

TITLE 67. AERONAUTICS

CHAPTER 7. AIRPORT AFFECTED AREAS

Part 1. General Provisions

67-7-101. Short title. This chapter may be cited as the "Airport Compatibility Act".

History: En. Sec. 3, Ch. 300, L. 2005.

67-7-102. Legislative finding and purpose. The legislature finds that tall trees and structures and certain types of development located in the vicinity of airports endanger the lives and property of users of the airport and of occupants of land in its vicinity. The legislature also finds that the location of tall trees and structures and certain types of development near airports reduces the area available for landing, taking off, and maneuvering aircraft and increases the likelihood of legal action against a local government for noise nuisance, thus destroying the utility of the airports and the public investment in them. It is the purpose of this chapter to promote the public health, safety, and general welfare by the delineation of an airport affected area and by the development of compatible noise, height, and land use regulations to control airport hazards. 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 political subdivisions may raise and expend public funds and in which political subdivisions may acquire land or property interests.

History: En. Sec. 4, Ch. 300, L. 2005.

67-7-103. Definitions.

- (1) Except as provided in subsection (2)(b), the definitions in 67-1-101 apply to this chapter.
- (2) In this chapter, the following definitions also apply:
 - (a) "Airport affected area" means the land and space above the ground surface of an airport in the proximity of the airport, the use of which may be affected by the airport's existence, including the areas described in 14 CFR, part 77.
 - (b) "Governing body" means a city commission, town council, county commission, or the commissioners of a municipal or regional airport authority.

History: En. Sec. 5, Ch. 300, L. 2005.

Part 2. Designation and Regulation of Airport Affected Areas

67-7-201. Designation of airport affected area -- regulations required -- maps and descriptions required -- public hearing required -- effect of designation.

(1) Subject to the provisions of subsection (5), a governing body of a political subdivision that owns or controls an NPIAS airport or that has an airport affected area for an NPIAS airport within its territorial limits or a joint board established pursuant to 67-7-202 shall, by ordinance or resolution, exercising its police power:

- (a) designate an airport affected area within 1 year of April 19, 2005;
- (b) concurrently adopt regulations for the airport affected area that comply with 67-7-203; and
- (c) administer and enforce the regulations that are adopted.

(2) A governing body of a political subdivision that owns or controls a non-NPIAS airport or that has an airport affected area for a non-NPIAS airport within its territorial limits or a joint board established pursuant to 67-7-202 may, by ordinance or resolution, exercising its police power, designate an airport affected area. If the governing body or joint board makes the designation, it shall concurrently adopt regulations for the airport affected area that may comply with 67-7-203 and shall administer and enforce the regulations.

(3) The airport affected area may not be less than 10,000 feet from the thresholds of each runway or less than 1 mile wide on each side of each runway unless evaluations for a specific runway show that the accident data justifies a lesser area. A greater area may be regulated as an airport affected area if:

- (a) studies have been conducted in accordance with 14 CFR, part 150, maps of the area have been prepared, and a program has been approved by the federal aviation administration; or
- (b) the governing body intends to protect imaginary surfaces as provided in 14 CFR, part 77.

(4) The designation must be accompanied by maps and legal descriptions of the airport affected area. The maps must be filed with the clerk and recorder of each affected county and with the clerk of each affected city or town.

(5)

- (a) Before a governing body designates an airport affected area and adopts or amends regulations governing the airport affected area, the governing body shall hold at least one public hearing.
- (b) The notice of the public hearing must be published as provided in 7-1-2121 if the governing body is a county commission or the commissioners of a regional airport authority and as provided in 7-1-4127 if the governing body is a city commission, a town council, or the commissioners of a municipal airport authority.

(6) After the designation of an airport affected area, a person may not recover from a local government, an airport authority, an airport operator, or an airport owner damages caused by noise, fumes, vibrations, light, or any other effects from normal and anticipated normal airport operations.

History: En. Sec. 6, Ch. 300, L. 2005.

67-7-202. Joint airport affected area regulation board authorized -- may adopt regulations.

