# Explanation of SB 255

**Sen. Gebhardt, Reps. A. Olson/Wells, sponsors**

Title 67 contains Chapters 4, 5 and 6, each of which addresses control of land and structures around airports. Chapter 4 was enacted in 1977 and is mandatory, Chapter 5 was enacted in 1939 and has been largely ignored and Chapter 6, Airport Zoning, was enacted in 1947 before county zoning had been authorized.

An issue about the relevance and interrelationship of these three chapters occurred when a county attorney refused to sign a Certificate of Sponsor's Attorney for Montana Aeronautics because he could not certify the regulations drafted for the airports in his county complied with all three of these chapters. Most counties are reluctant to zone, and cannot comply with Chapter 6.

With this bill, the Montana Association of Counties is proposing Chapters 4, 5 and 6 be repealed, that the definitions be revised and updated, and the best of each of these chapters be enacted into a new chapter which is mandatory to protect airports on the National Plan of Integrated Airport Systems (about 70 airports in Montana, including the larger ones) and permissive for the smaller airports.

The following table explains the interrelationship between the proposed bill and existing law:

| Section in SB 255 | Section(s) in Existing Law |
|---|---|
| Section 1 | This is necessary to remove the term "landing fields" from other places in the code. |
| Section 2, **Definitions** | 67-1-101, **Definitions** |
| Section 3, **Short title** "Airport Compatibility Act" | New |

EXHIBIT 1
DATE 1.17.05
SB 255

| **Section in SB 255** (con't) | **Section(s) in Existing Law** (con't) |
|---|---|
| Section 4, **Legislative finding and purpose** | 67-4-101 and 67-6-102, **Legislative finding and purpose** |
| Section 5, **Definitions (specific to the new chapter)** | New, defines **Airport Affected Area ("AAA")** |
| Section 6 (1)–addresses NPIAS airports | 67-4-203, **Development of criteria for regulations of influence area**; 67-6-201, **Airport zoning power** |
| Section 6 (2)–addresses non-NPIAS airports for which an AAA and regulations are permissive, not mandatory. | *See* above for NPIAS. |
| Section 6 (3)–designates the size of the AAA, but allows adjustment | 67-4-201 (1), **Designation of airport influence area.** The maximums in this code section are now minimums in the new law. |
| Section 6 (4)–requires maps and legal description of the AAA be filed with the county and city. | 67-4-201 (2), **Designation of airport influence areas**. [Did not require legal description] |
| Section 6 (5) (a)–requires a hearing before the AAA is designated and regulations are adopted | 67-4-201 (1), **Designation of airport influence area;** 67-4-302, **Rulemaking–notice and hearing** |
| Section 6 (5) (b)–sets forth the notice for the hearing | New, but based on 67-4-302. **Rulemaking–notice and hearing.** |
| Section 6 (5)(6)–provides for immunity for effects from the airport | 67-4-202. **Temporary effect of designation.** |
| Section 7, Joint AAA regulation board authorized | 67-6-201 (2) and (3). **Airport zoning power.** |
| Section 8 (1) (a)-(e)–mandatory requirements for regulations for NPIAS airports | 67-4-203, **Development of criteria for regulations of influence area**; 67-6-203 (1), **Airport zoning regulations – requirements.** |

| **Section in SB 255** (con't) | **Section(s) in Existing Law** (con't) |
|---|---|
| Section 8 (2) (a)-(l)–permissive items to be addressed in AAA regulations | New. Derived from regulations being drafted by consultants around the state. Subsections (2)(d) and (2)(e) are from 67-6-201(1), **Airport zoning power.**. |
| Section 9, **State lands.** | 67-4-211, **State lands.** |
| Section 10, **Procedure for developing or amending regulations–assistance from existing boards or commissions.** | 67-6-202 , **Airport zoning regulations–procedure–commission,** as guide, with modifications for counties. |
| Section 11, **Prior nonconforming uses.** | 67-4-303, **Rules to be reasonable–prior nonconforming uses;** 67-6-207, **Permits–variances** |
| Section 12, **Acquisition of property rights when regulations not sufficient.** | 67-5-202, **Regulation or existing structures–power of acquisition**; 67-6-301, **Acquisition of property rights when zoning not sufficient.** |
| Section 13, **Regulations relative to zoning ordinances.** | 67-4-304, **Rules relative to zoning ordinances**. |
| Section 14, **Permit system.** | 67-4-311, **Permit system**; 67-6-207 (1), **Permits–variances.** |
| Section 15, **Enforcement**. | 67-5-211, **Enforcement**; 67-6-205, **Airport zoning regulations–administration** |
| Section 16, **Appeals**. | 67-4-312, **Board of adjustment,** ; 67-6-206, **Board of adjustment.** |
| Section 17, **Variance**. | 67-4-313, **Variance**; 67-6-207, **Permits–variances.** |
| Section 18. **Penalty.** | 67-4-401, **Penalty.** |
| Section 19. **Injunction.** | 67-4-402, **Injunction.** |

Sections 21 through 28 make changes in existing law, consistent with the above; Section 29 repeals existing Chapters 4, 5 and 6; Section 30 is administrative; Section 31 makes the new law effective on passage and approval, rather than on October 1, 2005; and Section 32 grandfathers in airport influence areas and regulations adopted pursuant to existing law.

Section 32 specifically says, except for the definitions, the new law does not apply to a governing body that had expended funds to begin the process of designating or had already designated an airport influence area or that had established a zoning district and airport zoning regulations before this law, and it can use the existing law as a guide. However, if a governing body alters an existing airport influence area or amends its regulations, then the new law applies.

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# TITLE 67

## AERONAUTICS


Ch.
1. General Provisions.
2. Department of Transportation — Aeronautical Powers and Duties.
3. Regulation and Licensing.
4. Noise, Height, and Land Use Regulation.
5. Airport Hazard Regulation.
6. Airport Zoning Act.
Chapters 7 through 9 reserved.
10. Municipal Airports.
11. Airport Authorities.


## CHAPTER 1
## GENERAL PROVISIONS


**Part 1 — Definitions and Policy**

67-1-101. Definitions.
67-1-102. Policy.
67-1-103. Board of aeronautics.
67-1-104. Governmental nature of aeronautical functions.
67-1-105. Penalties.

**Part 2 — Uniform Principles**

67-1-201. Short title.
67-1-202. State sovereignty in space.
67-1-203. Spatial ownership.
67-1-204. Lawfulness of flight and landings.
67-1-205. Penalties.
67-1-206. Interpretation.
67-1-207 through 67-1-210 reserved.
67-1-211. Alcohol concentration standards — evidence admissible — administration of tests.

**Part 3 — Finance**

67-1-301. Money — receipt and disbursement.
67-1-302. Industrial revenue projects.
67-1-303. Airline property tax — state airports.
67-1-304. Airport grants and loans.
67-1-305. Terminated.
67-1-306. Special aeronautical loan account.
67-1-307. Aeronautical loans.


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### Part 1
### Definitions and Policy

**67-1-101. Definitions.** Unless the context requires otherwise, in this title the following definitions apply:

(1) "Aeronautics" means 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, restricted landing areas, or other air navigation facilities; and air instruction.

(2) "Aeronautics instructor" means an individual engaged in giving instruction or offering to give instruction in aeronautics, either in flying or ground subjects, or both, for hire or reward, without advertising that occupation, without calling the facilities an "air school" or

anything equivalent to an "air school", and without employing or using other instructors. It does not include an instructor in a public school or university of this state or an institution of higher learning accredited and approved for carrying on collegiate work while engaged in duties as an instructor.

(3) "Air carrier" means a person or corporation owning, controlling, operating, or managing aircraft as a scheduled common carrier of passengers or freight for compensation within this state.

(4) "Aircraft" means a contrivance used or designed for navigation of or flight in the air.

(5) "Aircrew" includes an 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; an individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft engines, propellers, or appliances except for an individual employed outside the United States, an individual employed by a manufacturer of aircraft, aircraft engines, propellers, or appliances to perform duties as inspector or mechanic in connection with them, and an individual performing inspection or mechanical duties in connection with aircraft owned or operated by the individual; and an individual who serves in the capacity of aircraft dispatcher or air traffic control tower operator.

(6) "Air instruction" means the imparting of aeronautical information by an aeronautics instructor or in or by an air school or flying club.

(7) "Air navigation" means the operation or navigation of aircraft in the air space over this state or upon an airport or restricted landing area within this state.

(8) "Air navigation facility" means a facility used in, available for use in, or designed for use in aid of air navigation, including airports, restricted landing areas, and structures, mechanisms, lights, beacons, marks, 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 or restricted area and any combination of these facilities.

