

1 SENATE BILL NO. 417

2 INTRODUCED BY E. BUTTREY

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MILITARY AREA COMPATIBILITY ACT;
5 ALLOWING A GOVERNING BODY TO DESIGNATE MILITARY AFFECTED AREAS UNDER CERTAIN
6 CIRCUMSTANCES; PROVIDING FOR MILITARY AFFECTED AREA REGULATIONS; REQUIRING MAPS AND
7 LEGAL DESCRIPTIONS OF THE MILITARY AFFECTED AREA; REQUIRING A PUBLIC HEARING BEFORE
8 DESIGNATION OF A MILITARY AFFECTED AREA; ALLOWING CREATION OF A JOINT REGULATION
9 BOARD; PROVIDING FOR PRIOR NONCONFORMING USES IN A MILITARY AFFECTED AREA; ALLOWING
10 REGULATIONS TO BE PART OF ZONING ORDINANCES; REQUIRING A PERMIT SYSTEM; REQUIRING THE
11 REGULATIONS TO PROVIDE FOR ENFORCEMENT; ESTABLISHING AN APPEALS PROCESS; PROVIDING
12 FOR A VARIANCE FROM THE REGULATIONS; AND PROVIDING PENALTIES AND REMEDIES FOR
13 VIOLATIONS."

14

15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16

17 NEW SECTION. **Section 1. Short title.** [Sections 1 through 13] may be cited as the "Military Area
18 Compatibility Act".

19

20 NEW SECTION. **Section 2. Legislative findings -- purpose.** The legislature finds and declares that:

21 (1) the ability of the United States military to train and operate effectively in Montana is crucial to the
22 nation's defense;

23 (2) increasing development pressures in and around existing military facilities and training areas
24 represent a potential threat to the continued viability of military missions in Montana;

25 (3) local governments should be empowered to implement land use policies designed to protect existing
26 military missions from encroachment and encourage expansion of military missions in Montana; and

27 (4) it is the purpose of [sections 1 through 13] to promote public health, safety, and general welfare by
28 the delineation of military affected areas and by granting local governments the ability to develop regulations to
29 ensure that surrounding land uses are compatible with uses in military affected areas.

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1 NEW SECTION. Section 3. Military affected areas -- definitions. For the purposes of [sections 1
2 through 13], the following definitions apply:

3 (1) "Airport" has the meaning provided in 67-1-101.

4 (2) "Governing body" has the meaning provided in 67-7-103.

5 (3) (A) "Military affected area" means the land and space above the ground surface of an area used for
6 military purposes or in close proximity to military facilities or an area used for military purposes that IS DIRECTLY
7 AFFECTED OR THAT will be DIRECTLY affected by military uses.

8 (B) THE TERM DOES NOT MEAN AN AREA OVER WHICH MILITARY AIRCRAFT OPERATE WHEN NO OTHER
9 COMPONENTS OF MILITARY FACILITIES OR MILITARY USES EXIST.

10 (4) "Military facilities" and "military uses" include but are not limited to military airports, military
11 installations, intercontinental ballistic missile alert facilities or launch control centers, missile locations, access
12 roads to missiles or missile-related facilities, and sites formerly used for military training that may be contaminated
13 with hazardous wastes or explosive ordnance.

14 (5) "YDNL" has the meaning provided in 67-1-101.

15

16 NEW SECTION. Section 4. Designation of military affected areas -- public hearing required -- joint
17 regulation board authorized. (1) A governing body of a political subdivision within which military operations
18 occur may, in consultation with the appropriate military authority, designate a military affected area and may
19 adopt, administer, and enforce military affected area regulations.

20 (2) The designation of a military affected area must be accompanied by maps and legal descriptions of
21 the military affected area.

22 (3) (a) Before a governing body designates a military affected area and adopts or amends regulations
23 governing the military affected area, the governing body shall hold at least one public hearing.

24 (b) The notice of the public hearing must be published as provided in 7-1-2121 if the governing body is
25 a county commission or the commissioners of a regional airport authority and as provided in 7-1-4127 if the
26 governing body is a city commission, a town council, or the commissioners of a municipal airport authority.

27 (4) If a military affected area encompasses land within the boundaries of more than one political
28 subdivision, the governing bodies of the political subdivisions may by ordinance or resolution create a joint military
29 affected area regulation board. The joint board must have two members appointed by the governing body of each
30 political subdivision participating in its creation, and a presiding officer must be elected by a majority of the

1 members appointed. The joint board shall consider the zoning regulations and ordinances of each affected
 2 political subdivision in developing its recommendations, but the board's recommendations are not binding on the
 3 governing bodies of any of the affected political subdivisions.