(1) If an airport affected area is located outside of the jurisdictional area of the governing body of the political subdivision that owns or controls the airport, the governing body of the political subdivision that owns or controls the airport and the governing body of the political subdivision within which the airport affected area is located may by ordinance or resolution create a joint airport affected area regulation board.

(2) The joint board may adopt, administer, and enforce airport affected area regulations, as provided in 67-7-201, subject to the provisions of 67-7-203.

(3) The joint board must have two members appointed by the governing body of each political subdivision participating in its creation, and a presiding officer must be elected by a majority of the members appointed. The members of the joint board who are appointed shall select an additional at-large member who resides in the county in which the airport is located.

(4) If, in the judgment of the governing body of the political subdivision that owns or controls an airport, the governing body of the political subdivision that contains the airport affected area has failed to adopt or enforce reasonably adequate airport affected area regulations for the airport affected area and if the governing body of the political subdivision that contains the airport affected area has refused to join in creating a joint board under this section, the governing body of the political subdivision that owns or controls the airport may adopt, administer, and enforce airport affected area regulations for the airport affected area. The regulations adopted by the governing body of the political subdivision that owns or controls the airport prevail if a conflict arises between regulations adopted by that governing body and the governing body of the political subdivision that contains the airport affected area.

History: En. Sec. 7, Ch. 300, L. 2005.

67-7-203. Airport affected area regulations -- contents.

(1) Subject to the provisions of 67-7-209, regulations adopted for the airport affected area must be reasonable, be designed to promote the public health, safety, and general welfare, and, for an NPIAS airport, at a minimum, give consideration to:

- (a) the safety of airport users and persons and property in the vicinity of the airport;
- (b) the character of the flying operations conducted or expected to be conducted at the airport;
- (c) the nature of the terrain;
- (d) the future development of the airport; and
- (e) federal aviation administration recommendations for the aeronautical surfaces necessary for safe flying operations.

(2) Airport affected area regulations may:

- (a) designate the airport or airports that are subject to the regulations, with a description of existing and future runways and approaches;
- (b) define the terms used in the regulations based on the definitions provided in Title 67 and 14 CFR, part 77;
- (c) describe the airport affected area by referencing maps and describing existing airport hazards and natural terrain that intrude into the airport affected area;
- (d) designate and describe zones within the airport affected area, along with the height limitations for structures and trees within each zone, considering local conditions and needs, as well as the notice requirements and obstructions standards provided in 14 CFR, part 77;
- (e) show the contours for decibel levels of 65 YDNL or greater on the maps that designate an airport affected area, if a study has been conducted pursuant to 14 CFR, part 150, and require that information to be considered by anyone who builds within the airport affected area;

- (f) specify permitted and conditional uses within each zone of the airport affected area by addressing:
 - (i) incompatible land uses, such as uses for residences, schools, hospitals, day-care centers, or other concentrations of people indoors or outdoors;
 - (ii) the land uses that are considered incompatible with certain noise levels, as provided in 14 CFR, part 150;
 - (iii) bird attractants such as solid waste disposal sites and lagoons;
 - (iv) sources of electromagnetic radiation that may interfere with electronic navigational aids;
 - (v) lights other than navigational aids that glare upward or shine on or in the direction of the airport; and
 - (vi) the national transportation safety board's accident investigation data in the vicinity of airports and specific accident data for a particular airport, if that information is available;
- (g) define nonconforming uses, measures to be taken to mitigate the nonconforming uses, and the expiration of the uses in accordance with this chapter;
- (h) provide for an inventory of existing land uses, structures, and trees within the airport affected area;
- (i) expand on the permit system provided pursuant to 67-7-212 for changes to existing land uses, including changes that affect structures or trees, and for new land uses, structures, or trees;
- (j) subject to the provisions of 67-7-303, provide a variance procedure from the literal application of the regulations, including the conditions for granting a variance; and
- (k) establish or designate local boards, commissions, or agents to administer and adjudicate interpretations of the regulations.

History: En. Sec. 8, Ch. 300, L. 2005.

