

## CHAPTER 114

## AERONAUTICS

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**114.001 Definitions.** In this chapter:

(1) "Department" means the department of transportation.

(3) "Secretary" means the secretary of transportation.

History: 1977 c. 29.

**114.002 Definitions.** As used in this chapter, unless the context otherwise requires:

(1) "Aeronautics" means the science and art of flight and including but not limited to transportation by aircraft; the operation, construction, repair or maintenance of aircraft, aircraft power plants and accessories, including the repair, packing and maintenance of parachutes; the design, establishment, construction, extension, operation, improvement, repair or maintenance of airports or other air navigation facilities; and instruction in flying or ground subjects pertaining thereto.

(2) "Aircraft" means any contrivance invented, used or designed for navigation of or flight in the air.

(3) "Airport" means any area of land or water which is used, or intended for use, for the landing and take-off of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon.

(4) "Air navigation facility" means any facility, other than one owned or operated by the United States, used in, available for use in, or designed for use in aid of air navigation, including any structures, mechanisms, lights, beacons,

markers, communicating systems, or other instrumentalities, or devices used or useful as an aid, or constituting an advantage or convenience to the safe taking-off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport, and any combination of any or all of such facilities.

(5) "Operation of aircraft" or "operate aircraft" means the use, navigation or piloting of aircraft in the airspace over this state or upon any airport within this state.

(6) "Airman" means any individual who engages, as the person in command, or as pilot, mechanic or member of the crew, in the navigation of aircraft while under way, and any individual who is directly in charge of the inspection, maintenance, overhauling or repair of aircraft engines, propellers or appliances, and any individual who serves in the capacity of aircraft dispatcher, or air-traffic control-tower operator; but does not include any individual employed outside the United States, or any individual employed by a manufacturer of aircraft, aircraft engines, propellers or appliances to perform duties as inspector or mechanic in connection therewith, or any individual performing inspection or mechanical duties in connection with aircraft owned or operated by him.

(7) "Aeronautics instructor" means any individual who for hire or reward engages in giving instruction or offering to give instruction in flying or ground subjects pertaining to aeronautics; but excludes any instructor in a public school, university or institution of higher learning duly accredited and approved for carrying

on collegiate work, who instructs in flying or ground subjects pertaining to aeronautics, only in the performance of his duties at such school, university or institution.

(8) "Air school" means any aeronautics instructor who advertises, represents or holds out as giving or offering to give instruction in flying or ground subjects pertaining to aeronautics; and any person who advertises, represents or holds out as giving or offering to give instruction in flying or ground subjects pertaining to aeronautics whether for or without hire or reward; but excludes any public school, or university, or institution of higher learning duly accredited and approved for carrying on collegiate work.

(9) "Person" means any individual, firm, partnership, corporation, company, association, joint stock association or body politic; and includes any trustee, receiver, assignee or other similar representative thereof.

(10) "Municipality" means any county, city, town or village of this state.

(11) "Airport hazard" means any structure, object of natural growth, 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 such landing or taking off.

(12) "State airway" means a route in the navigable airspace over and above the lands or waters of this state, designated by the department as a route suitable for air navigation.

History: 1971 c. 164 s. 84; 1977 c. 29 s. 1654 (5)

**114.01 State airport system.** The department is directed to cooperate with and assist any federal aeronautical agency in the preparation and annual revision of the national airport plan and to lay out a comprehensive state system of airports adequate to provide for the aeronautical needs of the people of all parts of the state. Such state system shall include every airport on the national system and such additional airports as may be deemed necessary. In selecting the general location of the airports on the system and determining their capacity, due regard shall be given to aeronautical necessity as evidenced by the population of the locality to be served, its commerce and industry and such other factors as the department deems pertinent. In selecting the specific sites, due regard shall be given to general suitability for service and economy of development as evidenced by convenience of access, adequacy of available area, character of topography and soils, freedom from hazards and obstructions to flight and other pertinent consideration.

History: 1971 c. 164 s. 84; 1971 c. 192, 228; 1977 c. 29, 98, 272

**114.02 Sky sovereignty.** 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.

**114.03 Landowner's rights skyward.** 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 114.04.

**114.04 Flying lawful, landing unlawful; limitations; emergency.** 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 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 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 114.05.

Since federal laws and regulations preempt local control of aircraft flights, s. 114.04 cannot be invoked to make unlawful flights which are in accordance with federal laws and regulations. *Luedtke v. County of Milwaukee*, 521 F (2d) 387.

**114.05 Damages by aircraft.** The liability of the owner, lessee and pilot of every aircraft operating over the lands or waters of this state for injuries or damage to persons or property on the land or water beneath, caused by the ascent, descent or flight of such aircraft, or the dropping or falling of the aircraft or of any object or material therefrom, shall be determined by the law applicable to torts on land, except that there shall be a presumption of liability on the part of the owner, lessee or pilot, as the case may be, where injury or damage is caused by the dropping or falling of the aircraft or of any object or material therefrom, which presumption may be rebutted by proof that the injury or damage was not caused by negligence on the part of the owner, lessee or pilot and the burden of proof in such case shall be upon such owner, lessee or pilot to show absence of negligence on his part.

**114.06 Inter-aircraft liability.** 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.

**114.065 State liability for aircraft. (1)** Any person suffering any damage proximately resulting from the negligent operation of an aircraft owned and operated by the state, and which damage is occasioned by the operation of such aircraft in the performance of its business, may file a claim therefor against the state and the legislature shall have the right to allow, compromise, settle and pay the same; the claim shall state the time and place of the accident, a brief description of the injuries or damages, the manner in which they were received and the grounds upon which claim is made and that satisfaction thereof is claimed. "Business" as used herein means any business whether governmental or proprietary.

(2) No action to recover damages under this section shall be brought unless within 90 days after the date of the accident a claim is filed for the damages sought or if the damages cannot be determined or ascertained, a notice of intention to file claim shall be filed within such 90 days, which notice shall contain a statement of the facts establishing the negligence upon which the claim is based and a description of the nature of the injuries or damages for which claim will later be filed.

(3) The manner and form and the place of filing such claims and notices shall be as provided in s. 16.53 (8), except that they shall be made in triplicate; in addition to its duties under that subsection the department of administration shall transmit one of the copies of the claim or notice to the attorney general.

(4) The attorney general shall obtain information relating to the accident giving rise to the claim and make his report thereon to the legislature.

(5) Failure of the legislature to pass upon the claim within 60 days after presentation shall constitute a disallowance. Recess periods and periods between sessions due to sine die adjournments shall be included in arriving at said 60 days. Any such disallowance shall bar any action founded on the claim unless brought within 6 months after disallowance. Actions against the state and payment of the amount recovered shall be as provided in ss. 285.01 and 285.04.

**114.07 Criminal jurisdiction.** 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.

**114.08 Contracts made in flight.** 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.

**114.09 Reckless flying; penalty. (1)** No person shall operate an aircraft in the air, or on the ground or water while under the influence of intoxicating liquor or controlled substances under ch. 161, nor operate an aircraft in the air, or on the ground or water in a careless or reckless manner so as to endanger the life or property of another. In determining whether the operation was careless or reckless the court shall consider the standards for safe operation of aircraft prescribed by federal statutes or regulations governing aeronautics. The court shall make a written report of all convictions (including bail or appearance money forfeitures) obtained under this section to the department, which shall send the report to the proper federal agency.

