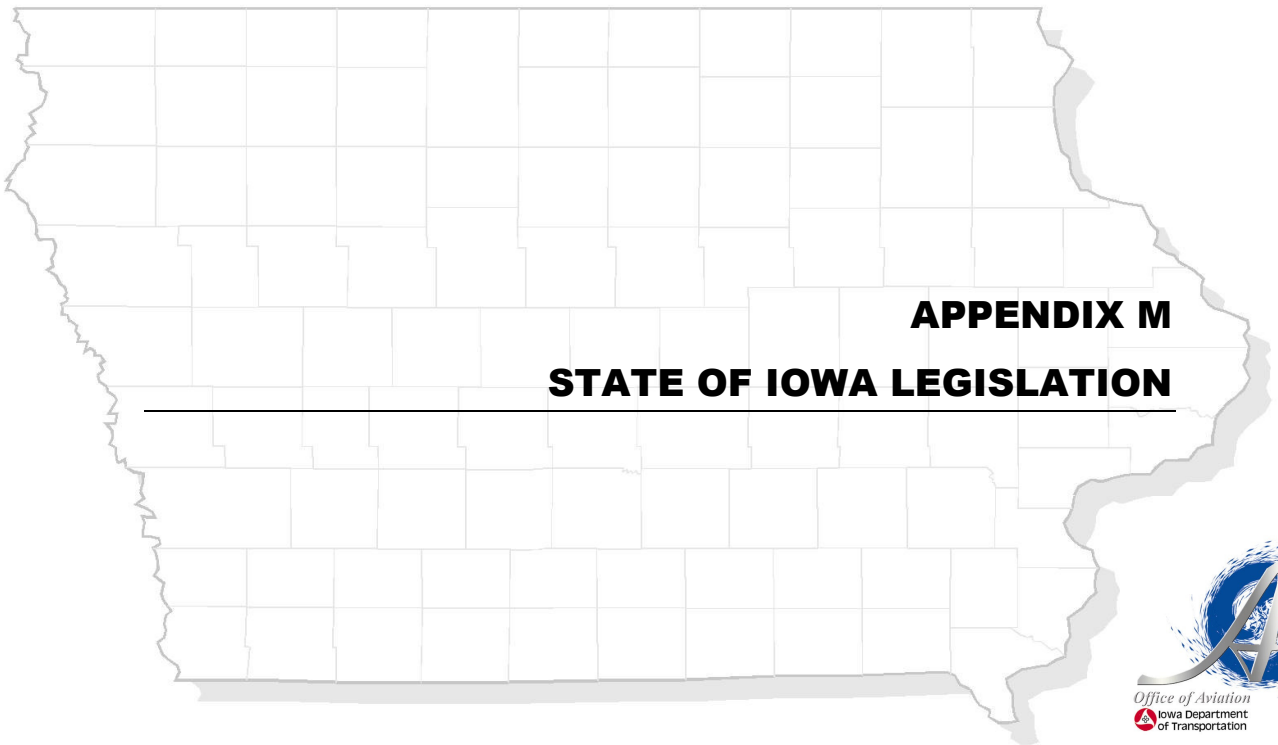




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APPENDIX M

STATE OF IOWA LEGISLATION





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Iowa Laws Related to Land Use

State of Iowa laws related to planning, environmental, and land acquisition issues are spread across a wide range of state statutes and administrative rules affecting aviation and airports. If additional information or resources are needed regarding specific issues or concerns contact the airport's legal counsel or the Iowa Department of Transportation Office of Aviation. Complete text of chapters for the Iowa Code can be found at the following web site. www.legis.state.ia.us

Planning and Design Related Regulations and Policies

This section includes state laws and policies relevant to land use compatibility and provides a summarization of the primary regulations. The sources listed below are not meant to be all inclusive, but rather a general summary and overview of resources relating to planning and design.