(9) "Airport" means an area of land or water, except a restricted landing area, that is designed for the landing and takeoff of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft or for receiving or discharging passengers or cargo, and all appurtenant areas used or suitable for airport buildings or other airport facilities and all appurtenant rights-of-way.

(10) "Airport and landing field" means any area of land or water, or both, that is used or is made available for the landing and takeoff of aircraft, owned, leased, controlled, operated, or maintained by the United States, the state of Montana, or any county or municipality or any of the authorized agencies or branches of a county or municipality within the state of Montana.

(11) "Airport authority" or "authority" means a regional airport authority or municipal airport authority created under chapter 11 and the governing body of a municipality that has determined to exercise the powers of a municipal airport authority under 67-11-102.

(12) "Airport hazard" means a structure, object of natural growth, or use of land that obstructs the air space required for the flight of aircraft in landing or taking off at an airport or restricted landing area or is otherwise hazardous to landing or taking off.

(13) "Airport hazard area" means any area of land or water upon which an airport hazard might be established if not prevented as provided in this title.

(14) "Airport protection privileges" means easements through or other interests in air space over land or water, interests in airport hazards outside the boundaries of airports or restricted landing areas, and other protection privileges, the acquisition or control of which is necessary to ensure safe approaches to the landing areas of airports and restricted landing areas and the safe and efficient operation of airports or restricted landing areas.

(15) "Air school" means a person engaged in giving or offering to give instruction in aeronautics, either in flying or ground subjects, or both, for or without hire or reward, and advertising or representing to the public that the person gives or offers to give that instruction. It does not include a public school or university of this state or an institution of higher learning accredited and approved for carrying on collegiate work.

(16) "Board" means the board of aeronautics provided for in 2-15-2506.



(17) "Bonds" means bonds, notes, interim certificates, debentures, or similar obligations issued by an authority under chapter 11.

(18) "Building or structure" means any edifice, structure, or construction of any kind, character, or description and any object of natural growth erected, constructed, grown, located or proposed to be erected, constructed, grown, or located within the area described in 67-5-201 hereof as safety zones, including any edifice, structure, or construction or object within the restricted zones erected, constructed, placed, or located on or over land or water, or both.

(19) "Civil aircraft" means an aircraft other than a public aircraft.

(20) "Commercial air operator" means any person owning, controlling, operating, or managing aircraft for any commercial purpose for compensation.

(21) "Department" means the department of transportation provided for in Title 2, chapter 15, part 25.

(22) "Established perimeter of an airport or landing field", for the purposes of computing all distances and elevations as contemplated by chapter 5, is the metes and bounds and elevations along the respective sides of the airport or landing field as determined by the United States government, the state of Montana, a county, a municipality, or any other public authority owning, leasing, controlling, operating, or maintaining the airport or landing field. The determination and definition must be evidenced by a plat showing the metes and bounds and elevations that must be filed in the records of the public authority for official purposes and subject to inspection and examination at all reasonable times by any interested persons.

(23) "Flying club" means a person other than an individual that, neither for profit nor reward, owns, leases, or uses one or more aircraft for the purpose of instruction or pleasure, or both.

(24) "Governing body" means a city commission, town council, or county commission and the boards, departments, and divisions of those entities, by whatever name they are known, that have charge of finances and management of a municipality or a county.

(25) "Height of buildings and structures" means, for the purposes of chapter 5, the vertical distance measured from the ground or surface level of the airport or landing field on the side adjacent to the building or structure to the level of the highest point of the building or structure.

(26) "Municipal airport authority" or "municipal authority" means a municipal airport authority created under 67-11-102.

(27) "Municipality" or "political subdivision" means a county, city, village, or town of this state and any other political subdivision, public corporation, authority, or district in this state authorized by law to acquire, establish, construct, maintain, improve, and operate airports and other air navigation facilities.

(28) "Navigable air space" means air space above the minimum altitudes of flight prescribed by the laws of this state or by regulations of the department.

(29) "Operation of aircraft" or "operate aircraft" means the use of aircraft for the purpose of air navigation and includes the navigation or piloting of aircraft. A person who causes or authorizes the operation of aircraft, whether with or without the right of legal control (in the capacity of owner, lessee, or otherwise) of the aircraft, operates the aircraft.

(30) "Person" means an individual, firm, partnership, corporation (private, municipal, or public), company, association, joint-stock association, or body politic and includes a trustee, receiver, assignee, or other similar representative.

(31) "Public aircraft" means an aircraft used exclusively in the service of any government or of a political subdivision of a government, including the government of a state, territory, or possession of the United States, or the District of Columbia but not including a government-owned aircraft engaged in carrying persons or property for commercial purposes.

(32) "Real property" means lands, structures, buildings, and interests in land, including lands under water and riparian rights, and all things and rights usually included within the term real property, including not only fee simple absolute but also all lesser interests, such as easements, rights-of-way, uses, leases, licenses, and all other incorporeal hereditaments and every estate, interest, or right, legal or equitable, pertaining to real property.

(33) "Regional airport authority" or "regional authority" means a regional airport authority created under 67-11-103.

(34) "Restricted landing area" means an area of land or water, or both, that is used or is made available for the landing and takeoff of aircraft, the use of which must, except in case of emergency, be only as provided by the department.

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

(36) "Structure" means any object constructed or installed by a person, including but not limited to buildings, towers, smokestacks, and overhead transmission lines.

(37) "Tree" means any object of natural growth.

**History:** Ap. p. Sec. 3, Ch. 152, L. 1945; amd. Sec. 2, Ch. 348, L. 1974; amd. Sec. 2, Ch. 213, L. 1975; Sec. 1-102, R.C.M. 1947; Ap. p. Sec. 1, Ch. 122, L. 1967; amd. Sec. 18, Ch. 348, L. 1974; Sec. 1-311, R.C.M. 1947; Ap. p. Sec. 26, Ch. 348, L. 1974; Sec. 1-322.1, R.C.M. 1947; Ap. p. Sec. 6, Ch. 12, L. 1939; Sec. 1-706, R.C.M. 1947; Ap. p. Sec. 1, Ch. 287, L. 1947; amd. Sec. 38, Ch. 348, L. 1974; Sec. 1-710, R.C.M. 1947; Ap. p. Sec. 1, Ch. 433, L. 1971; amd. Sec. 42, Ch. 348, L. 1974; Sec. 1-901, R.C.M. 1947; R.C.M. 1947, 1-102, 1-311, 1-322.1(2), (3), 1-706(a) thru (d), 1-710(2) thru (4), 1-901(2) thru (7); amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 6, Ch. 512, L. 1991; amd. Sec. 1, Ch. 279, L. 1993.

**Cross-References**

Exemption from motor carrier laws, 69-12-102.

**67-1-102. Policy.** It is hereby declared that the purpose of this title is to further the public interest and aeronautical progress by:

(1) providing for the protection and promotion of safety in aeronautics;

(2) cooperating in effecting a uniformity of the laws relating to the development and regulation of aeronautics in the several states;

(3) revising existing statutes relative to the development and regulation of aeronautics so as to grant to a state agency such powers and impose upon it such duties that the state may properly perform its functions relative to aeronautics and effectively exercise its jurisdiction over persons and property within such jurisdiction, may assist in the promotion of a statewide system of airports, may cooperate with and assist the political subdivisions of this state and others engaged in aeronautics, and may encourage and develop aeronautics;

(4) establishing uniform regulations, consistent with federal regulations and those of other states, in order that those engaged in aeronautics of every character may so engage with the least possible restriction, consistent with the safety and the rights of others; and

(5) providing for cooperation with the federal authorities in the development of a national system of civil aviation and for coordination of the aeronautical activities of those authorities and the authorities of this state by assisting in accomplishing the purposes of federal legislation and eliminating costly and unnecessary duplication of functions.

**History:** En. Sec. 3, Ch. 152, L. 1945; R.C.M. 1947, 1-103.

**Cross-References**

Public transportation issues — Department of Transportation to represent state, 60-21-101.

**67-1-103. Board of aeronautics.** (1) The board shall act in an advisory capacity to the department in matters pertaining to aeronautics.

(2) Regular meetings shall be held at the board's offices at Helena, but whenever the convenience of the public or of the parties may be promoted or delay or expense may be prevented, it may hold hearings or proceedings at any other place designated by it.

**History:** (1)En. Sec. 2, Ch. 171, L. 1967; amd. Sec. 27, Ch. 348, L. 1974; Sec. 1-323, R.C.M. 1947; (2)En. Sec. 6, Ch. 152, L. 1945; amd. Sec. 3, Ch. 348, L. 1974; Sec. 1-203, R.C.M. 1947; R.C.M. 1947, 1-203, 1-323(2).

