

PROPOSED CODIFICATION
OF LAWS RELATING TO AVIATION
INTO THE PENNSYLVANIA CONSOLIDATED STATUTES
TITLE 74, PART IV
1982

Staff Report of the
JOINT STATE GOVERNMENT COMMISSION
108 Finance Building
Harrisburg, Pennsylvania

The Joint State Government Commission was created by act of 1937, July 1, P.L. 2460, as amended, as a continuing agency for the development of facts and recommendations on all phases of government for the use of the General Assembly.

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INTRODUCTION

Pursuant to 1982 House Concurrent Resolution No. 194, sponsored by Representative Benjamin H. Wilson, the staff of the Joint State Government Commission has drafted a proposed Aviation Code which codifies various statutes as Part IV, Title 74 (Transportation) of the Pennsylvania Consolidated Statutes. At the request of Representative Wilson, this proposed legislation is transmitted to the Transportation Committee of the House of Representatives for the use of the Aviation Subcommittee.

The proposal codifies The Aeronautical Code (May 25, 1933, P.L. 1001, No. 224)--hereinafter called the "Aeronautical Code"-- pertinent provisions of The Administrative Code of 1929 (April 9, P.L. 177, No. 175)--hereinafter called the "Administrative Code"--and various other statutes identified in the repealer section of the proposal. A preliminary version was reviewed by the staff of the Bureau of Aviation of the Department of Transportation, whose helpful suggestions were incorporated.

The proposal, modernizing the 49-year-old act without introducing substantive or policy changes, references and incorporates

provisions from the Consolidated Statutes: definitions from Title 1 (General Provisions); procedures from Title 2 (Administrative Law and Procedure); classifications of crimes and sentences from Title 18 (Crimes Code); and procedures from Title 42 (Judiciary and Judicial Procedures). The proposal also harmonizes the Airport Zoning Act (April 17, 1945, P.L. 237, No. 107) with procedures contained in the Municipalities Planning Code (July 31, 1968, P.L. 805, No. 247) and other laws regulating zoning.

Each section is followed by a source note and, where appropriate, staff comments. Cross-reference tables are attached to facilitate the tracking of existing law to the Code.

PROPOSED AVIATION CODE

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PART IV

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TITLE 74
TRANSPORTATION
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CHAPTER 51
PRELIMINARY PROVISIONS

Section 5101. Short title of part.
Section 5102. Definitions.

§ 5101. Short title of part.

This part shall be known and may be cited as the "Aviation Code."

§ 5102. Definitions.

The following words and phrases when used in this part shall have the meanings given to them in this section, unless the context clearly indicates otherwise:

"Air navigation facilities." Airports and all aids to air navigation, including lights, marks, structures and electrical communicating systems.

"Airman." An individual, including the person in command and any pilot, mechanic or member of the crew, who engages in the operation of aircraft while under way or an individual including a parachute rigger or repairman who is in charge of the inspecting, overhauling or repairing of aircraft.

"Civil aircraft." Aircraft not of the military or naval forces of the Federal government or not used exclusively in any governmental service of any state or country.

"Civil airway." A route in the navigable airspace over or above the territory or waters of this Commonwealth which has been designated by the department as a route suitable for intrastate or interstate air commerce.

"Commercial airport." An airport which may be used for commercial flight operations.

"Commercial flight operations." The carrying of persons or goods for hire, including the conduct of flight instruction for compensation.

"Commercial operator." A person who conducts commercial flight operations.

"Department." The Department of Transportation of the Commonwealth.

"Navigable airspace." Airspace above the minimum safe altitudes of flight prescribed by the department.

"Nonresident." A person who occupies his place of abode or uses his place of business within this Commonwealth, if any, for a period not longer than 30 days or parts thereof, not necessarily consecutive, in a year.

"Personal airport." An airport at which no commercial flight operation is conducted, including an airport maintained solely for the use of a single person, or at which any aircraft owned, controlled or flown by another is not based over eight days nor maintained for financial return.

Source: Derived from Section 102 of the Aeronautical Code.

Comment: The definitions of "aeronautics," "aircraft," "airport" and "person" are supplied by 1 Pa.C.S. § 1991. The definitions of "officer," "owner," "passenger" and "pilot" are omitted as self-explanatory. The definition of "commission" is omitted as obsolete. The definition of "landing area" is omitted, and the term is replaced throughout this part by "airport," as defined in 1 Pa.C.S. § 1991. The definition of "department" is added.

CHAPTER 53

POWERS AND DUTIES OF DEPARTMENT OF TRANSPORTATION

Section 5301. Powers and duties of department.

Section 5302. Aircraft for official use.

Section 5303. Administration of Federal aid for local airports.

Section 5304. Denial or revocation of licenses.

§ 5301. Powers and duties of department.

(a) General powers.--The department shall administer the provisions of this part and, for that purpose, shall promulgate and enforce regulations as necessary to execute the powers vested in it

by this part and other laws relating to aviation, airports and air safety within this Commonwealth. The Deputy Secretary for Aviation, with the approval of the Secretary of Transportation, shall have the powers and perform the functions and duties provided by this part. Where any provision of this part confers powers or imposes duties upon the department which under any Federal statute may be exercised by or imposed on only the Secretary of Transportation, the reference to the department shall be construed to mean the department acting by and through the Secretary of Transportation or the person for the time being acting as the Secretary of Transportation personally.

(b) Specific powers.--The department shall have the power and its duty shall be to:

(1) Provide for the examination, rating and licensing of airports and air navigation facilities and for issuing such other licenses or certificates as the department deems necessary in administering this part.

(2) Establish, operate and maintain along civil airways all necessary air navigation facilities, including intermediate landing fields, and encourage and assist in the establishment of civil airways and the construction of air

navigation facilities. The department may acquire, by purchase, condemnation, lease or otherwise, air navigation facilities and lands suitable for the establishment of air navigation facilities, through the Department of General Services as agent.

