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CHAPTER 5.

 STATE AERONAUTICAL REGULATORY ACT

**SECTION 55‑5‑10.** Short title.

 This chapter may be cited as "The State Aeronautical Regulatory Act".

HISTORY: 1962 Code Section 2‑77; 1952 Code Section 2‑77; 1942 Code Section 7112‑25; 1935 (39) 447; 1938 (40) 1835; 1993 Act No. 181, Section 1289, eff July 1, 1993; 2012 Act No. 270, Section 3, eff June 18, 2012.

**SECTION 55‑5‑20.** Reserved by 2012 Act No. 270, Section 3, eff June 18, 2012.

**SECTION 55‑5‑30.** Repealed by Act No. 181, Sections 1289 and 1617(A), eff July 1, 1993.

**SECTION 55‑5‑40.** Repealed by Act No. 181, Sections 1289 and 1617(A), eff July 1, 1993.

**SECTION 55‑5‑50.** Executive director of aeronautics and other employees.

 Notwithstanding another provision of law, the division shall employ an executive director of aeronautics in accordance with the provision contained in Section 13‑1‑1050 and 13‑1‑1080 and other employees necessary for the proper transaction of the division's business.

HISTORY: 1962 Code Section 2‑52; 1952 Code Section 2‑52; 1942 Code Section 7112‑6; 1935 (39) 447; 1974 (58) 2026; 1993 Act No. 181, Section 1289, eff July 1, 1993; 2005 Act No. 11, Section 1.E, eff upon approval (became law without the Governor's signature on January 13, 2005); 2012 Act No. 270, Section 3, eff June 18, 2012.

**SECTION 55‑5‑60.** Reserved by 2012 Act No. 270, Section 3, eff June 18, 2012.

**SECTION 55‑5‑70.** Promotion and maintenance of air commerce and aeronautical activities; authority to promulgate rules as necessary.

 The division shall promote and foster air commerce within the State and the division shall have an interest in the maintenance and enhancement of the aeronautical activities and facilities within the State. The division shall adopt reasonable rules and promulgate regulations as it may deem necessary and advisable, in conjunction with Federal Aviation Administration regulations, for the public safety and for the promotion of aeronautics governing the designing, laying out, location, building, equipping, operation and use of all airports.

HISTORY: 1962 Code Section 2‑55; 1952 Code Section 2‑55; 1942 Code Section 7112‑8; 1935 (39) 447; 1993 Act No. 181, Section 1289, eff July 1, 1993; 2012 Act No. 270, Section 3, eff June 18, 2012.

**SECTION 55‑5‑71.** Written approval by division of restricted use airport; considerations.

 It is unlawful for a restricted use airport, or other air navigation facility within three nautical miles of a public use facility to be used or operated without the written approval of the division. This approval must be based upon consideration of aviation safety, including a location that would constitute a collision or air traffic hazard or conflict with flight operations in the vicinity of a public use airport.

HISTORY: 2012 Act No. 270, Section 3, eff June 18, 2012.

**SECTION 55‑5‑72.** Written approval by division of plans for construction of or additions to public airport; exceptions.

 Except as provided in this section, no airport open for public use shall be constructed in this State unless the master plan study, or airport layout plan, or the construction plans and specifications for such airport or landing strip have been approved in writing by the division. No additions shall be made to any existing airport or landing strip open for public use unless the master plan study or the construction plans and specifications for an airport or landing strip have been approved in writing by the division. This provision shall not apply to airports owned by private entities, or an airport which does not receive State funds.

HISTORY: 2012 Act No. 270, Section 3, eff June 18, 2012.

**SECTION 55‑5‑73.** Approved and filed plan required for obtaining airport construction funding.

 No state airport construction funding or funding from the State Aviation Fund shall be provided to an airport unless it has an airport layout plan and construction plan approved by, and on file with the division at the time the request for funding is made.

HISTORY: 2012 Act No. 270, Section 3, eff June 18, 2012.

