

SENATE BILL NO. 255

INTRODUCED BY GEBHARDT, A. OLSON, WELLS

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4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE AIRPORT COMPATIBILITY ACT; DEFINING
5 "AIRPORT AFFECTED AREA"; REQUIRING A GOVERNING BODY TO DESIGNATE AN AIRPORT AFFECTED
6 AREA FOR CERTAIN AIRPORTS AND REQUIRING REGULATIONS TO BE CONCURRENTLY ADOPTED;
7 REQUIRING MAPS AND LEGAL DESCRIPTIONS OF THE AIRPORT AFFECTED AREA; REQUIRING A
8 PUBLIC HEARING BEFORE DESIGNATION OF AN AIRPORT AFFECTED AREA; ALLOWING CREATION OF
9 A JOINT REGULATION BOARD; ESTABLISHING CERTAIN MINIMUM REQUIREMENTS FOR AIRPORT
10 AFFECTED AREA REGULATIONS AND ESTABLISHING A PROCEDURE FOR DEVELOPING OR AMENDING
11 THE REGULATIONS; PROVIDING FOR PRIOR NONCONFORMING USES IN AN AIRPORT AFFECTED
12 AREA; PROVIDING FOR ACQUISITION OF PROPERTY UNDER CERTAIN CIRCUMSTANCES; ALLOWING
13 REGULATIONS TO BE PART OF ZONING ORDINANCES; REQUIRING A PERMIT SYSTEM; REQUIRING
14 THE REGULATIONS TO PROVIDE FOR ENFORCEMENT; ESTABLISHING AN APPEALS PROCESS;
15 PROVIDING FOR A VARIANCE FROM THE REGULATIONS; PROVIDING PENALTIES AND REMEDIES FOR
16 VIOLATION OF THE ACT OR REGULATIONS; AMENDING SECTIONS 7-14-4801, 67-1-101, 67-10-102,
17 67-10-202, 67-10-231, 67-10-402, 67-10-902, 67-11-103, 67-11-201, 67-11-241, AND 70-30-102, MCA;
18 REPEALING SECTIONS 67-4-101, 67-4-102, 67-4-201, 67-4-202, 67-4-203, 67-4-204, 67-4-211, 67-4-301,
19 67-4-302, 67-4-303, 67-4-304, 67-4-311, 67-4-312, 67-4-313, 67-4-314, 67-4-401, 67-4-402, 67-5-101, 67-5-102,
20 67-5-201, 67-5-202, 67-5-203, 67-5-204, 67-5-211, 67-5-212, 67-6-101, 67-6-102, 67-6-103, 67-6-201, 67-6-202,
21 67-6-203, 67-6-204, 67-6-205, 67-6-206, 67-6-207, 67-6-211, AND 67-6-301, MCA; AND PROVIDING AN
22 IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

23

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

25

26 **Section 1.** Section 7-14-4801, MCA, is amended to read:

27 **"7-14-4801. Acquisition of landing fields and parking areas lots or lands for aircraft.** A city or town
28 council may acquire by lease, gift, purchase, or condemnation pursuant to Title 70, chapter 30, lots or lands for
29 landing ~~fields~~ or parking ~~areas for~~ of aircraft, within or outside of the corporate limits of the municipality. The city
30 or town council may exercise municipal jurisdiction over the lots or lands acquired pursuant to this section, even

1 though the lots or lands or any portion of the lots or lands is outside of the corporate limits of the municipality."

2

3 **Section 2.** Section 67-1-101, MCA, is amended to read:

4 **"67-1-101. Definitions.** Unless the context requires otherwise, in this title, the following definitions
5 apply:

6 (1) "Aeronautics" means transportation by aircraft; the operation, construction, repair, or maintenance
7 of aircraft, aircraft power plants and accessories, including the repair, packing, and maintenance of parachutes;
8 the design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports,
9 restricted landing areas, or other air navigation facilities; and air instruction.

10 (2) (a) "Aeronautics instructor" means an individual engaged in giving instruction or offering to give
11 instruction in aeronautics, either in flying or ground subjects, or both, for hire or reward, without advertising that
12 occupation, without calling the facilities an "air school" or anything equivalent to an "air school", and without
13 employing or using other instructors.

14 (b) ~~¶~~ The term does not include an instructor in a public school or university of this state or an institution
15 of higher learning accredited and approved for carrying on collegiate work while engaged in duties as an
16 instructor.

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

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

20 (5) "Aircrew" includes:

21 (a) an individual who engages, as the person in command or as pilot, mechanic, or member of the crew,
22 in the navigation of aircraft while under way;

23 (b) an individual who is directly in charge of the inspection, maintenance, overhauling, or repair of
24 aircraft engines, propellers, or appliances except for an individual employed outside the United States, an
25 individual employed by a manufacturer of aircraft, aircraft engines, propellers, or appliances to perform duties
26 as inspector or mechanic in connection with them, and an individual performing inspection or mechanical duties
27 in connection with aircraft owned or operated by the individual; and

28 (c) an individual who serves in the capacity of aircraft dispatcher or air traffic control tower operator.

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

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

3 (8) "Air navigation facility" means a facility used in, available for use in, or designed for use in aid of air
4 navigation, including airports, restricted landing areas, and structures, mechanisms, lights, beacons, marks,
5 communicating systems, or other instrumentalities or devices used or useful as an aid or constituting an
6 advantage or convenience to the safe taking off, navigation, and landing of aircraft or the safe and efficient
7 operation or maintenance of an airport or restricted area and any combination of these facilities.