**Cross-References**

Board of Aeronautics — qualification — allocation — quasi-judicial, 2-15-2506.

**67-1-104. Governmental nature of aeronautical functions.** The acquisition of lands for establishing airports or other air navigation facilities; the acquisition of airport protection privileges; the acquisition, establishment, construction, enlargement, improvement, maintenance, equipment, and operation of airports and other air navigation facilities, whether by the state separately or jointly with a municipality; the assistance of this state in that acquisition, establishment, construction, enlargement, improvement, maintenance, equipment, and operation; and the exercise of any other powers granted to the department are public and governmental functions exercised for a public purpose and as a matter of public necessity; and such lands and other property and privileges acquired and used by the state in the manner and for the purposes enumerated in this title are acquired and used for public and governmental purposes and as a matter of public necessity.



**History:** En. Sec. 21, Ch. 152, L. 1945; amd. Sec. 37, Ch. 348, L. 1974; amd. Sec. 2, Ch. 232, L. 1977; amd. Sec. 1, Ch. 234, L. 1977; R.C.M. 1947, 1-502.

**67-1-105. Penalties.** Unless otherwise provided, any person violating any of the provisions of chapters 1 through 3, except 67-3-212, or any of the rules or orders issued pursuant thereto is guilty of a misdemeanor and punishable by a fine of not more than $500 or by imprisonment in a county jail for not more than 90 days, or both.

**History:** En. Sec. 22, Ch. 152, L. 1945; R.C.M. 1947, 1-503; amd. Sec. 1, Ch. 140, L. 1979.

## Part 2
## Uniform Principles

**67-1-201. Short title.** This part may be cited as the "Uniform State Law for Aeronautics".

**History:** En. Sec. 10, Ch. 17, L. 1929; re-en. Sec. 2736.10, R.C.M. 1935; R.C.M. 1947, 1-606.

**67-1-202. State sovereignty in space.** Sovereignty in the space above the lands and waters of this state is declared to rest in the state, except where assumed by the United States law.

**History:** En. Sec. 5, Ch. 17, L. 1929; re-en. Sec. 2736.5, R.C.M. 1935; R.C.M. 1947, 1-601.

**67-1-203. Spatial ownership.** 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 67-1-204.

**History:** En. Sec. 6, Ch. 17, L. 1929; re-en. Sec. 2736.6, R.C.M. 1935; R.C.M. 1947, 1-602.

**Cross-References**

Surface owner's rights, 70-16-101.

**67-1-204. Lawfulness of flight and landings.** (1) Flight in aircraft over the lands and waters of this state is lawful, unless it is 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 conducted as to be imminently dangerous to persons or property lawfully on the land or water or in violation of the air commerce regulations that have been or may be promulgated by the department of transportation of the United States.

(2) Aircraft landings and takeoffs from the public waters of this state are lawful if proper safety precautions regarding public waters, as prescribed in 14 CFR, part 91, are taken prior to the landing or takeoff, except as otherwise provided by this section.

(3) Aircraft landings and takeoffs from public roads in this state are lawful if proper safety precautions, as approved by the governing jurisdiction of the roads, are taken prior to the landing or takeoff, except as otherwise provided in this section. However, the local governing jurisdiction may not incur liability as a result of an approval under this subsection.

(4) A person may not operate an aircraft, as pilot of the aircraft, either in the air, on the water, or on the ground, in a careless or reckless manner so as to endanger the life or property of others, including the aircraft being operated and passengers carried in the aircraft.

(5) The willful and malicious use of aircraft in stunting or diving over livestock in a manner calculated to frighten or stampede them is an unlawful use of aircraft, and actual and punitive damages, in addition to the penalties provided by this part, may be recovered in an action for damages caused by the willful and malicious use of the aircraft. As used in this subsection, "livestock" includes ostriches, rheas, and emus.

(6) The landing of an aircraft on the private lands or waters of another without 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 pilot is liable for actual damage caused by the forced landing.

(7) A person may not knowingly operate, attempt to operate, or be in actual physical control of an aircraft while under the influence of alcohol or drugs. "Under the influence" means that as a result of taking into the body alcohol, drugs, or any combination of alcohol and

(2) The department may adopt rules necessary to implement the provisions of this section.

History: En. Sec. 1, Ch. 417, L. 1983.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

**67-3-213 through 67-3-220 reserved.**

**67-3-221. Repealed.** Sec. 1, Ch. 373, L. 1985.

History: En. Sec. 11, Ch. 152, L. 1945; amd. Sec. 12, Ch. 348, L. 1974; R.C.M. 1947, 1-303.

## Part 3
## Airport Licensing
## (Repealed. Sec. 1, Ch. 398, L. 1985)

Part Compiler's Comments

*Histories of Repealed Sections:*

67-3-301. En. Sec. 12, Ch. 152, L. 1945; amd. Sec. 13, Ch. 348, L. 1974; R.C.M. 1947, 1-304.
67-3-302. En. Sec. 13, Ch. 152, L. 1945; amd. Sec. 14, Ch. 348, L. 1974; R.C.M. 1947, 1-305.
67-3-303. En. Sec. 14, Ch. 152, L. 1945; amd. Sec. 15, Ch. 348, L. 1974; R.C.M. 1947, 1-306.
67-3-304. En. Sec. 16, Ch. 152, L. 1945; amd. Sec. 16, Ch. 348, L. 1974; R.C.M. 1947, 1-308.
67-3-305. En. Sec. 15, Ch. 152, L. 1945; R.C.M. 1947, 1-307.
67-3-306. En. Sec. 17, Ch. 152, L. 1945; R.C.M. 1947, 1-309.

## Part 4
## Air Operators and Air Carriers

**67-3-401. Commercial air operators — insurance.** The department shall require every commercial air operator to procure and continue in effect, as long as the commercial air operator continues to offer its services for compensation, adequate protection against liability imposed by law upon a commercial air operator for the payment of damages for personal bodily injuries, including death resulting from those injuries, and property damage as a result of an accident.

History: En. Sec. 4, Ch. 122, L. 1967; amd. Sec. 19, Ch. 348, L. 1974; R.C.M. 1947, 1-314.

**67-3-402. Amount of insurance.** The department, after a public hearing, shall set the amount of liability insurance, required by 67-3-401, which is reasonably necessary to provide adequate compensation for damage incurred through an accident involving a commercial air operator.

History: En. Sec. 5, Ch. 122, L. 1967; amd. Sec. 20, Ch. 348, L. 1974; R.C.M. 1947, 1-315.

**67-3-403. Evidence of insurance.** (1) The protection required under 67-3-401, covering each aircraft used or to be used in commercial operations for compensation, shall be evidenced by providing one of the following to the department:

(a) a copy of the policy of insurance issued by a company authorized to write the insurance in the state;

(b) a bond of a surety company authorized to write surety bonds in the state; or

(c) evidence of the qualification of the commercial air operator as a self-insurer as may be authorized by the department.

(2) With the consent of the department, a copy of an insurance policy, certified by the company issuing it to be a true copy of the original policy, a photostatic copy of the original policy, an abstract of the provisions of the policy, or a certificate of insurance issued by the company issuing the policy may be filed with the department instead of the original or a duplicate or counterpart of the policy.

(3) The department may accept policies of insurance written by unauthorized insurers if the policies of insurance meet the rules adopted by the department.

History: En. Sec. 6, Ch. 122, L. 1967; amd. Sec. 21, Ch. 348, L. 1974; R.C.M. 1947, 1-316.

Cross-References

Guaranty, indemnity, and suretyship, Title 28, ch. 11.
Copy of policy to mortgagor or pledgor, 33-15-412.



**67-3-404. Continuation of insurance — notice upon cancellation.** The protection against liability shall be continued in effect as long as the commercial air operator continues to offer his services for compensation. The policy of insurance or surety bond shall not be cancelable on less than 30 days' written notice to the department, except in the event of cessation of operations as a commercial air operator.

History: En. Sec. 8, Ch. 122, L. 1967; amd. Sec. 22, Ch. 348, L. 1974; R.C.M. 1947, 1-318.

**67-3-405. Violations.** A commercial air operator who knowingly refuses or fails to procure protection against liability as required by 67-3-401 is guilty of a misdemeanor, and each day during which that commercial air operator continues in default constitutes a separate offense.

History: En. Sec. 10, Ch. 122, L. 1967; amd. Sec. 24, Ch. 348, L. 1974; R.C.M. 1947, 1-320.

Cross-References

Sentence when no penalty specified, 46-18-212.

