation, it is desirable that these fees be maintained at a nominal amount, that is, considerably less than the cost of licensing. Some states charge only two dollars for airport, landing field, and air school licenses.

7 requiring or prohibiting certain things to be done, [it] shall
 8 set forth its reasons therefor and shall state the requirements
 9 to be met before such approval will be given or such rule, regu-
 10 lation, or order will be modified or changed. In any case where
 11 the [.....] deems such action necessary or proper,
 12 [it] may order the closing of any airport, landing field, or
 13 landing strip, or the cessation of operations of any air school,
 14 flying club, air beacon, or other air navigation facility, until
 15 the requirements laid down by the [.....] shall
 16 have been fulfilled. To carry out the provisions of this act,
 17 the [.....] and any officers, State or municipal,
 18 charged with the duty of enforcing this act, may inspect and
 19 examine at reasonable hours any premises, and the buildings
 20 and other structures thereon, where such airports, landing
 21 fields, landing strips, air schools, flying clubs, air beacons,
 22 or other air navigation facilities are operated.

1 SECTION 11. [*Appeal from Order.*].—Any person against
 2 whom an order has been entered may within ten days after the
 3 service thereof appeal to the [County or Circuit Court] of the
 4 County in which the order was made or the property affected
 5 by the order is located, for the purpose of having the rea-
 6 sonableness or lawfulness of the order inquired into and
 7 determined.

1 [SECTION 12. [*Procedure for Appeal.*].—The party taking
 2 the appeal shall file a præcipe in the office of the clerk of
 3 the [County or Circuit Court], and summons shall thereupon
 4 be issued by the clerk and shall be served upon the [.....
 5]. Upon the filing of the præcipe, the appeal shall
 6 be docketed for trial not less than ten days nor more than
 7 thirty days after the service of the summons and shall be tried
 8 by the [County or Circuit Court] without formal pleadings.
 9 Upon trial of the appeal, the court shall hear evidence as to
 10 matters concerning the order in question, as to the condition
 11 of the property in question, and the manner of its operation,
 12 and shall enter judgment either affirming or setting aside
 13 the order of the [.....] or the court may remand
 14 the matter to the [.....] for further hearing. The

15 [County or Circuit Court] may in its discretion determine
16 whether the filing of the præcipe shall act as a supersedeas.*]

1 SECTION 13. [*Failure to File Appeal, Waiver.*—If an
2 appeal is not taken from the order of the [.....]
3 within the period fixed, the party against whom the order was
4 entered, shall be deemed to have waived the right to have
5 the reasonableness or lawfulness of the order reviewed by a
6 court and that issue shall not be tried in any court in which
7 suit may be instituted for the penalty for failure to comply
8 with the order.

1 SECTION 14. [*Penalty.*—Any person failing to comply
2 with the requirements, or violating any of the provisions, of
3 this act, or the rules, regulations, or orders adopted by the
4 [.....], shall be guilty of a misdemeanor and punish-
5 able by a fine of not more than [five hundred] dollars, or by
6 imprisonment for not more than [ninety] days or both.

1 SECTION 15. [*Constitutionality.*—If any provision of this
2 act or the application thereof to any person or circumstances
3 is held invalid, such invalidity shall not affect other pro-
4 visions or applications of the act which can be given effect
5 without the invalid provision or application and to this end
6 the provisions of this act are declared to be severable.

1 SECTION 16. [*Uniformity of Interpretation.*—This act
2 shall be so interpreted and construed as to effectuate its general
3 purpose to make uniform the law of those States which enact it.

1 SECTION 17. [*Short Title.*—This act may be cited as the
2 "Uniform Aeronautical Regulatory Act."

1 SECTION 18. [*Repeal.*—All acts or parts of acts which
2 are inconsistent with the provisions of this act are hereby
3 repealed.

1 SECTION 19. [*Effective Date.*—This act shall take effect
2 [.....].

*Section 12 should be modified in certain states to meet peculiarities of
local procedure. It should not be omitted.

APPENDIX D: UNIFORM AIRPORTS ACT OF 1935

Reprinted by permission of the National Conference of Commissioners on Uniform State Laws

UNIFORM AIRPORTS ACT

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

FORTY-FIFTH ANNUAL CONFERENCE
LOS ANGELES, CALIFORNIA

JULY 9-15, 1935

WITH
PREFATORY NOTE



APPROVED BY THE AMERICAN BAR ASSOCIATION AT ITS MEETING IN
LOS ANGELES, CALIFORNIA, JULY 15-19, 1935

The Special Committee which acted for the National Conference of Commissioners on Uniform State Laws in preparing the Uniform Airports Act was as follows:

WILLIAM A. SCHNADER, Packard Bldg., Philadelphia, Pa., *Chairman*,
WILLIAM M. HARGEST, Court House, Harrisburg, Pa., *Chairman*,
Uniform Public Law Acts Section,
GEORGE G. BOGERT, University of Chicago Law School, Chicago, Ill.,
WILLIAM M. CROOK, American Natl. Bank Bldg., Beaumont, Tex.,
W. JEFFERSON DAVIS, 1140 Rowan Bldg., Los Angeles, Cal.,
NATHAN WILLIAM MACCHESNEY, 30 N. LaSalle St., Chicago, Ill.,
HENRY C. MACKALL, First Natl.-Soo Line Bldg., Minneapolis, Minn.

Copies of all Uniform Acts and other printed matter issued by the Conference may be obtained from

JOHN H. VOORHEES, *Secretary*,
1140 North Dearborn Street,
Chicago, Illinois.

UNIFORM AIRPORTS ACT

PREFATORY NOTE

The Uniform Airports Act herewith presented was finally adopted by the National Conference of Commissioners on Uniform State Laws at its meeting held in Los Angeles, California, in July, 1935, approved by the American Bar Association, and recommended to the several states, the District of Columbia, and the insular possessions of the United States for enactment.

The original draft of the Uniform Airports Act was prepared by the Uniform Airports Act Committee of the Conference, in conjunction with the Committee on Aeronautical Law of the American Bar Association.

At the 1932 meeting of the Conference in Washington, D. C., the first tentative draft of the Uniform Airports Act was submitted and considered. No action was taken and leave was granted to the Committee to study the question further.

At the 1933 meeting of the Conference in Grand Rapids, Michigan, the Special Committee on Uniform Aeronautics Acts, which had taken over the work of the Uniform Airports Act Committee, was continued with authority to confer further with the American Bar Association Committee on Aeronautical Law.

At the Milwaukee meeting of the Conference in 1934 the second tentative draft of the Act was submitted by the Special Committee on Uniform Aeronautics Acts, the name of which Committee at that meeting was changed to Special Committee on Uniform Aeronautical Code. That draft was thoroughly considered section by section. The Special Committee on Uniform Aeronautical Code retained jurisdiction of the Act for the purpose of the further study of the draft and the consideration of some suggestions which were received, and submitted to the Conference at its meeting in Los Angeles a final draft of the Act. That draft was thoroughly considered by the Conference, and after slight changes had been made in it was approved and was adopted as above stated.

The Uniform Airports Act is the first of three acts on the law of aeronautics to be presented by the Committee on Uniform Aeronautical Code and adopted by the Conference. It provides for the acquisition, construction, operation, and regulation of airports and landing fields for the use of aircraft, by municipalities, counties, and other political subdivisions.

It is important to the steady development of aeronautics in the United States that the primary step of providing such facilities for the use of aircrafts be taken in every state as soon as possible. Many states have already enacted statutes for this purpose. Thus, during 1933, the State of Georgia enacted the Uniform Airports Act as it appeared in the first tentative draft.

The two remaining acts on the law of aeronautics will contain respectively the regulatory provisions and the provisions concerning the right of flight and all aspects of tort liability.

UNIFORM AIRPORTS ACT

[AN ACT PROVIDING FOR THE ACQUISITION, CONSTRUCTION, OPERATION AND REGULATION OF AIRPORTS AND OTHER NAVIGATION FACILITIES; DECLARING THE OWNERSHIP AND OPERATION OF AIRPORTS TO BE A PUBLIC, GOVERNMENTAL AND MUNICIPAL PURPOSE; PROVIDING THE RIGHT OF CONDEMNATION FOR AIRPORT PURPOSES BY CITIES AND OTHER POLITICAL SUBDIVISIONS; PROVIDING FOR THE ISSUANCE OF BONDS AND FOR THE LEVYING OF TAXES FOR SUCH PURPOSES; AND EXTENDING POLICE REGULATIONS TO SUCH PUBLIC AIRPORTS AND TO MAKE UNIFORM THE LAW WITH REFERENCE THERETO.]