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

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

16 ~~(11)~~(10) "Airport authority" or "authority" means a regional airport authority or municipal airport authority
17 created under chapter 11 and the governing body of a municipality that has determined to exercise the powers
18 of a municipal airport authority under 67-11-102.

19 ~~(12)~~(11) "Airport hazard" means a structure, object of natural growth, or use of land that obstructs the
20 air space required for the flight of aircraft in landing or taking off at an airport or restricted landing area or is
21 otherwise hazardous to landing or taking off.

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

24 ~~(14)~~(12) "Airport protection privileges" means easements through or other interests in air space over land
25 or water, interests in airport hazards outside the boundaries of airports or restricted landing areas, and other
26 protection privileges, the acquisition or control of which is necessary to ensure safe approaches to the landing
27 areas of airports and restricted landing areas and the safe and efficient operation of airports or restricted landing
28 areas.

29 ~~(15)~~(13) (a) "Air school" means a person engaged in giving or offering to give instruction in aeronautics,
30 either in flying or ground subjects, or both, for or without hire or reward, and advertising or representing to the

1 public that the person gives or offers to give that instruction.

2 (b) ~~If~~ The term does not include a public school or university of this state or an institution of higher
3 learning accredited and approved for carrying on collegiate work.

4 ~~(14)~~(14) "Board" means the board of aeronautics provided for in 2-15-2506.

5 ~~(15)~~(15) "Bonds" means bonds, notes, interim certificates, debentures, or similar obligations issued by
6 an authority under chapter 11.

7 ~~(16)~~(16) "Building or structure" means any edifice, structure, or construction of any kind, character, or
8 description and any object of natural growth erected, constructed, grown, located or proposed to be erected,
9 constructed, grown, or located within the airport affected area ~~described in 67-5-201 hereof as safety zones~~
10 designated pursuant to [section 6], including any edifice, structure, or construction or object within the restricted
11 zones erected, constructed, placed, or located on or over land or water, or both.

12 ~~(17)~~(17) "Civil aircraft" means an aircraft other than a public aircraft.

13 ~~(18)~~(18) "Commercial air operator" means any person owning, controlling, operating, or managing
14 aircraft for any commercial purpose for compensation.

15 ~~(19)~~(19) "Department" means the department of transportation provided for in Title 2, chapter 15, part
16 25.

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

24 ~~(20)~~(20) "Flying club" means a person other than an individual that, neither for profit nor reward, owns,
25 leases, or uses one or more aircraft for the purpose of instruction or pleasure, or both.

26 ~~(21)~~(21) "Governing body" means, except as provided in [section 5], a city commission, town council,
27 or county commission and the boards, departments, and divisions of those entities, by whatever name they are
28 known, that have charge of finances and management of a municipality or a county.

29 ~~(22)~~(22) "Height of buildings and structures" means, for the purposes of ~~chapter 5~~ [sections 3 through
30 19], the vertical distance measured from the ground or surface level of the airport or landing field on the side

1 adjacent to the building or structure to the level of the highest point of the building or structure.

2 ~~(26)~~(23) "Municipal airport authority" or "municipal authority" means a municipal airport authority created
3 under 67-11-102.

4 ~~(27)~~(24) "Municipality" or ~~"political subdivision"~~ means a county, city, village, or town of this state and
5 any other political subdivision, public corporation, authority, or district in this state authorized by law to acquire,
6 establish, construct, maintain, improve, and operate airports and other air navigation facilities.

7 ~~(28)~~(25) "Navigable air space" means air space above the minimum altitudes of flight prescribed by the
8 laws of this state or by regulations of the department.

9 (26) "NPIAS airport" means an airport that is included in the federal aviation administration's national
10 plan of integrated airport systems.

11 ~~(29)~~(27) "Operation of aircraft" or "operate aircraft" means the use of aircraft for the purpose of air
12 navigation and includes the navigation or piloting of aircraft. A person who causes or authorizes the operation
13 of aircraft, whether with or without the right of legal control, ~~(in the capacity of owner, lessee, or otherwise),~~ of
14 the aircraft, operates the aircraft.

15 ~~(30)~~(28) "Person" means an individual, firm, partnership, private, municipal, or public corporation
16 ~~(private, municipal, or public),~~ company, association, joint-stock association, or body politic and includes a
17 trustee, receiver, assignee, or other similar representative.

18 (29) "Political subdivision" has the same meaning as municipality.

19 ~~(31)~~(30) "Public aircraft" means an aircraft used exclusively in the service of any government or of a
20 political subdivision of a government, including the government of a state, territory, or possession of the United
21 States, or the District of Columbia, but not including a government-owned aircraft engaged in carrying persons
22 or property for commercial purposes.

23 ~~(32)~~(31) "Real property" means lands, structures, buildings, and interests in land, including lands under
24 water and riparian rights, and all things and rights usually included within the term real property, including not
25 only fee simple absolute but also all lesser interests, such as easements, rights-of-way, uses, leases, licenses,
26 and all other incorporeal hereditaments and every estate, interest, or right, legal or equitable, pertaining to real
27 property.

28 ~~(33)~~(32) "Regional airport authority" or "regional authority" means a regional airport authority created
29 under 67-11-103.

30 ~~(34)~~(33) "Restricted landing area" means an area of land or water, or both, that is used or is made

1 available for the landing and takeoff of aircraft, the use of which must, except in case of emergency, be only as
2 provided by the department.