**SECTION 55‑5‑75.** Omitted by 2012 Act No. 270, Section 3, eff June 18, 2012.

**SECTION 55‑5‑80.** Responsibility and authority of the division.

 (A) The division shall have a seal and shall adopt rules and promulgate regulations for its administration, not inconsistent, as it considers necessary. It may amend its rules and regulations and shall adopt reasonable rules and promulgate regulations as it considers necessary and advisable for the public safety and the safety of those engaged in aeronautics.

 (B) The division shall enter into contracts or agreements with the Federal Aviation Administration to administer, and shall administer grant programs, maintenance programs, or other programs in the support of the state aeronautical system.

 (C) The division shall operate a flight department including the purchase, operation, and maintenance of aircraft to support the transportation needs of the State, and may support and cooperate with other state agencies who own aircraft through maintenance and operations agreements.

 (D) The division shall consult with the Federal Aviation Administration, persons involved in aeronautics and aeronautical activity, public airports, and airport governing boards as necessary for the purpose of enhancing the public safety and the safety of those engaged in aeronautics. The division may promulgate regulations to carry out this purpose. However, these regulations must not be inconsistent with federal law or regulations governing aeronautics.

 (E) The division shall assist in the development of aviation and aviation facilities within the State for the purpose of safeguarding the interest of those engaged in all phases of the aviation industry and of the general public and of promoting aeronautics.

 (F) The division may cooperate with any authority, county, or municipality in the establishment, maintenance and operation of airports, landing fields or emergency landing strips and may do so in cooperation with other states or with any federal agency.

 (G) The division shall have the authority to partner with local governments, private entities, special purpose districts, or others to establish, own, operate, and maintain existing or future airports.

 (H) The division may conduct inspections of aviation facilities for compliance with federal grants, or to assist in obtaining grants from federal agencies, or to ensure compliance with national building or fire codes, including premises and the buildings and other structures at airports, or at prospective airports or other air navigation facilities. In order to effectuate this purpose, the division shall cooperate with the local governing body of an airport and any state or municipal officer or agency that may have jurisdiction over the airport.

 (I) The division may participate in and support the emergency management division air branch emergency support function.

 (J) The division shall have the authority to review and approve airport master plans pursuant to Section 55‑5‑72.

 (K) The division shall have the authority to take action to abate any imminent or foreseeable hazard to aviation safety at a public use airport in the State or in the vicinity of a public use airport when it can be shown that:

 (1) a violation of this title or a violation of a federal, state, or local law, ordinance, regulation, or federally approved airport design criteria that relates to aviation safety has occurred;

 (2) a condition exists that interferes with, or has a reasonable potential in the judgment of the division to interfere with aircraft operations;

 (3) a condition poses an increased risk to aviation safety;

 (4) the persistence of a condition would cause aircraft takeoff, landing, or approach criteria to be adversely impacted; or

 (5) a condition exists that would constitute a nuisance to aircraft operation. These conditions may include, but are not limited to:

 (a) obstructions such as towers, trees, or manmade structures;

 (b) conditions that adversely affect FAA or industry criteria for safe approach, landing, takeoff and departure profiles;

 (c) landfills or other activities that have the potential to attract a large number of birds;

 (d) interference with airport markings, including lighting;

 (e) light pollution, including off‑airport lighting;

 (f) land uses that have a reasonable potential to interfere with aircraft operations, pose an increased risk to aviation safety, adversely affect aircraft takeoff, landing or approach criteria, or constitute a nuisance to aircraft operations; or

 (g) interference with airport and aviation navigational equipment and facilities.

 (L) Legal action may include the issuance of an order directing the abatement or removal of the hazard, an action in circuit court or the Administrative Law Court to enjoin the construction or maintenance of a hazard, or the removal and abatement of a hazard.

 (M) Except in emergency situations, before taking legal action, the division shall cooperate with the airport sponsor and affected local governments with the objective of achieving a mutually agreeable solution. If necessary, the parties shall engage in alternative dispute resolution. The alternative dispute resolution must be between the governmental entity and the division and shall not involve any private parties.

 (N) The division may promulgate regulations necessary to implement this section.

 (O) The division and an affected local government shall have the ability to seek cost recovery for the actual costs in the removal or abatement of the hazard against the persons responsible for creating or maintaining an airport hazard that violates this section, or violates a federal, state, or local law, ordinance, regulation, or federally approved airport design criteria.