4 (5) A GOVERNING BODY MAY NOT DESIGNATE LAND THAT IS MORE THAN 1,200 FEET FROM A LAUNCH CONTROL
 5 CENTER OR MISSILE LOCATION AS PART OF A MILITARY AFFECTED AREA.

6

7 NEW SECTION. Section 5. Military affected area regulations -- contents. (1) Regulations adopted
 8 for the military affected area must be reasonable, be designed to promote the public health, safety, and general
 9 welfare, and protect and facilitate the military missions executed within the military affected area. At a minimum,
 10 these regulations must give consideration to:

11 (a) the safety of persons physically present in a military affected area and the persons and property in
 12 the vicinity of the area;

13 (b) the character of the military operations conducted or expected to be conducted within the area;

14 (c) the nature of the terrain;

15 (d) the future development of the military affected area; ~~and~~

16 (e) United States department of defense recommendations for the safety zones, noise contours, and
 17 flight path restrictions for the appropriate type of military operation and the compatibility of surrounding land uses
 18 with the recommendations; AND

19 (F) EXISTING AND POTENTIAL FUTURE USES OF THE LAND PROPOSED TO BE INCLUDED IN A MILITARY AFFECTED
 20 AREA.

21 (2) Military affected area regulations MUST BE LIMITED TO ADDRESSING CURRENT AND KNOWN FUTURE
 22 MILITARY USES AND may BE ADOPTED ONLY TO:

23 (a) limit electromagnetic emissions that may interfere with military operations;

24 (b) describe the military affected area by referencing maps other than those required under [section 4(2)]
 25 and describing existing hazards and natural terrain that intrude into the military affected area;

26 (c) designate and describe zones within the military affected area, along with the height limitations for
 27 structures and trees within each zone, considering local conditions and needs;

28 (d) show the contours for decibel levels of 65 YDNL or greater on the maps that designate a military
 29 affected area if a study has been conducted pursuant to United States department of defense regulations and
 30 require that information to be considered before any building may occur within the military affected area;

1 (e) specify the permitted and conditional land uses within each zone of the military affected area by
2 addressing:

3 (i) residences, schools, hospitals, day-care centers, or other concentrations of people, indoors or
4 outdoors, that are incompatible with activities within the military affected area;

5 (ii) land uses that are incompatible with the decibel levels described in subsection (2)(d); and

6 (iii) other land uses that are incompatible with United States department of defense recommendations
7 regarding compatible use of land within a military affected area.

8
9 **NEW SECTION. Section 6. Regulations relative to zoning ordinances.** (1) Subject to subsection (3),
10 if a governing body has adopted a zoning ordinance or resolution, any regulations adopted under [sections 1
11 through 13] may be made a part of the zoning ordinance or resolution and may be administered and enforced
12 in connection with it.

13 (2) If a political subdivision has a planning board, zoning commission, or joint military affected area
14 board, a governing body may request the assistance of those boards or commissions in designating a military
15 affected area or adopting, amending, or repealing military affected area regulations.

16 (3) When a conflict exists between the regulations adopted pursuant to [sections 1 through 13] and any
17 zoning ordinances or resolutions applicable to the same area that the regulations are intended to govern, the
18 more stringent limitation or requirement prevails.

19
20 **NEW SECTION. Section 7. Prior nonconforming uses.** (1) All regulations adopted under [sections
21 1 through 13] must be reasonable and may not require the removal or alteration of any structure or require
22 cessation or alteration of a use that is lawfully in existence when the regulations become effective. Those
23 structures or uses must be treated as prior nonconforming structures or uses that may remain or continue, ~~but~~
24 ~~regulations may prohibit their expansion or their reconstruction or replacement following destruction or substantial~~
25 ~~damage. For the purposes of this subsection, "substantial damage" has occurred when 80% or more of a~~
26 ~~structure is deteriorated or decayed or has been torn down or destroyed.~~

