

AMENDMENTS TO LB390

(Amendments to E & R amendments, ER234)

Introduced by Schilz

1 1. Insert the following new sections:

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

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

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

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

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

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

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

1 3-404 The application for the permit, required by section
2 3-403, shall be made in writing on forms prescribed by the
3 Department of Aeronautics and shall contain or be accompanied by
4 details as to the location, construction, height, and dimensions
5 of the proposed structure, the nature of its intended use,
6 and such other information as the Director of Aeronautics may
7 require. Upon the filing of such application the director shall
8 make an investigation and an aeronautical study of such proposed
9 construction and its effect, if any, upon air navigation, and the
10 health, welfare, and safety of the public. If the director, upon
11 such investigation, shall determine that such proposed structure
12 will not constitute a hazard to air navigation and will not
13 interfere unduly with the public right of freedom of transit in
14 commerce through the air space affected thereby, he or she shall
15 issue to the applicant a permit, required by section 3-403,
16 authorizing the erection and construction of such structure,
17 subject to such conditions as to marking and lighting as the
18 department may prescribe by its rules and regulations, authorized
19 by section 3-407. If he or she does not so determine, he or
20 she shall deny the application. In making such investigation,
21 aeronautical study, and determination, the director shall consider
22 (1) the character of flying operations expected to be conducted
23 in the area concerned, (2) the nature of the terrain, (3) the
24 character of the neighborhood, (4) the uses to which the property
25 concerned is devoted or adaptable, (5) the proximity to existing
26 airports, airways, control areas, and control zones, (6) the
27 height of existing, adjacent structures, and (7) all the facts

1 and circumstances existing. He or she shall impose only such
2 restrictions or requirements as may be reasonably necessary to
3 effectuate the purpose of sections 3-401 to 3-409 and section 4 of
4 this act.

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

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

12 Sec. 4. (1) A meteorological evaluation tower, the height
13 of which is at least fifty feet above the surface of the ground at
14 the point of installation, shall be marked according to subsection
15 (2) of this section. This section applies to a meteorological
16 evaluation tower that is located outside the corporate limits of a
17 city or village.

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

1 safety sleeves installed on each outer guy wire extending at least
2 fourteen feet above the anchor point of the guy wire.

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

14 (4) The owner of a tower described in subsection (1)
15 of this section that was erected prior to the effective date of
16 this act and which is either lighted, marked with balls at least
17 twenty-one inches in diameter, painted, or modified in some other
18 manner so it is recognizable in clear air during daylight hours
19 from a distance of not less than two thousand feet, shall mark
20 the tower as required by subsection (2) of this section within two
21 years after the effective date of this act or at such time as the
22 tower is taken down for maintenance or other purposes, whichever
23 comes first, except that the owner of a tower erected prior to the
24 effective date of this act which is not lighted, marked, painted,
25 or modified as described in this subsection shall mark such tower
26 as required by subsection (2) of this section within ninety days
27 after the effective date of this act. The registration requirements

1 of subsection (3) of this section shall be performed by the owner
2 of a tower erected prior to the effective date of this act within
3 fifteen business days after the effective date of this act.

4 (5) A material failure to comply with the marking and
5 registration requirements of this section shall be admissible as
6 evidence of negligence on the part of an owner of a meteorological
7 evaluation tower in an action in tort for property damage, bodily
8 injury, or death resulting from an aerial collision with such
9 unmarked or unregistered tower.

10 (6) The department may adopt and promulgate rules and
11 regulations for carrying out the purposes of this section.

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

14 3-406 The provisions of sections 3-403 to 3-405 shall
15 not apply to structures hereafter erected under the authority of
16 a license or permit issued by a federal agency or other state
17 agency now having specific statutory jurisdiction over the air
18 space, including authority to prohibit or regulate the height of
19 structures for the promotion of safety in aviation, nor to existing
20 structures. Nothing in sections 3-401 to 3-409 and section 4 of
21 this act shall be construed to limit or abridge any right, power,
22 or authority to zone property under the provisions of any other
23 law of this state or of the federal government except, that in the
24 event of any conflict between the regulations for height limits
25 of structures, lighting, and marking adopted under the provisions
26 of sections 3-401 to 3-409 and section 4 of this act, and any
27 other regulations applicable to the same area, the more stringent

1 limitation or requirement shall govern and prevail.

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

4 3-408 Any person, firm, or corporation (1) violating
5 any of the provisions of sections 3-401 to 3-409 and section 4
6 of this act, (2) submitting false information in the application
7 for a permit, (3) violating any rule or regulation adopted by
8 the Department of Aeronautics, ~~pursuant hereto,~~ ~~as authorized by~~
9 ~~section 3-407,~~ (4) failing to do and perform any act required
10 hereby, or (5) violating the terms of any permit issued pursuant
11 to the provisions of sections 3-401 to 3-409 and section 4 of
12 this act, shall be guilty of a Class III misdemeanor. Each day any
13 violation continues or any structure erected in violation of the
14 provisions of sections 3-401 to 3-409 and section 4 of this act
15 shall continue in existence, shall constitute a separate offense.

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

18 3-409 In addition to the penalties provided for by
19 section 3-408, the erection and maintenance of any structure
20 in violation of the provisions of sections 3-401 to 3-409 and
21 section 4 of this act may be enjoined by any court of competent
22 jurisdiction in an action for that purpose commenced by the
23 Department of Aeronautics or any other interested person. The
24 erection of such structure and permitting the same to stand or
25 remain, in violation of the provisions of sections 3-401 to 3-409
26 and section 4 of this act, is hereby declared to be a nuisance and
27 the department, or its authorized agent, is authorized to go upon

1 the premises and abate such nuisance by removing such structure
2 after five days' notice to the interested parties, to be served by
3 mail addressed to them at their last-known place of business or
4 residence. The expense incident to the removal of such structure
5 shall be paid by the owners thereof and if the department removes
6 such structures as provided in this section the expense incurred by
7 the department may be recovered from the sale of the structure or
8 its salvage material.

9 Sec. 12. The following section is outright repealed:
10 Section 66-1901, Revised Statutes Cumulative Supplement, 2012.

11 Sec. 13. Since an emergency exists, this act takes effect
12 when passed and approved according to law.

13 2. Renumber the remaining sections and correct the
14 repealer accordingly.