Be it enacted, etc. (Use the proper enacting clause for the state.)

1 SECTION 1. *Municipalities May Acquire Airports.*—Municipalities, counties, and other political subdivisions of
2 this state* are hereby authorized, separately or jointly, to
3 acquire, establish, construct, expand, own, lease, control, equip,
4 improve, maintain, operate, regulate and police airports and
5 landing fields for the use of aircraft, either within or without
6 the geographical limits of such municipalities, counties and
7 other political subdivisions, and may use for such purpose or
8 purposes any available property that is now or may at any time
9 hereafter be owned or controlled by such municipalities, coun-
10 ties or other political subdivisions; but no county shall ex-
11 ercise the authority hereby conferred outside of its geographi-
12 cal limits except in an adjoining county and this only jointly
13 with such adjoining county.
14

1 SECTION 2. *Airports a Public Purpose.*—Any lands ac-
2 quired, owned, leased, controlled or occupied by such counties,

* Each state should consider for itself the question as to whether or not "other political subdivisions," such as Park Boards, Drainage Boards, Levee Boards, School Boards should be granted this authority, depending upon the peculiar and individual nature of such political subdivisions.

3 municipalities or other political subdivisions for the purpose
 4 or purposes enumerated in Section 1 of this act, shall and are
 5 hereby declared to be acquired, owned, leased, controlled or
 6 occupied for public, governmental and municipal purposes.

1 SECTION 3. *Private Property May Be Acquired by Pur-*
 2 *chase or Condemnation.*—Private property needed by a
 3 county, municipality, or other political subdivision for an air-
 4 port or landing field or for the expansion of an airport or land-
 5 ing field, may be acquired by grant, purchase, lease, or other
 6 means, if such political subdivision is able to agree with the
 7 owners of said property on the terms of such acquisition, and
 8 otherwise by condemnation [or excess condemnation]* in the
 9 manner provided by the law under which such political sub-
 10 division is authorized to acquire real property for public
 11 purposes.†

1 SECTION 4. *Purchase Price may be Paid from Bond Issue*
 2 *or Otherwise.*—The purchase price or award for real property
 3 acquired, in accordance with the provisions of this act, for an
 4 airport or landing field may be paid for by appropriation of
 5 moneys available therefor or wholly or partly from the proceeds
 6 of the sale of bonds of said county, municipality, or other
 7 political subdivision, as the legislative body of such political
 8 subdivision shall determine; subject, however, to the adoption
 9 of a proposition therefor at a regular or special election, if
 10 the adoption of such a proposition is a prerequisite to the issu-
 11 ance of bonds of such political subdivision for public purposes
 12 generally.

1 SECTION 5. *Authority to Equip, Improve, Establish Fees*
 2 *and Charges and Lease.*—Counties, municipalities, or other

* In states where excess condemnation is authorized by law for other purposes, these words should be included.

† In states where the right of condemnation is not provided by general statute, a special condemnation law for airports, conformable to the practice of the state in respect to other condemnation proceedings, should be enacted.

3 political subdivisions of this state which have established or
4 may hereafter establish airports or landing fields, or which
5 acquire, lease, or set apart real property for such purpose or
6 purposes, are hereby authorized:

7 (a) to construct, equip, improve, maintain, and operate the
8 same, or to vest authority for the construction, equipment,
9 improvement, maintenance, and operation thereof, in an officer,
10 board or body of such political subdivision. The expense of such
11 construction, equipment, improvement, maintenance, and opera-
12 tion shall be a responsibility of said political subdivision;

13 (b) to adopt regulations and establish charges, fees and tolls
14 for the use of such airports or landing fields, fix penalties for
15 the violation of said regulations, and establish liens to enforce
16 payment of said charges, fees and tolls;

17 (c) to lease for a term not exceeding [] years such
18 airports or landing fields to private parties for operation, or
19 to lease or assign for a term not exceeding [] years to
20 private parties for operation space, area, improvements, and
21 equipment on such airports or landing fields, provided in
22 each case that in so doing the public is not deprived of its
23 rightful, equal and uniform use thereof.

1 SECTION 6. *Funds for Operation May Be Raised by Tax-*
2 *ation and Otherwise.*—The local public authorities having
3 power to appropriate moneys within the counties, municipali-
4 ties, or other public subdivisions of this state, acquiring, estab-
5 lishing, developing, operating, maintaining, or controlling air-
6 ports or landing fields under the provisions of this act, are
7 hereby authorized to appropriate and cause to be raised by
8 taxation or otherwise in such political subdivisions, moneys suf-
9 ficient to carry out therein the provisions of this act; also, to
10 use for such purpose or purposes moneys derived from said air-
11 ports or landing fields.

1 SECTION 7. *Authority to Acquire Air Rights by Purchase*
2 *and Condemnation.*—Where necessary, in order to provide
3 unobstructed air space for the landing and taking off of aircraft
4 utilizing airports and landing fields acquired or maintained

5 under the provisions of this act, the counties, municipalities,
6 and other subdivisions of this state are hereby granted authority
7 to acquire such air rights over private property as are necessary
8 to insure safe approaches to the landing areas of said airports
9 and landing fields. Such air rights may be acquired by grant,
10 purchase, lease or condemnation in the same manner as is pro-
11 vided in Section 3 of this act for the acquisition of the airport
12 or landing fields itself or the expansion thereof.

1 SECTION 8. *Authority to Acquire Easements for Lights*
2 *and Markers.*—Such counties, municipalities, and other po-
3 litical subdivisions of this state are hereby authorized to
4 acquire the right or easement for a term of years, or perpetually,
5 to place and maintain suitable marks for the daytime, and to
6 place, operate and maintain suitable lights for the nighttime
7 marking of buildings, or other structures or obstructions, for
8 the safe operation of aircraft utilizing airports and landing
9 fields acquired or maintained under the provisions of this act.
10 Such rights or easements may be acquired by grant, purchase,
11 lease or condemnation in the same manner as is provided in
12 Section 3 of this act for the acquisition of the airport or land-
13 ing field itself or the expansion thereof.

1 SECTION 9. *Authority to Police Airports.*—Counties, mu-
2 nicipalities or other political subdivisions of this state acquir-
3 ing, establishing, developing, operating, maintaining, or con-
4 trolling airports or landing fields without the geographical
5 limits of such subdivisions, under the provisions of this Act,
6 are hereby specifically granted the right to promulgate, amend,
7 and enforce police regulations for such airports or landing
8 fields.

1 SECTION 10. *Construction and Intent of this Act.*—It is the
2 intent and purpose of this act that all provisions herein relating
3 to the issuance of bonds and the levying of taxes for airport
4 purposes, and the condemnation for airports and airport facili-
5 ties, shall be construed in accordance with general provisions of

6 the law of this state governing the right and procedure of
7 municipalities to condemn property, issue bonds and levy taxes.

1 SECTION 11. *Constitutionality.*—If any provision of this
2 act or the application thereof is held invalid, such invalidity
3 shall not affect provisions or applications of the act which
4 can be given effect without the invalid provision or application,
5 and to this end the provisions of this act are declared to be
6 severable.

1 SECTION 12. *Uniformity of Interpretation.*—This act shall
2 be so interpreted and construed as to effectuate the general
3 purpose of these states which enact it.

1 SECTION 13. *Short Title.*—This act may be cited as the
2 Uniform Airports Act.

1 SECTION 14. *Repeal.*—All acts or parts of acts which are
2 inconsistent with the provisions of this act are hereby repealed.

1 SECTION 15. *Time of Taking Effect.*—This Act shall take
2 effect

APPENDIX E: UNIFORM STATE LAW FOR AERONAUTICS OF 1922

Reprinted by Permission of the National Conference of Commissioners on Uniform State Laws

Uniform State Law for Aeronautics

Drafted by the

**National Conference of Commissioners
on Uniform State Laws**

and by it

**Approved and Recommended for Enactment
in All the States**

at its

Conference at San Francisco, Cal.

August 2-8, 1922

COMMITTEE ON A UNIFORM AVIATION ACT OF THE
COMMISSIONERS ON UNIFORM STATE
LAWS—1921-1922

GEORGE GLEASON BOGERT, *Chairman*,
Cornell Law School, Ithaca, N. Y.

NELLIS E. CORTHELL,
Laramie, Wyo.

CHARLES V. IMLAY,
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Providence, R. I.