27 **(2) A NONCONFORMING STRUCTURE OR USE THAT IS DESTROYED OR SUBSTANTIALLY DAMAGED BY FIRE, FLOOD,**
28 **OR OTHER NATURAL DISASTER MAY NOT BE RESTORED AS A NONCONFORMING STRUCTURE OR USE UNLESS A VARIANCE**
29 **IS ISSUED BY THE APPEALS BOARD PROVIDED FOR IN [SECTION 10] OR UNLESS THE RESTORATION OCCURS WITHIN 24**
30 **MONTHS OF THE DAMAGE HAVING OCCURRED AND THE RESULTING STRUCTURE OR USE OCCUPIES THE SAME PHYSICAL**

1 FOOTPRINT AND IS USED FOR THE SAME PURPOSE AS THE ORIGINAL NONCONFORMING STRUCTURE OR USE. A
 2 NONCONFORMING STRUCTURE OR USE IS CONSIDERED TO BE SUBSTANTIALLY DAMAGED WHEN 80% OR MORE OF A
 3 STRUCTURE IS DAMAGED OR DESTROYED.

4 ~~(2)~~(3) The regulations may require the owner of structures to permit the political subdivision, at its
 5 expense, to install, operate, and maintain the lights and markers necessary to warn pilots of the presence of a
 6 hazard in the vicinity of the military affected area.

7
 8 NEW SECTION. Section 8. Permit system. (1) The regulations adopted pursuant to [sections 1
 9 through 13] must provide for a permit system for erecting new structures, changing uses of land or structures,
 10 and substantially altering, ~~repairing~~, or replacing existing structures within the military affected area.

11 (2) A permit may not be granted that would allow the establishment of an incompatible use or that would
 12 allow a nonconforming use or structure to become a greater hazard or cause greater incompatibility with the
 13 military affected area.

14
 15 NEW SECTION. Section 9. Enforcement. The governing body or its designated agent or agency is
 16 responsible for enforcing the regulations adopted pursuant to [sections 1 through 13]. The regulations must
 17 provide for an enforcement officer and an appeal process from the decision of the enforcement officer, who may
 18 be an existing employee of the local government.

19
 20 NEW SECTION. Section 10. Appeals. (1) The governing body that designated the military affected
 21 area shall act as a military affected area appeals board or appoint a military affected area appeals board that
 22 functions in the same manner as a board of adjustment provided for in Title 76, chapter 2. If the governing body
 23 appoints a military affected area appeals board, the board must have at least three members.

24 (2) The provisions of 76-2-223 and 76-2-225 through 76-2-228 apply to the governing body of a county
 25 or a military affected area appeals board appointed by that governing body and the provisions of 76-2-323 and
 26 76-2-325 through 76-2-328 apply to the governing body of a municipality or a military affected area appeals board
 27 appointed by that governing body when considering grievances relating to regulations, variances, or permits.

28 (3) If a governing body has appointed a board of adjustment under the provisions of 76-2-221 through
 29 76-2-228 or 76-2-321 through 76-2-328, the governing body may designate the members of that board as the
 30 military affected area appeals board, in which case the terms of the members for the purposes of [sections 1

1 through 13] are concurrent with their terms as members of the board of adjustment.

2

3 **NEW SECTION. Section 11. Variance.** (1) A person intending to erect or increase the height of a
4 structure or use property in a manner that is not in accordance with the requirements of the regulations adopted
5 pursuant to [sections 1 through 13] may apply to the governing body or an enforcement officer appointed for this
6 purpose by the governing body for a variance from the regulations.

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

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

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

15 (5) A variance granted under this section may require the owner of a structure to allow the political
16 subdivision, at the owner's expense, to install, operate, and maintain the lights and markers necessary to warn
17 pilots of the presence of a military affected area hazard.

18 (6) A person who builds a structure pursuant to a variance from the military affected area regulations or
19 who takes or buys property in a military affected area for which a variance has been granted is considered to be
20 aware that the military affected area existed before the variance was granted and that normal and anticipated
21 normal military operations may result in noise, vibrations, and fumes being projected over the property. A person
22 using a structure built pursuant to a variance may not seek damages from a governing body, a local government,
23 or the federal government for interference with the enjoyment of that structure caused by noise, vibrations, and
24 fumes from normal and anticipated normal military operations.

25

26 **NEW SECTION. Section 12. Penalty.** A person who violates the provisions of [sections 1 through 13]
27 or the regulations adopted under [section 5] is subject to a civil penalty and a criminal penalty. The civil penalty
28 is a fine of \$100 for each day that the violation is not remedied after the governing body has given notification of
29 the violation and held a hearing on the violation. The criminal penalty is a fine of \$500 pursuant to 45-2-104.

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