(3) Establish, set apart and provide for the protection of necessary air space reservations within this Commonwealth which do not conflict with air space reservations established by the Federal government or with any civil or military airway designated under the provisions of the Federal Aviation Act of 1958 Public Law 85-726, 72 Stat. 737, or other Federal statute.

(4) Designate, establish and chart civil airways within, over and above the lands or waters of this Commonwealth. The department shall grant no exclusive right for the use of any civil airway, airport or other air navigation facility under its jurisdiction.

(5) Arrange for publication of aeronautical charts.

(6) Regulate the safety, adequacy and sufficiency of all air navigation facilities and equipment used in private or commercial flying.

(7) Regulate the marking of highways, municipalities and other aerial markings.

(8) Regulate the erection, location and maintenance of aerial beacon lights and other aerial night lighting equipment.

(9) Regulate the instruction in aeronautics of student flyers and mechanics and the safety, adequacy and sufficiency of airports and air navigation facilities used in that instruction.

(10) With the approval of the Governor, execute leases or licenses, with or without consideration, granting to the Federal government or to any municipality within this Commonwealth the right to erect, operate and maintain, upon intermediate landing fields belonging to the Commonwealth, boundary lights and other equipment and air navigation facilities. All leases and licenses shall be revocable upon six months' notice and shall require the lessee or licensee, at his own expense, to maintain any structures erected by it under its lease or license.

(11) Investigate, record and report the causes of accidents in civil air navigation.

(12) Establish air traffic rules by regulation, including minimum safe altitudes for flight.

(13) Cooperate with the Federal government, State and local governments and government agencies in the administration of this part, including the enforcement of regulations, and exchange information pertaining to civil air navigation.

(14) Expend moneys appropriated to it for the purposes of the administration of this part, including proceeds from aviation fuel excise taxes and fines arising from violations of Chapter 57 (relating to violations and penalties) from time to time in the Motor License Fund.

(15) Accept and expend moneys received from the Federal government or from any other source for the making of surveys and plans and the purchase of lands for, and the construction of, airports and other air navigation facilities.

(16) Expend Commonwealth funds for the purchase of civil air patrol aircraft, educational materials and equipment, defray maintenance and hanger rents of "on-loan" United States Air Force aircraft of 190 horsepower or less, and purchase or lease maintenance supplies and equipment for the communications network for the civil air patrol.

(c) Conformity to Federal law.--All rules and regulations promulgated by the department under the authority of this part shall be consistent with and conform to the Federal statutes and regulations governing aeronautics.

(d) Limitation on powers.--Nothing in this part shall confer upon the department the power to regulate schedules or the issuance of stock, or to make any determination of public convenience or of the

adequacy and sufficiency of service of common carriers engaged in commercial flying within this Commonwealth.

Source: Section 201 of the Aeronautical Code; Section 1208 of the Administrative Code, as affected by the act of May 6, 1970, (P.L. 356, No. 120), which abolished the Pennsylvania Aeronautics Commission and transferred its functions to the Department of Transportation; Section 2001.3(g) of the Administrative Code; the act of May 25, 1933 (P.L. 1016, No. 226); and the act of May 29, 1956 (1955 P.L. 1787, No. 596).

Comment: The powers conferred upon the department by subsections (b), (c), (d) and (e) of Section 201 of the Aeronautical Code are included in paragraph (2) of this section; the powers conferred by subsection (1) are included in paragraph (13); the powers conferred by subsection (n) are included in paragraph (14) and (15); and the powers conferred by the act of May 29, 1956 (1955 P.L. 1787, No. 586) are included in paragraph (16). The last paragraph of the present subsection (m) is generalized and included in proposed subsections (c) and (d). In *Clarke v. Hermitage*, ___ Pa. Commonwealth Ct. ___, 433 A.2d 631 (1981), the court affirmed the opinion of the Mercer County Court of Common Pleas, 18 Mercer C. L. J. 100 (1980) to the effect that the power here codified in paragraph (b)(2) does not preempt local zoning ordinances. In subsection (b)(5) the phrase "maps of civil airways" was replaced by "aeronautical charts" at the suggestion of the Bureau of Aviation. Net proceeds from aviation fuel excise taxes are restricted to purposes reasonably relating to air navigation by Section 11 of Article VIII of the Constitution of Pennsylvania. The power of the Department of General Services to lease airports owned by the Commonwealth is established in Section 2402(i) and (n) of the Administrative Code, subject to the conditions stated therein. For provisions dealing with airport restaurants, see Section 461 of the act of April 12, 1951 (P.L. 90, No. 21), known as the Liquor Code. For power of the Governor to commission pilots, see Section 701(j) of the Administrative Code.

§ 5302. Aircraft for official use.

The department shall purchase and maintain all aircraft required for the proper conduct of the business of the Commonwealth agencies and the General Assembly. The use of such aircraft shall be charged by the department to the using agency or the General Assembly. The amount of such charge shall be paid into the Motor License Fund and be credited to the amounts appropriated therefrom for the use of the department. All amounts so credited are hereby appropriated to the department for the same purposes as other appropriations out of the Motor License Fund for the use of the department.

Source: Section 526 of the Administrative Code.

§ 5303. Administration of Federal aid for local airports.

(a) Approval by department of project.--No municipality or municipal authority, acting alone or jointly with another municipality or municipal authority or with the Commonwealth, shall submit to any Federal agency any project application under the provisions of any Federal statute which provides airport planning funds or airport construction and development funds for the expansion and improvement of the airport system unless the project and the project application have been first approved by the department.