3 ~~(35)~~(34) "State airway" means a route in the navigable air space over and above the lands or waters of
4 this state, designated by the department as a route suitable for air navigation.

5 ~~(36)~~(35) "Structure" means any object constructed or installed by a person, including but not limited to
6 buildings, towers, smokestacks, and overhead transmission lines.

7 ~~(37)~~(36) "Tree" means any object of natural growth.

8 (37) "YDNL" means the 365-day average, in decibels, day-night average sound level as provided in 14
9 CFR 150.7."

10
11 NEW SECTION. Section 3. Short title. [Sections 3 through 19] may be cited as the "Airport
12 Compatibility Act".

13
14 NEW SECTION. Section 4. Legislative finding and purpose. The legislature finds that tall trees and
15 structures and certain types of development located in the vicinity of airports endanger the lives and property
16 of users of the airport and of occupants of land in its vicinity. The legislature also finds that the location of tall
17 trees and structures and certain types of development near airports reduce the area available for landing, taking
18 off, and maneuvering aircraft and increase the likelihood of legal action against a local government for noise
19 nuisance, thus destroying the utility of the airports and the public investment in them. It is the purpose of
20 [sections 3 through 19] to promote the public health, safety, and general welfare by the delineation of an airport
21 affected area and by the development of compatible noise, height, and land use regulations to control airport
22 hazards. The prevention of the creation or establishment of airport hazards and the elimination, removal,
23 alteration, mitigation, or marking and lighting of existing airport hazards are public purposes for which political
24 subdivisions may raise and expend public funds and in which political subdivisions may acquire land or property
25 interests.

26
27 NEW SECTION. Section 5. Definitions. (1) Except as provided in subsection (2)(b), the definitions
28 in 67-1-101 apply to [sections 3 through 19].

29 (2) In [sections 3 through 19], the following definitions also apply:

30 (a) "Airport affected area" means the land and space above the ground surface of an airport in the

1 proximity of the airport, the use of which may be affected by the airport's existence, including the areas described
2 in 14 CFR, part 77.

3 (b) "Governing body" means a city commission, town council, county commission, or the commissioners
4 of a municipal or regional airport authority.

5
6 **NEW SECTION. Section 6. Designation of airport affected area -- regulations required -- maps**

7 **and descriptions required -- public hearing required -- effect of designation.** (1) Subject to the provisions
8 of subsection (5), a governing body of a political subdivision that owns or controls an NPIAS airport or that has
9 an airport affected area for an NPIAS airport within its territorial limits or a joint board established pursuant to
10 [section 7] shall, by ordinance or resolution, exercising its police power:

11 (a) designate an airport affected area within 1 year of [the effective date of this act];

12 (b) concurrently adopt regulations for the airport affected area that comply with [section 8]; and

13 (c) administer and enforce the regulations that are adopted.

14 (2) A governing body of a political subdivision that owns or controls a non-NPIAS airport or that has an
15 airport affected area for a non-NPIAS airport within its territorial limits or a joint board established pursuant to
16 [section 7] may, by ordinance or resolution, exercising its police power, designate an airport affected area. If the
17 governing body or joint board makes the designation, it shall concurrently adopt regulations for the airport
18 affected area that may comply with [section 8] and shall administer and enforce the regulations.

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

22 (a) studies have been conducted in accordance with 14 CFR, part 150, maps of the area have been
23 prepared, and a program has been approved by the federal aviation administration; or

24 (b) the governing body intends to protect imaginary surfaces as provided in 14 CFR, part 77.

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

28 (5) (a) Before a governing body designates an airport affected area and adopts or amends regulations
29 governing the airport affected area, the governing body shall hold at least one public hearing.

30 (b) The notice of the public hearing must be published as provided in 7-1-2121 if the governing body

1 is a county commission or the commissioners of a regional airport authority and as provided in 7-1-4127 if the
 2 governing body is a city commission, town council, or the commissioners of a municipal airport authority.

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

6
 7 **NEW SECTION. Section 7. Joint airport affected area regulation board authorized -- may adopt**
 8 **regulations.** (1) If an airport affected area is located outside of the jurisdictional area of the governing body of
 9 the political subdivision that owns or controls the airport, the governing body of the political subdivision that owns
 10 or controls the airport and the governing body of the political subdivision within which the airport affected area
 11 is located may by ordinance or resolution create a joint airport affected area regulation board.

12 (2) The joint board may adopt, administer, and enforce airport affected area regulations, as provided
 13 in [section 6], subject to the provisions of [section 8].

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

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

27
 28 **NEW SECTION. Section 8. Airport affected area regulations -- contents.** (1) Subject to the
 29 provisions of [section 11], regulations adopted for the airport affected area must be reasonable, be designed to
 30 promote the public health, safety, and general welfare, and, for an NPIAS airport, at a minimum, give

1 consideration to:

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

8 (2) Airport affected area regulations may:

- 9 (a) designate the airport or airports that are subject to the regulations, with a description of existing and
10 future runways and approaches;
11 (b) define the terms used in the regulations based on the definitions provided in Title 67 and 14 CFR,
12 part 77;
13 (c) describe the airport affected area by referencing maps and describing existing airport hazards and
14 natural terrain that intrude into the airport affected area;
15 (d) designate and describe zones within the airport affected area, along with the height limitations for
16 structures and trees within each zone, considering local conditions and needs, as well as the notice requirements
17 and obstructions standards provided in 14 CFR, part 77;
18 (e) show the contours for decibel levels of 65 YDNL or greater on the maps that designate an airport
19 affected area, if a study has been conducted pursuant to 14 CFR, part 150, and require that information to be
20 considered by anyone who builds within the airport affected area;
21 (f) specify permitted and conditional uses within each zone of the airport affected area by addressing:
22 (i) incompatible land uses, such as uses for residences, schools, hospitals, day-care centers, or other
23 concentrations of people indoors or outdoors;
24 (ii) the land uses that are considered incompatible with certain noise levels, as provided in 14 CFR, part
25 150;
26 (iii) bird attractants such as solid waste disposal sites and lagoons;
27 (iv) sources of electromagnetic radiation that may interfere with electronic navigational aids;
28 (v) lights other than navigational aids that glare upward or shine on or in the direction of the airport; and
29 (vi) the national transportation safety board's accident investigation data in the vicinity of airports and
30 specific accident data for a particular airport, if that information is available;

- 1 (g) define nonconforming uses, measures to be taken to mitigate the nonconforming uses, and the
2 expiration of the uses in accordance with [sections 3 through 19];
- 3 (h) provide for an inventory of existing land uses, structures, and trees within the airport affected area;
- 4 (i) expand on the permit system provided pursuant to [section 14] for changes to existing land uses,
5 including changes that affect structures or trees, and for new land uses, structures, or trees;
- 6 (j) subject to the provisions of [section 17], provide a variance procedure from the literal application of
7 the regulations, including the conditions for granting a variance; and
- 8 (k) establish or designate local boards, commissions, or agents to administer and adjudicate
9 interpretations of the regulations.

10

11 **NEW SECTION. Section 9. State lands.** When an airport affected area lies partially or entirely on
12 state-owned lands, the department of natural resources and conservation shall administer the affected lands
13 in conformance with the airport affected area regulations adopted by the local governing body.

14

15 **NEW SECTION. Section 10. Procedure for developing or amending regulations -- assistance**
16 **from existing boards or zoning commissions.** (1) In adopting, amending, and repealing airport affected area
17 regulations under [sections 3 through 19], a governing body or a joint airport affected area regulation board may
18 request the assistance of existing planning boards or zoning commissions.

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

21 (a) request that an existing airport board recommend the boundaries of the airport affected area and
22 the various zones to be established and the regulations that will govern the airport affected area; or

23 (b) act without assistance of an airport board, planning board, or zoning commission.

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

1
2 **NEW SECTION. Section 11. Prior nonconforming uses.** (1) All regulations adopted under [sections
3 3 through 19] must be reasonable and may not require the removal or alteration of any structure or tree or
4 require cessation or alteration of a use that is lawfully in existence when the regulations become effective. Those
5 structures, trees, or uses must be treated as prior nonconforming structures, trees, or uses that may remain or
6 continue, but regulations may prohibit their expansion or their reconstruction or replacement following destruction
7 or substantial damage. For the purposes of this section, "substantial damage" has occurred when 80% or more
8 of a structure or tree is deteriorated or decayed or has been torn down or destroyed.

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

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

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

17
18 **NEW SECTION. Section 12. Acquisition of property rights when regulations not sufficient.** The
19 political subdivision within which a property or nonconforming use is located or the political subdivision owning
20 the airport or served by the airport may acquire, by purchase, grant, or condemnation pursuant to Title 70,
21 chapter 30, an air right, aviation easement, or other estate or interest in the property or nonconforming structure
22 or use that is necessary to effectuate the purposes of [sections 3 through 19]. The governing body of the political
23 subdivision may acquire an interest when:

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

25 (2) the necessary approach protection cannot, because of constitutional limitations, be provided by
26 airport affected area regulations under [sections 3 through 19]; or

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

29
30 **NEW SECTION. Section 13. Regulations relative to zoning ordinances.** (1) Subject to the provisions

1 of subsections (2) and (3), if a governing body has adopted a zoning ordinance or resolution, any regulations
 2 adopted under [sections 3 through 19] may be made a part of the zoning ordinance or resolution and may be
 3 administered and enforced in connection with it.

4 (2) The zoning ordinance or resolution may not limit the effectiveness or scope of the regulations
 5 adopted pursuant to [sections 3 through 19].

6 (3) When a conflict exists between the regulations adopted pursuant to [sections 3 through 19] and any
 7 zoning ordinances or resolutions applicable to the same area that the regulations are intended to govern, the
 8 more stringent limitation or requirement prevails.

9
 10 **NEW SECTION. Section 14. Permit system.** (1) The regulations adopted pursuant to [sections 3
 11 through 19] must provide for a permit system for erecting new structures OR TREES, changing uses of land or
 12 structures, and substantially altering, repairing, or replacing existing structures OR REPLACING EXISTING TREES
 13 within the airport affected area.

14 ~~————(2) A material change may not be made in the use of land and a structure or tree may not be erected,~~
 15 ~~altered, planted, or otherwise established in an airport affected area unless a permit has been granted. An~~
 16 ~~application for a permit to plant a tree is for informational purposes only, and a permit may not be denied for that~~
 17 ~~purpose if the tree is not an airport hazard when planted.~~

18 ~~(3)(2)~~ (2) A permit may not be granted that would allow the establishment of an airport hazard or that would
 19 allow a nonconforming use, structure, or tree to become a greater hazard to air navigation than it was on the
 20 effective date of the designation of the airport affected area and the regulations adopted to protect the airport
 21 affected area.