Iowa Code Chapter 28I, Metropolitan or Regional Planning Commissions

This chapter authorizes the creation of a joint planning commission, which may be designated as a metropolitan or regional planning commission, by the governing bodies of two or more adjoining cities and/or counties. Once formed, the joint planning commission will be separate from the governmental bodies that created it. The commission will have not less than five members, all of which will be appointed by the governing bodies of the area served by the commission. Section 28I.4 Powers and Duties, states that the commission shall have the authority to make and implement comprehensive studies and plans for the development of the area it serves to ensure a unified development plan as well as eliminate planning duplication. The plans for development may include, but are not limited to, recommendations for highways, bridges, airports, streets, parks, and public utilities.



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Iowa Code Chapter 329, Airport Zoning

- **329.2, Airport Hazards Contrary to Public Interest**

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

Accordingly, it is hereby declared:

1. That the creation or establishment of an airport hazard is a public nuisance and an injury to the community served by the airport in question.
2. That it is necessary in the interest of the public health, safety, and general welfare that the creation or establishment of airport hazards be prevented.
3. That this should be accomplished, to the extent legally possible, by proper exercise of the police power.
4. That the prevention of the creation or establishment of airport hazards, and the elimination, removal, alteration, mitigation, or marking and lighting of existing airport hazards are public purposes for which municipalities may raise and expend public funds, as an incident to the operation of airports, to acquire land or property interests therein.

- **329.3, Zoning Regulations, Powers Granted**

Every municipality having an airport hazard area within its territorial limits may adopt, administer, and enforce in the manner and upon the conditions prescribed by this chapter, zoning regulations for such airport hazard area, which regulations may divide such area into zones and, within such zones, specify the land uses permitted, and regulate and restrict, for the purpose of preventing airport hazards, the height to which structures and trees may be erected or permitted to grow.



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- **329.4, Extraterritorial Airport Hazard Areas**

When any airport hazard area appertaining to an airport owned or controlled by a municipality is located outside the territorial limits of said municipality:

1. *Ordinances.* The municipality owning or controlling the airport, and the municipality within which the airport hazard area is located, may by duly adopted ordinance adopt, administer, and enforce airport zoning regulations applicable to the airport hazard area.
2. *Petition to district court.* If the municipality within which is located such airport hazard area has failed or refused, within 60 days after demand has been made upon it by any municipality owning or controlling the airport, to adopt reasonably adequate airport zoning regulations under section 329.3, or to join in adopting joint airport zoning regulations as authorized in subsection 1 of this section, the municipality owning or controlling the airport may, upon a resolution of necessity therefore duly adopted by its governing body, petition the district court of the county in which such airport hazard area or any part thereof is located, in the name of the municipality owning or controlling the affected airport, praying that zoning regulations be established for the airport hazard area in question.
3. *Petition contents.* Such petition shall allege all essential facts showing the necessity for bringing such action, the relief sought including proposed zoning regulations, and the necessity therefore.
4. *Parties.* The parties defendant in such action shall be the municipality in which such airport hazard area is located, and all persons having an apparent or contingent interest in the property located within such area, who may be joined in said action generally as a class.



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5. *Procedure.* The action shall be triable in equity and in accordance with general rules of civil procedure, except that such action shall have precedence over any other business of the court except criminal cases, and the court shall set said petition for hearing not less than 60 days nor more than 120 days from the date it is filed with the clerk of said court.
6. *Notice.* The original notice in such action shall be served upon the municipality in which such airport hazard area is located, and in the same manner as original notice of any other action but not less than 30 days prior to the date set for trial; and upon all other defendants by the publication of said notice in some newspaper or newspapers of general circulation within the area described in the petition, or as near thereto as possible, which publication shall be in the same manner as provided for the publication of other original notices, provided, however, that the last publication thereof shall be not less than 30 days prior to the date set for trial.
7. *Decree and modification.* Upon trial the court may enter decree establishing such zoning regulations as it shall find reasonable and necessary. The court having once taken jurisdiction of such matter shall retain continuing jurisdiction thereof for such subsequent modification as it may deem advisable, upon proper application of interested parties, and due showing made thereunder after such notice to possible adverse parties as the court shall prescribe.
8. *Appeal.* Any person or municipality adversely affected or aggrieved by any findings of the court may appeal therefrom as in other civil actions.
9. *Enforcement.* Following the entry of any final decree by the district court, and unless appeal has been taken therefrom, the zoning regulations established by such decree may be enforced, and violations thereof punished, as provided by section 329.14.



