

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 845

Introduced by Schilz, 47; Krist, 10.

Read first time January 13, 2014

Committee: Government, Military and Veterans Affairs

A BILL

1 FOR AN ACT relating to the Department of Aeronautics; to amend
2 sections 3-402, 3-404, 3-405, 3-406, 3-408, and 3-409,
3 Reissue Revised Statutes of Nebraska; to define a term;
4 to provide for regulation of meteorological evaluation
5 towers; to provide duties; to harmonize provisions; to
6 repeal the original sections; and to outright repeal
7 section 66-1901, Revised Statutes Cumulative Supplement,
8 2012.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 3-402, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 3-402 As used in sections 3-401 to 3-409 and section 4 of
4 this act, unless the context otherwise requires:

5 (1) Structure ~~shall mean~~ means any manmade object which
6 is built, constructed, projected, or erected upon, from, and above
7 the surface of the earth, including, but not limited to, towers,
8 antennas, buildings, wires, cables, and chimneys;

9 (2) Obstruction ~~shall mean~~ means any structure which
10 obstructs the air space required for the flight of aircraft and in
11 the landing and taking off of aircraft at any airport or restricted
12 landing area; ~~and~~

13 (3) Meteorological evaluation tower means an anchored
14 structure, including all guy wires and accessory facilities, on which
15 one or more meteorological instruments are mounted for the purpose of
16 meteorological data collection; and

17 ~~(3)~~ (4) Person shall mean means any public utility,
18 public district, or other governmental division or subdivision or any
19 person, corporation, partnership, or limited liability company.

20 Sec. 2. Section 3-404, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 3-404 The application for the permit, required by section
23 3-403, shall be made in writing on forms prescribed by the Department
24 of Aeronautics and shall contain or be accompanied by details as to
25 the location, construction, height, and dimensions of the proposed

1 structure, the nature of its intended use, and such other information
2 as the Director of Aeronautics may require. Upon the filing of such
3 application the director shall make an investigation and an
4 aeronautical study of such proposed construction and its effect, if
5 any, upon air navigation, and the health, welfare, and safety of the
6 public. If the director, upon such investigation, shall determine
7 that such proposed structure will not constitute a hazard to air
8 navigation and will not interfere unduly with the public right of
9 freedom of transit in commerce through the air space affected
10 thereby, he or she shall issue to the applicant a permit, required by
11 section 3-403, authorizing the erection and construction of such
12 structure, subject to such conditions as to marking and lighting as
13 the department may prescribe by its rules and regulations, authorized
14 by section 3-407. If he or she does not so determine, he or she shall
15 deny the application. In making such investigation, aeronautical
16 study, and determination, the director shall consider (1) the
17 character of flying operations expected to be conducted in the area
18 concerned, (2) the nature of the terrain, (3) the character of the
19 neighborhood, (4) the uses to which the property concerned is devoted
20 or adaptable, (5) the proximity to existing airports, airways,
21 control areas, and control zones, (6) the height of existing,
22 adjacent structures, and (7) all the facts and circumstances
23 existing. He or she shall impose only such restrictions or
24 requirements as may be reasonably necessary to effectuate the purpose
25 of sections 3-401 to 3-409 and section 4 of this act.

1 Sec. 3. Section 3-405, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 3-405 Any person aggrieved by any action of the
4 Department of Aeronautics in granting or denying a permit under the
5 terms of sections 3-401 to 3-409 and section 4 of this act may appeal
6 the action, and the appeal shall be in accordance with the
7 Administrative Procedure Act.

8 Sec. 4. (1) A meteorological evaluation tower, the height
9 of which is at least fifty feet but not more than two hundred feet
10 above the surface of the ground at point of installation, shall be
11 marked according to subsection (2) of this section. This section
12 applies to a meteorological evaluation tower that is located outside
13 the corporate limits of a city or village.