(2) Any person violating any provision of this section shall be fined not less than \$10 nor more than \$100 for the first offense and for a subsequent offense not less than \$100 nor more than \$500, or imprisoned not less than 6 months, or both.

History: 1971 c. 192, 219, 307; 1977 c. 29 s. 1654 (5).

**114.095 Dropping objects prohibited.** No operator of an aircraft and no passenger therein shall drop any object therefrom except loose water or loose sand ballast; provided, however, that this section shall not prohibit the dusting or spraying of vegetation with insecticides dropped from airplanes, or the sowing of seeds, or the depositing of fish in lakes or streams, or the delivery of packages or mail by dropping from airplanes, or other similar practices, when such is done in accordance with the federal regulations applicable thereto.

**114.10 Killing birds or animals.** Any aeronaut or passenger, who, while in flight within this state, shall intentionally kill or attempt to kill any birds or animals or who shall shoot at any bird or animal from an airplane shall be guilty of a misdemeanor and punishable by a fine of not less than \$50 nor more than \$100 or by imprisonment for not less than 30 days nor more than 6 months or both.

**114.105 Local regulation.** Any county, town, city or village may adopt any ordinance in strict conformity with the provisions of this chapter and impose the same penalty for violation of any of its provisions except that such ordinance shall not provide for the suspension or

revocation of pilot or aircraft licenses or certificates and shall not provide for imprisonment except for failure to pay any fine which may be imposed. No local authority shall enact any ordinance governing aircraft or aeronautics inconsistent with the provisions of this chapter. Every court in which a violation of such ordinance is prosecuted shall make a written report of any conviction (including bail or appearance money forfeiture) to the federal civil aeronautics administration.

**114.11 Local airports; Interstate reciprocity.**

**(1)** The governing body of any county, city, village or town in this state is hereby authorized to acquire, establish, construct, own, control, lease, equip, improve, maintain and operate airports or landing fields or landing and take-off strips for the use of airplanes and other aircraft either within or without the limits of such counties, cities, villages and towns, and may use for such purpose or purposes any property suitable therefor that is now or may at any time hereafter be owned or controlled by such county, city, village or town, and may regulate the same, provided, such regulation shall not be in conflict with such rules and regulations as may be made by the federal government. The governing body of each and every county and municipality owning an airport or landing field or landing and take-off strip in the state of Wisconsin shall cause the surroundings of such airport, landing field or landing and take-off strip to be marked for aeronautical purposes, and maintain such marking, subject to and in accordance with law and such rules and regulations as may from time to time be made by the federal government and in so doing may cooperate with other states and subdivisions thereof and acquire rights and easements in property outside of the state.

**(2)** The governing body of any county, city, village or town of this state is authorized to acquire, establish, construct, own, control, lease, equip, improve, maintain and operate airports or landing fields or landing and take-off strips or other aeronautical facilities in an adjoining state whose laws permit, subject to the laws of such state, but subject to the laws of this state in all matters relating to financing such aeronautical project.

**(3)** The governing body of any municipality or other political subdivision of an adjoining state whose laws permit, is hereby authorized to acquire, establish, construct, own, control, lease, equip, improve, maintain and operate airports, or landing fields, or landing and take-off strips or other aeronautical facilities in this state, subject to all laws, rules and regulations of this

state applicable to its municipalities or other political subdivisions in such aeronautical project, but subject to the laws of its own state in all matters relating to financing such project. Such municipality or other political subdivision of an adjoining state shall have all privileges, rights and duties of like municipalities or other political subdivisions of this state, including the right to exercise the right of eminent domain. This subsection shall not apply unless the laws of such adjoining state shall permit municipalities or other political subdivisions of this state to acquire, establish, construct, own, control, lease, equip, improve, maintain, operate and otherwise control such airport, landing field or landing and take-off strips or other aeronautical facilities therein with all privileges, rights and duties applicable to the municipalities or other political subdivisions of such adjoining state in such aeronautical projects.

**(4)** The governing body of any county, city, village or town is authorized to appropriate money to any town, city, village or other county, for the operation, improvement or acquisition of an airport by such town, city, village or other county or any combination of such municipalities.

**(5)** The governing body of any county, city, village or town in this state may, together with any municipality or other political subdivision of an adjoining state if, under the laws of that state, such municipality or other political subdivision is similarly authorized, jointly sponsor an airport project located in this state or in the adjoining state.

(a) If the project is located in this state, the secretary of transportation shall act as agent on behalf of the joint sponsors. If the project is located in the adjoining state, the proper public official or agency of that state shall act as agent on behalf of the joint sponsors.

(b) All matters relating to financing of the joint project shall be governed by the laws of the jurisdiction which furnishes the specific moneys. All other matters relating to the joint project shall be governed by the laws of the state in which the project is located.

History: 1973 c. 148

**114.12 Condemnation of lands for airports.**

Any lands acquired, owned, controlled or occupied by such counties, cities, villages and towns for the purposes enumerated in s. 114.11 shall and are hereby declared to be acquired, owned, controlled and occupied for a public purpose, and as a matter of public necessity, and such cities, villages, towns or counties shall have the right to acquire property for such purpose or purposes under the power of eminent domain as and for a public necessity including property

owned by other municipal corporations and political subdivisions and including any street, highway, park, parkway or alley, provided that no state trunk highway shall be so acquired without the prior consent of the department. Whenever the county, city, village or town as the case may be shall own all land or access rights on both sides of such street, highway, park, parkway or alley, it may, within the limits where it has ownership or access rights on both sides, notwithstanding any other provisions of law, vacate and close such public way by resolution of the governing body of the county, city, village or town acquiring it and no damages shall be assessed against such county, city, village or town by reason of such closing, except as may be allowed in a particular condemnation action where the lands or rights in lands necessary for such airport are so acquired. If such closing shall leave any part of such street, highway, parkway or alley without access to another public street or highway, the county, town, city or village effecting such closing shall immediately provide such access at its expense.

**History:** 1977 c. 29 s. 1654 (8) (a).

Six-year limitation of 182.017 (5) to bring action against utility is inapplicable to condemnation action under 114.12 Public Service Corp. v. Marathon County, 75 W (2d) 442, 249 NW (2d) 543.

**114.13 Purchase of land for airports.** Private property needed by a county, city, village or town for an airport or landing field or landing and take-off strip, or property or rights for the protection of the aerial approaches thereof, shall be acquired by purchase if the city, village, town or county is able to agree with the owners on the terms thereof, and otherwise by condemnation, as provided in s. 32.05. The purchase price or award for real property acquired for an airport or landing field or landing and take-off strip, or property or rights for the protection of the aerial approaches thereof, may be paid for the appropriation of moneys available therefor, or wholly or partly from the proceeds of the sale of bonds of the city, village, town or county, as the governing body of such city, village, town or county determines, subject to ch. 67. Such property or rights may be acquired by gift, which the respective governing bodies are authorized to accept.

**114.134 Airport standards and approval.**

**(1) PUBLIC AIRPORT INFORMATION.** No person shall operate an airport within this state that is open to the general public unless effective runway and landing strip lengths are properly reported, published and marked in accordance with applicable federal aviation regulations and federal obstruction standards.

**(2) TRAVERSE WAY CLEARANCE.** No person shall operate an airport within this state unless all runways and landing strips are so located that approaching and departing aircraft clear all public roads, highways, railroads, waterways or other traverse ways by a height which complies with applicable federal standards.