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- **329.5, Prevention of Airport Hazards**

Any municipality owning or controlling an airport may maintain actions in equity to restrain and abate as nuisances the creation or establishment of airport hazards appertaining to said airport, in violation of any zoning regulations adopted or established pursuant to the provisions of this chapter for any area whether within or without the territorial limits of said municipality.

- **329.6, Zoning Powers**

If any municipality owning or controlling an airport adjacent to which there is an airport hazard area shall fail or refuse, within sixty days after demand made upon it by the department, to adopt reasonably adequate airport zoning regulations under section 329.3, or to proceed as provided in section 329.4, the department may petition the district court of the county in which such airport hazard area, or any part thereof, is located, in the name of the state, praying that zoning regulations be established for the airport hazard area in question, and the provisions of section 329.4, subsections 3 to 9, shall apply to such actions provided, however, that such municipality shall be joined as a party defendant in any such action. The department may maintain actions in equity to restrain and abate as nuisances the creation or establishment of airport hazards appertaining to any airport within the state, in violation of any zoning regulations adopted or established pursuant to the provisions of this chapter.

- **329.7, Relation to Comprehensive Zoning Regulations**

Any municipality which adopts zoning ordinances under chapter 414 or chapter 335 may incorporate therein airport hazard area zoning regulations and administer and enforce them as provided in this chapter.

- **329.8, Conflicting Regulations**

In the event of any conflict between any airport zoning regulations adopted or established under this chapter and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or trees, the use of land, or any other matter, the more stringent limitation or requirement shall govern and prevail.



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- **329.9, Procedure for Adopting Zoning Regulations -- Zoning Commission**

In adopting, amending, and repealing airport zoning regulations under this chapter the governing body of a city shall follow the procedure in sections 414.4 and 414.6 and the board of supervisors of a county shall follow the procedure in sections 335.6 and 335.8. The commission so appointed shall be known as the airport zoning commission. The airport zoning commission shall consist of two members from each municipality selected by the governing body and one additional member to act as chairperson and to be selected by a majority vote of the members selected by the municipality. The terms of the members of the airport zoning commission shall be for six years excepting that when the board is first created, one of the members appointed by each municipality shall be appointed for a term of two years and one for a term of four years. Members may be removed for cause by the appointing authority upon written charges after public hearing. Vacancies shall be filled for the unexpired term of any member whose office becomes vacant in the same manner in which the member was selected.

- **329.10, Airport Zoning Requirements**

1. All airport zoning regulations adopted under this chapter shall be reasonable and none shall impose any requirement or restriction which is not necessary to effectuate the purposes of this chapter.
2. a. Airport zoning regulations adopted under this chapter may require, at the municipality's expense, the removal, lowering, or other change or alteration of any structure or tree, or a change in use, not conforming to the regulations when adopted or amended.
b. Airport zoning regulations adopted under this chapter may require a property owner to permit the municipality at its own expense to install, operate, and maintain on the property markers and lights as necessary to indicate to operators of aircraft the presence of the airport hazard.



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3. All such regulations may provide that a pre-existing nonconforming structure, tree, or use, shall not be replaced, rebuilt, altered, allowed to grow higher, or replanted, so as to constitute a greater airport hazard than it was when the airport zoning regulations or amendments to the regulations were adopted.