W. H. STAAKE,
Philadelphia, Pa.

A. T. STOVALL,
Okona, Miss.

GEORGE B. YOUNG
Montpelier, Vermont.

August 2-8, 1922

THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

The National Conference of Commissioners on Uniform State Laws is composed of Commissioners appointed by Legislative or Executive authority from the States, the District of Columbia the territory of Alaska, and the Island Possessions of the United States. The organization meeting was held at Saratoga, New York, in August, 1892; and annual meetings have been regularly held since that time, immediately preceding the meetings of the American Bar Association.

The purpose of the organization, as its name imports, is to promote uniformity of legislation on subjects of common interest throughout the United States. The Commissioners are chosen from the legal profession, and serve without compensation or emoluments of any sort. Many of them have for years paid their own expenses, and all of them have rendered unstinting services for the public welfare. There is nothing of a personal or private nature about any of the aims or objects of the National Conference. Proposed acts are carefully drawn by special committees of trained lawyers, assisted by experts in many instances, and are printed, distributed and discussed in the National Conference at more than one annual session. When finally approved by the Conference, the Uniform Acts are recommended for general adoption throughout the jurisdiction of the United States and are submitted to the American Bar Association for its approval. Each uniform act is thus the fruit of one or more tentative drafts submitted to the criticism, correction and emendation of the Commissioners, and represents the experience and the judgment of a select body of lawyers chosen from every part of the United States.

The Uniform Negotiable Instruments Act, one of the earlier productions of the National Conference, has now been adopted

in 51 out of the 53 jurisdictions of the United States, and other Uniform Acts are being generally adopted.

Some of the other Uniform Acts are the Uniform Sales Act, adopted in 25 jurisdictions; Uniform Warehouse Receipts Act, adopted in 48 jurisdictions; Uniform Bills of Lading Act, adopted in 25 jurisdictions; Uniform Partnership Act, adopted in 14 jurisdictions.

National Conference of Commissioners on Uniform State Laws.
By its Executive Committee.

GEORGE G. BOGERT, *Secretary*,
Cornell Law School,
Ithaca, N. Y.
October, 1922.

At the Thirty-second Meeting of the National Conference of Commissioners on Uniform State Laws held at San Francisco, Cal., August 2-8, 1922, the following resolution was adopted on the 7th day of August, 1922:

"Resolved, By the National Conference of Commissioners on Uniform State Laws that the second tentative draft of an Act Concerning Aeronautics and to Make Uniform the Law Relating Thereto, be and the same is hereby approved, and that the same be submitted to the legislatures of the different states, the territories of Alaska and Hawaii, the District of Columbia, and the Insular Possessions of the United States for enactment at their next session."

A true copy.

Attest:

GEORGE G. BOGERT, *Secretary*,
Ithaca, N. Y.

UNIFORM STATE LAW FOR AERONAUTICS

CONTENTS

- SEC. 1. Definition of Terms.
- SEC. 2. Sovereignty in Space.
- SEC. 3. Ownership of Space.
- SEC. 4. Lawfulness of Flight.
- SEC. 5. Damage on Land.
- SEC. 6. Collision of Aircraft.
- SEC. 7. Jurisdiction Over Crimes and Torts.
- SEC. 8. Jurisdiction Over Contracts.
- SEC. 9. Dangerous Flying a Misdemeanor.
- SEC. 10. Hunting from Aircraft a Misdemeanor.
- SEC. 11. Uniformity of Interpretation.
- SEC. 12. Short Title.
- SEC. 13. Repeal.
- SEC. 14. Time of Taking Effect.

AN ACT CONCERNING AERONAUTICS AND
TO MAKE UNIFORM THE LAW WITH
REFERENCE THERETO

Be it enacted

SECTION 1. [Definition of Terms.] In this Act, "aircraft" includes balloon, airplane, hydroplane, and every other vehicle used for navigation through the air. A hydroplane, while at rest on water and while being operated on or immediately above water, shall be governed by the rules regarding water navigation; while being operated through the air otherwise than immediately above water, it shall be treated as an aircraft.

"Aeronaut" includes aviator, pilot, balloonist, and every other person having any part in the operation of aircraft while in flight.

"Passenger" includes any person riding in an aircraft, but having no part in its operation.

SECTION 2. [Sovereignty in Space.] Sovereignty in the space above the lands and waters of this State is declared to rest in the State, except where granted to and assumed by the United States pursuant to a constitutional grant from the people of this State.

SECTION 3. [Ownership of Space.] The ownership of the space above the lands and waters of this State is declared to be vested in the several owners of the surface beneath, subject to the right of flight described in Section 4.

SECTION 4. [Lawfulness of Flight.] Flight in aircraft over the lands and waters of this State is lawful, unless at such a low altitude as to interfere with the then existing use to which the land or water, or the space over the land or water, is put by the owner, or unless so conducted as to be imminently dangerous to persons or property lawfully on the land or water beneath. The landing of an aircraft on the lands or waters of another, without his consent, is unlawful, except in the case of a forced landing.

For damages caused by a forced landing, however, the owner or lessee of the aircraft or the aeronaut shall be liable, as provided in Section 5.

SECTION 5. [Damage on Land.] The owner of every aircraft which is operated over the lands or waters of this State is absolutely liable for injuries to persons or property on the land or water beneath, caused by the ascent, descent or flight of the aircraft, or the dropping or falling of any object therefrom, whether such owner was negligent or not, unless the injury is caused in whole or in part 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 either or both of them may be sued separately. An aeronaut 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 objects falling from it.

SECTION 6. [Collision of Aircraft.] The liability of the owner of one aircraft to the owner of another aircraft, or to aeronauts or passengers on either aircraft, for damage caused by collision on land or in the air, shall be determined by the rules of law applicable to torts on land.

SECTION 7. [Jurisdiction Over Crimes and Torts.] All crimes, torts and other wrongs committed by or against an aeronaut or passenger while in flight over this State shall be governed by the laws of this State; and the question whether damage occasioned by or to an aircraft while in flight over this State constitutes a tort, crime or other wrong by or against the owner of such aircraft, shall be determined by the laws of this State.

SECTION 8. [Jurisdiction Over Contracts.] All contractual and other legal relations entered into by aeronauts or passengers while in flight over this State shall have the same effect as if entered into on the land or water beneath.

SECTION 9. [Dangerous Flying a Misdemeanor.] Any aeronaut or passenger who, while in flight over a thickly inhabited

area or over a public gathering within this State, shall engage in trick or acrobatic flying, or in any acrobatic feat, or shall, except while in landing or taking off, fly at such a low level as to endanger the persons on the surface beneath, or drop any object except loose water or loose sand ballast, shall be guilty of a misdemeanor and punishable by a fine of not more than \$(), or imprisonment for not more than (), or both.

SECTION 10. [Hunting from Aircraft a Misdemeanor.] Any aeronaut or passenger who, while in flight within this State, shall intentionally kill or attempt to kill any birds or animals shall be guilty of a misdemeanor and punishable by a fine of not more than \$(), or by imprisonment for not more than (), or both.

SECTION 11. [Uniformity of Interpretation.] This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it, and to harmonize, as far as possible, with Federal laws and regulations on the subject of aeronautics.

SECTION 12. [Short Title.] This Act may be cited as the Uniform State Law for Aeronautics.

SECTION 13. [Repeal.] All Acts or parts of Acts which are inconsistent with the provisions of this Act are hereby repealed.

SECTION 14. [Time of Taking Effect.] This Act shall take effect ().

APPENDIX F: UNIFORM AIR LICENSING ACT OF 1930

Reprinted by permission of the National Conference of Commissioners on Uniform State Laws

UNIFORM AIR LICENSING ACT

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

FORTIETH ANNUAL CONFERENCE
AT CHICAGO, ILLINOIS

AUGUST 11TH TO 16TH, 1930

WITH
PREFATORY NOTE



APPROVED BY THE AMERICAN BAR ASSOCIATION AT ITS MEETING AT CHICAGO,
ILLINOIS, AUGUST 20TH TO 23RD, 1930

The committee which acted for the National Conference of Commissioners on Uniform State Laws in Preparing the Uniform Air Licensing Act was as follows:

- Randolph Barton, Jr., Baltimore, Md., *Chairman.*
- Jesse A. Miller, Des Moines, Ia., *President, Ex-Officio.*
- George G. Bogert, Chicago, Ill.
- Walter A. Lybrand, Oklahoma City, Okla.
- Hugh Victor Mercer, Minneapolis, Minn.
- W. M. Crook, Beaumont, Tex.
- Eugene McQuillin, St. Louis, Mo.
- Henry G. W. Dinkelspiel, San Francisco, Cal.