22 ~~(4)(3)~~ (3) A permit granted pursuant to [sections 3 through 19] may require the owner of a structure or tree
 23 to allow the governing body, at ~~its~~ THE OWNER'S expense, to install, operate, and maintain the lights and markers
 24 necessary to warn pilots of the presence of an airport hazard.

25
 26 **NEW SECTION. Section 15. Enforcement.** The governing body or its designated agent or agency
 27 is responsible for enforcing the regulations adopted pursuant to [sections 3 through 19]. The regulations must
 28 provide for an enforcement officer and an appeal process from the decision of the enforcement officer, who may
 29 be an existing employee of the local government.

30

1 **NEW SECTION. Section 16. Appeals.** (1) The governing body THAT DESIGNATED THE AIRPORT AFFECTED
2 AREA shall act as an airport appeals board or appoint an airport appeals board that functions in the same manner
3 as a board of adjustment provided for in Title 76, chapter 2. If the governing body appoints an airport appeals
4 board, the board must have at least three members.

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

9 (3) If a governing body has appointed a board of adjustment under the provisions of 76-2-221 through
10 76-2-228 or 76-2-321 through 76-2-328, the governing body may designate the members of that board as the
11 airport appeals board, in which case the terms of the members for the purposes of [sections 3 through 19] are
12 concurrent with their terms as members of the board of adjustment.

13

14 **NEW SECTION. Section 17. Variance.** (1) A person intending to erect or increase the height of a
15 structure, permit the growth of a tree, or use property in a manner that is not in accordance with the requirements
16 of the regulations adopted pursuant to [sections 3 through 19] may apply to the governing body or an
17 enforcement officer appointed for this purpose by the governing body for a variance from the regulations.

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

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

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

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

29 (6) A person who builds a structure pursuant to a variance from the airport affected area regulations
30 or who takes or buys property in an airport affected area for which a variance has been granted is on notice that

1 the airport existed before the variance was granted and that normal and anticipated normal operations of the
 2 airport will result in noise, vibrations, and fumes being projected over the property. A person using a structure
 3 built pursuant to a variance may not collect damages from a governing body or local government or from an
 4 airport authority, airport operator, or airport owner for interference with the enjoyment of that structure caused
 5 by noise, vibrations, and fumes from normal and anticipated normal airport operations.

6
 7 **NEW SECTION. Section 18. Penalty.** A person who violates the provisions of [sections 3 through 19]
 8 or the regulations adopted under [section 8] is subject to a civil penalty and a criminal penalty. The civil penalty
 9 is a fine of \$100 for each day that the violation is not remedied after the governing body has given notification
 10 of the violation and held a hearing on the violation. The criminal penalty is a fine of \$500, pursuant to 45-2-104.

11
 12 **NEW SECTION. Section 19. Injunction.** A local governing body may institute in any court of
 13 competent jurisdiction an action to prevent, restrain, correct, or abate any violation of [sections 3 through 19] or
 14 the regulations adopted pursuant to [sections 3 through 19].

15
 16 **Section 20.** Section 67-10-102, MCA, is amended to read:
 17 **"67-10-102. Acquisition and establishment of airports and landing fields.** (1) Counties, cities, and
 18 towns may, either individually or by the joint action of a county and one or more of the cities and towns within
 19 the county, acquire by gift, deed, purchase, or condemnation pursuant to Title 70, chapter 30, land for airport
 20 ~~or landing field~~ purposes. The local governments may use the land to establish, construct, own, control, lease,
 21 equip, improve, operate, and regulate airports ~~or landing fields~~ for the use of airplanes and other aircraft.

22 (2) In addition, a county, city, or town may exercise the authority granted by this section by acting jointly
 23 with one or more counties, with one or more cities, with one or more towns, or with any combination of counties,
 24 cities, or towns. A multijurisdictional airport is not required to be located, in whole or in part, within the limits of
 25 each subdivision participating in the joint venture."

26
 27 **Section 21.** Section 67-10-202, MCA, is amended to read:
 28 **"67-10-202. Creation of board -- funding -- rules.** (1) The county, city, or town, acting individually or
 29 acting jointly as authorized by 67-10-102, having established an airport ~~or landing field~~ and acquired property
 30 for ~~such that~~ that purpose, may construct, improve, equip, maintain, and operate the ~~same and for that purpose~~

1 ~~airport. The county, city, or town~~ may create a board or body from the ~~inhabitants~~ residents of ~~such the~~ county,
 2 city, ~~or town, or such joint subdivisions~~ subdivision of the state for the purpose of conferring upon them; and may
 3 confer upon ~~them;~~ the board or body the jurisdiction for the improvement, equipment, maintenance, and
 4 operation of ~~such the~~ airport ~~or landing field~~. The board of county commissioners, the city or town council, ~~as~~
 5 ~~the case may be;~~ or the board of county commissioners and the council or councils under a joint venture may
 6 adopt rules and establish fees or charges for the use of ~~such the~~ airport ~~or landing field~~ or may authorize ~~such~~
 7 the board or body to do so, subject, ~~however;~~ to the approval of the appointing power before the ~~same shall~~ fees
 8 or charges may take effect. All expenses of ~~such the~~ construction, improvement, equipment, maintenance, and
 9 operation ~~shall be~~ are a charge against ~~such the~~ county, city, or town; ~~or when~~ When a county, city, or town acts
 10 jointly under the authority ~~herein given~~ provided in this section, ~~such the~~ charges ~~shall be~~ are against the joint
 11 ~~subdivisions~~ subdivision of the state and ~~shall~~ must be apportioned according to benefits to accrue, the
 12 proportion to be paid by each to be fixed in advance by joint resolution of the governing bodies.