**(3) AIRPORT SITE APPROVAL.** No person shall construct or otherwise establish a new airport or activate an airport within this state unless the secretary of transportation issues a certificate of approval for the location of the proposed airport. No charge shall be made for application or approval. The secretary may issue a certificate of approval if he determines that the location of the proposed airport is compatible with existing and planned transportation facilities in the area.

**(4) PUBLIC HEARINGS, NOTICE AND REVIEW.**

(a) The secretary may hold a public hearing before the issuance of a certificate of approval.

(b) The secretary shall grant a hearing at the request of any applicant after any refusal to issue a certificate. Upon receipt of a request for hearing, the matter shall be referred to the transportation commission which shall hear and decide the matter.

(c) At least 15 days before the date of the hearing a class 1 notice of any public hearing shall be published, under ch. 985, in the official state newspaper and in a paper of general circulation printed and published near the location of the proposed airport.

(d) Any order or decision of the secretary or transportation commission is subject to review under ch. 227.

**(5) PENALTY.** Each day on which any person violates any provision of this section shall be considered a separate violation in determining penalties under s. 114.27.

**History:** 1973 c. 242; 1977 c. 29

**114.135 Airport protection.** It is declared to be in the public interest that the navigable airspace over the state and the aerial approaches to any airport be maintained in a condition best suited for the safe operation of aircraft and to that end the bulk, height, location and use of any building or structure, or any other object, and the use of land, may be regulated, or any building, structure or other object may be removed. It is the legislative intent that this section shall not supersede s. 59.97 (4), but that it shall be supplemental to such section.

**(1) PROCEDURE TO OBTAIN PROTECTION PRIVILEGES.** The aerial approaches to any airport owned and operated by corporations organized to provide aeronautic facilities to the general public may be protected in the following manner: The owner of such airport shall prepare

and file with the register of deeds plans and specifications showing the land affected, the owner of each parcel or interest therein, whether public or private, the regulations to be imposed on each parcel and the structures, buildings or other objects to be removed. The owner or managing body of the airport may negotiate and acquire from the owners of the various parcels or interest therein, whether public or private, by deeds the protection privileges shown by the plans and specifications. Referring in the deed to the plans and specifications, and briefly describing the same, shall be deemed sufficient legal description to convey the protection privileges set forth in said plans and specifications in the property of the grantor or grantors. In case the owner of the airport is unable to obtain by negotiation the desired protection privileges, he may acquire the same by eminent domain in the manner set forth in chapter 32, except as to lands and buildings of railway companies which are necessary to, or are used in connection with the operation of the railway. In case the protection privileges sought shall extend into more than one county the plans and specifications shall be filed with the register of deeds of each county. In case any parcel of land lies in more than one county, eminent domain proceedings may be instituted in the circuit court of any county in which said parcel is situated, provided a certified copy of the final judgment with a description of the property involved is recorded with the register of deeds of all counties in which such parcel of land or interest therein lies.

**(2) NOTICE; CLAIM FOR DAMAGES.** In case of any airport landing field or landing and take-off strip owned by any city, village, town or county or any union of them, the commission or other body in charge of the operation and control of the airport, landing field or landing and take-off strip may prepare and file without charge with the register of deeds plans and specifications showing the protection privileges sought as described in sub. (1). The commission or other body in charge shall send by registered mail with return receipt to each owner at his or her last-known address a notice stating that the plans and specifications have been filed with the register of deeds' office, stating the county, time of filing, the file number, and a brief description of the parcel of land or interest therein affected. If the address of the owner cannot be ascertained or the registered letter is returned unclaimed, notice shall be sent by registered mail to the person in possession of the premises. If no person is in possession, then the notice shall be posted in a conspicuous place on the land involved and published as a class 3 notice, under ch. 985, in the area affected. The right of the owner to claim for damages for the protection

regulations imposed in the plans and specifications, or the removal of obstructions shall be forever barred, unless the owner files a claim for damages with the commission or other body in charge within 6 months from the receipt of the notice from the commission, or other body in charge, or the posting and last publication. The claim shall be verified and shall state the amount of damages claimed. The commission or other body in charge may pay the damages, if it has available funds, and the payment shall operate as a conveyance. If no claims for payment are filed or if payment is made, the commission or other body in charge shall file an affidavit for each parcel involved setting forth the rights acquired which shall be recorded by the register of deeds without charge and when so recorded has the same effect as any duly recorded instrument. If any owner is a minor or incompetent, the notice may be sent by registered mail to the owner's guardian, if he or she has one, and if there is none the circuit court of the county in which the land, or a larger part, is located shall upon application of the commission or other body in charge appoint a guardian to receive the notice, and to protect the rights of the owner. Any funds payable to the owner shall be cared for in the manner provided in ch. 880. If the commission or other body in charge determines that the damages claimed are excessive, it shall so report to the governing body or bodies which established the airport, landing field or landing and take-off strip in question and with its consent may acquire in the name of the governmental body or bodies the protection privilege desired in the manner set forth in sub. (1) or it may deposit with the county clerk an award and notify the owner of the land involved in the method specified in this subsection. The landowner may accept the award without prejudice to his or her right to claim and contest for a greater sum. The landowner may, within a period of 6 months after notice of the award, proceed as provided in ch. 32 to have the damages appraised.

**(3) EXERCISE OF POWER AND AUTHORITY.** The power and authority to protect airports conferred in subsections (1) and (2) may be exercised from time to time; amended plans and specifications may be filed in the register of deeds' office, and new protection privileges acquired from time to time in the methods provided by this section.

**(4) ENCROACHMENTS.** The duty to prevent encroachments by growth of trees or other vegetation, or otherwise, upon the protection privileges acquired by any airport, landing field, landing and take-off strip, shall be upon the owner or owners of the parcel of land affected by the protection privilege only in cases where the

owner or owners have received compensation for the protection privilege. Any such encroachment is declared to be a private nuisance and may be abated in the manner prescribed in ch. 823. In cases where no compensation has been paid for the protection privilege, encroachments shall be removed by the owner or the authority in charge of the airport, landing field, or landing and take-off strip and shall be, in case of a publicly owned airport, landing field or landing and take-off strip, a city, village, town or county charge as the case may be. In removing such encroachments, the owner or authority in charge of the airport, landing field or landing and take-off strip in question, may go upon the land and remove the encroachment without being liable for damages in so doing.

**(5) ENCROACHMENTS A PRIVATE NUISANCE.** It shall be unlawful for any one to build, create, cause to be built or created, any object, plant, or cause to be planted, any tree or trees or other vegetation, which shall encroach upon any acquired protection privilege. In addition to the penalty set forth in s. 114.27, such encroachment is declared to be a private nuisance and may be removed in the manner prescribed in ch. 823.

**(6) PERMIT FOR ERECTION OF HIGH STRUCTURES REQUIRED.** No person shall erect anywhere in this state any building, structure, tower or any other object the height of which exceeds the limitations set forth in sub. (7) without first filing an application and procuring a permit from the secretary of transportation.

**(7) POWER TO CONTROL ERECTION OF HIGH STRUCTURES.** For the purposes of sub. (6) the power and authority to control the erection of buildings, structures, towers and other objects by the secretary of transportation shall be limited to those objects that would either extend to a height of more than 500 feet above the ground or surface of the water within one mile of the location of the object, or above a height determined by the ratio of one foot vertical to 40 feet horizontal measured from the nearest boundary of the nearest public airport within the state; however, this power and authority shall not extend to objects of less than 150 feet in height above the ground or water level at the location of the object or to objects located within areas zoned under s. 114.136 or to objects located within areas zoned under s. 62.23 (7) where the zoning ordinance enacted under said subsection controls the height of structures.