Copies of all Uniform Acts and other printed matter issued by the Conference may be obtained from

JOHN H. VOORHEES, *Secretary,*
1140 North Dearborn St.,
Chicago, Ill.

PREFATORY NOTE

The National Conference of Commissioners on Uniform State Laws, at its annual meeting, held at Chicago in August, 1930, finally approved and recommended to the states for adoption the "Uniform Air Licensing Act" that follows; and at the annual meeting of the American Bar Association, immediately following, the act was similarly approved.

The first draft of the act was submitted at the Seattle meeting of the Conference in 1928; it was redrafted by the committee and again fully discussed and considered at the Memphis meeting in 1929, and before being again submitted at the meeting in 1930 (at which, after careful examination, it was adopted) it had been thoroughly reconsidered by not only the members of the committee in charge of its drafting but also by representatives of a corresponding committee of the American Bar Association.

The act, as will be seen, is designed to bring about the licensing both of all airmen and of all aircraft by the federal government. Not only is there no subject as to which "uniformity" is so peculiarly desirable, but the resources and facilities of the federal government naturally are far in excess of and superior to those at the disposal of any individual state. Many of those interested in the subject urged that the holding of a federal license should be compulsory, but it was feared that question might arise as to the constitutionality of such a requirement, as applied to purely intrastate flying, hence provision is made for state machinery which shall follow and correspond with the requirements and regulations of the Air Commerce Department from time to time in force. Inasmuch as the possession of a federal license not only will relieve the holder of need of a *state* license, but will entitle him to engage in *interstate* flying, it is anticipated that few, if any, will fail to avail themselves of the advantages following the possession of a federal rather than merely a state license.

The act is short and explains itself. So slight (it is anticipated) will be the duties of a *state* licensing officer thereunder, that it is

believed than even such an official as the Automobile Commissioner can satisfactorily administer these duties, the fees to be fixed by the act being sufficient to cover the relatively small additional expense involved in applying, in the examination and inspection of airmen and aircraft, the regulation and the standards of the Air Commerce Department.

On the other hand, those states which desire to do so can under this act make their own machinery as elaborate as they see fit, and can, if they desire, create a new officer for its administration. That, of course, would require additional legislation providing for the creation of such an office, the mode of filling it, and the compensation of the incumbent.

The Commissioners on Uniform State Laws now have under consideration further proposed uniform legislation, dealing with such question as acquisition and regulation of airports, responsibility of aircraft owners or operators to passengers and property owners, limitation or regulation of right of flight, etc.

Such further data, information or advice as the Commissioners or the committee can supply will be gladly placed at the disposal of those desiring it, on application to the Secretary of the Conference, 1140 North Dearborn Street, Chicago, Ill.

RANDOLPH BARTON, JR., Chairman.

November 1, 1930.

UNIFORM AIR LICENSING ACT

AN ACT CONCERNING THE LICENSING OF AIRMEN AND AIRCRAFT,
 CONCERNING AIR TRAFFIC RULES AND PROVIDING PENALTIES
 FOR VIOLATION THEREOF, AND TO MAKE UNIFORM THE LAW
 WITH REFERENCE THERETO

Be it enacted

1 SECTION 1. *Definition of Terms.* In this act,

2 The term "Aircraft" means any contrivance now known or
 3 hereafter invented, used, or designed for navigation of or
 4 flight in the air, except a parachute or other contrivance de-
 5 signed for such navigation but used primarily as safety
 6 equipment.

7 The term "Public Aircraft" means an aircraft used ex-
 8 clusively in the governmental service of the United States.

9 The term "Civil Aircraft" means any aircraft other than
 10 a public aircraft.

11 The term "Airman" means any individual (including the
 12 person in command, and any pilot, mechanic or member of
 13 the crew) who engages in the navigation of aircraft while
 14 under way, and any individual who is in charge of the in-
 15 spection, overhauling or repairing of aircraft.

16 The term "person" means an individual, a partnership, or
 17 two or more individuals having a joint or common interest,
 18 or a corporation.

1 SECTION 2. *Federal Law Followed.* It is hereby declared
 2 that the policy, principles and practices established by the
 3 United States Air Commerce Act of 1926, and all existing
 4 amendments thereto, are hereby adopted and extended and
 5 made applicable to cover all air traffic in this state, so far as
 6 not covered by federal law at any time.

1 SECTION 3. *Power to Regulate.* The [Vehicle Commis-
2 sioner]¹ shall administer the provisions of this act, and for such
3 purpose is authorized to make such regulations as are necessary
4 to execute the functions vested in him by this act, including
5 air traffic rules, which regulations shall conform to and
6 coincide with, so far as practicable, the provisions of the Air
7 Commerce Act of 1926, and amendments thereto, passed by
8 the Congress of the United States and Air Commerce Regu-
9 lations and air traffic rules issued from time to time pursuant
10 thereto.

1 SECTION 4. *Aircraft License Required.* No civil aircraft
2 shall be flown in this state unless such aircraft either is
3 licensed as provided by Section 6 of this act, or shall have an
4 existing license under federal law.

1 SECTION 5. *Airman License Required.* No person shall act
2 as an airman of any civil aircraft in this state unless he
3 shall have either an appropriate license as provided in Section
4 7 of this act, or an appropriate existing license under federal
5 law.

1 SECTION 6. *Licensing of Aircraft.* The [Vehicle Commis-
2 sioner] shall provide for the issuance and expiration, and for
3 the suspension and revocation of licenses of civil aircraft,
4 in accordance with regulations promulgated by him, which
5 regulations shall conform to and coincide with, so far as prac-
6 ticable, the provisions of the Air Commerce Act of 1926, and
7 amendments thereto, passed by the Congress of the United
8 States, and Air Commerce Regulations issued from time to
9 time pursuant thereto.

1 SECTION 7. *Licensing of Airmen.* The [Vehicle Commis-
2 sioner] shall provide for the issuance and expiration, for the
3 suspension and revocation of licenses as airmen to persons
4 applying therefor in accordance with regulations promulgated
5 by him, which regulations shall conform to and coincide with,
6 so far as practicable, the provisions of the Air Commerce Act
7 of 1926, and amendments thereto, passed by the Congress of
8 the United States, and Air Commerce Regulations issued from
9 time to time pursuant thereto.

¹There should be inserted in this blank the name of the same official who
licenses motor vehicles.

1 SECTION 8. *Fees.* The [Vehicle Commissioner] shall collect
2 fees as follows:

- 3 For the examination and tests of an applicant
- 4 for an airman's license.....[\$]
- 5 For the examination and inspection of an air-
- 6 craft[\$]
- 7 For the issuance of certificate of registration
- 8 for every aircraft.....[\$]
- 9 For the issuance of an airman's license
- 10[\$]

11 which fees shall be paid over to [the state treasury].

1 SECTION 9. *Exceptions.* The provisions of this act shall not
2 apply to civil aircraft or airmen while engaged exclusively in
3 commercial flying constituting an act of interstate or foreign
4 commerce, nor to public aircraft.

1 SECTION 10. *Penalties for Violation of This Act.* Any
2 person who violates any provision of this act or any rule or
3 regulation promulgated hereunder, shall be punishable by a
4 fine of not more than [\$] or by imprisonment for not
5 more than [] or both.

1 SECTION 11. *Validity of Portions of Act.* If any pro-
2 vision of this act, or the application of such provision to any
3 person or circumstances, shall be held invalid, the remainder
4 of this act, or the application of such provision to any person
5 or circumstances other than those as to which it is held in-
6 valid, shall not be affected thereby.

1 SECTION 12. *Uniformity of Interpretation.* This act shall
2 be so interpreted and construed as to effectuate its general
3 purpose to make uniform the law of those states which enact
4 it, and to harmonize the law of this state with the federal law
5 on the same subject.

1 SECTION 13. *Short Title.* This act may be cited as the
2 Uniform Air Licensing Act.

1 SECTION 14. *Repeal.* All acts or parts of acts which are
2 inconsistent with the provisions of this act are hereby repealed.