13 (2) For the purpose of ~~meeting the charges mentioned~~ complying with subsection (1), when the airport
 14 ~~or landing field~~ is ~~such a~~ joint venture, a joint fund ~~shall~~ must be created and maintained into which each of the
 15 political subdivisions ~~interested in the joint venture~~ shall deposit its proportionate share in accordance with the
 16 predetermination of the board of county commissioners and council or councils affected.

17 (3) All disbursements from ~~such the~~ fund ~~shall~~ must be made by order of ~~such the~~ joint board or body,
 18 if one ~~be~~ is created as authorized, otherwise under ~~such the~~ rules ~~as that~~ the joint control by the commissioners
 19 and council or councils may adopt."

20

21 **Section 22.** Section 67-10-231, MCA, is amended to read:

22 "**67-10-231. No limitation on airport hazard zoning.** Nothing contained in this chapter ~~shall be~~
 23 ~~construed to limit~~ limits any right, power, or authority of a municipality to regulate airport hazards by zoning or
 24 by establishing airport affected area regulations as provided in [sections 3 through 19]."

25

26 **Section 23.** Section 67-10-402, MCA, is amended to read:

27 "**67-10-402. Tax levy.** (1) Subject to 15-10-420 and for the purpose of establishing, constructing,
 28 equipping, maintaining, and operating airports, ~~landing fields,~~ and ports under the provisions of this chapter and
 29 as provided in Title 7, chapter 14, part 11, the county commissioners or the city or town council may each year
 30 assess and levy, in addition to the annual levy for general administrative purposes or the all-purpose mill levy

1 authorized by 7-6-4451, a tax on the taxable value of all taxable property in the county, city, or town for airports
2 and ~~landing fields and for~~ ports.

3 (2) In the event of a jointly established airport, ~~landing field~~, or port, the county commissioners and the
4 city or town council or councils involved shall determine in advance the levy necessary for those purposes and
5 the proportion that each political subdivision joining in the venture is required to pay.

6 (3) If the levy is insufficient for the purposes enumerated in subsection (1), the commissioners and
7 councils are authorized and empowered to contract an indebtedness on behalf of the county, city, or town by
8 borrowing money or issuing bonds for those purposes. However, bonds may not be issued until the proposition
9 has been submitted to the qualified electors and approved by a majority vote, except as provided in subsection
10 (4).

11 (4) For the purpose of establishing a reserve fund to resurface, overlay, or improve existing runways,
12 taxiways, and ramps, the governing bodies may set up annual reserve funds in their annual budget if:

13 (a) the reserve is approved by the governing bodies during the normal budgeting procedure;

14 (b) the necessity to resurface or improve runways by overlays or similar methods periodically is based
15 upon competent engineering estimates; and

16 (c) the funds are expended at least within each 10-year period.

17 (5) The reserve fund may not exceed at any time a competent engineering estimate of the cost of
18 resurfacing or overlaying the existing runways, taxiways, and ramps of any one airport for each fund. The
19 governing body of the airport or port, if in its judgment it considers it advantageous, may invest the fund in any
20 interest-bearing deposits in a state or national bank insured by the FDIC or obligations of the United States of
21 America, either short-term or long-term. Interest earned from the investments must be credited to the operations
22 and maintenance budget of the airport or port governing body. ~~Due to the uniqueness of the subject matter, the~~
23 ~~provisions of this section are declared necessary in the interests of the public health and safety."~~

24

25 **Section 24.** Section 67-10-902, MCA, is amended to read:

26 **"67-10-902. Definitions.** As used in this part, the following definitions apply:

27 (1) "Airport" means an airport ~~and landing field~~, as defined in 67-1-101, that does not have commercial
28 automobile rental services available. The term includes a regional airport authority or municipal airport authority
29 as defined in 67-1-101.

30 (2) "Courtesy car" means a motor vehicle provided by, and titled in the name of, a municipality for the

1 purposes and pursuant to the conditions set out in this part.

2 (3) (a) "User" means an airplane pilot or an airplane passenger who flies into an airport.

3 (b) The term does not include local residents or airport personnel."
4

5 **Section 25.** Section 67-11-103, MCA, is amended to read:

6 **"67-11-103. Regional airport authority.** (1) Two or more municipalities may by joint resolution create
7 a public body, corporate and politic, to be known as a regional airport authority. The resolution creating a
8 regional airport authority ~~shall~~ must create a board of not less than five commissioners; the number to be
9 appointed, their term and compensation, if any, ~~shall~~ must be provided for in the resolution. Each ~~such~~ regional
10 airport authority shall organize, select officers for terms to be fixed by agreement, and adopt and amend from
11 time to time rules for its own procedure ~~not inconsistent~~ consistent with 67-11-104.

12 (2) A regional airport authority may be increased ~~from time to time~~ to serve one or more additional
13 municipalities if each additional municipality and each of the municipalities then included in the regional authority
14 and the commissioners of the regional authority, respectively, adopt a joint resolution consenting ~~thereto~~;
15 ~~provided that if~~ to the increase. If a municipal airport authority for any municipality seeking to be included in the
16 regional authority is then in existence, the commissioners of the municipal authority ~~must~~ shall consent to the
17 inclusion of the municipality in the regional authority. Upon the inclusion of any municipality in the regional
18 authority, all rights, contracts, obligations, and property, real and personal, of the municipal authority ~~shall~~ must
19 be in the name of and vest in the regional authority.

