

State of South Dakota

NINETY-THIRD SESSION LEGISLATIVE ASSEMBLY, 2018

634Z0544

HOUSE BILL NO. _____

Introduced by: _____

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding aviation.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 50-1-1 be amended to read:

4 50-1-1. Terms as used in this title mean:

5 (1) "Aeronautical information manual," the official guide to aviation and flight activity
6 in the United States, including airspace, air traffic control procedures, and other
7 procedures related to flight safety as published by the Federal Aviation
8 Administration;

9 (2) "Aeronautics," the act or practice of the art and science of transportation by aircraft,
10 and operation, the science, art, and physics of flight. The term also means the method
11 or act of construction, repair, or maintenance of aircraft, airports, or air navigation
12 facilities airport facilities, aircraft, and aviation facilities;

13 ~~(2)~~(3) "Air traffic," aircraft operating in the air or on an airport surface other than a loading
14 ramp and parking area;

15 (4) "Air traffic control," a service operated by an authority under FAA oversight to
16 promote the safe, orderly, and expeditious flow of air traffic in the United States;



- 1 (5) ~~any powered contrivance used or designed for navigation of, or a device~~
2 that is used, intended to be used, or designed for flight in; the air. The term includes
3 any airplane, balloon, civil aircraft, drone, glider, helicopter, and public aircraft;
- 4 ~~(3)~~(6) "Airplane," an engine-driven fixed-wing aircraft, heavier than air, that is supported
5 in flight by the dynamic reaction of the air against the aircraft's wings;
- 6 (7) ~~any area, either of land or water, which is used, or intended for use to be~~
7 used, for the landing and take-off of aircraft, and any appurtenant areas which are
8 used, or intended for use, for airport buildings or other airport facilities area,
9 structure, facility, or rights right of way, together with all airport buildings and
10 ~~facilities located thereon to facilitate that use. The term includes any military airport,~~
11 private airport, public airport, and temporary airport;
- 12 ~~(4)~~(8) "Anemometer," an instrument for measuring and recording the speed of the wind for
13 purposes of documenting whether a site has wind resources sufficient for the
14 operation of a wind turbine generator;
- 15 (9) "Anemometer tower," a structure, including any guy wire or accessory facility, on
16 which an anemometer is mounted;
- 17 (10) "Aviation," the act, science, or practice of flight or transportation by aircraft;
- 18 (11) "Aviation facility," any facility that supports aviation activities, including any airport,
19 heliport, and navigational aid;
- 20 (12) "Balloon," an aircraft that is not engine-driven, is lighter than air, and sustains flight
21 through the use of gas buoyancy or an airborne heater;
- 22 (13) "Civil aircraft," any aircraft other than a public aircraft;
- 23 ~~(5)~~ (14) "Commission," the South Dakota Aeronautics Commission;
- 24 ~~(6)~~ (15) "Controlled airspace," airspace of specific and defined classifications and

1 dimensions inside of which air traffic control services are provided;

2 (16) "Department," the South Dakota Department of Transportation;

3 ~~(7)~~(17) "Drone," a small unmanned aircraft system;

4 (18) "Federal Aviation Administration," the federal authority regulating any aspect of civil
5 aviation in the United States, including air traffic management, construction and
6 operation of any airport, and the certification of pilots, aviation personnel, and
7 aircraft;

8 (19) "Federal aviation regulations," the rules promulgated by the Federal Aviation
9 Administration governing any aviation activity in the United States;

10 (20) "Glider," an aircraft that is heavier than air, supported in flight by the dynamic
11 reaction of the air against its lifting surfaces, and the flight of which does not depend
12 principally on an engine;

13 (21) "Helicopter," a type of aircraft that derives both lift and propulsion from one or more
14 sets of horizontally revolving overhead rotors, is capable of moving vertically and
15 horizontally, and for which the direction of motion is controlled by the pitch of the
16 rotor blades;

17 (22) "Heliport," an area of land, water, or a structural surface, used or intended for use as
18 a landing and take-off area for helicopters. The term includes both public and private
19 heliports;