1 SECTION 15. *Time of Taking Effect.* This act shall take
2 effect [].

APPENDIX G: UNIFORM AIRCRAFT FINANCIAL RESPONSIBILITY ACT OF 1954

Reprinted by permission of the National Conference of Commissioners on Uniform State Laws

UNIFORM AIRCRAFT FINANCIAL RESPONSIBILITY ACT

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS ON
UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS SIXTY-THIRD YEAR
CHICAGO, ILLINOIS
AUGUST 9-14, 1954

WITH
PREFATORY NOTE

APPROVED BY THE AMERICAN BAR ASSOCIATION AT ITS MEETING AT
CHICAGO, ILLINOIS, AUGUST 18, 1954

The Committee which acted for the National Conference of Commissioners on Uniform State Laws in preparing the Uniform Aircraft Financial Responsibility Act was as follows:

JOHN C. SATTERFIELD, 1117 Plaza Bldg., Jackson, Miss., *Chairman*
JAMES THOS. CONNOR, 407 Richards Bldg., New Orleans, La.
TELFORD B. ORBISON, Union Natl. Bank Bldg., New Albany, Ind.
FRANK M. PARKER, Wachovia Bank Bldg., Asheville, N.C.
JOHN CARLISLE PRYOR, Mississippi Savings Bldg., Burlington, Iowa.
JOHN W. THOMAS, 205 Federal Land Bank Bldg., Columbia, S.C.
EDWARD L. WRIGHT, Pyramid Bldg., Little Rock, Ark., *Chairman, Section C*

Copies of Uniform and Model Acts and other printed matter issued by the Conference may be obtained from

NATIONAL CONFERENCE OF COMMISSIONERS ON
UNIFORM STATE LAWS
1155 East Sixtieth Street
Chicago 37, Illinois

UNIFORM AIRCRAFT FINANCIAL RESPONSIBILITY ACT

In 1952 the Civil Aeronautics Board announced proposed regulations for compulsory insurance of air carriers which were submitted to the industry and parties who were or might be affected thereby. There was substantial protest to the adoption of such regulations, one of the grounds being that under the federal act there was no authority for the adoption of such regulations, and on June 10, 1953, the Civil Aeronautics Board announced that the proposed regulations had been withdrawn.

During this period the National Association of State Aviation Officials, the Association of Casualty and Surety Companies and the United States Aviation Underwriters contacted the National Conference of Commissioners on Uniform State Laws and suggested the desirability of a Uniform Aircraft Financial Responsibility Act which would be available for adoption by the states. If generally adopted, this would be a material element in retaining this proper field of state supervision and control and discouraging further attempts to obtain action by the Civil Aeronautics Board or an amendment of the statute to give authority to such board to adopt regulations in this field.

This act is based upon the so-called "Uniform Motor Vehicle Safety Responsibility Act," which is one of the acts constituting the "Uniform Vehicle Code," first formulated in 1934 and periodically reviewed and revised by the National Committee on Uniform Traffic Law and Ordinances, which is a part of the President's Highway Safety Conference carried on in cooperation with the Bureau of Public Roads. Certain of its provisions have been revised in view of decisions of the Supreme Courts of numerous states. An excellent discussion of the construction of such act by the courts of numerous states which is available to those interested in proposing this act for adoption may be found in an article entitled "Implementation of Public Policy Against the Financially Irresponsible Motorist" by Charles C. Collins of Washington, D.C., which appeared in the Brooklyn Law Review of December, 1952.

The practical aspects of the application of this law to the owners of aircraft and its administrative effect have been carefully reviewed by officials and a special committee of the National Association of State Aviation Officials, and both the practical and legal effects upon claimants and defendants have been reviewed by special counsel and representatives of the United States Aviation Underwriters and the Association of Casualty and Surety Companies.

As the so-called Uniform Motor Vehicle Safety Responsibility Act or variations thereof has been in effect in forty-six states for periods up to twenty years, the Conference has had the benefit of the construction by courts of such states of many provisions similar to those included in the act. It is felt that although interstate commerce will necessarily be affected by the act, nevertheless under numerous decisions upholding similar acts affecting motor vehicles its provisions will not be a burden thereon so as to step beyond the power of the states to regulate the exercise of the privilege of the operation of aircraft within its borders.

This act contemplates that while the requirement of insurance or security does not go into effect until an accident occurs and there is no provision for compulsory insurance or security thereafter, nevertheless it will provide ample protection for the public and for passengers in aircraft. Although a compulsory insurance motor vehicle law has been in effect in Massachusetts since 1925, no other state has adopted such an act. The great majority of the states have found that the withdrawal of the privilege of further operation of a motor vehicle until security is given has been sufficient to result in insurance being taken in most instances and security being provided to permit a continued exercise of the privilege, in most cases.

The main purpose of the act is to provide a greater incentive to the owners and operators of aircraft to provide for their financial responsibility by taking out liability insurance or otherwise before they operate, or allow their aircraft to be operated upon or over the land or waters of the state and to require such owners and operators to pay or receive the payment of claims arising out of accidents resulting from the operation of an aircraft in the absence of such insurance.

Three alternative courses of action are made available to the operator of an aircraft involved in an accident and the owner thereof legally responsible for its operation. First, an owner may take out liability insurance before he operates the aircraft, or allows his aircraft to be operated and before it becomes involved in an accident. An operator may thus protect his operation of an aircraft.

Second, if such operator or owner is not covered by liability insurance and becomes involved in an accident of sufficient seriousness to set the "security" provision into operation, then he has another choice to make. He may post satisfactory security to cover the loss for which he later may be judicially found responsible; or become a self-insurer; or third, he may give up his aircraft operating privileges and the registration of his aircraft until the liability for the damages resulting from the accident has been determined and any judgment obtained by the claimant has been paid or he has been released or until the lapse of one year without the bringing of a suit for damages as a result of the accident.

Exceptions are, of course, provided to the operation of these provisions. For example, the owner of a parked aircraft may, in most cases, be exempt from these provisions as to security. Again, the owner of the aircraft which at the time of an accident was being operated without his permission or for the operation of which he is not legally responsible is not required to deposit security.

It is drawn to apply to both residents and non-residents and its reciprocal provisions will make it effective as between those states which adopt the act. The right of an insurance carrier to file a limited power of attorney for process after an accident prevents it from working a hardship upon a non-resident owner or operator.

UNIFORM AIRCRAFT FINANCIAL RESPONSIBILITY ACT

AN ACT TO PROVIDE FOR THE GIVING OF SECURITY BY OWNERS AND OPERATORS OF AIRCRAFT INVOLVED IN ACCIDENTS; TO PROVIDE FOR ADMINISTRATION THEREOF; TO PROVIDE PENALTIES FOR VIOLATION OF ANY PROVISIONS OF THIS ACT; AND TO REPEAL ALL OTHER ACTS OR PARTS OF ACTS INCONSISTENT WITH OR CONTRARY TO THIS ACT

Be it enacted:

1 SECTION 1. [*Definitions.*] As used in this Act, unless the con-
2 text requires otherwise:

3 (a) "Agency" means the [Department of Aeronautics] of this
4 state.

5 (b) "Aircraft" means any contrivance now known, or here-
6 after invented, used or designed for navigation of or flight in the
7 air.

8 (c) "Judgment" means any judgment which has become final
9 by expiration without appeal of the time within which an appeal
10 might have been perfected, or by final affirmation on appeal, ren-
11 dered by a court of competent jurisdiction of any state or of the
12 United States, upon a claim for damages suffered by a claimant
13 arising out of the ownership, operation, maintenance or use of any
14 aircraft, including damages for care and loss of services, because
15 of bodily injury to or death of any person or injury to or destruc-
16 tion of property, including the loss of use thereof, or upon an
17 agreement of settlement for such damages.

18 (d) "Non-resident's Operating Privilege" means the privilege
19 conferred upon a non-resident by the law of this state pertaining
20 to the operation by him of an aircraft, or the use of an aircraft
21 owned by him, in this state.

22 (e) "Operator" means any person who is exercising actual
23 physical control of an aircraft.

24 (f) "Owner" means any of the following persons who may be
25 legally responsible for the operation of an aircraft:

- 26 (1) A person who holds the legal title to an aircraft;
- 27 (2) A lessee of an aircraft;
- 28 (3) A conditional vendee, a trustee under a trust receipt, a
29 mortgagor or other person holding an aircraft subject to a security
30 interest.

31 (g) "Passenger" means any person in, on or boarding an air-

32 craft for the purpose of riding therein, or alighting therefrom
 33 following a flight or attempted flight therein.

34 (h) "Person" means any individual, firm, co-partnership, asso-
 35 ciation or corporation, public or private, including his or its suc-
 36 cessors, assignees or legal representatives.

37 [(i) "Registration" means a certificate of registration of air-
 38 craft engaged in air navigation in this state, or of operators
 39 thereof, issued by the Agency pursuant to the laws of this state.]