HISTORY: 1962 Code Section 2‑56; 1952 Code Section 2‑56; 1942 Code Section 7112‑9; 1935 (39) 447; 1993 Act No. 181, Section 1289, eff July 1, 1993; 2012 Act No. 270, Section 3, eff June 18, 2012.

**SECTION 55‑5‑85.** Repealed by implication, by 1978 Act No. 635, Section 1.

**SECTION 55‑5‑86.** Reserved by 2012 Act No. 270, Section 3, eff June 18, 2012.

**SECTION 55‑5‑87.** Reserved by 2012 Act No. 270, Section 3, eff June 18, 2012.

**SECTION 55‑5‑88.** Reserved by 2012 Act No. 270, Section 3, eff June 18, 2012.

**SECTION 55‑5‑90.** Reserved by 2012 Act No. 270, Section 3, eff June 18, 2012.

**SECTION 55‑5‑100.** Reserved by 2012 Act No. 270, Section 3, eff June 18, 2012.

**SECTION 55‑5‑110.** Burden of proof in criminal prosecution of proper license.

 In any criminal prosecution under any of the provisions of this chapter a defendant who relies for his justification upon a license of any kind shall have the burden of proving that he is properly licensed or is the possessor of a proper license, as the case may be, and the fact of nonissuance of such license may be evidenced by a certificate signed by the official having power of issuance, or his deputy, under seal of office, stating that he has made diligent search in the records of his office and that from the records it appears that no such license was issued up to the date of the making of such certificate.

HISTORY: 1962 Code Section 2‑59; 1952 Code Section 2‑59; 1942 Code Section 7112‑3; 1935 (39) 447; 1993 Act No. 181, Section 1289, eff July 1, 1993; 2012 Act No. 270, Section 3, eff June 18, 2012.

**SECTION 55‑5‑120.** Reserved by 2012 Act No. 270, Section 3, eff June 18, 2012.

**SECTION 55‑5‑130.** Reserved by 2012 Act No. 270, Section 3, eff June 18, 2012.

**SECTION 55‑5‑140.** Reserved by 2012 Act No. 270, Section 3, eff June 18, 2012.

**SECTION 55‑5‑150.** Closing an airport or runway for imminent danger to aircrafts; mediation to resolve disputes with airport sponsor regarding closure.

 (A) The division may close, order closure, or approve closure of an airport, airport runway, or any portion of one only when a condition exists on the airport property that constitutes an imminent and substantial endangerment to aircraft operations and aviation safety, and the condition remains unabated after notice to the airport owner and operator, and a reasonable opportunity has expired to correct any deficiencies determined by the division. The division may promulgate regulations to administer this section.

 (B) If the division disagrees with a decision of an airport sponsor or governmental body to close a public use airport or any part of one, both the division and the airport sponsor or governmental body shall engage in mediation or another form of alternative dispute resolution mutually agreed upon in an attempt to resolve their differences. In addition, the division may require that the airport sponsor develop a proposed closure plan that contains:

 (1) a certification that all grant conditions imposed by federal or state funding have been complied with, and that all grant funds have been repaid to the appropriate agency;

 (2) a statement for the reason for the closure;

 (3) an economic analysis of the impact of the closure on the community;

 (4) a plan and schedule for the use of or development of a replacement facility acceptable to the division; and

 (5) other information required by the division.

HISTORY: 2012 Act No. 270, Section 3, eff June 18, 2012.

**SECTION 55‑5‑160.** Use of testimony obtained during investigations; employees not required to testify.

 Except as otherwise provided in this chapter, in order to facilitate the making of investigations by the division, in the interest of the public safety and the promotion of aeronautics, the public interest requires and it is therefore provided that the reports of investigations or hearings, or any part thereof or any testimony given thereat, shall not be admitted in evidence or used for any purpose in any suit, action or proceeding growing out of any matter referred to in said investigation, hearing or report thereof, except in case of criminal or other proceedings instituted by or in behalf of the division under the provisions of this chapter; nor shall any employee of the division be required to testify to any facts ascertained in, or information gained by reason of, his official capacity and, further, no employee of the division shall be required to testify as an expert witness in any suit, action or proceeding involving any aircraft.