20 (23) "Military airport," any military air base, air station, airfield, or other area, publicly or
21 privately owned, that is designed, set aside, and operated by the state, a political
22 subdivision of the state, or the United States, for civil or national defense, or for any
23 federal program relating to flight, or for the operation of military aircraft, and used
24 in the interest of the public for those purposes;

1 (24) "Navigational aid," any device external to an aircraft specifically intended to assist
2 a pilot in determining the pilot's position and safe course;

3 (25) "Prescribed adjusted height," a height adjusted upward seventeen feet for an interstate
4 highway, fifteen feet for any other public road, ten feet or the height of the highest
5 mobile object that would normally traverse the road, whichever is greater, for a
6 private road, and twenty-three feet for a railroad;

7 ~~(8)~~ (26) "Private airport," any privately owned airport that is ~~open to and~~ available for
8 use only by the owner and the owner's invitees;

9 ~~(9)~~ (27) "Public aircraft," any aircraft, including military aircraft, used exclusively in
10 the governmental service, ~~including military and naval aircraft,~~ or of any state
11 or territory ~~thereof~~ of the United States;

12 ~~(10)~~ (28) "Public airport," any airport, whether publicly or privately owned, that is ~~open~~
13 ~~to and~~ available to the public for ~~use by the flying public~~ aviation activity;

14 (29) "Structure" any object constructed by human action;

15 (30) "Small unmanned aircraft system" or "SUAS," any unmanned aircraft and its
16 associated elements that is operated without the possibility of direct human
17 intervention from within or on the aircraft, and that weighs not more than fifty-five
18 pounds, including anything that is onboard or otherwise attached to the aircraft;

19 (31) "Temporary airport," any airport established and set aside for the operation of aircraft
20 for transitory or impermanent purposes;

21 (32) "Uncontrolled airspace," any portion of airspace in the United States that has not
22 been designated as controlled airspace.

23 Section 2. That § 50-2-2.1 be amended to read:

24 50-2-2.1. The commission may promulgate rules pursuant to chapter 1-26 regarding:

- 1 (1) The design, layout, location, construction, operation, equipping, and use of all public
- 2 airports;
- 3 (2) The establishment, location, maintenance, and operation of all air markings, air
- 4 beacons and other ~~navigation facilities~~ navigational aids; and
- 5 (3) The operation of aerial applicators or operators including minimum standards, class
- 6 definitions, and safety requirements.

7 Section 3. That § 50-2-5 be amended to read:

8 50-2-5. The commission shall foster air commerce within the ~~State of South Dakota~~ state.

9 ~~The commission shall supervise the aeronautical activities and facilities within the state,~~

10 ~~including supervision and control over all airports, air marking, air beacons, and all other air~~

11 ~~navigation facilities.~~

12 Section 4. That § 50-2-12 be amended to read:

13 50-2-12. The commission shall approve the expenditure and disbursement of moneys

14 appropriated and available for matching purposes and for the construction, development,

15 operation, marking, and maintenance of airports, and ~~air navigation~~ airport facilities.

16 Section 5. That § 50-4-2 be amended to read:

17 50-4-2. The department may, on behalf of and in the name of the state, out of appropriations

18 and other moneys made available for such purposes, construct, improve, maintain, mark, and

19 operate airports and other ~~air navigation~~ aviation facilities either within or without this state and

20 to assist financially counties, municipalities, and organized townships in constructing,

21 improving, maintaining, marking, and operating airports and other ~~air navigation~~ aviation

22 facilities within or without the state. For such purposes the department may exercise all of the

23 powers and authority conferred upon municipal corporations by this title.

24 Section 6. That § 50-4-3 be amended to read:

1 50-4-3. The department may cooperate with the government of the United States, and any
2 agency or department thereof, in the acquisition, construction, improvement, maintenance, and
3 operation of airports and other ~~navigation~~ aviation facilities in this state.