67-7-204. State lands. When an airport affected area lies partially or entirely on state-owned lands, the department of natural resources and conservation shall administer the affected lands in conformance with the airport affected area regulations adopted by the local governing body.

History: En. Sec. 9, Ch. 300, L. 2005.

67-7-205 through 67-7-207 reserved.

67-7-208. Procedure for developing or amending regulations -- assistance from existing boards or zoning commissions.

(1) In adopting, amending, and repealing airport affected area regulations under this chapter, a governing body or a joint airport affected area regulation board may request the assistance of existing planning boards or zoning commissions.

(2) If a political subdivision does not have an existing planning board or zoning commission to assist with recommendations for airport affected area regulations, the governing body may:

- (a) request that an existing airport board recommend the boundaries of the airport affected area and the various zones to be established and the regulations that will govern the airport affected area; or
- (b) act without assistance of an airport board, planning board, or zoning commission.

(3) If a governing body or joint airport affected area regulation board uses a separate airport board, planning board, or zoning commission to assist the governing body or joint board in designating the airport affected area and establishing regulations to govern the airport affected area, the airport board, planning board, or zoning commission shall make a preliminary report and hold public hearings on the report before submitting its final report to the governing body or joint board. The governing body or joint board may not hold a public hearing or take action on the regulations until it has received the final report from the airport board, planning board, or zoning commission.

History: En. Sec. 10, Ch. 300, L. 2005.

67-7-209. Prior nonconforming uses.

(1) All regulations adopted under this chapter must be reasonable and may not require the removal or alteration of any structure or tree or require cessation or alteration of a use that is lawfully in existence when the regulations become effective. Those structures, trees, or uses must be treated as prior nonconforming structures, trees, or uses that may remain or continue, but regulations may prohibit their expansion or their reconstruction or replacement following destruction or substantial damage. For the purposes of this section, "substantial damage" has occurred when 80% or more of a structure or tree is deteriorated or decayed or has been torn down or destroyed.

(2) The regulations may require that trees in place at the time that the regulations take effect be maintained by the political subdivision, at its expense, at heights attained at that time.

(3) The regulations may require the owner of structures or trees to permit the political subdivision, at its expense, to install, operate, and maintain the lights and markers necessary to warn pilots of the presence of an airport hazard.

(4) Land in existing residential subdivisions or platted for residential subdivision at the time that regulations are adopted may continue to be used for residential purposes, subject to notification provided to property owners that the lots are within an adopted airport affected area.

History: En. Sec. 11, Ch. 300, L. 2005.

67-7-210. Acquisition of property rights when regulations not sufficient. The political subdivision within which a property or nonconforming use is located or the political subdivision owning the airport or served by the airport may acquire, by purchase, grant, or condemnation pursuant to Title 70, chapter 30, an air right, aviation easement, or other estate or interest in the property or nonconforming structure or use that is necessary to effectuate the purposes of this chapter. The governing body of the political subdivision may acquire an interest when:

(1) it is desirable to remove, lower, or otherwise terminate a nonconforming structure or use;

(2) the necessary approach protection cannot, because of constitutional limitations, be provided by airport affected area regulations under this chapter; or

(3) it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport affected area regulations.

History: En. Sec. 12, Ch. 300, L. 2005.

67-7-211. Regulations relative to zoning ordinances.

(1) Subject to the provisions of subsections (2) and (3), if a governing body has adopted a zoning ordinance or resolution, any regulations adopted under this chapter may be made a part of the zoning ordinance or resolution and may be administered and enforced in connection with it.

(2) The zoning ordinance or resolution may not limit the effectiveness or scope of the regulations adopted pursuant to this chapter.

(3) When a conflict exists between the regulations adopted pursuant to this chapter and any zoning ordinances or resolutions applicable to the same area that the regulations are intended to govern, the more stringent limitation or requirement prevails.

History: En. Sec. 13, Ch. 300, L. 2005.

67-7-212. Permit system.