(b) Administration of funds.--Unless the department has approved the project, no municipality or municipal authority can directly accept, receive, receipt for or disburse any funds granted by the Federal government; the municipality or municipal authority shall instead designate the department as its agent to accept, receive, receipt for, and disburse the funds. Funds paid over by the Federal government shall be received by the Commonwealth and immediately paid over to the municipality or municipal authority for application to the designated project under such terms and conditions as may be imposed by the Federal government in making the grant.

(c) Agreement with department.--The municipality or municipal authority shall enter into an agreement with the department, prescribing the terms and conditions of such agency, in accordance with Federal and Pennsylvania law.

Source: Act of May 2, 1947 (P.L. 136, No. 56).

§ 5304. Denial or revocation of licenses.

No license required under this part shall be denied or revoked unless the department has complied with Subchapter A of Chapter 5 of Title 2 (relating to practice and procedure of Commonwealth agencies) and with the General Rules of Administrative Practice and Procedure.

Source: New. Replaces Section 501 of the Aeronautical Code.

Comment: The General Rules of Administrative Practice and Procedure are set forth in 1. Pa. Code § 31.1 et seq.

CHAPTER 55
LEGAL STATUS OF AIR NAVIGATION

- Section 5501. Ownership of space.
- Section 5502. Lawfulness of flight.
- Section 5503. Damage to persons and property on ground.
- Section 5504. Law applicable to crimes and torts.
- Section 5505. Law applicable to contracts.

§ 5501. Ownership of space.

The ownership of the space over and above the lands and waters of this Commonwealth is declared to be vested in the owner of the surface beneath, but the ownership extends only so far as is necessary to the enjoyment of the use of the surface without interference and is subject to the right of passage or flight of aircraft. Flight through the space over and above land or water, at a sufficient height and without interference to the enjoyment and use of the land or water beneath, is not an actionable wrong unless the flight results in actual damage to the land or water, or property thereon or therein, or use of the land or water beneath.

Source: Reenactment of Section 401 of the Aeronautical Code.

Comment: For provisions relating to conveyance and transfer of estates, rights and interests in air space, see act of August 14, 1963 (P.L. 871, No. 419).

§ 5502. Lawfulness of flight.

Flight in aircraft over the lands and waters of this Commonwealth is lawful unless at such 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 dangerous or damaging 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 or emergency landing. For damage caused by a forced or emergency landing, the owner, lessee and operator of the aircraft shall be liable as provided in section 5503 (relating to damage to persons and property on ground).

Source: Reenactment of Section 402 of the Aeronautical Code.

Comment: The registration referred to is that required by Subchapter V of the Aviation Act of 1958 (Pub.L. 85-726, 72 Stat. 737). With respect to a landowner's right to enjoin flights of aircraft interfering with the use and enjoyment of the land, see Crew v. Gallagher, 358 Pa. 541, 58 A.2d 179 (1948); Gardner v. Allegheny County, 382 Pa. 88, 114 A.2d 491 (1955); and Griggs v. Allegheny County, 402 Pa. 411, 168 A.2d 123 (1961).

§ 5503. Damage to persons and property on ground.

(a) General rule.--The owner and the pilot, or either of them, of an aircraft which is operated over the lands or waters of this Commonwealth shall be liable for injuries or damage to persons or

property on or over the land or water beneath, caused by the ascent, descent or flight of aircraft or the dropping or falling of any object therefrom in accordance with the law applicable to torts on land in this Commonwealth.

(b) Definition of "owner."--As used in this section "owner" includes a person having full title to aircraft and operating it through servants and also includes a bona fide lessee or bailee of the aircraft whether gratuitously or for hire. It does not include a bona fide bailor or lessor of the aircraft, whether gratuitously or for hire, or a mortgagee, secured party, trustee for creditors of the aircraft or other persons having a security title only. The owner of the aircraft shall not be liable when the pilot of the aircraft is in possession thereof as a result of theft or felonious conversion. The person in whose name an aircraft is registered with the United States Department of Transportation is prima facie the owner of the aircraft within the meaning of this section.

Source: Substantially a reenactment of Section 403 of the Aeronautical Code.

§ 5504. Law applicable to crimes and torts.

(a) General rule.--All crimes, torts and other wrongs committed by or against a pilot or passengers, while in flight over or above the lands and waters of this Commonwealth, shall be governed by the law of this Commonwealth. The issue of whether damage occasioned

by or to an aircraft, while over this Commonwealth, constitutes a tort, crime or other wrong by or against the owner of the aircraft shall be determined by the law of this Commonwealth.

(b) Liability for injury to passengers.--The liability of the owner or pilot of an aircraft carrying passengers, for injury or death to the passengers, shall be determined by the law applicable to torts on the lands or waters of this Commonwealth arising out of similar relationships.

(c) Liability for collision of aircraft.--The liability of the owner of one aircraft to the owner of another aircraft, or to pilots or passengers on either aircraft, for damage caused by collision, on land or in the air, shall be determined by the law applicable to torts on the lands or waters of this Commonwealth.

Source: Reenactment of Sections 404, 406 and 407 of the Aeronautical Code.

§ 5505. Law applicable to contracts.

All contractual and other relations entered into by pilots or passengers, while in flight over or above the lands or waters of this Commonwealth, shall be governed by the laws applicable to similar relations entered into on the lands of this Commonwealth.

Source: Reenactment of Section 405 of the Aeronautical Code.

CHAPTER 57
VIOLATIONS AND PENALTIES

- Section 5701. Operating aircraft while under influence of alcohol or controlled substance.
- Section 5702. Operating aircraft without consent of owner.
- Section 5703. Offenses relating to licensure of aircraft and airmen.
- Section 5704. Failure to provide lighting and safety equipment.
- Section 5705. Failure to give required notices.
- Section 5706. Commencement of proceedings for summary offenses.
- Section 5707. Disposition of fines, fees and forfeitures.

§ 5701. Operating aircraft while under influence of alcohol or controlled substance.