20 (3) A regional airport authority may be decreased if each of the municipalities then included in the
21 regional authority and the commissioners of the regional authority consent to the decrease and make provisions
22 for the retention or disposition of its assets and liabilities.

23 (4) A municipality ~~shall~~ may not adopt any resolution authorized by this section without a public hearing
24 ~~thereon on the resolution~~. Notice ~~thereof shall~~ of the hearing must be given at least 10 days prior ~~thereto to the~~
25 hearing in a newspaper published in the municipality or, if there is no newspaper published ~~therein in the~~
26 municipality, ~~then~~ in a newspaper having general circulation in the municipality.

27 (5) For the purpose of this chapter, a regional airport authority ~~shall have~~ has the same powers as all
28 other political subdivisions in the adoption and enforcement of ~~comprehensive~~ airport zoning affected area
29 regulations as provided for ~~by the laws of this state in this title~~."
30

1 **Section 26.** Section 67-11-201, MCA, is amended to read:

2 **"67-11-201. General powers of authority.** An authority has all the powers necessary or convenient
3 to carry out the purposes of this chapter, including, subject to 15-10-420, the power to certify annually to the
4 governing bodies creating it the amount of tax to be levied by the governing bodies for airport purposes.
5 Authority powers include but are not limited to the power to:

6 (1) sue and be sued, have a seal, and have perpetual succession;

7 (2) execute contracts and other instruments and take other action that may be necessary or convenient
8 to carry out the purposes of this chapter;

9 (3) plan, establish, acquire, develop, construct, purchase, enlarge, improve, maintain, equip, operate,
10 regulate, and protect airports and air navigation facilities, within this state and within any adjoining state,
11 including the acquisition, construction, installation, equipment, maintenance, and operation at the airports or
12 buildings and other facilities for the servicing of aircraft or for comfort and accommodation of air travelers and
13 the purchase and sale of supplies, goods, and commodities that are incident to the operation of its airport
14 properties. For the authorized purposes, an authority may, by purchase, gift, devise, lease, eminent domain
15 proceedings pursuant to Title 70, chapter 30, or otherwise, acquire property, real or personal, or any interest in
16 property, including easements in airport hazards or land outside the boundaries of an airport or airport site, that
17 is necessary to permit the removal, elimination, obstruction-marking, or obstruction-lighting of airport hazards
18 or to prevent the establishment of airport hazards.

19 (4) establish ~~comprehensive airport zoning affected area~~ regulations in accordance with ~~the laws of this~~
20 ~~state~~ this title;

21 (5) acquire, by purchase, gift, devise, lease, eminent domain proceedings, or otherwise, existing airports
22 and air navigation facilities. However, an authority may not acquire or take over any airport or air navigation
23 facility owned or controlled by another authority, a municipality, or a public agency of this or any other state
24 without the consent of the authority, municipality, or public agency.

25 (6) establish or acquire and maintain airports in, over, and upon any public waters of this state or any
26 submerged lands under public waters, provided that the authority has obtained the approval of the owner or
27 agency that controls the water, and construct and maintain terminal buildings, landing floats, causeways,
28 roadways, and bridges for approaches to or connecting with any airport and landing floats and breakwaters for
29 the protection of the airport."
30

1 **Section 27.** Section 67-11-241, MCA, is amended to read:

2 **"67-11-241. No limitation on airport hazard zoning.** Nothing contained in this chapter ~~shall be~~
3 ~~construed to limit~~ limits any right, power, or authority of a municipality to regulate airport hazards by zoning or
4 by establishing airport affected area regulations as provided in [sections 3 through 19]."

5

6 **Section 28.** Section 70-30-102, MCA, is amended to read:

7 **"70-30-102. Public uses enumerated.** Subject to the provisions of this chapter, the right of eminent
8 domain may be exercised for the following public uses:

9 (1) all public uses authorized by the government of the United States;

10 (2) public buildings and grounds for the use of the state and all other public uses authorized by the
11 legislature of the state;

12 (3) public buildings and grounds for the use of any county, city, town, or school district;

13 (4) canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the
14 inhabitants of any county, city, or town;

15 (5) projects to raise the banks of streams, remove obstructions from streambanks, and widen, deepen,
16 or straighten stream channels;

17 (6) water and water supply systems as provided in Title 7, chapter 13, part 44;

18 (7) roads, streets, alleys, controlled-access facilities, and all other public uses for the benefit of a county,
19 city, or town or the inhabitants of a county, city, or town;

20 (8) acquisition of road-building material as provided in 7-14-2123;

21 (9) stock lanes as provided in 7-14-2621;

22 (10) parking areas as provided in 7-14-4501 and 7-14-4622;

23 (11) airport ~~and landing field~~ purposes as provided in 7-14-4801, 67-2-301, ~~67-5-202, 67-6-301~~, [section
24 12], and Title 67, chapters 10 and 11;

25 (12) urban renewal projects as provided in Title 7, chapter 15, parts 42 and 43;

26 (13) housing authority purposes as provided in Title 7, chapter 15, part 44;

27 (14) county recreational and cultural purposes as provided in 7-16-2105;

28 (15) city or town athletic fields and civic stadiums as provided in 7-16-4106;

29 (16) county cemetery purposes as provided in 7-35-2201, cemetery association purposes as provided
30 in 35-20-104, and state veterans' cemetery purposes as provided in 10-2-604;