(1) The regulations adopted pursuant to this chapter must provide for a permit system for erecting new structures or trees, changing uses of land or structures, and substantially altering, repairing, or replacing existing structures or replacing existing trees within the airport affected area.

(2) A permit may not be granted that would allow the establishment of an airport hazard or that would allow a nonconforming use, structure, or tree to become a greater hazard to air navigation than it was on the effective date of the designation of the airport affected area and the regulations adopted to protect the airport affected area.

(3) A permit granted pursuant to this chapter may require the owner of a structure or tree to allow the governing body, at the owner's expense, to install, operate, and maintain the lights and markers necessary to warn pilots of the presence of an airport hazard.

History: En. Sec. 14, Ch. 300, L. 2005.

Part 3. Enforcement and Variances

67-7-301. Enforcement. The governing body or its designated agent or agency is responsible for enforcing the regulations adopted pursuant to this chapter. The regulations must provide for an enforcement officer and an appeal process from the decision of the enforcement officer, who may be an existing employee of the local government.

History: En. Sec. 15, Ch. 300, L. 2005.

67-7-302. Appeals.

(1) The governing body that designated the airport affected area shall act as an airport appeals board or appoint an airport appeals board that functions in the same manner as a board of adjustment provided for in Title 76, chapter 2. If the governing body appoints an airport appeals board, the board must have at least three members.

(2) The provisions of 76-2-223 and 76-2-225 through 76-2-228 apply to the governing body of a county or an airport appeals board appointed by that governing body and the provisions of 76-2-323 and 76-2-325 through 76-2-328 apply to the governing body of a municipality or an airport appeals board appointed by that governing body when considering grievances relating to regulations, variances, or permits

(3) If a governing body has appointed a board of adjustment under the provisions of 76-2-221 through 76-2-228 or 76-2-321 through 76-2-328, the governing body may designate the members of that board as the airport appeals board, in which case the terms of the members for the purposes of this chapter are concurrent with their terms as members of the board of adjustment.

History: En. Sec. 16, Ch. 300, L. 2005.

67-7-303. Variance.

(1) A person intending to erect or increase the height of a structure, permit the growth of a tree, or use property in a manner that is not in accordance with the requirements of the regulations adopted pursuant to this chapter may apply to the governing body or an enforcement officer appointed for this purpose by the governing body for a variance from the regulations.

(2) If an enforcement officer has been appointed by the governing body, the decision of the officer is final unless it is appealed to either the governing body or the airport appeals board, if one exists.

(3) A variance must be granted when a literal application or enforcement of the regulations would result in substantial practical difficulty or unnecessary hardship and when the variance would not be contrary to the public interest.

(4) A variance must be granted for a nonconforming use when there is no immediate hazard to safe flying operations or to persons and property in the vicinity of the airport and when the noise or vibrations from normal and anticipated normal airport operations would not be likely to cause damage to structures.

(5) A variance granted under this section may require the owner of a structure or tree to allow the political subdivision, at the owner's expense, to install, operate, and maintain the lights and markers necessary to warn pilots of the presence of an airport hazard.

(6) A person who builds a structure pursuant to a variance from the airport affected area regulations or who takes or buys property in an airport affected area for which a variance has been granted is on notice that the airport existed before the variance was granted and that normal and anticipated normal operations of the airport will result in noise, vibrations, and fumes being projected over the property. A person using a structure built pursuant to a variance may not collect damages from a governing body or local government or from an airport authority, airport operator, or airport owner for interference with the enjoyment of that structure caused by noise, vibrations, and fumes from normal and anticipated normal airport operations.

History: En. Sec. 17, Ch. 300, L. 2005.

67-7-304. Penalty. A person who violates the provisions of this chapter or the regulations adopted under 67-7-203 is subject to a civil penalty and a criminal penalty. The civil penalty is a fine of \$100 for each day that the violation is not remedied after the governing body has given notification of the violation and held a hearing on the violation. The criminal penalty is a fine of \$500, pursuant to 45-2-104.

History: En. Sec. 18, Ch. 300, L. 2005.