- **329.11, Variances**

Any person desiring to erect or increase the height of any structure, or to permit the growth of any tree, or otherwise use the person's property in violation of airport zoning regulations adopted under this chapter, may apply to the board of adjustment for a variance from the zoning regulations. Such variances shall be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest, but would do substantial justice and be in accordance with the spirit of the regulations and this chapter; provided, however, that any such variance may be allowed subject to any reasonable conditions that the board of adjustment may deem necessary to effectuate the purposes of this chapter, including the reservation of the right of the municipality, at its own expense, to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to operators of aircraft the presence of the airport hazard.



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- **329.12, Board of Adjustment -- Creation -- Powers -- Duties**

The governing body of any municipality seeking to exercise powers under this chapter shall by ordinance provide for the appointment of a board of adjustment, as provided in section 414.7 for a city, or as provided in section 335.10 for a county. The board of adjustment has the same powers and duties, and its procedure and appeals are subject to the same provisions as established in sections 414.9 to 414.19 for a city, or sections 335.12 to 335.21 for a county. The concurring vote of a majority of the board shall be necessary to reverse any order, requirement, decision or determination of any administrative official or to decide in favor of the applicant on any matter upon which it is required to pass under any regulations adopted pursuant to this chapter or to effect any variance therefrom. The board of adjustment shall consist of two members from each municipality, selected by the governing body thereof, and one additional member to act as chairperson and to be selected by a majority vote of the members selected by the municipality. Members shall be removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose office becomes vacant in the same manner in which said member was selected. The terms of the members of the board of adjustment shall be for five years, excepting that when the board shall first be created, one of the members appointed by each municipality shall be appointed for a term of two years and one for a term of four years.

- **329.13, Administration of Airport Zoning Regulations**

All airport zoning regulations adopted under this chapter shall provide for the administration and enforcement of such regulations by an administrative agency, which may be an agency created by such regulations, or by any official, board, or other existing agency of the municipality adopting the regulations, or of one or both of the municipalities which participated therein, but in no case shall such administrative agency be or include any member of the board of adjustment. The duties of any administrative agency designated pursuant to this chapter shall not include any of the powers herein delegated to the board of adjustment.



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- **329.14, Enforcement and Remedies**

Each violation of this chapter or of any regulations, order, or rules promulgated pursuant to this chapter, shall constitute a simple misdemeanor and each day a violation continues to exist shall constitute a separate offense.

Iowa Code Chapter 335, County Planning and Zoning

This chapter authorizes counties to plan and zone their districts accordingly. Sections 335.3 Powers and 335.5 Objectives, speak directly to the ability of counties to regulate and restrict the height and location of structures. Further, this chapter states that regulations should be made in accordance with comprehensive plans and also facilitates transportation and other public requirements.

Iowa Code Chapter 352, County Land Preservation and Use Commissions

The intent of Chapter 352, County Land Preservation and Use Commissions is protecting agricultural land from nonagricultural development pressures. Chapter 352 outlines how counties can create land use preservation and use plans and policies to assure the preservation of agricultural land. Further, this chapter provides guidance on the use and development of land and natural resources which could impact transportation within the State.

Iowa Code Chapter 414, Municipal Planning and Zoning

This chapter authorizes any city to plan and zone their districts accordingly. Sections 414.1 Building restrictions and 414.3 Basis of regulations, state that any city may regulate the height, number of stories, and size of structures for the purpose of promoting the general welfare of the community. Regulations should be made in accordance with a comprehensive plan and also used to facilitate the provision of transportation.

Environmental Related Laws

This section includes state statutes relevant to environmental related land use compatibility and provides a summarization of the primary regulations. The sources listed below are not meant to be all inclusive, but rather a general summary and overview of resources relating to environmental constraints.



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Iowa Code Chapter 161A, Soil and Water Conservation

Section 161A.64, Erosion control plans required for certain projects, presents basic principles and performance standards for erosion control during construction and post-construction. The requirements for developing an erosion control plan are stated in the Iowa Department of Natural Resources' *Iowa Construction Site Erosion Control Manual*. The manual describes activities or structural controls that prevent or reduce pollutants from entering water bodies.