**(8) RULES, REGULATIONS, STANDARDS AND CRITERIA.** In carrying out sub. (6) the secretary of transportation may perform such acts, issue and amend such orders and make, promulgate and amend and enforce such reasonable rules,

regulations and procedures and establish such minimum standards and criteria governing erection of buildings, structures, towers and hazards in the interest of the safe operation of aircraft as it deems necessary in the public interest and safety.

**(9) CONFLICTING AUTHORITY.** Wherein conflicting jurisdiction arises over the control of the erection of a building, structure, tower or hazard between the secretary of transportation and any political subdivision of the state, the secretary of transportation may overrule rules and regulations adopted by any political subdivision under the laws of this state after a public hearing wherein all parties thereto have been given an opportunity to be heard. The secretary may refer such matters to the transportation commission in which case the commission shall hear and decide the matter after notice and hearing.

**(10) VIOLATIONS AND PENALTIES.** Each day that any person violates any of the provisions of subs. (6), (7), (8) and (9) may be considered as a separate violation in determining penalties under s. 114.27.

**History:** 1971 c. 41 s. 12; Sup Ct Order, 67 W (2d) 774; 1977 c. 29, 449.

The 500 feet specified in sub. (7) is to be measured from the lowest point within one mile from the base of the tower. The commission (now secretary of transportation) may hold a hearing on whether to issue a permit for a tower even though an application is not made or is withdrawn. *State v. Chippewa Cable Co.* 48 W (2d) 341, 180 NW (2d) 714

The jurisdiction of the secretary of transportation with respect to control over the erection of high structures is limited by the provisions contained in (7) to those structures that either extend to a height of more than 500 feet above the ground or surface of the water within one mile of the location of the object, or a height determined by the ratio of one foot vertical to 40 feet horizontal measured from the nearest boundary of the nearest public airport in the state. If a local zoning ordinance, rule or regulation permits the erection of structures, which exceed these heights, a conflict of jurisdiction would arise and the secretary could invoke (9) to resolve the conflict. 62 Atty. Gen. 232.

**114.136 Airport approach protection. (1) POWERS OF MUNICIPALITIES.** (a) Any county, city, village or town that is the owner of a site for an airport which has been approved for such purpose by the appropriate agencies of the state and the federal government may protect the aerial approaches to such site by ordinance regulating, restricting and determining the use, location, height, number of stories and size of buildings and structures and objects of natural growth in the vicinity of such site and may divide the territory to be protected into several areas and impose different regulations and restrictions with respect to each area. The provisions of such ordinance shall be effective whether the site and the lands affected by such ordinance are located within or without the limits of such county, city, village or town, and whether or not such buildings, structures and objects of natural growth are in existence on the effective date of

the ordinance. Such regulations, restrictions and determinations are declared to be for the purpose of promoting the public safety, welfare and convenience, and may be adopted, enforced and administered without the consent of any other governing body. Any ordinance adopted under this section may be amended from time to time in the same manner as is provided for the adoption of the original ordinance in subsection (2). The authority granted in this section shall be independent and exclusive of any other authority granted in the statutes.

(b) When an airport site is owned jointly by 2 or more units of government, such ordinance may be adopted by joint action of the governing bodies of such units. In such case, such governing bodies shall meet jointly to select a joint commission consisting of one member from each governing body selected by that governing body and, if there be 2, the members so selected shall elect a third member. Such joint commission shall elect a chairman and a secretary, and shall have authority to formulate a tentative ordinance and hold public hearings as provided in subsection (2). At least 15 days written notice of the meeting to select a joint commission shall be given to each governing body by filing a copy of such written notice with the clerk thereof. Such notice may be given on the initiative of one such governing body or jointly by more than one. The governing bodies that attend such meeting may proceed jointly. If one attends, or if only one favors an ordinance, it may proceed alone without appointing a commission, but no ordinance applicable to a jointly owned airport shall be adopted by a governing body acting alone unless it has given notice of meeting to select a joint commission as provided by this subsection, and such ordinance shall be as effective as if adopted by the joint bodies.

**(2) FORMULATION OF ORDINANCE, PUBLIC HEARING.** (a) Except as provided by subsection (1) (b) the county park commission in the case of any county, the city or village plan commission in the case of a city or village, or if there be no such commissions, a committee of the governing body or bodies of the county, city, village or town which owns the airport site shall first formulate a tentative ordinance and hold a public hearing or hearings thereon in some public place within the county, city, village or town. Notice of the hearings shall be given by publication of a class 3 notice, under ch. 985, in the area affected by the proposed ordinance.

(b) The regulations, restrictions and determinations shall include, among other things, provisions for the limitation of the height of buildings, structures and objects of natural growth located not more than 3 miles from the boundaries of the airport site. Such regulations,

restrictions and determinations shall specify the maximum permissible height of buildings, structures and objects of natural growth and may specify such maximum permissible height as a ratio between the permissible maximum height of the building, structure or object of natural growth above the level of the airport site and its distance from the nearest point on the boundary of the airport site. For the purposes of this section, buildings, structures and objects of natural growth shall not be restricted to a height above the level of the airport site which is less than one-thirtieth of its distance from the boundary of the airport site in the case of class I and II airports as classified by the civil aeronautics administration of the United States department of commerce and one-fiftieth of its distance from the boundary of the airport in the case of class III and larger airports as classified by said administration. Provided, however, that a building, structure, or object of natural growth within 3 miles of the airport site may be restricted to a height of 150 feet above the airport level, which is defined as the lowest point planned on any runway.

(c) Should a greater restriction be deemed necessary for the proper protection of any part of the area affected, such greater restriction shall be secured by purchase or by the exercise of the right of eminent domain in the manner provided by chapter 32.

(d) The height restrictions shall not apply to legal fences or to farm crops which are cut at least once each year.

**(3) NONCONFORMING USES.** The lawful use of land, buildings and structures existing at the time of the adoption or amendment of any ordinance under the authority of this section may be continued, although such use does not conform with the provisions of the ordinance. The expansion or enlargement of a nonconforming use shall be in conformity with the ordinance. The governing body of the owner of the airport site may remove such nonconforming use or acquire the necessary air right over the same by purchase or exercise of the right of eminent domain in the manner provided by chapter 32.

**(4) BOARD OF APPEALS.** (a) Any ordinance adopted under the authority of this section shall provide for a board of appeals. If the county, city or village which is the owner of the airport has a zoning ordinance adopted under provision of law other than this section, the board of adjustment or board of appeals set up by such ordinance shall be the board of appeals under the ordinance adopted under this section, and shall have duties, powers and functions as provided by the zoning ordinance adopted under provisions of law other than this section.

(b) If there be no such board of appeals or board of adjustment, any regulations adopted under this section shall provide for a board of appeals. Where the airport is owned jointly, the ordinance shall provide for a joint board of appeals. Such board shall be constituted and have all the powers, duties and functions as provided in section 62.23 (7) (e), but not more than 2 members of such board shall be owners or occupants of the area affected by the ordinance.

(5) ENFORCEMENT. The governing body of the county, city, village or town owning the airport site may provide for the enforcement of any ordinance or regulations enacted pursuant to this section. Such enforcement may be by a system of permits or any other appropriate method. The governing body enacting the ordinance may provide for the punishment of a violation of the ordinance by fine or imprisonment, or both.