4 Section 7. That § 50-4-4 be amended to read:

5 50-4-4. The department may accept and receive federal moneys and other moneys either
6 public or private, for and on behalf of the state, counties, or municipalities, for the acquisition,
7 construction, improvement, maintenance, and operation of airports and other ~~air navigation~~
8 aviation facilities, whether the work is to be done by the state, counties, or municipalities, or
9 jointly, aided by grants of aid from the United States.

10 Section 8. That § 50-4-5 be amended to read:

11 50-4-5. The department shall act as an agent of any county or municipality of this state upon
12 the request of the county or municipality, in accepting, receiving and receipting for any moneys
13 for airports or other ~~air navigation facility~~ aviation purposes, and in contracting for the
14 acquisition, construction, improvement, maintenance, or operation of airports or other ~~air~~
15 ~~navigation~~ aviation facilities, financed either in whole or in part by federal moneys. The
16 governing body of the county or municipality shall designate the department as its agent for such
17 purposes and to enter into an agreement with the department prescribing the terms and
18 conditions of the agency.

19 Section 9. That § 50-4-7 be amended to read:

20 50-4-7. All contracts for the acquisition, construction, improvement, maintenance, and
21 operation of airports, or other ~~air navigation~~ aviation facilities made by the department, either
22 as the agent of this state or as the agent of any county or municipality, shall be made pursuant
23 to the laws of this state governing the making of like contracts.

24 Section 10. That § 50-5-7 be amended to read:

1 50-5-7. If the commission deems it necessary, the commission may order the closing of any
2 airport, or order any other ~~air navigation~~ aviation facility to cease operations until it complies
3 with the requirements established by the commission.

4 Section 11. That § 50-5-8 be amended to read:

5 50-5-8. The commission or the commission's agent may inspect and examine at reasonable
6 hours, to carry out the provisions of this title, any premises, and the buildings and other
7 structures thereon, where the airports or other ~~air navigation~~ aviation facilities are operated.

8 Section 12. That § 50-6A-1 be amended to read:

9 50-6A-1. Terms used in this chapter mean:

10 (1) "Airport authority" or "authority," any regional airport authority created pursuant to
11 the provisions of this chapter;

12 (2) ~~"Air navigation Airport facility," any facility, other than one owned and operated by~~
13 ~~the United States, used in, available for use in, or designed for use in the aid of air~~
14 ~~navigation~~ aviation, including any structures, mechanisms, lights, beacons, markers,
15 communicating systems, or other instrumentalities, or devices, used or useful as an
16 aid, or constituting an advantage or convenience, to the safe taking off, ~~navigation,~~
17 and landing of aircraft, or the safe and efficient operation or maintenance of an
18 airport, or any combination of any or all of such facilities;

19 ~~(2) "Airport authority" or "authority," any regional airport authority created pursuant to~~
20 ~~the provisions of this chapter;~~

21 (3) "Airport hazard," any structure, object of natural growth, or use of land ~~which~~ that
22 obstructs the airspace required for the flight of aircraft in landing or taking off at an
23 airport or is otherwise hazardous to such landing or taking off of aircraft;

24 (4) "Bonds," any bonds, notes, interim certificates, debentures, or similar obligations

1 issued by an authority pursuant to this chapter;

2 (5) "Governing body," the official or officials authorized by law to exercise ordinance
3 or other lawmaking powers of a political subdivision;

4 (6) "Person," a person as defined by subdivision 2-14-2(18) as well as any joint stock
5 association, or body politic; and includes any trustee, receiver, assignee, or other
6 similar representative thereof;

7 (7) "Political subdivision" or "subdivision," any county, municipality, or other public
8 body of this state;

9 (8) "Project," any airport operated by an authority, including all real and personal
10 property, structures, machinery, equipment and appurtenances or facilities that are
11 part of the airport or used or useful in connection therewith either as ground facilities
12 for the convenience of handling aviation equipment, passengers and freight or as part
13 of ~~aviation operation, air navigation and air safety operation~~ aviation and air safety
14 operations; and

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

21 Section 13. That § 50-6A-14 be amended to read:

22 50-6A-14. For the purpose of aiding and cooperating in the planning, undertaking,
23 construction, or operation of airports and ~~air navigation~~ aviation facilities pursuant to the
24 provisions of this chapter, any subdivision for which an authority has been created may, upon