A person commits a misdemeanor of the third degree if he operates or navigates aircraft while under the influence of alcohol or a controlled substance, or permits any person who may be under the influence of alcohol or a controlled substance to operate or navigate any aircraft owned by him or in his custody or control or carries in any aircraft any passenger who is visibly under the influence of alcohol or a controlled substance. For purposes of this section a "controlled substance" is as defined in the act of April 14, 1972 (P.L. 223, No. 64), known as "The Controlled Substance, Drug, Device and Cosmetic Act."

Source: Section 601(a) of the Aeronautical Code.

Comment: The grading of the offense as a misdemeanor of the third degree refers to the classification established in 18 Pa.C.S. § 106. The maximum

fine for a misdemeanor of the third degree is \$2,500 (18 Pa.C.S. § 1101(5)); the maximum sentence of imprisonment is one year (18 Pa.C.S. § 1104).

§ 5702. Operating aircraft without consent of owner.

A person commits a misdemeanor of the third degree if he tampers with, makes use of or navigates any aircraft without the knowledge or consent of the owner or custodian thereof.

Source: Section 601(c) of the Aeronautical Code.

Comment: For maximum sentences for this offense, see comment to Section 5701.

§ 5703. Offenses relating to licensure of aircraft and airmen.

(a) Legislative findings.--The public safety requires and the advantages of uniform regulation make it desirable that aircraft operating within this Commonwealth should conform, with respect to design, construction and airworthiness, to the standards prescribed by the Federal government. A person engaging within this Commonwealth in operating aircraft or in charge of the inspection, overhaul or repair of aircraft, or the repair, packing or maintenance of parachutes, should have the qualifications necessary for licensure by the Federal Department of Transportation.

(b) A person is guilty of a summary offense if he:

(1) Operates, navigates or permits the operation or navigation of any aircraft within this Commonwealth, unless the

aircraft has an appropriate, effective license issued by the Federal government and is registered with the Federal Government. This restriction does not apply to aircraft owned by the Federal government or the possessions thereof, aircraft of any state or territory or aircraft licensed by a foreign country if similar reciprocal relations exist between the United States and the foreign country.

(2) Operates, navigates, inspects or repairs any aircraft or repairs, packs or maintains parachutes in this Commonwealth, unless the person is the holder of an appropriate, effective license or permit issued by the Federal government. This restriction does not apply to those persons operating aircraft owned by the Federal government or the possessions thereof, aircraft of any state or territory or aircraft licensed by a foreign country if similar reciprocal relations exist between the United States and the foreign country.

(3) Operates or navigates aircraft while in possession of any Federal license, or displays or causes or permits the license to be displayed, knowing it to have been cancelled, revoked, suspended or altered.

(4) Lends to or knowingly permits the use of by one not entitled thereto any Federal airman's and aircraft license issued to him.

(5) Displays or represents as his own any Federal airman's or aircraft license not issued to him.

(c) Possession and display of licenses and certificates.--The certificate of the license required for the person operating the aircraft and the certificate of the license required for the aircraft, and any other licenses or certificates issued by the department, shall be kept in such places and exhibited to such persons, at such time and under such circumstances as may be required by the regulations of the department. A person violating this subsection commits a summary offense.

(d) Nonresidents.--The provisions of this part, insofar as they relate to registration and licensing, shall not apply to aircraft owned and operated within this Commonwealth by nonresidents of this Commonwealth for a period not to exceed 30 days in the calendar year if the owner or pilot can show satisfactory proof he has complied with the laws relating to registration and licensing of airmen and aircraft in the state, territory, district or country of which he is a resident except that a nonresident owner or airman shall not engage within this Commonwealth in the carrying of passengers, merchandise or property, for hire or reward, by means of civil aircraft or in any commercial flying for hire or reward, unless he has complied with the provisions of this part governing registration and license as if he were a resident of this Commonwealth. A person violating this subsection commits a summary offense.

Source: Derived from Sections 301, 302, 303, 304 and 601(b), (c), (d) and (g) of the Aeronautical Code.

Comment: Section 601(f) is supplied by 18 Pa.C.S. §§ 4903 and 4904. The grading of the offenses refers to the uniform classification established in 18 Pa.C.S. § 106. The maximum fine for a summary offense is \$300 (18 Pa.C.S. § 1101); the maximum sentence of imprisonment is 90 days (18 Pa.C.S. § 1105). The penalty provision of Sections 301 and 601(g) of the Aeronautical Code are combined in paragraph (a)(1). For penalty applicable to a common carrier by airplane operating without a certificate of public convenience, permit or license authorizing the service performed, see 66 Pa.C.S. § 3310.

§ 5704. Failure to provide lighting and safety equipment.

In order to promote aeronautical safety, all owners or lessees of terminal airports maintaining regularly scheduled flights and all radio transmission stations used for air navigation purposes shall maintain, at all times, auxiliary aerial night lighting equipment and an auxiliary source of electrical current sufficient to maintain adequate lighting and radio transmission during a minimum period of 12 hours. A person violating this section commits a misdemeanor of the third class. Each day a violation of this section continues constitutes a separate offense. This section does not apply to any airport operated by the Federal government.

Source: Act of June 21, 1937 (P.L. 1967, No. 387).

Comment: For maximum sentence for this offense, see comment to Section 5701.

§ 5705. Failure to give required notices.

(a) Obstructions to aircraft within approach area.--A person who erects and maintains any smoke stack, flag pole, elevated tank, radio station tower, antenna, building, structure or other obstruction to the operation of aircraft within an approach area that extends above an inclined plane, as defined in this subsection, without giving prior notice thereof to the department commits a summary offense. Each day a violation of this subsection continues constitutes a separate offense. For purposes of this subsection, "approach area" includes all that area lying within and below an inclined plane, starting at each end of each runway or landing strip of a commercial airport and extending outward horizontally for a distance of 1000 feet at a ratio of one foot of height for each 20 feet of distance from each end of the runway or landing strip and having a width of 300 feet.