**114.14 Equipment, control of airport; expense; regulations.** (1) The governing body of a city, village, town or county which has established an airport or landing field, or landing and take-off strip, and acquired, leased or set apart real property for such purpose may construct, improve, equip, maintain and operate the same, or may vest jurisdiction for the construction, improvement, equipment, maintenance and operation thereof in any suitable officer, board or body of such city, village, town or county. The expenses of such construction, improvement, equipment, maintenance and operation shall be a city, village, town or county charge as the case may be. The governing body of a city, village, town or county may adopt regulations, and establish fees or charges for the use of such airport or landing field, or may authorize an officer, board or body of such village, city, town or county having jurisdiction to adopt such regulations and establish such fees or charges, subject however to the approval of such governing body before they shall take effect.

(2) The governing body of a city, village, town or county which has established an airport may vest jurisdiction for the construction, improvement, equipment, maintenance and operation thereof in an airport commission of 3 commissioners. In the case of a county, such commissioners shall be appointed by the chairman of the county board, subject to the approval of the county board; in the case of cities, villages and towns by the mayors or city managers, village presidents and town chairmen, respectively. Their terms shall be 6 years; on the first appointment the members shall be appointed for terms of 2, 4, and 6 years, respectively. Their

compensation and allowance for expenses shall be as fixed by the governing body. Such commissioners shall be persons especially interested in aeronautics. Such airport commission shall elect one member chairman and one secretary who shall keep an accurate record of all its proceedings and transactions and report such to the governing body. Such commission shall have complete and exclusive control and management over the airport for which it has been appointed. All moneys appropriated for the construction, improvement, equipment, maintenance or operation of an airport, managed as provided by this subsection, or earned by such airport or made available for its construction, improvement, equipment, maintenance or operation in any manner whatsoever, shall be deposited with the treasurer of the city, village, town or county where it shall be kept in a special fund and paid out only on order of the airport commission, drawn and signed by the secretary and countersigned by the chairman. In case of union airports owned by 2 governmental units, one commissioner shall be first appointed as provided by this subsection, the third shall be appointed alternately from each such unit starting with one from the governmental unit whose name comes first in the alphabet. In cases where there are 3 or more such governmental units, one commissioner shall be appointed for each. The length of the terms to be served by each shall be determined by lot. The moneys available for union airports shall be kept in the manner provided in this subsection in the treasury of one of the governmental units selected by the commission, and paid out in like manner.

(3) In carrying out its duties the airport commission may employ a manager who may be a member of the commission and fix his compensation (but no member of the commission shall vote on the question of his selection as manager nor on any question as to his compensation), and employ and fix the compensation of such other employes as may be deemed necessary; may make such contracts or other arrangements as may be deemed necessary for the construction, improvement, equipment, maintenance or operation of the airport; may contract with the United States or any agency thereof; may contract with private parties for a term not to exceed 10 years for the operation of the airport, including all necessary arrangements for the improvement and equipment and successful operation thereof. Provided, that in no case shall the public be deprived of equal and uniform use of the airport; and further, that no act, contract, lease or any activity of the airport commission shall be or become a binding contract on any government unit unless expressly authorized,

and then only to the extent so expressly authorized.

**114.15 Appropriation, taxation for airports.** The local authorities of a city, village, town or county to which this chapter is applicable having power to appropriate money therein may annually appropriate and cause to be raised by taxation in such city, village, town or county, a sum sufficient to carry out the provisions of this chapter.

**114.151 Union airports.** All powers conferred upon any county, city, village or town by sections 114.11 to 114.15, relating to the acquisition, establishment, construction, ownership, control, lease, equipment, improvement, maintenance, operation and regulation of airports or landing fields may be exercised by any 2 or more municipalities in the establishment, acquisition, equipment and operation of joint airports or landing fields. The governing body of any county, city, village or town participating in the ownership or operation of a joint airport as provided in this section may by resolution withdraw from such joint operation or control and may relinquish its interest in the airport.

**114.16 Pilots; federal license or permit.** It shall be unlawful for any person to pilot within this state any civil aircraft, unless such person is the holder of a currently effective pilot's license or student's permit issued by the government of the United States; but this restriction shall not apply to any person operating any aircraft licensed by a foreign country with which the United States has a reciprocal agreement covering the operation of such licensed aircraft.

**114.17 Mechanic's license, issue, presentation.** Any person repairing, adjusting, inspecting or overhauling aircraft or aircraft engines within this state shall be in possession of a mechanic's license issued to him by the federal government, which must be presented for inspection upon demand of any passenger, peace officer of this state, or any official, manager or person in charge of any airport or landing field in this state.

*History:* 1971 c. 192.

**114.18 Aircraft; airworthiness; federal license.** It shall be unlawful for any person to operate, pilot or navigate, or cause or authorize to be operated, piloted or navigated within this state any civil aircraft, unless such aircraft has a currently effective license issued by the government of the United States or has been duly identified by the government of the United

States but this restriction shall not apply to aircraft licensed by a foreign country with which the United States has a reciprocal agreement covering the operations of such licensed aircraft, or to a nonpassenger-carrying flight solely for inspection or test purposes authorized by the United States to be made without such license.

**114.19 Display of licenses.** The certificate of the license or permit respectively required of a pilot or a student shall be kept in the personal possession of the licensee or permittee when he is operating an aircraft within this state. The certificate of the license required for an aircraft shall be carried in the aircraft at all times and shall be conspicuously posted therein in clear view of passengers. Such certificate of pilot's license, student's permit or aircraft license shall be presented for inspection upon the demand of any passenger, any peace officer of this state, any authorized official, or any official, manager or person in charge of any airport in this state upon which it shall land, or upon the reasonable request of any other person. In any criminal prosecution under any of the provisions of this chapter, a defendant who relies upon a license or permit of any kind shall have the burden of proving that he is properly licensed or is the possessor of a proper license or permit. The fact of nonissuance of such license or permit 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 or permit was issued.

**114.20 Aircraft to be registered; fee in lieu of taxes; filing of documentary liens on aircraft; penalties. (1)** All aircraft customarily kept in this state shall be registered with the department on or before November 1, 1953, and annually thereafter on or before November 1, except those aircraft which have been designated by the secretary of transportation as unairworthy aircraft and which are in a severely damaged condition or in a state of major deterioration with one or more of the plane's flight surfaces removed. All aircraft purchased to be customarily kept in this state shall be registered by the purchaser with the department, except that this subsection shall not apply to aircraft owned and held by a designated aircraft dealer solely for purposes of sale. The fee for such registration shall be as set forth in sub. (2). Application for registration shall be filed not more than 30 days from date of purchase and if filed after that date a penalty of \$5 shall be charged. No aircraft for which a registration

certificate is required shall be purchased or sold or otherwise transferred without assignment of the registration certificate. Upon payment of the fee the department shall issue a certificate and evidence of registration which shall be displayed in and on the aircraft at all times in the manner prescribed by the department.

(2) The owner of aircraft customarily kept in this state shall pay a registration fee on such aircraft in lieu of general property taxes. Such registration fee shall be paid in full except as hereinafter provided, and shall be determined as follows:

(a) The fee shall be established in accordance with the following net empty weight schedule:

Net Empty Weight in Pounds	Fee
0 to 599	\$ 14
600 to 699	16
700 to 799	18
800 to 899	20
900 to 999	22
1,000 to 1,099	24
1,100 to 1,199	26
1,200 to 1,299	28
1,300 to 1,399	30
1,400 to 1,499	32
1,500 to 1,599	34
1,600 to 1,699	36
1,700 to 1,799	38
1,800 to 1,899	40
1,900 to 1,999	42
2,000 to 2,099	44
2,100 to 2,199	46
2,200 to 2,499	52
2,500 to 2,999	62
3,000 to 3,999	82
4,000 to 4,999	102
5,000 to 7,500	152
7,500 and over	202

(b) For privately owned single or multi-engine, one to 5-place surplus military aircraft the registration fee shall be in accordance with the provisions of pars. (a) and (c), but in no event shall it exceed \$22.