COMMENT

This definition is to be included if registration of aircraft or operators is provided for by state law.

40 [(j) "Resident's Operating Privilege" means the privilege con-
 41 ferred upon a resident by the law of this state pertaining to the
 42 operation by him of an aircraft, or the use of an aircraft owned by
 43 him, in this state.]

COMMENT

This definition is unnecessary if registration of aircraft or operators is provided for by state law.

44 (k) "Notification" means notice in writing served upon a person
 45 by either:

46 (1) Actual delivery or offer of delivery to such person by any
 47 adult individual whose rights are not affected by the proceeding
 48 involved; or

49 (2) Registered mail addressed to the person at the last ad-
 50 dress known to the Agency.

51 (l) "State" means any state, the District of Columbia, any
 52 territory or possession of the United States and the Commonwealth
 53 of Puerto Rico.

54 (m) "Claimant" means any person having a claim for damages
 55 as the result of an accident within this state involving an aircraft.

1 SECTION 2. [*Agency to Administer Act—Appeal to Court.*]

2 (a) The Agency shall administer and enforce the provisions of
 3 this Act and may make rules and regulations necessary for its
 4 administration [which shall become effective ten days after the
 5 filing thereof with the Secretary of State.]

6 (b) The Agency shall provide for hearings upon request of any
 7 person who may be affected by its orders or acts under the provi-
 8 sions of this Act and may provide for a stay thereof until a hearing
 9 may be had.

10 [(c) Any person aggrieved by any order or act of the Agency

11 or by a failure of the agency to act hereunder, may have judicial
 12 review thereof as provided in the General Laws of this state for
 13 judicial review of the orders or acts of administrative agencies.]

14 [(d) Any person aggrieved by any order or act of the Agency
 15 hereunder, may have judicial review thereof [here insert language
 16 indicating scope of the review] by [appeal] to the [circuit] Court
 17 of [. County] by the filing of written [notice of appeal] with
 18 the Agency within [30] days after the order or act becomes final.
 19 The Agency shall transmit to the Court the original or a certified
 20 copy of the entire record of the proceeding under review, includ-
 21 ing a transcript of any oral testimony taken at the hearing, at
 22 the cost of the appellant. By order of Court or by stipulation of
 23 all parties to the [appeal], the record may be shortened by the
 24 elimination of any portion thereof. The Court shall determine
 25 whether the filing of the [appeal] shall operate as a stay of any
 26 such order or act of the Agency and the terms of such stay. The
 27 court may, in disposing of the issues before it, affirm, modify or
 28 reverse the order or act of the Agency in whole or in part and may
 29 enter its own order or may reverse and remand the cause for
 30 further proceedings by the Agency.]

COMMENT

The second alternative paragraph may be utilized in those states not having a general administrative review statute.

1 SECTION 3. [*Report Required Following Accident.*]

2 (a) The operator of any aircraft involved in an accident within
 3 this state in which any person is killed or injured or damage in
 4 excess of \$100.00 is sustained to the property of any person, other
 5 than property owned by the owner or operator or in his care, cus-
 6 tody or control or carried in or on the aircraft, shall immediately
 7 but not later than forty-eight hours after the accident report the
 8 matter in writing to the Agency. If the operator is physically
 9 incapable of making the report, the owner of the aircraft involved
 10 in the accident, shall immediately but not later than forty-eight
 11 hours after learning of the accident make the report. If neither the
 12 operator nor the owner is physically capable of making the report,
 13 then each passenger shall, within ten days after learning of the
 14 incapacity of the operator or owner, make the report. If the owner
 15 or operator dies as a result of the accident, the legal representative
 16 of the operator or owner shall make the report within ten days
 17 after his qualification. The [sheriff] of the [county] in which the
 18 accident occurred shall notify the Agency thereof in writing

19 immediately but not later than forty-eight hours after learning
20 of the accident.

21 (b) The report, the form of which shall be prescribed by the
22 Agency, shall include information to enable the Agency to deter-
23 mine whether the requirements for the deposit of security under
24 Section 4 are inapplicable by reason of existence of insurance or
25 other exceptions specified in this Act. The Agency may rely upon
26 the accuracy of the information until it has reason to believe that
27 the information is erroneous.

28 (c) The operator and the owner shall furnish such additional
29 information as the Agency may require.

1 SECTION 4. [*Security Required—Suspension—Exceptions.*]

2 (a) As promptly as practicable but not later than thirty days
3 after receipt of an accident report as required in Section 3, the
4 Agency shall determine by an order entered of record (1) the
5 amount of security within the limits specified in Section 5, which
6 it deems sufficient to satisfy any judgment for damages resulting
7 from the accident which may be recovered against each owner or
8 operator, and (2) the name and address of each claimant.

9 (b) As promptly as practicable but not later than thirty days
10 after the entry of the order required by sub-section (a) of this
11 Section the Agency, unless there is deposited for the benefit of the
12 owner or operator or both, as the case may be, security in the sum
13 so determined by the Agency, upon ten days notification shall
14 suspend:

15 (1) If the owner is a resident, the [registration] [resident's
16 operating privilege] of the owner and the [registration of] [right
17 to have operated for him] all aircraft owned by him.

18 (2) If the owner is a non-resident, the non-resident's operat-
19 ing privilege of the owner and of all aircraft owned by him.

20 (3) The [registration] [resident's] or non-resident's operating
21 privilege of the operator.

22 (c) The requirements as to security and suspension do not
23 apply:

24 (1) To the operator or the owner of the aircraft if the Agency
25 determines upon satisfactory evidence that he is not charged with
26 responsibility for the accident by the claimants, or to the operator
27 of an aircraft involved in an accident in which no injury was
28 caused to the person of any one other than the operator, and no
29 damage in excess of \$100.00 was caused to property not owned,
30 rented, occupied or used by the operator nor in his care, custody
31 or control nor carried in or on the aircraft;

32 (2) To the operator or owner of an aircraft if at the time of

33 the accident the aircraft was stationary, without passengers
 34 thereon or boarding the aircraft or alighting therefrom and the
 35 aircraft was parked in an area legally used for aircraft parking
 36 with no engine running nor in the process of being started;

37 (3) To the owner of an aircraft if at the time of the accident
 38 the aircraft was being operated, or was parked, without his per-
 39 mission express or implied;

40 (4) To the owner if there is in effect at the time of the acci-
 41 dent an aircraft liability policy or bond with respect to the aircraft
 42 involved in the accident;

43 (5) To the operator, if not the owner of the aircraft, if there
 44 is in effect at the time of the accident an aircraft liability policy
 45 or bond with respect to his operation of the aircraft involved in the
 46 accident;

47 (6) To the operator or owner if his liability for damages
 48 resulting from such accident is covered by any other form of lia-
 49 bility insurance policy or bond in effect at the time of the accident;

50 (7) To any person qualifying as a self-insurer under Sec-
 51 tion 7, or to any person operating an aircraft for the self-insurer
 52 for whose acts the self-insurer is legally responsible; nor

53 (8) After there is filed with the Agency satisfactory evidence
 54 that the person otherwise required to deposit security has

55 (i) been released from liability, or (ii) been adjudicated not
 56 to be liable by judgment, or (iii) executed a written agreement
 57 with all claimants providing for payment of an agreed amount
 58 with respect to all claims for injuries or damages resulting from
 59 the accident.

60 (d) The requirements as to suspension may be waived by the
 61 agency, in its discretion, if there is filed with the Agency by all
 62 claimants consent in writing that the person hereunder chargeable
 63 be allowed continuing operating privilege. If such waiver is granted
 64 by the Agency, it shall continue for six months from the date of
 65 the consent and thereafter unless the consent is revoked in writing.

66 (e) The Agency may take the actions authorized hereby or may
 67 modify or rescind the same at any time necessary to carry out the
 68 provisions of this Act upon [ten] days' notification of the persons
 69 affected thereby.

COMMENT

"Registration" should be used if registration of aircraft or operators is provided for by state law.

"Resident's" should be used if the state law does not provide for registration of aircraft or operators.

1 SECTION 5. [*Requisites of Policy or Bond.*]

2 (a) A policy or bond is not effective under Section 4 unless:

3 (1) Issued by an insurer or surety company authorized to do
4 business in this state; or

5 (2) Issued by an insurer or surety company not authorized to
6 do business in this state found by the Agency to afford adequate
7 protection and which has filed or shall file with the Agency a power
8 of attorney authorizing the Agency to accept service on its behalf
9 of notice or process in any action upon the policy or bond arising
10 out of such accident.