(b) Structures in close proximity to airport.--A person who erects a new structure or adds to an existing structure within five statute miles of the perimeter of an airport, if the structure is thereby made to extend to more than 500 feet above ground level, or who erects the structure within two miles of the perimeter of an airport above a forty-to-one glide plane with respect to the airport without in either event giving prior notice to the department, commits a summary offense.

Source: Act of July 27, 1953 (P.L. 641, No. 186).

Comment: For maximum sentences for these offenses, see comment to Section 5703.

§ 5706. Commencement of proceedings for summary offenses.

In cases where the alleged violation of this chapter is designated a summary offense, proceedings shall be instituted under applicable law within 30 days after the commission of the alleged violation. If the proceedings are instituted against a person prima facie guilty of an offense and it subsequently appears that another person was the violator, proceedings may be instituted against the other person within 30 days after his identity has been discovered.

Source: Derived from Section 603 of the Aeronautical Code.

Comment: The first sentence has been omitted as superfluous. The means of instituting proceedings in summary cases is set forth in Pa.R.Crim.P. No. 51.

§ 5707. Disposition of fines, fees and forfeitures.

All fines, fees and forfeitures collected under the provisions of this part for violations thereof, and all bail forfeited, shall be paid to the Department of Revenue and transmitted to the State Treasury and credited to the Motor License Fund by the district justice or other officer imposing or receiving them. A district justice who fails to pay the fines, fees and forfeitures to the Department of Revenue commits a misdemeanor of the third degree.

Source: Derived from Section 607 of the Aeronautical Code.

Comment: The grading of the offense is consistent with 42 Pa.C.S. § 3503. The provisions of the source relating to the monthly report required to be sent to the Department of Revenue are supplied by the act of April 9, 1929 (P.L. 343, No. 176), known as The Fiscal Code, Section 901. See also Section 1710 of The Fiscal Code. For maximum sentences for the offense defined in the last sentence of this section, see comment to Section 5701.

CHAPTER 59

MISCELLANEOUS PROVISIONS

SUBCHAPTER A

OLMSTEAD AIR FORCE BASE

Section 5901. Olmstead Air Force Base.

§ 5901. Olmstead Air Force Base.

(a) Acquisition of property.--All right, title and interest in certain property located in Lower Swatara Township and the Borough of Middletown, Dauphin County, presently known as Olmstead Air Force Base and more fully described in the act of April 25, 1929 (P.L. 755, No. 319), which has been acquired by the Commonwealth from the Federal government shall vest in the Commonwealth and shall be under the administration and control of the department for the uses and purposes set forth in this section.

(b) Powers and duties of department.-- The department shall have the power and its duty shall be to:

(1) Allocate so much of the property for use as an airport as it determines to be necessary.

(2) Operate and maintain the airport.

(3) Grant leases, licenses, easements and rights-of-way over, under and upon the property, for any period under such terms and conditions and for such rent or other consideration as the department deems proper.

(4) Sell and convey or exchange with the approval of the Governor any of the property not necessary for the operation of the airport under such terms and conditions and for such consideration as the department deems proper.

(5) Equip, alter, repair, maintain, renew, relocate or demolish all or any portion of the property including any building, structure or fixture.

(6) Mark, build, rebuild, relocate, fix the width of, construct, repair and maintain roads over the property.

(7) Purchase, contract for and maintain all equipment, machinery, materials, services and supplies necessary to construct, operate or maintain the airport or the property.

(c) Discretionary authority.--To carry out the provisions and intentions of this section the department may:

(1) Maintain and operate utility services such as water, sewage, heat, electric power or other services and provide them

to any tenant or other person occupying or using any of the property or facilities covered by this section, under such terms and conditions and for such rent or other consideration as the department deems proper.

(2) Provide fire protection for the property and facilities.

(3) Provide police protection in accordance with the act of May 21, 1943 (P.L. 469, No. 210), relating to commissioning of institutional employes as police officers.

(4) Employ, in accordance with the rules and regulations of the Executive Board, such officers, technicians, professional assistants and other persons as the department deems necessary to carry out the provisions of this section.

(5) Acquire additional lands, easements, leases, licenses, permits or other rights or interests necessary for the proper accomplishment of the purposes of this section.

(6) Collect rents, fees and other moneys derived from any source pursuant to any provision of this section.

(d) Procedures.--The powers and duties granted by this act shall be exercised in accordance with the provisions of the act of April 9, 1929 (P.L. 177, No. 175), known as "The Administrative Code of 1929."

(e) Disposition of funds.--All moneys collected under this section shall be deposited in the Motor License Fund, and shall be credited to the appropriation to the department. All moneys so credited are hereby appropriated to the department to carry out the provisions of this section.

Source: Substantially a reenactment of the act of August 31, 1967 (P.L. 287, No. 119).

Comment: Certain language from Section 3(6) of the of the source has been omitted from paragraph (b)(6) because the power provided by that language is supplied in Section 5301(b)(13). Section 4(5) of the source has been omitted because of the power provided by that language is supplied in Section 5301(a).

SUBCHAPTER B

AIRPORT ZONING

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§ 5911. Short title of subchapter.

This subchapter shall be known and may be cited as the "Airport Zoning Act."

Source: Reenactment of Section 1 of the act of April 17, 1945 (P.L. 237, No. 107), known as the Airport Zoning Act.

§ 5912. Definitions.

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Airport hazard." Any structure, object or use of land which obstructs the airspace required for the flight of aircraft in landing or taking off at an airport or is otherwise hazardous to the landing or taking off of aircraft.

"Airport hazard area." Any area of land or water upon which an airport hazard might be established if not prevented as provided in this subchapter.