67-7-305. Injunction. A local governing body may institute in any court of competent jurisdiction an action to prevent, restrain, correct, or abate any violation of this chapter or the regulations adopted pursuant to this chapter.

History: En. Sec. 19, Ch. 300, L. 2005.

TITLE 7. LOCAL GOVERNMENT, CHAPTER 1. GENERAL PROVISIONS**Part 21. Counties**

7-1-2121. Publication and content of notice -- proof of publication. Unless otherwise specifically provided, whenever a local government unit other than a municipality is required to give notice by publication, the following applies:

- (1) Publication must be in a newspaper meeting the qualifications of subsections (2) and (3), except that in a county where a newspaper does not meet these qualifications, publication must be made in a qualified newspaper in an adjacent county. If there is no qualified newspaper in an adjacent county, publication must be made by posting the notice in three public places in the county, designated by resolution of the governing body.
- (2) (a) The newspaper must:
 - (i) be of general circulation;
 - (ii) be published at least once a week;
 - (iii) be published in the county where the hearing or other action will take place; and
 - (iv) have, prior to July 1 of each year, submitted to the clerk and recorder a sworn statement that includes:
 - (A) circulation for the prior 12 months;
 - (B) a statement of net distribution;
 - (C) itemization of the circulation that is paid and that is free; and
 - (D) the method of distribution.
- (b) A newspaper of general circulation does not include a newsletter or other document produced or published by the local government unit.
- (3) In the case of a contract award, the newspaper must have been published continuously in the county for the 12 months preceding the awarding of the contract.
- (4) If a person is required by law or ordinance to pay for publication, the payment must be received before the publication may be made.
- (5) The notice must be published twice, with at least 6 days separating each publication.
- (6) The published notice must contain:
 - (a) the date, time, and place of the hearing or other action;
 - (b) a brief statement of the action to be taken;
 - (c) the address and telephone number of the person who may be contacted for further information on the action to be taken;
 and
 - (d) any other information required by the specific section requiring notice by publication.
- (7) A published notice required by law may be supplemented by a radio or television broadcast of the notice in the manner prescribed in 2-3-105 through 2-3-107.
- (8) Proof of the publication or posting of any notice may be made by affidavit of the owner, publisher, printer, or clerk of the newspaper or of the person posting the notice. **History:** En. Sec. 1, Ch. 349, L. 1985; amd. Sec. 1, Ch. 354, L. 2001; amd. Sec. 1, Ch. 444, L. 2005; amd. Sec. 1, Ch. 439, L. 2007.

Part 41. Municipalities

7-1-4127. Publication of notice -- content -- proof. (1) When a municipality is required to publish notice, publication must be in a newspaper, except that in a municipality with a population of 500 or less or in which no newspaper is published, publication may be made by posting in three public places in the municipality which have been designated by ordinance.

- (2) The newspaper must be:
 - (a) of general paid circulation with a periodicals mailing permit;
 - (b) published at least once a week; and
 - (c) published in the county where the municipality is located.
- (3) In the case of a contract award, the newspaper must have been published continuously in the county for the 12 months preceding the awarding of the contract.
- (4) In a county where no newspaper meets these qualifications, publication must be made in a qualified newspaper in an adjacent county.
- (5) If a person is required by law or ordinance to pay for publication, the payment must be received before the publication may be made.
- (6) The notice must be published twice, with at least 6 days separating each publication.
- (7) The published notice must contain:
 - (a) the date, time, and place of the hearing or other action;
 - (b) a brief statement of the action to be taken;
 - (c) the address and telephone number of the person who may be contacted for further information on the action to be taken;
 and
 - (d) any other information required by the specific section requiring notice by publication.
- (8) A published notice required by law may be supplemented by a radio or television broadcast of the notice in the manner prescribed in 2-3-105 through 2-3-107.
- (9) Proof of the publication or posting of any notice may be made by affidavit of the owner, publisher, printer, or clerk of the newspaper or of the person posting the notice. **History:** En. Sec. 3, Ch. 455, L. 1979; amd. Sec. 3, Ch. 354, L. 2001.