HISTORY: 1962 Code Section 2‑63; 1952 Code Section 2‑63; 1942 Code Section 7112‑12; 1935 (39) 447; 1993 Act No. 181, Section 1289, eff July 1, 1993; 2012 Act No. 270, Section 3, eff June 18, 2012.

**SECTION 55‑5‑170.** Reserved by 2012 Act No. 270, Section 3, eff June 18, 2012.

**SECTION 55‑5‑180.** Public inspection of rules and regulations; annual reports.

 The division shall keep on file with the Secretary of State and at the principal office of the division for public inspection a copy of all its rules and regulations. On or before December thirty‑first, in each year, the division shall make to the Governor a full report of its proceedings for the year ending December first in each year and may submit with such report such recommendations pertaining to its affairs as seem to it to be desirable.

HISTORY: 1962 Code Section 2‑65; 1952 Code Section 2‑65; 1942 Code Section 7112‑13; 1935 (39) 447; 1993 Act No. 181, Section 1289, eff July 1, 1993; 2012 Act No. 270, Section 3, eff June 18, 2012.

**SECTION 55‑5‑190.** Enforcement of chapter; public departments to cooperate.

 The division, its members and employees and every county and municipal officer charged with the enforcement of state and municipal laws shall enforce and assist in the enforcement of this chapter. The division also may in the name of the State enforce the provisions of this chapter by injunction in the circuit courts of this State. Other departments and political subdivisions of the State may also cooperate with the division in the development of aeronautics and aeronautic facilities within the State.

HISTORY: 1962 Code Section 2‑66; 1952 Code Section 2‑66; 1942 Code Section 7112‑14; 1935 (39) 447; 1993 Act No. 181, Section 1289, eff July 1, 1993; 2012 Act No. 270, Section 3, eff June 18, 2012.

**SECTION 55‑5‑200.** Reserved by 2012 Act No. 270, Section 3, eff June 18, 2012.

**SECTION 55‑5‑210.** Reasons for certain orders to be stated.

 In any case in which the division issues an order pursuant to applicable law, including the South Carolina Administrative Procedures Act, Section 1‑23‑10, et seq., rules and regulations or policy and procedures as documented for public review, the division shall set forth findings of fact and conclusions of law, separately stated and its reasons and shall state the requirements to be met before such approval is given or the order is modified or changed.

HISTORY: 1962 Code Section 2‑68; 1952 Code Section 2‑68; 1942 Code Section 7112‑15; 1935 (39) 447; 1993 Act No. 181, Section 1289, eff July 1, 1993; 2012 Act No. 270, Section 3, eff June 18, 2012.

**SECTION 55‑5‑220.** Service of orders.

 Any order made by the division pursuant to this title shall be served upon the interested person by registered mail or in person before such order shall become effective.

HISTORY: 1962 Code Section 2‑69; 1952 Code Section 2‑69; 1942 Code Section 7112‑15; 1935 (39) 447; 1993 Act No. 181, Section 1289, eff July 1, 1993; 2012 Act No. 270, Section 3, eff June 18, 2012.

**SECTION 55‑5‑230.** Appeal from orders.

 A person against whom an order is entered may appeal within thirty days after the service to the Administrative Law Court as provided in Sections 1‑23‑380 and 1‑23‑600(D) for the purpose of having the reasonableness or lawfulness of the order inquired into and determined.

HISTORY: 1962 Code Section 2‑70; 1952 Code Section 2‑70; 1942 Code Section 7112‑16; 1935 (39) 447; 1993 Act No. 181, Section 1289, eff July 1, 1993; 2006 Act No. 387, Section 33, eff July 1, 2006; 2012 Act No. 270, Section 3, eff June 18, 2012.

**SECTION 55‑5‑240.** Procedure on appeal.

 The person taking the appeal shall file the notice of appeal in the office of the clerk with the Administrative Law Court and serve a copy on the director or his designee and all other parties of record. Upon appellate review, the administrative law judge shall enter an order either affirming or setting aside the order of the court; or may remand the matter to the court for further hearing. The filing of the notice of appeal operates as a supersedeas.