"Board." A zoning hearing board or joint zoning hearing board established pursuant to Article IX of the act of July 31, 1968 (P.L. 805, No. 247), known as the "Pennsylvania Municipalities Planning Code," but not including a "joint airport zoning board," established pursuant to section 5914(b) (relating to power to adopt airport zoning regulations). In municipalities where the Pennsylvania Municipalities Planning Code does not apply, "board" means the body having the powers listed in section 5919 (relating to appeals).

"Planning agency." A planning commission, planning department, planning committee of the governing body of a municipality or planning committee of a joint airport zoning board.

"Structure." Includes buildings, towers, smokestacks and overhead transmission lines.

Source: Derived from Section 2 of the Airport Zoning Act.

Comment: The definitions of "political subdivision" and "person" are supplied by 1 Pa.C.S. § 1991; in order to preserve the defined meaning, "political subdivision" is replaced throughout this subchapter by "municipality," which has the equivalent meaning under 1 Pa.C.S. § 1991. "Board" is redefined consistent with the Pennsylvania Municipalities Planning Code. The word "commission" is replaced by "planning agency," which is defined so as to be consistent with Section 107(15) of the Pennsylvania Municipalities Planning Code.

§ 5913. Legislative findings and declaration.

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

(1) The creation or establishment of an airport hazard is a public nuisance and an injury to the community served by the airport in question.

(2) It is necessary in the interest of the public health, public safety and general welfare that the creation or establishment of airport hazards be prevented.

(3) This should be accomplished to the extent legally possible by exercise of the police power without compensation.

(4) Both the prevention of the creation or establishment of airport hazards, and the elimination, removal, alteration, mitigation or marking and lighting of existing airport hazards are public purposes for which municipalities may raise and expend public funds and acquire land or property interests therein.

Source: Substantially a reenactment of Section 3 of the Airport Zoning Act.

§ 5914. Power to adopt airport zoning regulations.

(a) General rule.--In order to prevent the creation or establishment of airport hazards, every municipality having an airport hazard area within its territorial limits shall adopt, administer and enforce under the police power and in the manner and upon the conditions prescribed in this subchapter and in applicable zoning law unless clearly inconsistent with this subchapter, airport zoning regulations for such airport hazard area. The regulations may divide the area into zones, and within the zones specify the land uses permitted and regulate and restrict the height

to which structures may be erected or trees allowed to grow. A municipality which includes an airport hazard area created by the location of a commercial airport is required to adopt, administer and enforce zoning ordinances pursuant to this subchapter if the existing comprehensive zoning ordinance for the municipality does not provide for the land uses permitted and regulate and restrict the height to which structures may be erected or trees allowed to grow in an airport hazard area.

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

(c) Definition of "airport." As used in this section, the term "airport" does not include facilities designated as heliports

and which can be used only by rotary wing aircraft, nor airports which are not open to the general public.

Source: Substantially a reenactment of Section 4 of the Airport Zoning Act.

Comment: With respect to the right of municipalities to exclude air navigation facilities by zoning ordinance, see Appeal of Green & White Copter, Inc., 25 Pa. Commonwealth Ct. 445, 360 A.2d 283 (1976) and Bluebell Associates v. Township Engr., Whitpain Township, 45 Pa. Commonwealth Ct. 599, 405 A.2d 1070 (1979).

§ 5915. Relation to other zoning regulations.

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

(b) Conflict.--In the event of conflict between any airport zoning regulations adopted under this subchapter and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, the use of land or any other matter, and whether the other regulations were adopted by the municipality which adopted the airport zoning regulations or by some other municipality under this subchapter or otherwise, the more stringent limitation or requirement shall prevail.

Source: Substantially a reenactment of Section 5 of the Airport Zoning Act.

§ 5916. Procedure for adoption of zoning regulations.

(a) Notice and hearing.--No airport zoning regulations shall be adopted, amended or changed except by action of the municipality or the joint airport zoning board after a public hearing in relation thereto at which parties in interest and citizens shall have an opportunity to be heard. The notice shall be published once each week for two successive weeks in a newspaper of general circulation in the municipality or municipalities affected. The notice shall state the time and place of the hearing and the particular nature of the matter to be considered at the hearing. The first publication shall not be more than 30 days or less than 14 days from the date of the hearing.

(b) Airport zoning planning agency.--Prior to the initial zoning of any airport hazard area, the municipality or joint airport zoning board which is to adopt the regulations shall appoint a planning agency to be known as the airport zoning planning agency to recommend the boundaries of the various zones to be established and the regulations to be adopted therefor. The planning agency shall make a preliminary report and, after notice given in the same manner as is provided in subsection (a), shall hold public

hearings thereon before submitting its final report. The municipality or the joint airport zoning board shall not hold its public hearings or take other action until it has received the final report of the planning agency. Where a planning agency already exists it may be appointed as the airport zoning planning agency.

Source: Derived from Section 6 of the Airport Zoning Act and Section 107(18) of the act of July 31, 1968 (P.L. 805, No. 247), known as the Pennsylvania Municipalities Planning Code.

Comment: The notice provision is changed to conform with parallel provisions of the Pennsylvania Municipalities Planning Code. Also see 45 Pa.C.S., Part I.

§ 5917. Airport zoning requirements.

(a) Reasonableness.--All airport zoning regulations adopted under this subchapter shall be reasonable; none shall impose any requirement or restriction unless it is reasonably necessary to effectuate the purpose of this subchapter. In determining what regulations it may adopt, each municipality and joint airport zoning board shall consider among other factors the character of the flying operations expected to be conducted at the airport, the nature of the terrain within the airport hazard area, the character of the neighborhood and the uses to which the property to be zoned is put and adaptable.

(b) Nonconforming uses.--No airport zoning regulations adopted under this subchapter may require the removal, lowering or other change or alteration of any structure or tree not conforming to the regulations when adopted or amended or otherwise interfere with the continuance of any nonconforming use, except as provided in section 5918 (relating to permits and variances).