**67-3-406 through 67-3-420 reserved.**

**67-3-421 through 67-3-429. Repealed.** Sec. 1, Ch. 422, L. 1991.

Compiler's Comments

*Histories of Repealed Sections:*

67-3-421. En. Sec. 2, Ch. 171, L. 1967; amd. Sec. 27, Ch. 348, L. 1974; R.C.M. 1947, 1-323(1).
67-3-422. En. 1-323.1 by Sec. 28, Ch. 348, L. 1974; R.C.M. 1947, 1-323.1.
67-3-423. En. 1-323.2 by Sec. 29, Ch. 348, L. 1974; R.C.M. 1947, 1-323.2.
67-3-424. En. 1-323.3 by Sec. 30, Ch. 348, L. 1974; R.C.M. 1947, 1-323.3.
67-3-425. En. 1-323.4 by Sec. 31, Ch. 348, L. 1974; R.C.M. 1947, 1-323.4.
67-3-426. En. 1-323.5 by Sec. 32, Ch. 348, L. 1974; R.C.M. 1947, 1-323.5.
67-3-427. En. 1-323.6 by Sec. 33, Ch. 348, L. 1974; R.C.M. 1947, 1-323.6.
67-3-428. En. Sec. 3, Ch. 171, L. 1967; amd. Sec. 1, Ch. 208, L. 1969; amd. Sec. 34, Ch. 348, L. 1974; R.C.M. 1947, 1-324.
67-3-429. En. Sec. 1, Ch. 171, L. 1967; amd. Sec. 25, Ch. 348, L. 1974; R.C.M. 1947, 1-322.

# CHAPTER 4
# NOISE, HEIGHT, AND LAND USE REGULATION


Part 1 — General Provisions

67-4-101. Legislative finding and purpose.
67-4-102. Definitions.

Part 2 — Airport Influence Areas

67-4-201. Designation of airport influence areas.
67-4-202. Temporary effect of designation.
67-4-203. Development of criteria for regulation of influence area.
67-4-204. Amendment of criteria — redesignation of influence area.
67-4-205 through 67-4-210 reserved.
67-4-211. State lands.

Part 3 — Rules, Permits, and Variances

67-4-301. Local government to adopt rules.
67-4-302. Rulemaking — notice and hearing.
67-4-303. Rules to be reasonable — prior nonconforming uses.
67-4-304. Rules relative to zoning ordinances.
67-4-305 through 67-4-310 reserved.
67-4-311. Permit system.
67-4-312. Board of adjustment.
67-4-313. Variance.
67-4-314. Conditions on permit or variance.

Part 4 — Remedies

67-4-401. Penalty.
67-4-402. Injunction.

**Chapter Cross-References**
Acquisition of landing fields and parking areas for aircraft, 7-14-4801.
Public nuisance, 45-8-111.

## Part 1
## General Provisions

**67-4-101. Legislative finding and purpose.** It is hereby found 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. It is also found that the location of tall trees and structures and certain types of development near airports reduce the area available for landing, taking off, and maneuvering aircraft and increase 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 therefore the purpose of this chapter to promote the public health, safety, and general welfare by the development of compatible noise, height, and land use regulations.

**History:** En. 1-724 by Sec. 1, Ch. 551, L. 1977; R.C.M. 1947, 1-724.

**67-4-102. Definitions.** (1) The definitions in 67-1-101 apply to this chapter.

(2) In this chapter the following definitions also apply:

(a) "Airport" means, for the purpose of this chapter, only those airports included on the national airport system plan.

(b) "Airport influence area" means all land in the proximity of an airport, the use of which may be affected by the airport's existence.

(c) "Local government" means any county or incorporated city or town having an airport influence area partially or entirely within its jurisdictional limits.

**History:** En. 1-725 by Sec. 2, Ch. 551, L. 1977; R.C.M. 1947, 1-725.

## Part 2
## Airport Influence Areas

**67-4-201. Designation of airport influence areas.** (1) A local government with an airport shall designate an airport influence area around the airport. The designation must be based on federal aviation administration rules and guidelines. However, an airport influence area may not extend more than 10,000 feet out from the thresholds of the primary instrument approach runway or exceed 1 mile in width on each side of the primary instrument approach runway and its extended centerline. A public hearing must be held by the local government following the procedure prescribed in 67-4-302.

(2) A map of the designation must be filed with the county clerk and recorders of the affected counties and the city clerks of the affected cities and towns.

**History:** En. 1-726 by Sec. 3, Ch. 551, L. 1977; R.C.M. 1947, 1-726; amd. Sec. 2, Ch. 279, L. 1993.

**67-4-202. Temporary effect of designation.** Upon the designation of an airport influence area, the use of land within the airport influence area shall be restricted as to height consistent with part 77, federal aeronautics regulations, until rules are adopted pursuant to this chapter. This restriction does not affect nonconforming uses and areas already zoned on July 1, 1977, and may not be imposed for a period of more than 1 year. After the designation of an airport influence area, a person may not recover from a local government, an airport authority, an airport operator, or an airport owner damages caused by noise and vibrations from normal and anticipated normal airport operations.

**History:** En. 1-727 by Sec. 4, Ch. 551, L. 1977; R.C.M. 1947, 1-727; amd. Sec. 3, Ch. 279, L. 1993.

**Cross-References**
Public nuisance, 45-8-111.

**67-4-203. Development of criteria for regulation of influence area.** (1) The local government shall devise criteria and guidelines for regulation of the airport influence area.

(2) The criteria and guidelines for noise regulations shall be designed to promote the public health, safety, and general welfare, and the criteria and guidelines for height and land use regulations shall be designed solely to promote the public safety. The criteria and guidelines shall, at the minimum, give reasonable consideration to, among other things:

(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 magnitude and duration of noise produced by aircraft and the number of aircraft flybys;

(d) the nature of the terrain;

(e) the future development of the airport;

(f) the views and mandates of the federal agency charged with the fostering of civil aeronautics as to the aerial surfaces necessary for safe flying operations.

**History:** En. 1-728 by Sec. 5, Ch. 551, L. 1977; R.C.M. 1947, 1-728.



**67-4-204. Amendment of criteria — redesignation of influence area.** (1) When circumstance so requires, the local government may amend the criteria and guidelines.

(2) The local government may redefine the boundaries of the influence area of an airport whenever an amendment to the criteria and guidelines so requires or whenever the airport site boundaries are altered.

**History:** En. 1-732 by Sec. 9, Ch. 551, L. 1977; R.C.M. 1947, 1-732.

**67-4-205 through 67-4-210 reserved.**

**67-4-211. State lands.** When an airport influence 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 criteria and guidelines prescribed by the local governing body.

**History:** En. 1-731 by Sec. 8, Ch. 551, L. 1977; R.C.M. 1947, 1-731; amd. Sec. 172, Ch. 418, L. 1995.

**Cross-References**
Administration of state lands, Title 77, ch. 1.

## Part 3
## Rules, Permits, and Variances

**Part Cross-References**
Adoption and publication of rules, Title 2, ch. 4, part 3.
Zoning, Title 67, ch. 6, part 2.
No limitation on airport hazard zoning, 67-10-231, 67-11-241.

**67-4-301. Local government to adopt rules.** Within 1 year of the designation of an airport influence area, each local government affected shall adopt and provide for the administration of rules restricting the height to which structures may be erected and trees allowed to grow within the airport influence area.

**History:** En. 1-729 by Sec. 6, Ch. 551, L. 1977; R.C.M. 1947, 1-729.

**67-4-302. Rulemaking — notice and hearing.** Before a local government adopts or amends rules governing the airport influence area, it must hold a public hearing thereon. Unless otherwise specifically provided, when notice of a hearing or other official act is required by this title, the following shall apply:

(1) The notice shall be published two times with at least 7 days separating each publication. The first publication shall be no more than 21 days prior to the action and the last no less than 3 days prior to the action.

(2) The published notice shall contain:

(a) the date, time, and place at which the hearing or other action will occur;

(b) a brief statement of the action to be taken.

**History:** En. 1-730 by Sec. 7, Ch. 551, L. 1977; R.C.M. 1947, 1-730.

**67-4-303. Rules to be reasonable — prior nonconforming uses.** All rules adopted under this chapter shall be reasonable and may not require the removal or alteration of any structure or tree lawfully in existence when the rules become effective. Such uses are to be treated as prior nonconforming uses which may continue, but rules may prohibit their expansion or their reconstruction or replacement following destruction or substantial damage.

Rules may further require that trees in place at the time the rules take effect be maintained by the local government, at its expense, at heights attained at that time. Land in existing residential subdivisions or platted for residential subdivision at the time rules are adopted may continue to be used for residential purposes.