11 (3) If the accident results in bodily injury to or death of a
12 person not a passenger, the policy or bond provides coverage of
13 not less than [\$5,000] because of bodily injury to or death of one
14 person in any accident and [\$10,000] because of bodily injury to
15 or death of two or more persons in any one accident.

16 (4) If the accident involves an aircraft being operated for
17 hire and the accident results in bodily injury to or death of a pas-
18 senger, the policy or bond provides coverage of not less than
19 [\$10,000] because of bodily injury to or death of one person in
20 any one accident and not less than [\$10,000] multiplied by the
21 number of passenger-seats in the aircraft because of bodily injury
22 to or death of two or more persons in any one accident.

23 (5) If the accident involves an aircraft not being operated
24 for hire and the accident results in bodily injury to or death of a
25 passenger, the policy or bond provides coverage of not less than
26 [\$5,000] because of bodily injury to or death of one person in
27 any one accident and not less than [\$5,000] multiplied by the
28 number of passenger-seats in the aircraft because of bodily injury
29 to or death of two or more persons in any one accident.

30 (6) If the accident results in damage to or destruction of
31 property, the policy or bond provides coverage of not less than
32 [\$5,000] because of damage to or destruction of property in any
33 one accident with the exception of the following property which is
34 exempted from the security required under this Act: property
35 owned, rented, occupied or used by, or in the care, custody or
36 control of the owner or operator or carried in or on the aircraft.

37 (b) The policy bond need not cover:

38 (1) Any liability on account of bodily injury to or death
39 of any employee of the owner or operator while the employee is
40 engaged in the duties of his employment; or

41 (2) Any obligation for which the owner or operator or his
42 insurer may be held liable under any workmen's compensation law.

1 SECTION 6. [*Duration of Suspension.*]

2 [Registrations] [Resident's] or non-resident's operating
3 privilege suspended as provided in Section 4 shall not be restored

4 or renewed with respect to the aircraft involved in or the owner
5 or operator liable for the accident until:

- 6 (a) Security is deposited as required under Section 4; or
- 7 (b) One year shall have elapsed following the date of such
8 suspension and satisfactory evidence is filed with the Agency that
9 during such period no action for damages arising out of the acci-
10 dent has been instituted; or

11 (c) Satisfactory evidence is filed with the Agency of a release
12 from liability, or a judgment of non-liability as to all persons dam-
13 aged or injured in the accident, or a written agreement, in accord-
14 ance with paragraph 8 of subsection (2) of Section 4. If there is
15 a default in payment under such written agreement, then upon
16 [ten] days' notification of the owner or operator, the Agency shall
17 suspend the [registration] [resident's] or non-resident's operating
18 privilege of such person defaulting and the same shall not be
19 restored unless and until (1) such person deposits and thereafter
20 maintains security as required under Section 4 in such amount as
21 the Agency may then determine, within the limits herein provided,
22 or (2) one year has elapsed following the time when such security
23 was required and during such period no action upon the agreement
24 has been instituted in a court of this state; or

25 (d) Satisfactory evidence is filed with the Agency that any
26 judgment against such person for damages resulting from the acci-
27 dent has been satisfied in full or that there has been paid thereon
28 an amount equal to the applicable limits set forth in Section 5; or

29 (e) Written consent thereto has been filed with the Agency by
30 all claimants and the same is approved by the Agency in its
31 discretion.

COMMENT

The first bracketed word or phrase in each instance should be used if registra-
tion of aircraft or operators is provided for by state law. The second bracketed
word or phrase should be used if the state law does not provide for registration
of aircraft or operators.

1 SECTION 7. [*Self-Insurer.*] (a) Any person may at any time
2 apply to the Agency for a certificate of self-insurance, whether or
3 not there has occurred an accident as a result of which he might be
4 affected by some other provision of this Act.

5 (b) The Agency may in its discretion issue a certificate of
6 self-insurance when satisfied that the applicant is possessed and
7 will continue to be possessed of ability to pay judgments against
8 him within the limits provided in this Act.

9 (c) Upon not less than [ten] days' notification of a self-insurer
10 the Agency may for reasonable cause cancel a certificate of self-

11 insurance and shall cancel such certificate upon failure to pay any
12 judgment within thirty days.

1 SECTION 8. [*Application to Non-residents [Unregistered Air-*
2 *craft] and Accidents in Other States.*] (a) In case the operator
3 or owner of an aircraft involved in an accident within this state
4 [has no certificate of registration, or is a non-resident] [is a non-
5 resident], he shall not be allowed [a certificate of registration or]
6 a non-resident's operating privilege, [as the case may be,] until
7 he has complied with the requirements of this Act.

8 (b) When a non-resident's operating privilege is suspended pur-
9 suant to Section 4 or Section 6, the Agency shall transmit a certi-
10 fied copy of the record of such action to the official or department
11 regulating the operation of aircraft in the state in which the non-
12 resident resides, if the law of the other state provides for action
13 in relation thereto, similar to that provided for in subsection (c) of
14 this Section.

15 (c) Upon receipt of a certification that the operating privilege
16 of a resident of this state has been suspended or revoked in any
17 other state pursuant to a law providing for its suspension or revo-
18 cation for failure to deposit security for the payment of judgments
19 arising out of an aircraft accident, under circumstances which
20 would require the Agency to suspend a non-resident's operating
21 privilege had the accident occurred in this state, the Agency upon
22 [ten] days notification shall suspend his [registration] [resident's
23 operating privilege] if he was the operator of an aircraft involved
24 in the accident, or if he was the owner of an aircraft involved in
25 the accident and was legally responsible for its operation. The
26 suspension shall continue until the resident furnishes evidence of
27 his compliance with the security requirements of the law of the
28 other state.

1 SECTION 9. [*Form and Amount of Security.*] (a) The security
2 required under this Act shall be cash [or securities permissible
3 under state law as security for deposit of state funds] and in such
4 amount as the Agency may require but in no case in excess of the
5 limits specified in Section 5 in reference to the limits of a policy
6 or bond. If at the time of the accident there is in effect a liability
7 policy or a bond meeting the requisites of this Act other than
8 amount of coverage set forth in Section 5, the Agency may con-
9 sider such policy or bond in fixing the amount of security. The
10 person depositing security shall specify in writing the person or
11 persons on whose behalf the deposit is made and, at any time
12 while such deposit is in the custody of [the Agency or the State

13 Treasurer] the person depositing it may, upon approval of the
14 Agency, amend in writing the specification of the person or persons
15 on whose behalf the deposit is made to include an additional
16 person or persons; provided, however, that a single deposit of
17 security shall be applicable only on behalf of persons required
18 to furnish security because of the same accident. [Interest and
19 other income securities deposited as herein provided shall be paid
20 or inure to the benefit of the person making the deposit.]

21 (b) Upon ten days' notification of the parties concerned, the
22 Agency may reduce, or, within the limits specified in Section 5,
23 increase the amount of security ordered in any case if in its dis-
24 cretion the amount ordered is excessive or insufficient. In case the
25 security originally ordered has been deposited, the excess shall be
26 returned to the depositor notwithstanding the provisions of Sec-
27 tion 10. Substitution of security shall be permitted.

1 SECTION 10. [*Custody, Disposition and Return of Security.*]

2 Security deposited in compliance with the requirements of this
3 Act shall be delivered to the [Agency and shall be placed by the
4 Agency in the custody of the State Treasurer] and shall be re-
5 leased only:

6 (a) Upon certificate of the Agency in the payment of a judg-
7 ment rendered against the person or persons on whose behalf
8 the deposit was made, for damages arising out of the accident in a
9 civil action, begun not later than one year after the date of the
10 accident or within one year after the date of deposit of any se-
11 curity under sub-section (c) of Section 6, or in the payment of a
12 settlement, agreed to by the depositor and all the claimants, of a
13 claim or claims arising out of the accident.

14 (b) Upon certificate of the Agency issued after [ten] days'
15 notification of all claimants upon evidence satisfactory to the
16 Agency that all such claims arising from such accident have been
17 satisfied by either (1) a release from liability, or (2) a judgment
18 of non-liability, or (3) a written agreement in accordance with
19 paragraph 8 of sub-section (c) of Section 4, or whenever, after
20 the expiration of one year from the time of the accident or from
21 the date of deposit of any security under sub-section (c) of Sec-
22 tion 6, the Agency is given evidence satisfactory that there is no
23 such action pending and that no judgment rendered in any such
24 action is unpaid.