- 1 (17) preservation of historical or archaeological sites as provided in 23-1-102 and 87-1-209(2);
- 2 (18) public assistance purposes as provided in 53-2-201;
- 3 (19) highway purposes as provided in 60-4-103 and 60-4-104;
- 4 (20) common carrier pipelines as provided in 69-13-104;
- 5 (21) water supply, water transportation, and water treatment systems as provided in 75-6-313;
- 6 (22) mitigation of the release or threatened release of a hazardous or deleterious substance as provided
- 7 in 75-10-720;
- 8 (23) the acquisition of nonconforming outdoor advertising as provided in 75-15-123;
- 9 (24) screening for or the relocation or removal of junkyards, motor vehicle graveyards, motor vehicle
- 10 wrecking facilities, garbage dumps, and sanitary landfills as provided in 75-15-223;
- 11 (25) water conservation and flood control projects as provided in 76-5-1108;
- 12 (26) acquisition of natural areas as provided in 76-12-108;
- 13 (27) acquisition of water rights for the natural flow of water as provided in 85-1-204;
- 14 (28) property and water rights necessary for waterworks as provided in 85-1-209 and 85-7-1904;
- 15 (29) conservancy district purposes as provided in 85-9-410;
- 16 (30) wharves, docks, piers, chutes, booms, ferries, bridges, private roads, plank and turnpike roads, and
- 17 railroads;
- 18 (31) canals, ditches, flumes, aqueducts, and pipes for:
- 19 (a) supplying mines, mills, and smelters for the reduction of ores;
- 20 (b) supplying farming neighborhoods with water and drainage;
- 21 (c) reclaiming lands; and
- 22 (d) floating logs and lumber on streams that are not navigable;
- 23 (32) sites for reservoirs necessary for collecting and storing water. However, reservoir sites must
- 24 possess a public use demonstrable to the district court as the highest and best use of the land.
- 25 (33) roads, tunnels, and dumping places for working mines, mills, or smelters for the reduction of ores;
- 26 (34) outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines,
- 27 mills, and smelters for the reduction of ores;
- 28 (35) an occupancy in common by the owners or the possessors of different mines of any place for the
- 29 flow, deposit, or conduct of tailings or refuse matter from their several mines, mills, or smelters for reduction of
- 30 ores and sites for reservoirs necessary for collecting and storing water for the mines, mills, or smelters. However,

1 the reservoir sites must possess a public use demonstrable to the district court as the highest and best use of
2 the land.

3 (36) private roads leading from highways to residences or farms;

4 (37) telephone or electrical energy lines;

5 (38) telegraph lines;

6 (39) sewerage of any:

7 (a) county, city, or town or any subdivision of a county, city, or town, whether incorporated or
8 unincorporated;

9 (b) settlement consisting of not less than 10 families; or

10 (c) public buildings belonging to the state or to any college or university;

11 (40) tramway lines;

12 (41) logging railways;

13 (42) temporary logging roads and banking grounds for the transportation of logs and timber products
14 to public streams, lakes, mills, railroads, or highways for a time that the court or judge may determine. However,
15 the grounds of state institutions may not be used for this purpose.

16 (43) underground reservoirs suitable for storage of natural gas;

17 (44) projects to mine and extract ores, metals, or minerals owned by the condemnor located beneath
18 or upon the surface of property where the title to the surface vests in others. However, the use of the surface
19 of property for strip mining or open-pit mining of coal (i.e., any mining method or process in which the strata or
20 overburden is removed or displaced in order to extract the coal) is not a public use, and eminent domain may
21 not be exercised for this purpose.

22 (45) projects to restore and reclaim lands that were strip mined or underground mined for coal and not
23 reclaimed in accordance with Title 82, chapter 4, part 2, and to abate or control adverse affects of strip or
24 underground mining on those lands."

25
26 **NEW SECTION. Section 29. Repealer.** Sections 67-4-101, 67-4-102, 67-4-201, 67-4-202, 67-4-203,
27 67-4-204, 67-4-211, 67-4-301, 67-4-302, 67-4-303, 67-4-304, 67-4-311, 67-4-312, 67-4-313, 67-4-314, 67-4-401,
28 67-4-402, 67-5-101, 67-5-102, 67-5-201, 67-5-202, 67-5-203, 67-5-204, 67-5-211, 67-5-212, 67-6-101, 67-6-102,
29 67-6-103, 67-6-201, 67-6-202, 67-6-203, 67-6-204, 67-6-205, 67-6-206, 67-6-207, 67-6-211, and 67-6-301,
30 MCA, are repealed.

1

2 NEW SECTION. Section 30. Codification instruction. [Sections 3 through 19] are intended to be
3 codified as an integral part of Title 67, and the provisions of Title 67 apply to [sections 3 through 19].

4

5 NEW SECTION. Section 31. Effective date. [This act] is effective on passage and approval.

6

7 NEW SECTION. Section 32. Applicability. (1) Except as provided in subsection (2), [sections 3
8 through 19] do not apply to a governing body that had expended funds to begin the process of designating or
9 had already designated an airport influence area or that had established a zoning district and airport zoning
10 regulations on or before [the effective date of this act]. The provisions of Title 67, chapters 4, 5, and 6 apply to
11 the governing body as those provisions read before [the effective date of this act].

12 (2) If a governing body alters an airport influence area established before [the effective date of this act]
13 or amends the regulations for the airport influence area or any adopted airport zoning regulations, then the
14 provisions of [sections 3 through 19] apply.

15

- END -