**History:** En. 1-738 by Sec. 15, Ch. 551, L. 1977; R.C.M. 1947, 1-738.

**67-4-304. Rules relative to zoning ordinances.** (1) If a local government has adopted a zoning ordinance, any rules adopted under this chapter may be made a part of the zoning ordinance and may be administered and enforced in connection with it. However, the zoning ordinance may not limit the effectiveness or scope of the rules adopted pursuant to this chapter.

(2) Where a conflict exists between the rules adopted pursuant to this chapter and any zoning ordinances or resolutions applicable to the same area, the more stringent limitation or requirement shall prevail.

**History:** En. 1-737 by Sec. 14, Ch. 551, L. 1977; R.C.M. 1947, 1-737.

**Cross-References**

Municipal zoning, Title 76, ch. 2, part 3.

**67-4-305 through 67-4-310 reserved.**

**67-4-311. Permit system.** (1) The rules adopted pursuant to this chapter shall provide for a permit system for erecting new structures, changing uses of land or structures, and substantially altering, repairing, or replacing existing structures within the airport influence area.

(2) No material change may be made in the use of land and no structure or tree may be erected, altered, planted, or otherwise established in an airport influence area unless a permit for the use has been granted.

(3) No permit may be granted which 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 influence area or any subsequent revisions to it or than it was prior to the application for a permit.

**History:** En. 1-734 by Sec. 11, Ch. 551, L. 1977; R.C.M. 1947, 1-734.

**67-4-312. Board of adjustment.** (1) All rules adopted pursuant to this chapter shall provide for a board of airport hazard adjustment consisting of five members to be appointed for terms and in the manner provided in 76-2-321 through 76-2-328.

(2) All of the provisions of 76-2-321 through 76-2-328 relating to appeals and judicial review are applicable to grievances relating to rules, variances, or permits.

(3) Where a local government 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 local government may designate the members of that board as the board of airport hazard adjustment required by this chapter, in which case the terms of such members for purposes of this chapter are concurrent with their terms as members of the board of adjustment.

**History:** En. 1-736 by Sec. 13, Ch. 551, L. 1977; R.C.M. 1947, 1-736.

**67-4-313. Variance.** (1) Any person desiring to erect or increase the height of a structure, permit the growth of a tree, or use property in violation of the rules adopted pursuant to this chapter may apply to the board of airport hazard adjustment for a variance from the rules.

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

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

(4) Within an airport influence area a person who obtains a variance for building a structure which is a nonconforming use under rules adopted pursuant to this chapter or a person who takes or buys property subject to a variance 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 and vibrations being projected over the property. A person using a



structure built under a variance may not collect damages from a local government, an airport authority, an airport operator, or an airport owner for interference with the enjoyment of that structure caused by noise and vibrations from normal and anticipated normal airport operations.

**History:** En. 1-733 by Sec. 10, Ch. 551, L. 1977; R.C.M. 1947, 1-733; amd. Sec. 4, Ch. 279, L. 1993.

**Cross-References**

Public nuisance, 45-8-111.
Permits — variances, 67-6-207.

**67-4-314. Conditions on permit or variance.** Any permit or variance granted pursuant to this chapter may require the owner of the structure or tree in question to permit the local government, at its expense, to install, operate, and maintain the lights and markers necessary to warn pilots of the presence of an airport hazard.

**History:** En. 1-735 by Sec. 12, Ch. 551, L. 1977; R.C.M. 1947, 1-735.

## Part 4
## Remedies

**67-4-401. Penalty.** Any person who violates any provision of this chapter or any rules adopted pursuant to it is guilty of a misdemeanor and punishable by a fine not to exceed $500, imprisonment in a county jail for a period not to exceed 6 months, or both. Each day a violation continues to exist constitutes a separate offense.

**History:** En. 1-739 by Sec. 16, Ch. 551, L. 1977; R.C.M. 1947, 1-739(1).

**Cross-References**

Enforcement, 67-5-211.
Penalty — injunction, 67-6-211.

**67-4-402. 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 rules adopted under it.

**History:** En. 1-739 by Sec. 16, Ch. 551, L. 1977; R.C.M. 1947, 1-739(2).

**Cross-References**

Injunctions, Title 27, ch. 19.
Penalty — injunction, 67-6-211.

# CHAPTER 5
# AIRPORT HAZARD REGULATION

**Part 1 — General Provisions**

67-5-101. Purpose.
67-5-102. Exception — emergency landing strips.

**Part 2 — Regulation and Restriction**

67-5-201. Regulation of building heights.
67-5-202. Regulation of existing structures — power of acquisition.
67-5-203. Duty to acquire permit.
67-5-204. Restriction — lights.
67-5-205 through 67-5-210 reserved.
67-5-211. Enforcement.
67-5-212. Penalty.

## Part 1
## General Provisions

**67-5-101. Purpose.** For the purpose of ensuring safety from death or injury for aeronauts and passengers, to protect the property of those engaged in aeronautics, and to encourage and promote air travel and transportation of mail, passengers, express, and freight by air, it is

considered necessary to eliminate dangerous obstructions of air space in the vicinity of airports or landing fields which may now be or which may hereafter be acquired, owned, operated, controlled, or maintained by the United States, the state of Montana or any county or municipality thereof. In order to promote the public order, health, and safety by providing unobstructed air space for the safe descent, landing, ascent, and operation of aircraft utilizing public airports in the state of Montana, the height of buildings and other structures in the vicinity of the airports and landing fields in the state of Montana owned, leased, operated, maintained, or controlled by any of those public authorities shall be regulated and restricted as hereafter provided.

**History:** En. Sec. 1, Ch. 12, L. 1939; amd. Sec. 3, Ch. 232, L. 1977; R.C.M. 1947, 1-701.

**67-5-102. Exception — emergency landing strips.** This chapter shall not apply to any landing fields or strips now established or hereafter established by the civil aeronautics authority of the United States government, known as "emergency landing strips", which do not provide at least 1,800 feet of landing area in all directions and which do not provide facilities for the housing, supply, and servicing of aircraft.

**History:** En. Sec. 7, Ch. 12, L. 1939; R.C.M. 1947, 1-707.

## Part 2
## Regulation and Restriction

**67-5-201. Regulation of building heights.** (1) The height of buildings and other structures shall be regulated for the purposes set forth in 67-5-101, considering among other things:

(a) requirements and facilities necessary to secure the safe descent, landing, ascent, and operation of aircraft utilizing the public airports and landing fields in the state of Montana;

(b) hazards from the obstruction of air space and the relation of the height of buildings and other structures in the vicinity of such airports and landing fields to such hazards;

(c) the area within which buildings and other structures may dangerously obstruct air space in the vicinity of public airports and landing fields and the height of buildings or other structures within such area which is consistent with the safe use of such airports and landing fields; and

(d) the maintenance and use of either obstruction markers or lights, or both, upon buildings and other structures within such area as safety devices.

(2) The height of buildings and other structures is regulated and restricted within a distance of 2 miles from any public airport or landing field, measured at a right angle from any side or in a radial line from any corner of the established boundary line thereof, in any and all directions, as follows:

(a) The trapezoidal portion of the total 2-mile zone area, 500 feet in width at the boundary of the field or airport and broadening to a width of 2,500 feet 2 miles distant, the centerline of which is a continuation of the centerline of each runway at and upon such public airports and landing fields, known as the approach zone, may have no building or other structure or natural feature or object of any kind therein, the height of which is more than one-twentieth its distance from the nearest boundary of the airport or landing field.

(b) The remaining portion of the 2-mile zone area surrounding such public airports and landing fields, lying between the approach zones and known as turning zones, may have no building or other structure or natural feature or object of any kind therein, the height of which is more than one-seventh its distance from the nearest boundary of the airport or landing field.

(3) In measuring distances and heights to determine the zone standard, measurements shall be taken from the nearest side of the building or structure or other object to the nearest side of the airport or landing field. In the event of airports having boundaries not regular, the nearest established perimeter of such port and field shall be used, as distinguished from the actual boundary.

**History:** En. Sec. 2, Ch. 12, L. 1939; amd. Sec. 4, Ch. 232, L. 1977; R.C.M. 1947, 1-702.

**67-5-202. Regulation of existing structures — power of acquisition.** A building or other structure existing on February 7, 1939, that does not conform to the height regulations of this chapter is subject to acquisition by the governmental entity owning or operating an airport or landing field. In order to protect its own airports and landing fields and to implement this chapter, the governmental authority may acquire by purchase, grant, or condemnation pursuant to Title 70, chapter 30, an estate or interest in any building, structure, or other object, whether a natural object or not, and in the lands upon which it is situated that is necessary to vest full control in perpetuity of the space above the land. The acquisition is limited to the extent necessary to correct the height of any nonconforming building, other structure, or object to meet the requirements of this chapter with respect to height limitation within the designated zones.