HISTORY: 1962 Code Section 2‑71; 1952 Code Section 2‑71; 1942 Code Section 7112‑17; 1935 (39) 447; 1993 Act No. 181, Section 1289, eff July 1, 1993; 2006 Act No. 387, Section 34, eff July 1, 2006; 2012 Act No. 270, Section 3, eff June 18, 2012.

**SECTION 55‑5‑250.** Reserved by 2012 Act No. 270, Section 3, eff June 18, 2012.

**SECTION 55‑5‑260.** Penalties.

 (A) A person failing to comply with the requirements of this chapter or the rules and regulations of this chapter is subject to a civil penalty of two thousand dollars per violation.

 (B) A person who wilfully or intentionally violates a provision of this chapter or the rules and regulations for the enforcement of this chapter made by the division is guilty of a misdemeanor and is punishable by a fine of not more than two thousand dollars, or by imprisonment for not more than thirty days, or both.

 (C) An owner or operator who knowingly makes a false statement or representation of a material fact in a report to or written instrument filed with the division is guilty of a misdemeanor and, upon conviction, must be fined not less than one hundred dollars nor more than one thousand dollars, or imprisoned for not more than ninety days, or both.

HISTORY: 1962 Code Section 2‑73; 1952 Code Section 2‑73; 1942 Code Section 7112‑19; 1935 (39) 447; 1993 Act No. 181, Section 1289, eff July 1, 1993; 2012 Act No. 270, Section 3, eff June 18, 2012.

**SECTION 55‑5‑270.** Application and exceptions.

 The terms and provisions of this chapter shall apply to all civil aircraft that are not required to have an airworthiness certificate issued by the Federal Aviation Administration or its foreign counterpart unless the aircraft is engaged in private flight operations substantially similar to those conducted by civil aircraft.

HISTORY: 1962 Code Section 2‑74; 1952 Code Section 2‑74; 1942 Code Section 7112‑24; 1935 (39) 447; 1938 (40) 1835; 1993 Act No. 181, Section 1289, eff July 1, 1993; 2012 Act No. 270, Section 3, eff June 18, 2012.

**SECTION 55‑5‑280.** State Aviation Fund

 (A)(1) All monies received from licensing of airports, landing fields, or funds appropriated for aviation grants, the tax on aviation fuel, and fees for other licenses issued under this chapter must be paid into the State Treasury and credited to the fund known as the "State Aviation Fund".

 (2) The fund also may receive gifts, grants, and federal funds and shall include earnings from investments of monies from the fund.

 (3) A fund balance at the close of the fiscal year shall not lapse but must be carried forward to the next fiscal year.

 (4) The revenue credited to the State Aviation Fund pursuant to this subsection must be used solely as provided in subsection (C).

 (B) In any fiscal year in which the tax levied by the State pursuant to Section 12‑37‑2410, et seq., exceeds five million dollars, the revenues in excess of five million dollars must be directed to the State Aviation Fund; however, any revenue in excess of ten million dollars must be credited in equal amounts to the general fund and the State Aviation Fund.

 (C) The State Aviation Fund must be used solely for:

 (1) maintenance and repairs of the division's aircraft; or

 (2) maintenance, rehabilitation, and capital improvements to public use airports, which may include use as matching funds for FAA Airport Improvement Grants, provided that those airports receiving grants meet the requirements set forth by the division.

 (3) The State Aviation Fund must not be used for operating expenses of the division.

 (D) The division may promulgate regulations governing the eligibility requirements and procedures for disbursements from the State Aviation Fund.

HISTORY: 1962 Code Section 2‑75; 1952 Code Section 2‑75; 1942 Code Section 7112‑20; 1935 (39) 447; 1937 (40) 595; 1938 (40) 1835; 1993 Act No. 181, Section 1289, eff July 1, 1993; 2005 Act No. 11, Section 1.F, eff upon approval (became law without the Governor's signature on January 13, 2005); 2012 Act No. 270, Section 3, eff June 18, 2012.

**SECTION 55‑5‑290.** Reserved by 2012 Act No. 270, Section 3, eff June 18, 2012.