14 (2) A meteorological evaluation tower described in
15 subsection (1) of this section shall: (a) Be painted in seven equal-
16 width and alternating bands of aviation orange and white beginning
17 with orange at the top of the tower and ending with orange at the
18 base; (b) have two or more spherical marker balls at least twenty-one
19 inches in diameter that are aviation orange in color and attached to
20 each outer guy wire connected to the tower with the top ball no
21 further than fifteen feet from the top wire connection and the
22 remaining ball or balls at or below the mid-point of the tower on the
23 outer guy wires; and (c) have a yellow safety sleeve installed on
24 each outer guy wire extending seven feet up from the anchor point of
25 the guy wire and have a second yellow sleeve of the same length

1 installed on each outer guy wire directly above the lower sleeve. All
2 markings shall be replaced when faded or otherwise deteriorated. A
3 light may be affixed to the highest point on the tower as additional
4 marking.

5 (3) The owner of a meteorological evaluation tower
6 subject to this section shall, not less than ten business days prior
7 to erecting the tower, register with the Department of Aeronautics
8 the name and address of the owner, the height and location of the
9 tower, and any other information that the department deems necessary
10 for aviation safety. The owner of a tower subject to this section
11 shall also report the removal of the tower to the department not more
12 than thirty business days after its removal. The department shall
13 make the information received pursuant to this subsection available
14 to the public within five business days.

15 (4) The owner of a tower described in subsection (1) of
16 this section that was erected prior to the effective date of this act
17 shall mark the tower as required by subsection (2) of this section
18 within one year after the effective date of this act, except that the
19 registration requirements of subsection (3) of this section shall be
20 performed by the owner within fifteen business days of the effective
21 date of this act.

22 (5) The department may adopt and promulgate rules and
23 regulations for carrying out the purposes of this section.

24 Sec. 5. Section 3-406, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 3-406 The provisions of sections 3-403 to 3-405 shall not
2 apply to structures hereafter erected under the authority of a
3 license or permit issued by a federal agency or other state agency
4 now having specific statutory jurisdiction over the air space,
5 including authority to prohibit or regulate the height of structures
6 for the promotion of safety in aviation, nor to existing structures.
7 Nothing in sections 3-401 to 3-409 and section 4 of this act shall be
8 construed to limit or abridge any right, power, or authority to zone
9 property under the provisions of any other law of this state or of
10 the federal government except, that in the event of any conflict
11 between the regulations for height limits of structures, lighting,
12 and marking adopted under the provisions of sections 3-401 to 3-409
13 and section 4 of this act, and any other regulations applicable to
14 the same area, the more stringent limitation or requirement shall
15 govern and prevail.

16 Sec. 6. Section 3-408, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 3-408 Any person, firm, or corporation (1) violating any
19 of the provisions of sections 3-401 to 3-409 and section 4 of this
20 act, (2) submitting false information in the application for a
21 permit, (3) violating any rule or regulation adopted by the
22 Department of Aeronautics, ~~pursuant hereto, as authorized by section~~
23 ~~3-407,~~(4) failing to do and perform any act required hereby, or (5)
24 violating the terms of any permit issued pursuant to the provisions
25 of sections 3-401 to 3-409 and section 4 of this act, shall be guilty

1 of a Class III misdemeanor. Each day any violation continues or any
2 structure erected in violation of the provisions of sections 3-401 to
3 3-409 and section 4 of this act shall continue in existence, shall
4 constitute a separate offense.

5 Sec. 7. Section 3-409, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 3-409 In addition to the penalties provided for by
8 section 3-408, the erection and maintenance of any structure in
9 violation of the provisions of sections 3-401 to 3-409 and section 4
10 of this act may be enjoined by any court of competent jurisdiction in
11 an action for that purpose commenced by the Department of Aeronautics
12 or any other interested person. The erection of such structure and
13 permitting the same to stand or remain, in violation of the
14 provisions of sections 3-401 to 3-409 and section 4 of this act, is
15 hereby declared to be a nuisance and the department, or its
16 authorized agent, is authorized to go upon the premises and abate
17 such nuisance by removing such structure after five days' notice to
18 the interested parties, to be served by mail addressed to them at
19 their last-known place of business or residence. The expense incident
20 to the removal of such structure shall be paid by the owners thereof
21 and if the department removes such structures as provided in this
22 section the expense incurred by the department may be recovered from
23 the sale of the structure or its salvage material.

24 Sec. 8. Original sections 3-402, 3-404, 3-405, 3-406,
25 3-408, and 3-409, Reissue Revised Statutes of Nebraska, are repealed.

1 Sec. 9. The following section is outright repealed:
2 Section 66-1901, Revised Statutes Cumulative Supplement, 2012.