**History:** En. Sec. 5, Ch. 12, L. 1939; R.C.M. 1947, 1-705; amd. Sec. 37, Ch. 125, L. 2001.

**Compiler's Comments**

*2001 Amendment:* Chapter 125 in first sentence inserted reference to Title 70, chapter 30; and made minor changes in style. Amendment effective October 1, 2001.

**67-5-203. Duty to acquire permit.** (1) Each person, firm, or corporation in this state proposing to erect, establish, or maintain any building or other structure that would exceed the height limit established by law or to grow any natural object that would exceed such limit when grown, whenever the proposed erection or growth is within 2 miles of a public airport or landing field, shall apply to the proper officer of the United States or the state of Montana or any county or municipality thereof, whichever of those bodies has control of the airport or landing field affecting the area, for a permit to erect, establish, or maintain the structure, building, or object proposed.

(2) No permit may be granted unless the specifications of the building or other structure or object reveal that the total height does not or will not exceed the height limits fixed by law for the zone in which the same is to be established.

(3) No permit may be issued in violation of this section, and any permit which is issued in violation of this section is void.

**History:** En. Sec. 4, Ch. 12, L. 1939; amd. Sec. 5, Ch. 232, L. 1977; R.C.M. 1947, 1-704.

**67-5-204. Restriction — lights.** No searchlight, beacon light, or other glaring light shall be used, maintained, or operated within said Montana airport zoning areas so that the same shall reflect, glare, or shine upon or in the direction of the airports.

**History:** En. Sec. 8, Ch. 12, L. 1939; R.C.M. 1947, 1-708.

**67-5-205 through 67-5-210 reserved.**

**67-5-211. Enforcement.** A public body or governmental authority owning, operating, or maintaining a public airport or landing field or that creates a municipal or regional airport authority for that purpose shall enforce the provisions of this chapter as it pertains to areas surrounding the particular airport under the control of the body or authority. This chapter must be enforced in either a court of law or of equity in the state of Montana having jurisdiction of the action. Cases must be instituted in the name of the governmental body charged with the enforcement of this chapter. An action may be brought to prevent the erection, construction, or maintenance of buildings or other structures or parts of buildings or structures as may exceed the height limits fixed by this law or to restrain, correct, or abate any violation and to prevent the occupancy and use of any part of a building or structure erected in violation of this law.

**History:** En. Sec. 3, Ch. 12, L. 1939; R.C.M. 1947, 1-703; amd. Sec. 5, Ch. 279, L. 1993.

**Cross-References**

Noise, height, and land use regulation — penalty, 67-4-401.
Airport zoning — penalty — injunction, 67-6-211.

**67-5-212. Penalty.** Any person or firm or corporation violating any of the provisions of this law shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not more than $500 or by imprisonment for a period of not more than 6 months or by both such fine and imprisonment. Each such person, firm, or corporation shall be deemed guilty of a separate offense for every day during any portion of which any violation of this law is committed, continued, or permitted by such person, firm, or corporation and shall be punishable as provided by such law.

**History:** En. Sec. 12, Ch. 12, L. 1939; R.C.M. 1947, 1-709.

# CHAPTER 6
# AIRPORT ZONING ACT

**Part 1 — General Provisions**

67-6-101. Short title.
67-6-102. Legislative finding and purpose.
67-6-103. Constitutional restriction.

**Part 2 — Zoning**

67-6-201. Airport zoning power.
67-6-202. Airport zoning regulations — procedure — commission.
67-6-203. Airport zoning regulations — requirements.
67-6-204. Zoning regulations — merger or conflict.
67-6-205. Airport zoning regulations — administration.
67-6-206. Board of adjustment.
67-6-207. Permits — variances.
67-6-208 through 67-6-210 reserved.
67-6-211. Penalty — injunction.

**Part 3 — Miscellaneous Provisions**

67-6-301. Acquisition of property rights when zoning not sufficient.

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**Chapter Cross-References**
Planning and zoning, Title 76, ch. 2.

## Part 1
## General Provisions

**67-6-101. Short title.** This chapter shall be known and may be cited as the "Airport Zoning Act".

**History:** En. Sec. 14, Ch. 287, L. 1947; R.C.M. 1947, 1-723.

**67-6-102. Legislative finding and purpose.** (1) It is hereby found that an airport hazard endangers the lives and property of users of the airport and of occupants of land 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.

(2) Accordingly, it is hereby declared:

(a) 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;

(b) that it is therefore necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of airport hazards be prevented; and

(c) that this should be accomplished, to the extent legally possible, by exercise of the police power, without compensation.

(3) It is further declared that both 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 acquire land or property interests therein.

**History:** En. Sec. 2, Ch. 287, L. 1947; R.C.M. 1947, 1-711.

**67-6-103. Constitutional restriction.** In any case in which airport zoning regulations adopted under this chapter, although generally reasonable, are held by a court to interfere with the use or enjoyment of a particular structure or parcel of land to such an extent or to be so onerous in their application to such a structure or parcel of land as to constitute a taking or deprivation of that property in violation of the constitution of this state or the constitution of the United States, such holding shall not affect the application of such regulations to other structures and parcels of land.

**History:** En. Sec. 10, Ch. 287, L. 1947; R.C.M. 1947, 1-719.



**Cross-References**
Due process of law, Art. II, sec. 17, Mont. Const.
Eminent domain, Art. II, sec. 29, Mont. Const.
Private Property Assessment Act, Title 2, ch. 10, part 1.

## Part 2
## Zoning

**Part Cross-References**
Rules, permits, and variances, Title 67, ch. 4, part 3.
No limitation on airport hazard zoning, 67-10-231, 67-11-241.

**67-6-201. Airport zoning power.** (1) In order to prevent the creation or establishment of airport hazards, every political subdivision having an airport hazard area within its territorial limits may adopt, administer, and enforce, under the police power and in the manner and upon the conditions prescribed, airport 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 the height to which structures and trees may be erected or allowed to grow.

(2) Where an airport is owned or controlled by a political subdivision and any airport hazard area appertaining to such airport is located outside the territorial limits of said political subdivision, within or without the state, the political subdivision owning or controlling the airport and the political subdivision within which the airport hazard area is located may, by ordinance or resolution duly adopted, create a joint airport zoning board, which board shall have the same power to adopt, administer, and enforce airport zoning regulations applicable to the airport hazard area in question as that vested by subsection (1) in the political subdivision within which such area is located. Each such joint board shall have as members two representatives appointed by each political subdivision participating in its creation and in addition a chairman elected by a majority of the members so appointed.

(3) If in the judgment of a political subdivision owning or controlling an airport, the political subdivision within which is located an airport hazard area appertaining to that airport has failed to adopt or enforce reasonably adequate airport zoning regulations for such area under subsection (1) and if that political subdivision has refused to join in creating a joint airport zoning board as authorized in subsection (2), the political subdivision owning or controlling the airport may itself adopt, administer, and enforce airport zoning regulations for the airport hazard area in question. In the event of conflict between such regulations and any airport zoning regulations adopted by the political subdivision within which the airport hazard area is located, the regulations of the political subdivision owning or controlling the airport shall govern and prevail.

**History:** En. Sec. 3, Ch. 287, L. 1947; R.C.M. 1947, 1-712.

**67-6-202. Airport zoning regulations — procedure — commission.** (1) In adopting, amending, and repealing airport zoning regulations under this chapter, the political subdivision or joint airport zoning board shall follow the procedure prescribed by the laws of this state for the adoption, amendment, or repeal of comprehensive zoning regulations, as provided in Title 76, chapter 2, part 3.

(2) Prior to the initial zoning of any airport hazard area under this chapter, the political subdivision or joint airport zoning board which is to adopt the regulations shall appoint a commission, to be known as the airport zoning commission, to recommend the boundaries of the various zones to be established and the regulations to be adopted therefor. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and the legislative body of the political subdivision or the joint airport zoning board shall not hold its public hearings or take other action until it has received the final report of such commission. Where a city planning commission or comprehensive zoning commission already exists, it may be appointed as the airport zoning commission.

**History:** En. Sec. 5, Ch. 287, L. 1947; R.C.M. 1947, 1-714.

**67-6-203. Airport zoning regulations — requirements.** (1) All airport zoning regulations adopted under this chapter shall be reasonable, and none shall impose any

requirement or restriction which is not reasonably necessary to effectuate the purposes of this chapter. In determining what regulations it may adopt, each political subdivision and joint airport zoning board shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the nature of the terrain within the airport hazard area, the character of the neighborhood, and the uses to which the property to be zoned is put and adaptable.