(c) An aircraft which is 5 years or more old shall be registered upon payment of 75 per cent of the specified fee. The year of manufacture of the corresponding model shall be the basis for determining the age of the aircraft.

(d) For new aircraft, aircraft not previously registered in this state, or unregistered aircraft for which a registration certificate is required, the fee shall be computed from the date of purchase or restoration on the basis of one-twelfth of the prescribed registration fee multiplied by the number of months for the current registration year which have not fully expired.

(3) (a) Current registrations of aircraft when sold within the state shall be transferred to

the name of the purchaser by the purchaser and who shall make application and payment of a fee of \$1 to the department. Application for transfer of registration shall be filed not more than 30 days from date of purchase and if filed after that date a penalty of \$5 will be charged. Aircraft owned and held by a designated dealer for purposes of sale are exempt from the provisions of this subsection.

(b) Upon satisfactory proof of the loss or destruction of the registration certificate the department shall issue a duplicate thereof to the owner upon payment of a fee of \$1.

(4) Aircraft owned and operated exclusively in the public service by the state or by any county or municipality thereof or by the civil air patrol shall be registered by the department upon receipt of the proper application accompanied by payment of \$1 for each aircraft.

(5) This section shall not apply to aircraft included within the provisions of s. 76.02 (5a).

(6) The owner and holder of documentary liens upon aircraft may record the same, or a duplicate copy thereof and any assignment and affidavits pertaining thereto with the department, and such recording shall be valid thereafter to all persons. Such recording shall supersede and render unnecessary recordation or filing of such liens in the offices of the register of deeds in the county in which such aircraft is customarily kept.

(7) Any person who shall knowingly make a false statement in any application or in any other document required to be filed with the department, or forge any such application or other document or any registration certificate or assignment thereof, or attempt to do any of such acts, shall be fined not to exceed \$5,000 or imprisoned not to exceed 5 years, or both. Any person who shall operate an aircraft for which a registration certificate is required without such certificate having been issued or applied for, or who shall sell, buy or otherwise transfer such aircraft without assignment of the registration certificate or who shall violate any other provisions of this section for which no penalty is provided shall be fined not to exceed \$500 or imprisoned not to exceed 6 months, or both.

(8) In addition to all existing remedies afforded by civil and criminal law, upon complaint of the department, the fees, interest and late filing penalties specified in this section may be collected by the state in an action of debt.

(9) Aircraft dealer as used in s. 114.20 is any person with an established place of business in this state who is engaged in: (a) The manufacture of aircraft, or (b) the distribution or sale of new aircraft under authority of a franchise, license, letter of authority, agreement or other

arrangement from the manufacturer or an authorized agent, or (c) the distribution or sale of used aircraft to ultimate purchasers through ordinary trade channels. Any person desiring to be designated as an aircraft dealer shall apply to the department. The department may require the applicant to supply pertinent facts concerning past or proposed operation as a dealer. The department shall issue a certificate as a designated aircraft dealer to the applicant if the department determines from the facts submitted and its own investigation that the applicant is a dealer within the meaning of this section. Such certificates shall be valid for a period of one year ending October 31 in each year unless sooner revoked by the department.

**(9m)** Any aircraft dealer whose certificate is revoked may request a hearing before the transportation commission which shall hear and decide the matter after notice and hearing.

**(10)** For the purposes of this section dealer aircraft shall be those aircraft owned or held by a dealer solely for purposes of sale.

**(11)** Identification cards shall be furnished by the department to designated aircraft dealers at the rate of \$1 each. Such cards shall be valid only for the current registration year and only when used to designate dealer aircraft and shall be attached to all dealer aircraft which the dealer has in his possession.

**(12)** A refund may be made for aircraft registration fees paid in error as determined by the department. A refund may be made for any portion of the overpayment of aircraft registration fee as determined by the department. Refunds made under this section shall be paid out of s. 20.395 (2) (qd).

History: 1977 c. 29 ss. 1061, 1062, 1654 (5); 1977 c. 273.

**114.27 Penalty.** Any person failing to comply with the requirements, or violating any of the provisions of this chapter shall be guilty of a misdemeanor and punishable by a fine of not more than \$500, or by imprisonment for not more than 90 days, or both.

**114.31 Powers and duties of the secretary of transportation. (1) GENERAL.** The secretary shall have general supervision of aeronautics in the state and promote and foster a sound development of aviation in this state, promote aviation education and training programs, assist in the development of aviation and aviation facilities, safeguard the interests of those engaged in all phases of aviation, formulate and recommend and promote reasonable regulations in the interests of safety, and coordinate state aviation activities with those of other states and the federal government. He shall

have all powers that are necessary to carry out the policies of the department of transportation, including the right to require that statements made to him be under oath. The secretary is especially charged with the duty of informing himself regarding all federal laws that affect aeronautics in this state, all regulations pursuant to such laws, and all pending legislation providing for a national airport system, in order that he may recommend to the governor and the legislature such measures as will best enable this state to derive the maximum benefits from such legislation if and when it shall become effective. It shall be the duty of all other state boards, commissions, departments and institutions, especially the appropriate educational institutions to cooperate with the secretary.

**(2) STUDIES, INVESTIGATIONS, AIRPORT DEVELOPMENT PLAN.** He shall conduct studies and investigations with reference to the most effective development and operation of airports and all other aeronautical facilities, and issue reports of his findings. The secretary shall prepare and may modify in recognition of changing conditions an airport development plan.

**(3) AVIATION EDUCATION AND TRAINING.** In cooperation with the appropriate educational institutions of the state, and jointly with them he shall formulate programs of aviation education and training, and disseminate information regarding such programs.

**(4) COOPERATION WITH FEDERAL AERONAUTICAL AGENCY.** The secretary shall cooperate with and assist the federal government, the political subdivisions of this state, and others engaged in aeronautics or the promotion of aeronautics, and shall seek to coordinate the aeronautical activities of these bodies. To this end, the secretary is empowered to confer with or to hold joint hearings with any federal aeronautical agency in connection with any matter arising under ch. 114, relating to the sound development of aeronautics, and to take advantage of the cooperation, services, records and facilities of such federal agencies, as fully as may be practicable, in the administration of said sections. The secretary shall furnish to the federal agencies cooperation, and the services, records and facilities of the department, insofar as may be practicable.

**(5) AIR MARKING SYSTEM.** He shall cooperate with the federal government in any air marking system and weather information.

**(6) TECHNICAL SERVICES TO MUNICIPALITIES.** The secretary may, insofar as is reasonably possible, offer the engineering or other technical service of the department, to any municipality

desiring them in connection with the construction, maintenance or operation or proposed construction, maintenance or operation of an airport. The secretary may assess reasonable costs for services including services performed while acting as agent for a municipality. Such assessment shall include properly allocated administrative costs. Municipalities are authorized to cooperate with the secretary in the development of aeronautics and aeronautical facilities in this state. The department of local affairs and development and all other agencies are authorized and directed to make available such facilities and services, and to cooperate as far as possible to promote the best interests of aeronautics of the state.