(c) Model ordinances.--A municipality shall adopt, either in full or by reference, any provision of any model zoning ordinance or other similar guidelines suggested or published by the Federal Aviation Administration of the United States Department of Transportation regarding airport hazard areas.

Source: Substantially a reenactment of Section 7 of the Airport Zoning Act.

§ 5918. Permits and variances.

(a) Permits.--Any airport regulations may require that a permit be obtained before any new use or structure may be established or constructed and before any existing use or structure may be substantially changed, but no permit may be required to make maintenance repairs to or to replace parts of existing structures which do not enlarge or increase the height of an existing structure. However, all regulations shall

provide that before any nonconforming structure may be replaced, substantially altered or rebuilt or tree allowed to grow higher or replanted, a permit must be secured from the municipality authorizing the replacement or change. Applications for permits shall be granted unless to do so would allow the establishment or creation of an airport hazard or permit a nonconforming structure or tree or nonconforming use to be made or become higher or become a greater hazard to air navigation than it was when the applicable regulation was adopted, or than it is when the application for a permit is made.

(b) Variances.--Any person desiring to erect any structure or increase the height of any structure or permit the growth of any tree or otherwise use his property in violation of airport zoning regulations may apply to the board for a variance from the zoning regulations in question. A variance shall be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but would do substantial justice and would be in accordance with the spirit of the regulations and this subchapter. Any variance may be granted subject to any reasonable conditions that the board may deem necessary to effectuate the purposes of this subchapter.

(c) Hazard marking and lighting.--In granting any permit or variance under this section the board may, if it deems the action advisable to effectuate the purpose of this subchapter and reasonable in the circumstances, so condition the permit or variance as to require the owner of the structure or tree in question to permit the municipality at its own expense to install, operate and maintain thereon such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard.

Source: Substantially a reenactment of Section 8 of the Airport Zoning Act.

§ 5919. Appeals.

(a) Right of appeal.--Any person aggrieved or taxpayer affected by any decision of the municipality or joint zoning hearing board may appeal to the board as provided by law.

(b) Stay of proceedings.--An appeal shall stay all proceedings in furtherance of the action appealed from unless the municipality or joint zoning hearing board certifies to the board after the notice of appeal has been filed with it that, by reason of the facts stated in the certificate, a stay would in its opinion cause imminent peril to life or property. In such cases proceedings shall not be stayed otherwise than by order of the board or notice to the municipality or joint zoning appeal board.

(c) Board of appeals.--All airport zoning regulations shall provide for a board to hear and decide appeals, special exceptions and requests for variances. Where a zoning board of appeals or adjustment already exists it may be appointed as the board. Otherwise the board shall consist of five members each to be appointed for a term of three years by the authority adopting the regulations and to be removable by the appointing authority, for cause, upon written charges and after public hearing.

Source: Derived from Sections 9 and 10 of the Airport Zoning Act.

Comment: Paragraphs (2), (4) and (5) of Section 9 and paragraphs (3) and (4) of Section 10 are omitted because similar provisions are supplied by Article IX of the Pennsylvania Municipalities Planning Code or other law.

§ 5920. Judicial review.

Any person aggrieved or taxpayer affected by any decision of a board may appeal to the court of common pleas as provided by law. In cases where applicable law does not provide an appeal from a municipality to a board, a person or taxpayer may appeal from a decision of a municipality or joint airport zoning board, as provided by law for similar zoning proceedings.

Source: Derived from Section 12 of the Airport Zoning Act.

Comment: Paragraphs (2), (3), (4) and (5) are omitted because similar provisions are supplied by the Pennsylvania Municipalities Planning Code or other law.

§ 5921. Acquisition of air rights.

In any case in which it is desired to remove, lower or otherwise terminate a nonconforming structure or use, or the approach protection necessary cannot, because of constitutional limitations, be provided by airport zoning regulations, or it appears advisable that the necessary approach protection be provided by acquisition of property rights, rather than by airport zoning regulations, the municipality within which the property or nonconforming use is located, or the municipality owning the airport or served by it, may acquire by purchase, grant or condemnation, in the manner provided by the law under which municipalities are authorized to acquire real property for public purposes, such air right, aviation easement or other estate or interest in the property or nonconforming structure or use in question as may be necessary to effectuate the purpose of this subchapter. In the case of the purchase of any property or any easement or estate, or interest therein, or the acquisition thereof by the power of eminent domain, the municipality making the purchase or exercising the power shall, in addition to the damages for the

taking, injury or destruction of property, also pay the cost of the removal and relocation of any structure or any public utility, which is required to be moved to a new location.

Source: Substantially a reenactment of Section 14 of the Airport Zoning Act.

Section 2. Repealer.

The following acts and parts of acts are repealed absolutely:

Section 526 and 1208 and subsection (g) of section 2001.3 of the act of April 9, 1929 (P.L. 177, No. 175), known as "The Administrative Code of 1929."

Act of April 25, 1929 (P.L. 755, No. 319), entitled "An act to cede jurisdiction to the United States over the tracts of lands and buildings occupied by the Army Air Depot and Flying Field located in and adjacent to the Borough of Middletown, Dauphin County."

Act of May 8, 1929 (P.L. 1683, No. 540), entitled "An act making an appropriation out of the Motor License Fund to the Department of Property and Supplies."

Act of May 25, 1933 (P.L. 1001, No. 224), known as "The Aeronautical Code."

Act of May 25, 1933 (P.L. 1016, No. 226), entitled "An act relating to aeronautics; providing for the maintenance and operation of intermediate landing fields and air navigation facilities by the Commonwealth alone or in cooperation with the United States Government or political subdivisions of the Commonwealth; providing for the execution of leases or the issuance of licenses to the United States Government or to political subdivisions of the Commonwealth for the maintenance of navigation facilities on intermediate landing fields of the Commonwealth; conferring powers and duties on the Department of Revenue with respect thereto; and repealing certain acts and parts of acts."