Iowa Code Chapter 455B, Jurisdiction of Department of Natural Resources

Chapter 455B, Jurisdiction of Department of Natural Resources is a comprehensive outline of the responsibilities and powers of the Iowa Department of Natural Resources. The Department's mission is to conserve and enhance Iowa's natural resources which include but are not limited to state parks and forests, protecting the environment, and managing energy, fish, wildlife, and land and water resources.

Iowa Code Chapter 481 B, Endangered Plants and Wildlife

Chapter 481 B, Endangered Plants and Wildlife authorizes the Iowa Department of Natural Resources to cooperate with the federal government in the conservation, protection, and artificial propagation of endangered and threatened species; designate a state list of endangered and threatened species; and review the state list at least every two years for possible changes. Further, the chapter indicates that no one is exempt from the implementation of these laws and provides the penalties for violations against the provisions.

Iowa Code Section 455B.131-160, Air Quality

These sections of Chapter 455B authorize the Iowa Department of Natural Resources to have jurisdiction over the atmosphere of the state to prevent, abate and control air pollution, by establishing standards for air quality and by regulating potential sources of air pollution through a system of general rules or specific permits. To fulfill these responsibilities, the Department has developed the Air Quality Bureau which manages programs to protect air quality in the state including issuance of construction and operating permits for sources of air contaminants, monitoring air quality, and testing emissions from sources.



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Iowa Code Section 455B.171-199, Water Quality

These sections of Chapter 455B charge the Iowa Department of Natural Resources with the responsibility of preventing, abating, or controlling water pollution and to conduct the public water supply program. To fulfill these responsibilities, the Department has developed the Water Quality Bureau which manages programs that include drinking water, wastewater and storm water discharge, industrial pretreatment, state loans for wastewater and drinking water system construction, water quality monitoring, flood plain management and dam safety.

Iowa Code Section 455B.261-290, Flood Plains

These sections of Chapter 455B authorize the Iowa Department of Natural Resources the ability to establish and enforce rules for the orderly development and wise use of the flood plains of any river or stream within the state and alter, change, or revoke the rules. To fulfill these responsibilities, the Department's Flood Plain Management Program administers a state flood plain permit program, works with communities and counties to develop and administer local flood plain management programs, coordinates the National Flood Insurance Program, administers the state's dam safety program, and assists the Federal Emergency Management Agency and the Iowa Emergency Management Division in responding to flood disasters.

Iowa Code Section 455B.301-330, Solid Waste

These sections of Chapter 455B state the responsibilities of the Iowa Department of Natural Resources to protect the health, safety, and welfare of Iowans, and the protection of the environment requires the safe and sanitary disposal of solid wastes. An effective and efficient solid waste disposal program protects the environment and the public, and provides the most practical and beneficial use of the material and energy values of solid waste.



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Further, these sections establish criteria for the expansion and/or development of new sanitary disposal projects with regard to airports. In part, it states that any nearby runway used or planned to be used by turbojet or piston-type aircraft at FAA certified airports must be depicted on a map or aerial photograph, and must complete a Form 50A (542-1542A). It goes further to state, *“When a new landfill or lateral expansion is located within 10,000 feet of any airport runway end used by turbojet aircraft or within 5,000 feet of any airport runway end used by only piston-type aircraft, the plan must contain a notice that the landfill’s official files will include the following demonstration: that the site is designed and will be operated so that it does not pose a bird hazard to aircraft. For any new site or a lateral expansion within a five-mile radius of any airport runway end used for turbojet or piston-type aircraft, the plan must show that the Federal Aviation Administration has been notified. For existing landfills located within 10,000 feet of any airport runway end used by turbojet aircraft or within 5,000 feet of any runway end used by only piston-type aircraft, the owner or operator must prepare the demonstration required above in this paragraph and notify the director that it has been placed in the facility’s official files.”*

Iowa Code Section 455B.411-440, Hazardous Waste and Substance Management

The purpose of these sections is to protect the public health and environment by providing a unified procedure involving all affected persons and agencies, for establishing appropriate sites and properly designed facilities for the treatment, storage and disposal of hazardous waste in Iowa. Emphasis on alternatives to land burial of hazardous waste shall be made whenever possible. It is encouraged that the proposed facility comply with applicable city, county or airport zoning requirements, and if not, the location of the proposed facility at the proposed site should be reasonably justified.