(2) No airport zoning regulations adopted under this chapter shall require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations when adopted or amended or otherwise interfere with the continuance of any nonconforming use, except as provided in 67-6-207(3).

**History:** En. Sec. 6, Ch. 287, L. 1947; R.C.M. 1947, 1-715.

**67-6-204. Zoning regulations — merger or conflict.** (1) In the event that a political subdivision had adopted or hereafter adopts a comprehensive zoning ordinance regulating, among other things, the height of buildings, any airport zoning regulations applicable to the same area or portion thereof may be incorporated in and made a part of such comprehensive zoning regulations and be administered and enforced in connection therewith.

(2) In the event of conflict between any airport zoning regulations adopted 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 and whether such other regulations were adopted by the airport zoning regulations or by some other political subdivision, the more stringent limitation or requirement shall govern and prevail.

**History:** En. Sec. 4, Ch. 287, L. 1947; R.C.M. 1947, 1-713.

**67-6-205. Airport zoning regulations — administration.** 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 any official, board, or other existing agency of the political subdivision adopting the regulations or of one of the political subdivisions which participated in the creation of the joint airport zoning board adopting the regulations, if satisfactory to that political subdivision; 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 include that of hearing and deciding all permits under 67-6-207(1), but such agency shall not have or exercise any of the powers herein delegated to the board of adjustment.

**History:** En. Sec. 8, Ch. 287, L. 1947; R.C.M. 1947, 1-717.

**67-6-206. Board of adjustment.** All airport zoning regulations adopted under this chapter shall provide for a board of adjustment to be appointed in the manner and have and exercise all the powers provided in 76-2-321 through 76-2-328, and each and all of the provisions of said sections relating to appeals and judicial review shall be applicable to this chapter.

**History:** En. Sec. 9, Ch. 287, L. 1947; R.C.M. 1947, 1-718.

**67-6-207. Permits — variances.** (1) When advisable to facilitate the enforcement of this chapter, a system may be established for granting permits to establish or construct new structures and other uses. In any event, before any nonconforming structure may be replaced with a taller one or any nonconforming tree allowed to grow higher or be replanted, a permit must be secured from the administrative agency authorized to administer and enforce the regulations authorizing such replacement or change. No such permit shall be granted that would allow the structure to become a greater hazard to air navigation than it was when the applicable regulation was adopted. Whenever the administrative agency determines that a nonconforming structure or tree has been abandoned or more than 80% torn down, destroyed, deteriorated, or decayed, no permit shall be granted that would allow said structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations. Except as indicated, all applications for permits for replacement, change, or repair of nonconforming uses shall be granted.

(2) Any person desiring to erect any structure, increase the height of any structure, permit the growth of any tree, or otherwise use his 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 in question. 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 do substantial justice and be in accordance with the spirit of the regulations and this chapter. Any variance may be allowed subject to any reasonable conditions that the board of adjustment may deem necessary to effectuate the purposes of this chapter.

(3) In granting any permit or variance under this section, the administrative agency or board of adjustment may, if it deems such action advisable to effectuate the purposes of this chapter and reasonable in the circumstances, so condition such permit or variance as to require the owner of the structure or tree in question to permit the political subdivision, at its own expense, to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard.

**History:** En. Sec. 7, Ch. 287, L. 1947; R.C.M. 1947, 1-716.

**Cross-References**

Noise, height, and land use regulation — conditions on permits and variances, 67-4-313, 67-4-314.

**67-6-208 through 67-6-210 reserved.**

**67-6-211. Penalty — injunction.** Each violation of this chapter or of any regulations, orders, or rulings promulgated or made pursuant to this chapter shall constitute a misdemeanor and shall be punishable by a fine of not more than $500 or imprisonment for not more than 6 months or by both such fine and imprisonment, and each day a violation continues to exist shall constitute a separate offense. In addition the political subdivision or agency adopting zoning regulations under this chapter may institute in any court of competent jurisdiction an action to prevent, restrain, correct, or abate any violation of this chapter or of airport zoning regulations adopted under this chapter or of any order or ruling made in connection with their administration or enforcement; and the court shall adjudge to the plaintiff such relief, by way of injunction (which may be mandatory) or otherwise, as may be proper under all the facts and circumstances of the case, in order fully to effectuate the purposes of this chapter and of the regulations adopted and orders and rulings made pursuant thereto.

**History:** En. Sec. 11, Ch. 287, L. 1947; R.C.M. 1947, 1-720.

**Cross-References**

Injunctions, Title 27, ch. 19.

Noise, height, and land use regulation — penalty and injunction, 67-4-401, 67-4-402.

Restrictions on height of structures and lights — enforcement and penalty, 67-5-211, 67-5-212.

## Part 3
## Miscellaneous Provisions

**67-6-301. Acquisition of property rights when zoning not sufficient.** The political subdivision within which the 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 governmental entity 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 zoning 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 zoning regulations.

**History:** En. Sec. 12, Ch. 287, L. 1947; R.C.M. 1947, 1-721; amd. Sec. 38, Ch. 125, L. 2001.

**Compiler's Comments**

*2001 Amendment:* Chapter 125 substituted "pursuant to Title 70, chapter 30" for "in the manner provided by the law under which political subdivisions are authorized to acquire real property for public purposes"; and made minor changes in style. Amendment effective October 1, 2001.

**Cross-References**

Restrictions on annexation power, 7-2-4503.

**To assure those who believe Chapter 6 should have just been revised, the table below demonstrates how much of this bill is from Chapter 6.**

| Chapter 6 | SB 255 |
|---|---|
| 67-6-102. **Legislative finding and purpose.** | Section 4. **Legislative finding and purpose.** |
| 67-6-103. **Constitutional restriction.** | Leanne explained Legislative Services does not do this anymore. |
| 67-6-201. **Airport zoning power.** | Section 6 (1), **Designation of airport affected area–regulations required . . .** and Section 7. **Joint airport affected area authorized–may adopt regulations.** |
| 67-6-202. **Airport zoning regulations–procedure–commission.** | Section 10 with modifications. **Procedure for developing or amending regulations–assistance from existing boards or zoning commissions.** |
| 67-6-203. **Airport zoning regulations–requirements.** | Section 8. **Airport affected area regulations – contents.** |
| 67-6-204. **Zoning regulations –merger or conflict.** | Section 13. **Regulations relative to zoning ordinances.** |
| 67-6-205. **Airport zoning regulations – administration.** | Section 15. **Enforcement.** |
| 67-6-206. **Board of adjustment.** | Section 16. **Appeals.** |
| 67-6-207. **Permits – variances.** | Section 11. **Prior nonconforming uses,** Section 14. **Permit system,** and Section 17. **Variance.** |
| 67-6-211. **Penalty – injunction.** | Section 18. **Penalty,** and Section 19. **Injunction.** |
| 67-6-301. **Acquisition of property rights when zoning not sufficient.** | Section 12. **Acquisition of property rights when zoning not sufficient.** |

# MONTANA NPIAS AIRPORTS ZONING SUMMARY/1

Updated 04/30/04

| City, Airport | Draft Zoning Ordinance Prepared/2 | Date of Ordinance | Height Restriction Zoning | Land Use Zoning | AIP Land-use planning Grants |
|---|---|---|---|---|---|
| Anaconda, Bowman Field | 8/97 | | | | |
| Baker Municipal Airport | 8/97 | | | | |
| Benchmark | | | | | |
| Big Sandy Airport | | | | | |
| Big Timber Airport | | | | | |
| Billings Logan International Airport | | 4/28/1986 | X | X | |
| Bozeman, Gallatin Field | | 6/28/1979 | X | X | |
| Broadus Airport | | 3/18/2004 | X | X | |
| Butte, Bert Mooney Airport | | 1978 | X | X | |
| Chester, Liberty County Airport | 8/97 | | | | |
| Chinook, Edgar G. Obie Airport | 8/97 | 7/7/2003 | X | X | X |
| Choteau Airport | | | | | X |
| Circle Town/County Airport | | | | | |
| Colstrip Airport | 8/97 | 7/11/2001 | X | X | |
| Columbus Airport | 5/98 | 10/14/04 | | | |
| Conrad Airport | 8/97 | | | | |
| Culbertson, Big Sky Field | | | | | |
| Cut Bank Municipal Airport | 8/97&8/03 | | | | |
| Deer Lodge City/County Airport | | | | | |
| Dillon Airport | | | | | |
| Ekalaka Airport | | | | | |
| Ennis-Big Sky Airport | 12/02 | | | | X |
| Eureka Airport | | 2/12/2003 | X | X | |
| Forsyth, Tillitt Field | | 12/18/2002 | X | X | |
| Fort Benton Airport | | | | | |
| Gardiner Airport | | | | | |
| Geraldine Airport | | | | | |
| Glasgow International Airport | 8/97 | | | | |
| Glendive, Dawson Community Airport | | 5/20/2003 | X | X | X |
| Great Falls International Airport | | 2/2/1999 | X | X | |
| Hamilton, Ravalli County Airport | | | | | |
| Hardin, Fairgrounds Airpark | | | | | |
| Harlem, Riggin Memorial Airport | | 7/7/2003 | X | X | X |