Act of May 25, 1933 (P.L. 1017, No. 227), entitled "An act making an appropriation out of the Motor License Fund to the Department of Property and Supplies to assist in the development of aeronautics."

Act of June 21, 1937 (P.L. 1967, No. 387), entitled "An act requiring all terminal airports maintaining regular scheduled flights, and all radio transmission stations used for air navigation purposes, to maintain auxiliary aerial night lighting equipment, and an auxiliary source of electric current for the same; and providing penalties."

Act of May 21, 1943 (P.L. 328, No. 152), entitled, "An act authorizing the Secretary of Highways, at the request of, and under agreement with the Public Roads Administration of the United States, to lay out, establish, construct and maintain flight strips and roads to the sites of war activities, or to replace roads or streets which have been closed by defense or military activities, and to condemn property for such purposes, authorizing a width of two hundred feet for such roads in certain cases; and making an appropriation."

Act of April 17, 1945 (P.L. 237, No. 107), known as the "Airport Zoning Act."

Act of May 2, 1947 (P.L. 136, No. 56), entitled "An act relating to Federal aid to political subdivision or municipality authority for the development of public airports."

Act of July 27, 1953 (P.L. 641, No. 186), entitled "An act prohibiting the erection and maintenance of obstructions to the operation of aircraft in certain areas and prescribing penalties."

Act of May 29, 1956 (1955 P.L. 1787, No. 596), entitled "An act authorizing the Department of Military Affairs to expend State funds for civil air patrol aviation, education, training aids and maintenance of civil air patrol aircraft, and making an appropriation."

Act of August 31, 1967 (P.L. 287, No. 119), entitled, as amended, "An act providing for the administration of property and facilities located in Dauphin County, now known as Olmstead Air Force Base, to be acquired by the Commonwealth from the United States of America; establishing an airport; conferring powers and imposing duties upon the Department of Transportation."

Section 3. Effective date.

This act shall take effect in 60 days, except that the second sentence of section 5301(a) shall take effect on January 1, 1984.

COMPARATIVE STATUTE TABLE
AERONAUTICAL CODE OF 1933
2 PURDON'S STATUTES AND
TITLE 74, PENNSYLVANIA CONSOLIDATED STATUTES

Aeronautical Code Section	Purdon's Statutes Section	Title 74 Pa.C.S. Section
101	1460	Title section
102	1461	5102
103	1462	Unnecessary
201	1463	5301
202	1463.1	Unnecessary
301	1464	5703(b)(1)
302	1465	5703(b)(2)
303	1466	5703(c)
304	1466a	5703(d)
401	1467	5501
402	1468	5502
403	1469	5503
404	1470	5504(a)
405	1471	5505
406	1472	5504(b)
407	1473	5504(c)
501	1474	5304
601	1475	5701, 5702, 5703(a)
602	1476	Unnecessary
603	1477	5706
604	1478	Unnecessary
605	1479	Unnecessary
607	1481	5707
702	1486	Unnecessary

AIRPORT ZONING ACT 1945
2 PURDON'S STATUTES AND
TITLE 74, PENNSYLVANIA CONSOLIDATED STATUTES

Airport Zoning Act Section	Purdon's Statutes Section	Title 74, Pa.C.S. Section
1	1550	5911
2	1551	5912
3	1552	5913
4	1553	5914
5	1554	5915
6	1555	5916
7	1556	5917
8	1557	5918
9	1558	5919
10	1559	5919
11	1560	Unnecessary
12	1561	5920
13	1562	Unnecessary
14	1563	5921

PENNSYLVANIA PAMPHLET LAWS
PURDON'S STATUTES AND
TITLE 74, PENNSYLVANIA CONSOLIDATED STATUTES

Pa. Pamphlet Laws Section	Purdon's Statutes Section	Title 74, Pa.C.S. Section
1929, April 9, P.L. 177		
526	71 P.S. 206	5302
1208	71 P.S. 338	5301(a)
2001.3(g)	71 P.S. 511.3	5301(a)
1929, April 25, P.L. 755		
1	2 P.S. 1451	Obsolete
2	2 P.S. 1452	Obsolete
3	2 P.S. 1453	Obsolete
1929, May 8, P.L. 1683		
1	2 P.S. 1441	Unnecessary
1933, May 25, P.L. 1016		
1	2 P.S. 1503	5301(b)(2)
1933, May 25, P.L. 1017		
1	2 P.S. 1504	Obsolete
1937, June 21, P.L. 1967		
1	2 P.S. 1106a	5704
2	2 P.S. 1106b	5704
3	2 P.S. 1106c	5704
1943, May 21, P.L. 328		
1	2 P.S. 1504	5301(b)(2)
1947, May 2, P.L. 136		
1	2 P.S. 1455	5303
1953, July 27, P.L. 641		
1	2 P.S. 1458	5705(a)
2	2 P.S. 1459	5705(a)
2.1	2 P.S. 1459.1	5705(b)

Comparative Statute Table, continued

Pa. Pamphlet Laws Section	Purdon's Statutes Section	Title 74, Pa.C.S. Section
1956, May 29, 1955 P.L. 1787		
1	2 P.S. 1448	5301(a)(16)
2	2 P.S. 1449	Unnecessary
3	2 P.S. 1451	Unnecessary
1967, August 31, P.L. 287		
1	2 P.S. 1454.1	Unnecessary
2	2 P.S. 1454.2	5901(a)
3	2 P.S. 1454.3	5901(b)
4	2 P.S. 1454.4	5901(c)
5	2 P.S. 1454.5	Unnecessary
6	2 P.S. 1454.6	5901(d)
7	2 P.S. 1454.7	5901(e)