Iowa Code Section 455B.471-479, Underground Storage Tanks

These sections require the Iowa Department of Natural Resources to regulate underground storage tanks in order to prevent substances from underground storage tanks from being a threat to the public health and safety and to the natural resources of the state. The Department requires that all underground storage tanks be registered. These sections require release detection, prevention and correction methods that may be necessary to protect human health and the environment. These requirements are applicable to owners and operators of underground storage tanks.



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Iowa Code Chapter 456B, Special Provisions – Natural Resources Department

This chapter explains that the inventory process and protection of protected wetlands in Iowa. In Iowa and throughout the United States, wetlands are protected on public and private property. Contact should be made with local or regional zoning offices for general guidance and information, application forms for local zoning programs, review of wetland maps, assistance with wetland boundary determinations, and explanation of permitted uses.

Iowa Code Chapter 481A, Wildlife Conservation

This chapter charges the Iowa Department of Natural Resources with the responsibility of ensuring adequate protection, scientific management, and the appropriate use of Iowa's wildlife natural resources. To fulfill these responsibilities the Department has developed the Wildlife Bureau which manages public lands, assists private landowners with habitat improvement projects, and provides information about wildlife populations on local public lands.

Land Acquisition

This section includes state statutes relevant to land acquisition and provides a summarization of the primary regulations. The sources listed below are not meant to be all inclusive, but rather a general summary and overview of resources relating to land acquisitions.

Iowa Code Chapter 6A, Eminent Domain Law (Condemnation)/Chapter 6B, Procedure Under Eminent Domain

Chapters 6A and 6B authorize the state and counties or cities the power to condemn private property as may be necessary for any public improvement which is reasonable and necessary, as well as setting forth the procedures. Transportation projects are included as legally acceptable reasons for condemnation actions. Standards for condemnation include but are not limited to the written notice of a public hearing, requirement for a property appraisal, and a good faith offer of just compensation with the property owner before condemnation is allowed.



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Operational and Management Guidance

This section includes state statutes relevant to operational and management guidance and provides a summarization of the primary regulations. The sources listed below are not meant to be all inclusive, but rather a general summary and overview of resources relating to operational and management guidance.

Iowa Code Chapter 28E, Joint Exercise of Governmental Powers

Section 23E.1 Purpose, states this chapter's purpose is to permit state and local governments in Iowa to make efficient use of their powers by enabling them to provide joint services and facilities with other agencies. Further, it enables them to co-operate in other ways of mutual advantage. This chapter allows two or more counties and/or cities to enter into partnership with each other to share public facilities and services such as airports.

Iowa Code Chapter 303, Department of Cultural Affairs (Historic Preservation Districts)

Chapter 303, Department of Cultural Affairs, gives the Department the primary responsibility of developing of the state's interest in the areas of the arts, history, and other cultural matters. In fulfilling this responsibility, the Department is advised and assisted by two divisions: the State Historical Society of Iowa and its board of trustees, and the Iowa Arts Council. Developing standards and criteria for the acquisition of historic properties and for the preservation, restoration, maintenance, operation, and interpretation of properties are a few of the additional responsibilities of the Department of Cultural Affairs. Further, Chapter 303 enables any county or city to acquire by gift, purchase or condemnation any property rights in any real or personal historic property.