| | | | | Updated | 04/30/04 |
|---|---|---|---|---|---|
| City, Airport | Draft Zoning Ordinance Prepared/2 | Date of Ordinance | Height Restriction Zoning | Land Use Zoning | AIP Land-use planning Grants |
| Harlowton, Wheatland County Airport | | | | | |
| Havre City/County Airport | 8/97 | | | | |
| Helena Regional Airport | | No date | X | X | |
| Jordan Airport | | | | | X |
| Kalispell, Glacier Park Int'l Airport | | 6/9/1981 | X | X | |
| Kalispell City Airport | | | | | |
| Laurel Municipal Airport | 8/97 | | | | |
| Lewistown Municipal Airport | | | | | |
| Libby Airport | 8/97 | 2/12/2003 | X | X | |
| Lincoln Airport | | | | | |
| Livingston, Mission Field | 1/03 | | | | X |
| Malta Airport | | 3/1/2001 | X | X | |
| Miles City, Frank Wiley Field | | 6/10/2003 | X | X | |
| Missoula International Airport | 5/02 | 12/6/1978 | X | X | |
| Philipsburg, Riddick Field | | | | | |
| Plains Airport | 8/97 | | | | X |
| Plentywood, Sher-Wood Airport | | | | | |
| Polson Airport | 8/97 | | | | X |
| Poplar Airport | | | | | |
| Red Lodge Airport | | | | | |
| Ronan Airport | 8/97 | | | | X |
| Roundup Airport | | 9/7/1999 | X | X | |
| Scobey Airport | | | | | |
| Shelby Airport | | 2/17/04 | | | X |
| Sidney - Richland Municipal Airport | 8/97 | 1/19/2000 | X | X | |
| Stanford Airport | | | | | |
| Stevensville, Stevensville Airport | 8/97 | 1/8/1990 | X | | |
| Superior, Mineral County Airport | | 1/6/04 | X | X | X |
| Terry Airport | | | | | |
| Thompson Falls Airport | 8/97 | | | | |
| Three Forks, Pogreba Field | | | | X | |
| Townsend Airport | 5/03 | | | | X |
| Turner Airport | | 7/7/2003 | X | X | |
| Twin Bridges Airport | 12/02 | | | | X |
| Valier Airport | | | | | |

| | | | | Updated | 04/30/04 |
|---|---|---|---|---|---|
| City, Airport | Draft Zoning Ordinance Prepared/2 | Date of Ordinance | Height Restriction Zoning | Land Use Zoning | AIP Land-use planning Grants |
| West Yellowstone, Yellowstone Airport | | | | | |
| White Sulphur Springs Airport | | | | X | X |
| Winifred Airport | | | | | |
| Wolf Point, Lyman Clayton Field | | | | | |
| | | | | | |
| Total Airports | 72 | | 22 | 23 | 15 |
| /1 Baseline information is from Appendix A of the Montana State Aviation System Plan | | | | | |
| October 1999, AIP 3-30-0000-5B-98 | | | | | |
| | | | | | |
| /2 8/97 Draft Zoning Ordinances were prepared under the 1996 Montana | | | | | |
| System Plan Update - Land Use Compatibility Study | | | | | |
| | | | | | |
| | | | | | |
| F:\Land-use\MT NPIAS Airport Zoning Summary.xls | | | | | |
| | | | | | |

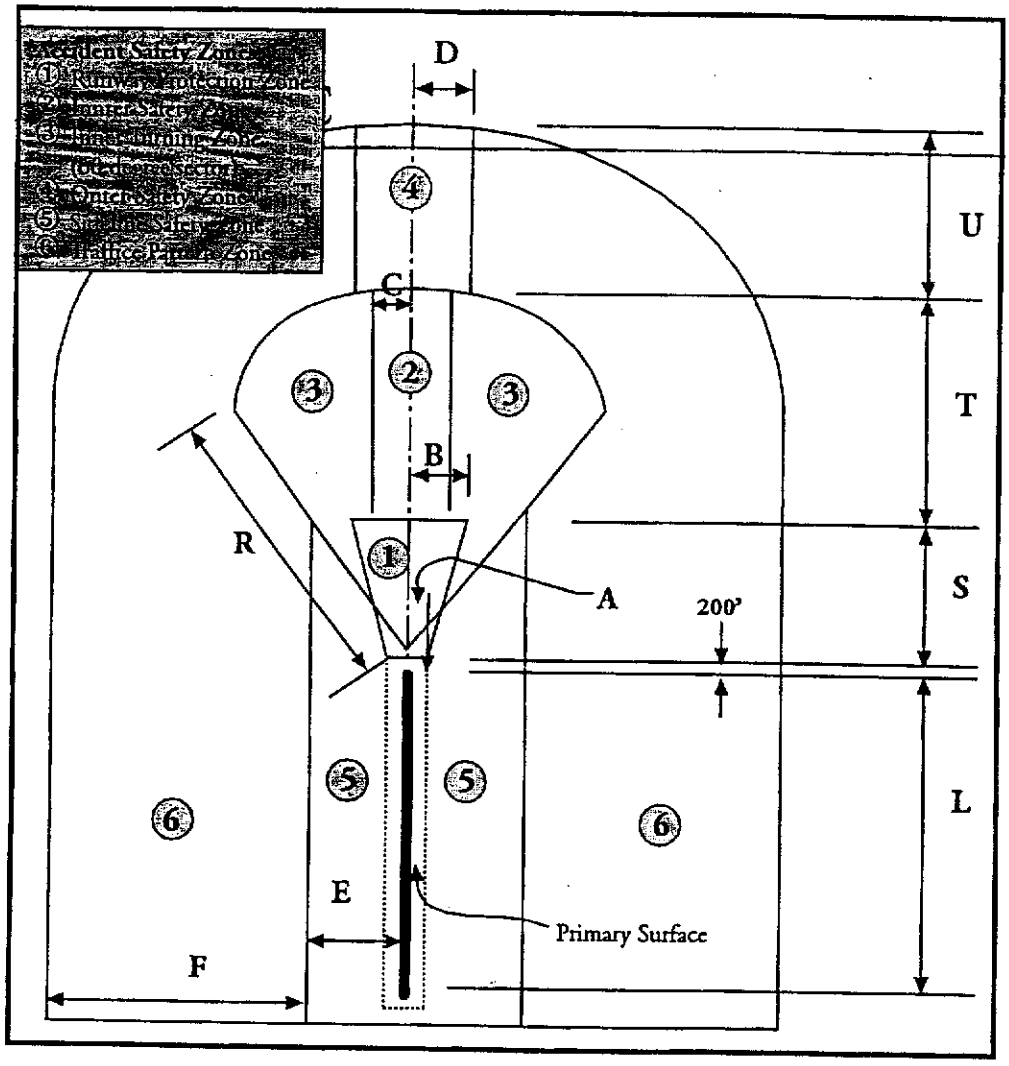
# AIRPORTS AND COMPATIBLE LAND USE VOLUME 1

Washington State
Department of Transportation
Aviation Division

*Revised February 1999*

# APPENDIX A

## Aircraft Accident Safety Zone Diagram




### Safety Zone Dimension (in Feet)

| Dimension | Runway Length Category (L) | | |
|---|---|---|---|
| | Runway less than 4,000 | Runway 4,000 to 5,999 | Runway 6,000 or more |
| A | 125 | 250 | 500 |
| B | 225 | 505 | 875 |
| C | 225 | 500 | 500 |
| D | 225 | 500 | 500 |
| E | 500 | 1,000 | 1,000 |
| F | 4,000 | 5,000 | 5,000 |
| R (60°Sector) | 2,500 | 4,500 | 5,000 |
| S | 1,000 | 1,700 | 2,500 |
| T | 1,500 | 2,800 | 2,500 |
| U | 2,500 | 3,000 | 5,000 |

Note:
Data Source: NTSB accident investigations 1984-1991. Illustration Source: Hodges and Shutt, Institute of Transportation Studies, University of California, Berkley, 1993.