**(8) PRIORITIES.** (a) On July 1 of each even-numbered year the governing body of each county, city, village or town that contemplates an airport development project in the next 6 years for which it proposes to request state or federal aid shall notify the secretary of such intention and submit such information as he requires.

(b) The secretary shall establish priorities for the projects proposed under s. 114.33 (2) in relation to the over-all airport development plan taking into account such factors as industrial, commercial, recreational and resources development and transportation needs.

(c) As part of his budget report, the secretary shall submit a tentative priority list of projects he recommends for state aid in the following biennium.

**History:** 1971 c. 125; 1973 c. 243 s. 82; 1977 c. 29 ss. 1063, 1654 (5); 1977 c. 273.

**114.315 Review.** Orders of the secretary of transportation shall be subject to review in the manner provided in ch. 227.

**114.316 Use of department airplanes for transportation.** Acting upon its own discretion, the department may, either in the interest of furthering aeronautics or for other reasons, use airplanes owned or rented by it to transport persons and property of state institutions, departments or officials. In such instance the department may make charges therefor to such institutions or departments.

**History:** 1971 c. 125; 1977 c. 29 s. 1654 (5).

**114.32 Federal aid for airports. (1) SECRETARY MAY ACCEPT.** The secretary of transportation may cooperate with the government of the United States, and any agency or department thereof in the acquisition, construction, improvement, maintenance and operation of airports and other air navigation facilities in this state, and comply with the laws of the United

States and any regulations made thereunder for the expenditure of federal moneys upon such airports and other air navigation facilities, and may enter into any contracts necessary to accomplish such purpose. He may accept, receive and receipt for federal moneys and other moneys, either public or private, for and in behalf of this state or any municipality thereof, for training and education programs, for the acquisition, construction, improvement, maintenance and operation of airports and other aeronautical facilities, whether such work is to be done by the state or by such municipalities, or jointly, aided by grants of aid from the United States, upon such terms and conditions as are or may be prescribed by laws of the United States and any rules or regulations made thereunder, and he may act as agent of any municipality of this state upon the request of such municipality, in accepting, receiving and receipting for such moneys in its behalf for airports, and in contracting for the acquisition, improvement, maintenance or operation of airports financed either in whole or in part by federal moneys, and the governing body of any such municipality may designate the secretary of transportation as its agent for such purposes and enter into an agreement with him prescribing the terms and conditions of such agency in accordance with federal laws, rules and regulations and with ch. 114. Such moneys as are paid over by the U.S. government shall be retained by the state or paid over to said municipalities under such terms and conditions as may be imposed by the U.S. government in making such grants.

**(3) CONTRACTS.** All contracts for the acquisition, construction, improvement, maintenance and operation of airports and other aeronautical facilities, made by the secretary of transportation either as the agent of this state or as the agent of any municipality, shall be made pursuant to the laws of this state governing the making of like contracts; provided, however, that where the acquisition, construction, improvement, maintenance and operation of any airport or landing strip and other aeronautical facilities is financed or partially financed with federal moneys, the secretary of transportation, as agent of the state or of any municipality thereof, may let contracts in the manner prescribed by the federal authorities, acting under the laws of the United States, and any rules or regulations made thereunder, notwithstanding any other state law to the contrary.

**(4) DISPOSITION OF FEDERAL FUNDS.** All moneys accepted for disbursement by the secretary of transportation pursuant to this section shall be deposited in the state treasury, and, unless otherwise prescribed by the authority

from which the money is received, kept in separate funds, designated according to the purpose for which the moneys were made available, and held by the state in trust for such purposes. All such moneys are appropriated for the purposes for which the same were made available to be expended in accordance with federal laws and regulations and with ch. 114. The secretary of transportation, whether acting for this state or as the agent of any of its municipalities, or when requested by the U.S. government or any agency or department thereof, may disburse such moneys for the designated purposes, but this shall not preclude any other authorized method of disbursement.

**(5) LOCAL PROJECTS AND FUNDS; SECRETARY'S FUNCTIONS.** No county, city, village or town, whether acting singly or jointly with a county, city, village or town, shall submit to a federal aeronautical agency or department any project application requesting federal assistance, for any airport improvement, aeronautical facility or planning study, unless the project and the project application have been first approved by the secretary. No such county, city, village or town shall directly accept, receive, receipt for or disburse any funds granted by the United States for the project, but it shall designate the secretary as its agent and in its behalf to accept, receive, receipt for and disburse such funds. It shall enter into an agreement with the secretary prescribing the terms and conditions of the secretary's functions under such agency in accordance with federal laws, rules and regulations and applicable laws of this state.

*History:* 1971 c 192.

The secretary of transportation possesses the requisite implied authority to enter into contracts with the federal government to secure federal funds to enable the department to undertake airport system planning. 60 Atty Gen 68.

See note to art. VIII, sec. 10, citing 60 Atty. Gen. 225.

**114.33 Initiation of airport project; sponsorship; land acquisition.** **(1)** Any county, city, village or town, either singly or jointly with one or more counties, cities, villages or towns, desiring to sponsor an airport development project to be constructed with federal aid and state aid or with the state aid alone as provided by this chapter, may initiate such project in the manner provided by this section. The department may initiate and sponsor an airport project in the same manner as a local governing body. The department may install, operate and maintain air navigation facilities with or without federal aid and may enter into agreements with sponsors to share the maintenance and operation costs of such facilities.

**(2)** Such initiation shall be by a petition filed with the secretary of transportation by the governing body or bodies of the counties, cities,

villages or towns desiring to sponsor the project, or by the state agency setting forth among other things that the airport project is necessary and the reason therefor; the class of the airport that it is desired to develop, the location of the project in general, and the proposed site tentatively selected; the character, extent and kind of improvement desired under the project, evidence that the petition has received a public hearing in the area affected before adoption by the petitioners, and any other statements that the petitioners may desire to make. At least 10 days' notice of the public hearing shall be given by publication of a class 1 notice, under ch. 985, in the area affected. On receipt of such petition there shall be an additional hearing in the matter by the secretary of transportation at some place convenient to the petitioners. At least 10 days' notice of the additional hearing shall be given to each petitioning governing body or state agency by registered mail addressed to the clerk thereof, and by publication of a class 1 notice, under ch. 985, in the area affected.

**(3)** The secretary shall make his finding within a reasonable time after the hearing. If such finding is generally favorable to the development petitioned for, the secretary shall submit his finding to the governor for approval and no finding favoring an airport development project shall be effective unless the governor's approval is indorsed thereon in writing. If such finding is approved by the governor the secretary shall notify the petitioners to that effect by filing a copy of his finding, which shall include among other things the location of the approved site, the character and extent of the improvements deemed necessary, and an approximate estimate of the costs and the amount to be paid by the sponsor. Such finding shall constitute approval of the airport site so specified as a portion of the state airport system. On receipt of such finding the sponsors shall take action at their next meeting toward providing their share of the cost and shall promptly notify the secretary. The sponsors may proceed in accordance with the finding to acquire the site and to make master development plans and project plans, and shall be entitled to receive credit therefor as provided by federal law and by this chapter. On completion and approval of the plans a revised estimate of the project costs shall be made for the purposes of the project application.

**(4)** All projects for the development of airports with federal aid shall be in compliance with federal laws. All plans and other arrangements for development of projects with state aid alone shall be subject to the approval of the secretary.