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Iowa Code Chapter 328, Aeronautics

Chapter 328, Aeronautics charges the Iowa Department of Transportation's Office of Aviation with promoting aeronautics in Iowa, providing airport safety inspections, providing technical services to airports in Iowa, enforcing aeronautical laws and minimum standards, and registering airports and aircraft in Iowa. This chapter goes on to authorize the Office of Aviation to receive and disburse federal funds for general aviation airports owned by counties or cities. The Office of Aviation, when acting as an agent of the federal government, will contract for all airport projects in which planning, construction, acquisition or improvements include federal or state funds, and the county or city owning the airport will select all consultants.

Iowa Code Chapter 330, Airports

This chapter begins by stating that before an airport is acquired by a county or city, the plans and specifications for it be submitted to the Iowa Department of Transportation's Office of Aviation which requires the legal description and plat of the site, distance from the nearest post office and railroad station, location and type of highways; location and type of obstructions on and near the site, kind of soil and subsoil, costs and details of grading and draining, and location of proposed runways, hangars, buildings, and other structures. The chapter states that any county or city is authorized to accept, receive, and receipt for federal moneys and other moneys, public or private, for the acquisition, construction, enlargement, improvement, maintenance, equipment, or operation of airports, and other air navigation facilities; and sites for general aviation airports and other navigation facilities, and to comply with the laws of the United States and any regulations for the expenditure of federal moneys upon airports and other air navigation facilities.

Iowa Code Chapter 330 also authorizes the creation of an airport commission by the council of any county or city, which owns or acquires an airport. The commission has all of the powers in relation to the airport granted to counties and cities under state law, except powers to sell the airport.

Iowa Code Chapter 330A, Airport Authorities

In addition to the creation of a commission, one or more municipalities are authorized to join together to create an airport authority for the purpose of managing and controlling an airport.



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761 Iowa Administrative Code Chapter 710, Airport Improvement Program

This administrative rule is intended to implement Iowa Code Chapter 328.12 Duties and powers and Chapter 330.13 Federal aid, which both speak to applying for state and federal monies. Chapter 710 establishes the procedures for a county or city to apply for state or federal funds for the improvement of airports and air navigation facilities. A county or city owning a public airport that is listed in the FAA's National Plan of Integrated Airport Systems (NPIAS) is eligible to apply for federal funds. Projects must meet the FAA eligibility guidelines for federal airport improvement projects. A county or city owning or establishing a public airport is eligible to apply to the Office of Aviation for state airport improvement funds. In order for an airport improvement project to be approved, it must benefit and be accessible to the public. Airport projects eligible for federal and state funding may include, but are not limited to: runway, taxiway, and apron surfaces; lighting and navigational aids; obstruction removal; grading, drainage, and surfacing airfield surfaces and protection areas; signage, security access control and lighting; planning; and land acquisition. A project that involves airfield infrastructure must comply with the airport master plan or airport layout plan as adopted by the county or city. 716 Iowa Administrative Code Chapter 710 can be found at web site.

http://nxtsearch.legis.state.ia.us/NXT/gateway.dll?qt=&f=templates&xhitlist_q=administrative+code&fn=default.htm&xhitlist_d=curleg

761 Iowa Administrative Code Chapter 720, Iowa Airport Registration

This administrative rule is intended to implement Iowa Code Chapter 328.19 Registration, which speaks to airport registration in Iowa. This chapter establishes site approval, registration and registration renewal requirements and minimum safety standards for airports open for use by the public. It also establishes site approval requirements for airports maintained for private use. A person or county/city planning to construct or establish an airport will obtain a certificate of airport site approval from the Iowa Department of Transportation's Office of Aviation before the site is acquired or before the airport is constructed or established. If and when an airport ceases operation for any reason, the sponsor must notify the Office of Aviation, return the registration certificate and mark the landing area to clearly indicate that the airport is closed to air traffic. 761 Iowa Administrative Code Chapter 720 can be found at web site.

http://nxtsearch.legis.state.ia.us/NXT/gateway.dll?qt=&f=templates&xhitlist_q=iowa+airport+registration&fn=default.htm&xhitlist_d=curleg