25 (c) Upon the certificate of the Agency that other security
26 complying with sub-section (a) of Section 9 and satisfactory in
27 form, character and amount, has been deposited with it in lieu of
28 the original security deposited hereunder.

1 SECTION 11. [*Matters Not to be Evidence in Civil Suits or*
 2 *Criminal Proceedings.*] The records of and proceedings before the
 3 Agency [and the State Treasurer] shall be inadmissible in evi-
 4 dence and shall not be referred to at the trial of any civil action
 5 or criminal proceeding.

6 Subject to the foregoing provisions, the Agency shall, upon
 7 written request, make available to persons whose legal rights may
 8 be affected thereby, information and material developed in the
 9 course of its administration of this Act.

1 SECTION 12. [*Transfer of Registration to Defeat Purpose of*
 2 *Act Prohibited.*] No transfer of registration of aircraft of which
 3 the owner's registration has been suspended hereunder, shall be
 4 deemed valid or accepted by the Agency, unless the transferor or
 5 transferee demonstrates to the satisfaction of the Agency that the
 6 transfer of registration is the result of a bona fide transaction of
 7 purchase and sale, and not for the purpose, or with the effect, of
 8 defeating the purposes of this Act. Nothing in this Section shall
 9 affect the rights of any lessor or conditional vendor, chattel mort-
 10 gagee, or other person holding a security interest in any aircraft
 11 registered in the name of another as owner who becomes subject
 12 to the provisions of this Act.

COMMENT

See Comment to Section 13.

1 SECTION 13. [*Surrender of Registration.*] Any person whose
 2 registrations are suspended as herein provided shall immediately
 3 surrender or return his registration certificates to the Agency,
 4 until such time as the registrations are restored by the Agency.
 5 If such person fails or refuses to surrender or return the registra-
 6 tion certificates to the Agency, the Agency shall forthwith [issue]
 7 —[apply to the [Circuit] Court of [. County], which upon
 8 such application shall issue] a writ directing any [peace officer
 9 or enforcement officer] of the state to secure possession thereof
 10 and deliver the same to the Agency.

COMMENT

Sections 12 and 13 are necessary only if registration of aircraft is provided for
 by state law. If not and these sections are deleted, then the following sections
 should be correspondingly renumbered.

1 SECTION 14. [*Other Violations—Penalties.*] (a) Any owner or
 2 operator who knowingly refuses or fails to make any report of an

3 accident as required in Section 3 shall be guilty of a misdemeanor
 4 and upon conviction shall be fined not more than [\$100]; and if
 5 any person is killed or injured in such accident, the Agency shall
 6 in addition suspend the [registration] [resident's] or non-resi-
 7 dent's operating privilege of the person failing to make such report,
 8 until such report is filed and for such further period not to exceed
 9 [thirty] days as the Agency may fix.

10 (b) Any owner or operator who knowingly makes a false state-
 11 ment or representation of a material fact in a report to or written
 12 instrument filed with the Agency shall be guilty of a misdemeanor
 13 and upon conviction shall be fined not less than [\$100] nor more
 14 than [\$1,000], or imprisoned for not more than [ninety] days, or
 15 both.

16 (c) Any owner or operator whose [registration] [resident's] or
 17 non-resident's operating privilege has been suspended or revoked
 18 under this Act and who, during such suspension or revocation,
 19 operates any aircraft in this State, or knowingly permits any air-
 20 craft owned by such person to be operated by another in this State,
 21 except as permitted under this Act, shall be guilty of a misde-
 22 meanor and upon conviction shall be fined not more than [\$1,000],
 23 or imprisoned not more than [six] months, or both.

24 (d) Any owner or operator wilfully failing to return his regis-
 25 trations as required in Section 13 shall be guilty of a misdemeanor
 26 and upon conviction shall be fined not more than [\$500], or im-
 27 prisoned not to exceed [thirty] days, or both.

COMMENT

Subsection (d) should be deleted if Section 13 is deleted, but should be retained if that section is retained.

1 SECTION 15. [*Non-Applicability.*] This Act shall not apply to:

2 (a) Any aircraft owned and operated by or leased to and sub-
 3 ject to the sole control of the United States or any civil or military
 4 agency of the United States or of the District of Columbia, the
 5 Commonwealth of Puerto Rico or any territory or possession of
 6 the United States;

7 (b) Any aircraft owned and operated by or leased to and sub-
 8 ject to the sole control of this or any other State or Agency thereof
 9 or any political subdivision or municipality of this or any other
 10 State;

11 (c) Any aircraft owned and operated by or leased to and sub-
 12 ject to the sole control of any foreign country or any civil or mili-
 13 tary agency thereof or any political subdivision or municipality
 14 thereof;

15 (d) Any aircraft owned or being operated by a public air
16 carrier engaged principally in regularly scheduled interstate or
17 foreign air transportation for hire under either a federal certificate
18 of public convenience and necessity or under a letter of registra-
19 tion or exemption order issued by the Civil Aeronautics Board or
20 its successor.

1 SECTION 16. [*Act Not Retroactive.*] This Act shall not apply
2 with respect to any accident occurring prior to the effective date
3 of this Act.

1 SECTION 17. [*Act Not to Prevent Other Process.*] Nothing in
2 this Act shall be construed as precluding any party in any action
3 or proceeding from employing other processes provided by law.
4 Nothing in this Act shall be construed as precluding the utilization
5 by the Agency of the injunctive or other process of the courts in
6 aid of the enforcement of this Act.

1 SECTION 18. [*Service of Process.*] (a) The operation of an
2 aircraft on the land or waters of or in the air over this state shall
3 be deemed an appointment by the owner or operator of the [Sec-
4 retary of State] to be his true and lawful attorney upon whom
5 may be served all legal process in any action or proceeding against
6 him, arising from the ownership, maintenance, use or operation of
7 such aircraft and resulting in damage or loss to person or property,
8 and said use or operation shall be signification of his agreement
9 that any such process against him which is so served, shall be of
10 the same legal force and validity as though served upon him per-
11 sonally, provided such person is a non-resident of this state or
12 at the time a cause of action arises is a resident of this state but
13 subsequently becomes a non-resident of this state.

14 (b) Service of such process shall be made by serving [the
15 original thereof and a copy of] the [complaint] upon the [Secre-
16 tary of State] or by filing the same in his office, together with a
17 fee of \$2.00 and by the mailing of a copy of such process and of
18 the [complaint] by the plaintiff or his attorney to the defendant,
19 and to each of the defendants if more than one at his last known
20 address, within ten days thereafter by registered mail. In lieu of
21 such mailing to such defendant in a foreign state, plaintiff may
22 cause a copy of the [complaint] and process to be served per-
23 sonally in the foreign state upon such defendant by any adult
24 person not a party to the suit, by actually delivering the same to
25 such defendant or by offering to make such delivery in case de-
26 fendant refuses to accept delivery.

27 [(c) Proof of the service of such process upon the [Secretary
 28 of State] or the filing thereof in his office, and proof of the mailing
 29 or personal delivery thereof to the defendant shall be made by the
 30 affidavit or affidavits of the party or parties doing the acts, which
 31 shall be filed in the office of the Clerk of the Court in which the
 32 suit is filed. Process shall be deemed to be completed upon the
 33 filing of such affidavit or affidavits and of the original registry
 34 receipt issued by the post-office upon the mailing of such regis-
 35 tered letter, if service is obtained by mail.]

1 SECTION 19. [*Discharge in Bankruptcy.*] A discharge in bank-
 2 ruptcy shall not relieve any person from the requirements of
 3 this act.

1 [SECTION 20. [*Use of Singular or Plural.*] The singular includes
 2 the plural and the plural includes the singular; the masculine in-
 3 cludes the feminine and neuter, as requisite.]

1 SECTION 21. [*Uniformity of Interpretation.*] This Act shall be
 2 so interpreted and construed as to effectuate its general purpose
 3 to make uniform the laws of those states which enact it.

1 SECTION 22. [*Savings Clause.*] If any part or parts of this
 2 Act shall be held to be invalid, such invalidity shall not affect the
 3 validity of the remaining parts of this Act. The legislature hereby
 4 declares that it would have passed the remaining parts of this
 5 Act if it had known that such part or parts thereof would be
 6 declared invalid.

1 SECTION 23. [*Title of Act.*] This Act may be cited as the Uni-
 2 form Aircraft Financial Responsibility Act.

1 SECTION 24. [*Effective Date of Act.*] This Act shall take effect
 2 the day of, 19...

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