(5) In the case of projects to be carried out by contract, force account, or by a county highway committee in a manner similar to the applicable provisions of s. 84.06 (3), the sponsor's share of the cost of a project shall be deposited in the state treasury promptly on the request of the secretary of transportation, to be held in trust for the purposes of the project. The secretary of transportation need not request the entire share at any one time. The secretary of transportation shall have the right to suspend or discontinue proceedings or construction relative to any project at any time if any sponsor shall fail to pay the amount properly required of it as its contribution to such project. In the case of projects or parts of projects authorized by the secretary of transportation to be performed by force account methods, the secretary of transportation may permit the sponsor to retain the sponsor's share of the cost of such authorized project work provided the sponsor is to do the work. In such case the sponsor will be periodically reimbursed for the state or federal share, or both, on the basis of audited costs incurred by the sponsor.

(6) For the purposes of carrying out this section and s. 114.35, the secretary of transportation may acquire by gift, devise, purchase or condemnation any lands for establishing, protecting, laying out, enlarging, extending, constructing, reconstructing, improving and maintaining airports, or interests in lands in and about airports, and after establishment, layout and completion of such improvements, the secretary of transportation may convey as hereinafter provided such lands thus acquired and not necessary for such improvements, with reservations concerning the future use and occupation of such lands so as to protect such airports and improvements and their environs and to preserve the view, appearance, light, air and usefulness of such airports. Whenever the secretary of transportation deems it necessary to acquire any such lands or interests therein, for any of such purposes, he shall so order and in such order, or on a map or plat, show the lands and interests required, and shall file a copy of the order and map with the county clerk of each county in which such lands or interests are required. For the purposes of this section the secretary of transportation may acquire private or public lands or interests therein. When so provided in the secretary of transportation's order, such land shall be acquired in fee simple. Unless he elects to proceed under sub. (3), the secretary of transportation shall endeavor to obtain easements or title in fee simple by conveyance of the lands or interests required at a price, including any damages, deemed reasonable by the secretary of transportation. The instrument of conveyance shall name the state as grantee and shall

be recorded in the office of the register of deeds. The purchase or acquisition of lands or interests therein under this section is excepted and exempt from s. 20.914 (1). The secretary of transportation may purchase or accept donations of remnants of tracts or parcels of land existing at the time or after he has acquired portions of such tracts or parcels, by purchase or condemnation for airport purposes, where in the judgment of the secretary of transportation such action would assist in making whole the land owner, a part of whose lands have been taken for airport purposes and would serve to minimize the over-all cost of such taking by the public.

(7) If any of the needed lands or interests therein cannot be purchased expeditiously for a price deemed reasonable by the secretary of transportation, the secretary of transportation may acquire the same as provided in s. 32.05.

(8) (a) The secretary of transportation, upon the petition of the sponsoring municipality, may provide that all or certain parts of the required land or interests therein may be acquired by the municipality named by the secretary of transportation. When so provided, the municipality and the secretary of transportation shall appraise and set the maximum price, including damages, considered reasonable for the lands or interests to be so acquired. The municipality shall endeavor to obtain easements or title in fee simple by conveyance of the lands or interests required, as directed in the secretary of transportation's order. The instrument of conveyance shall name the municipality or municipalities as grantee and shall be subject to approval by the secretary of transportation, and shall be recorded in the office of the register of deeds and filed with the secretary of transportation. If the needed lands or interests therein cannot be purchased expeditiously within the appraised price, the municipality may acquire them by condemnation, as provided in s. 32.05.

(b) Any property of whatever nature acquired in the name of a city, village or town pursuant to this section or any predecessor shall be conveyed to the state without charge by the city, village or town when so ordered by the secretary of transportation.

(c) The municipality when so ordered by the secretary of transportation is authorized and empowered to sell and shall sell at public or private sale, subject to such conditions and terms authorized by the secretary of transportation, any and all buildings, structures, or parts thereof, and any other fixtures or personalty acquired in the name of the municipality under this section or any predecessor. The proceeds from such sale shall be deposited with the state in the appropriate airport fund and the expense

incurred in connection with such sale shall be paid from such fund.

(9) The cost of the lands and interests acquired and damages allowed pursuant to this section, expenses incidental thereto and the customary per diem and expenses of the municipality incurred in performing duties pursuant to this section, shall be paid out of the available airport improvement funds.

(10) Subject to the approval of the governor as herein provided, the secretary of transportation may sell at public or private sale property of whatever nature owned by the state and under the jurisdiction of the secretary of transportation when the secretary of transportation determines that such property is no longer necessary for the state's use for airport purposes. The secretary of transportation shall present to the governor a full and complete report of the property to be sold, the reason for the sale, and the minimum price for which the same should be sold, together with an application for the governor's approval of such sale. The governor shall thereupon make such investigation as he deems necessary and approve or disapprove such application. Upon such approval and receipt of the full purchase price, the secretary of transportation shall by appropriate deed or other instrument transfer the property to the purchaser. The funds derived from such sale shall be deposited in the appropriate airport fund, and the expense incurred by the secretary of transportation in connection with the sale shall be paid from such fund.

(11) Subject to the approval of the governor the secretary of transportation may convey lands or interests therein acquired pursuant to this section and improvements installed thereon to municipalities named in the secretary of transportation's order. The conveyance of the lands or interests therein and improvements shall restrict the use of the premises by the municipality to the uses for which they were acquired, except that the lands or interests therein declared by the secretary of transportation to be excess may be so conveyed without restrictions as to use.

(12) Lands held by any department, board, commission or other agency of the state may, with the approval of the governor, be conveyed to the secretary in the manner prescribed by statute and, if none is prescribed, then by a conveyance authorized by appropriate resolution of the controlling department, board or commission of the agency concerned.

History: 1971 c. 192; 1973 c. 241; 1977 c. 29

#### 114.34 State and sponsor's share of cost.

(1) The costs of projects involving federal aid, in excess of the federal government's share, shall be borne by the sponsor and the state, except that the state shall pay not more than one-half of such excess costs, nor more than \$100,000 for the cost of a building project or building improvement project and no part of the cost of hangars. The secretary, upon agreement with the sponsor, may advance up to 10% of the amount of any federal aid grant agreement for the payment of project costs of a federal aid project from unallocated state airport funds, subject to reimbursement upon final liquidation and settlement of the project with the sponsor and federal government.

(2) The costs of projects not involving federal aid shall be borne by the sponsor and the state. The state shall pay not more than one-half of such costs, which may include the cost of the land, the cost of lands or interest in lands deemed necessary for the protection of the aerial approaches, the cost of formulating the project application and preparing the plans and specifications, the cost of construction and of all facilities deemed necessary for the operation of the airport. The state shall not contribute more than \$100,000 for the cost of a building project or building improvement project and no part of the cost of hangars.

(3) The percentage of the costs borne by the state shall be determined by the department on the basis of the relative importance of the specific project to the state airport development program as a whole.

History: 1971 c. 164 s. 84; 1971 c. 192; 1977 c. 29 s. 1654 (5); 1977 c. 348.

#### 114.35 Federal aid; state and local funds.

It is declared to be the policy of the state to promote the development of an airport system in this state and to promote the development of joint airports in this state and in adjoining states which mutually benefit citizens of this state and those of adjoining states. The secretary shall use the amount provided by the state to assist sponsors in matching the federal aid that may become available to the state or available for specific projects or joint projects within this state or in an adjoining state and to aid sponsors in the development of approved projects on the state system or said joint projects independent of federal aid and for airmarking and air navigation facilities.

History: 1971 c. 125, 192, 228; 1973 c. 148; 1977 c. 418.