1 such terms, with or without consideration, as it may determine:

2 (1) Lend or donate money to the authority;

3 (2) Provide that all or a portion of the taxes or funds available or to become available to,
4 or required by law to be used by, the subdivision for airport purposes, be transferred
5 or paid directly to the airport authority as such funds become available to the
6 subdivision;

7 (3) Cause water, sewer, or drainage facilities, or any other facilities which it is
8 empowered to provide, to be furnished adjacent to or in connection with such airports
9 or ~~air navigation~~ aviation facilities;

10 (4) Dedicate, sell, convey, or lease any of its interest in any property, or grant easements,
11 licenses, or any other rights or privileges therein to the authority;

12 (5) Furnish, dedicate, close, pave, install, grade, regrade, plan, or replan streets, roads,
13 roadways, and walks from established streets or roads to such airports or ~~air~~
14 ~~navigation~~ aviation facilities;

15 (6) Do any and all things, whether or not specifically authorized in this section and not
16 otherwise prohibited by law, that are necessary or convenient to aid and cooperate
17 with the authority in the planning, undertaking, construction, or operation of airports
18 and ~~air navigation~~ aviation facilities; and

19 (7) Enter into agreements with the authority respecting action to be taken by the
20 subdivision pursuant to the provisions of this section.

21 Section 14. That § 50-6A-16 be amended to read:

22 50-6A-16. A regional airport authority ~~shall have the power to~~ may plan, establish, acquire,
23 develop, construct, purchase, enlarge, improve, maintain, equip, operate, regulate, and protect
24 airports and ~~air navigation~~ aviation facilities, within this state and within any adjoining state,

1 including the acquisition, construction, installation, equipment, maintenance, and operation at
2 such airports or buildings and other facilities for the servicing of aircraft or for comfort and
3 accommodation of air travelers, and the purchase and sale of supplies, goods, and commodities
4 as are incident to the operation of its airport properties. For such purposes an authority may by
5 purchase, gift, devise, lease, eminent domain proceedings or otherwise, acquire property, real
6 or personal, or any interest therein, including easements in airport hazards or land outside the
7 boundaries of an airport or airport site, as are necessary to permit the removal, elimination,
8 obstruction-marking, or obstruction-lighting of airport hazards or to prevent the establishment
9 of airport hazards.

10 Section 15. That § 50-6A-17 be amended to read:

11 50-6A-17. An authority ~~shall have the power to~~ may acquire, by purchase, gift, devise, lease,
12 eminent domain proceedings, or otherwise, existing airports and ~~air navigation~~ aviation
13 facilities; ~~provided, however,~~ However an authority ~~shall~~ may not acquire or take over any
14 airport or ~~air navigation~~ aviation facility owned or controlled by another authority, a
15 subdivision, or public agency of this or any other state without the consent of ~~such~~ the authority,
16 subdivision, or public agency.

17 Section 16. That § 50-6A-28 be amended to read:

18 50-6A-28. An authority may designate the department as the authority's agent to accept,
19 receive, receipt for, and disburse federal and state moneys, and other moneys, public or private,
20 made available by grant or loan or both, to accomplish in whole or in part, any of the purposes
21 of this chapter. The authority shall designate the department as the authority's agent in
22 contracting for and supervising the planning, acquisition, development, construction,
23 improvement, maintenance, equipment, or operation of any airport or other ~~air navigation~~
24 aviation facility.

1 An authority shall enter into an agreement with the department prescribing the terms and
2 conditions of the agency in accordance with any terms and conditions as are prescribed by the
3 United States, if federal money is involved, and in accordance with the applicable laws of this
4 state. All federal moneys accepted under this section by the department shall be accepted and
5 transferred or expended by the department upon any terms and conditions as are prescribed by
6 the United States.

7 All moneys received by the department pursuant to this section shall be deposited in the state
8 treasury, and unless otherwise prescribed by the agency from which the moneys were received,
9 shall be kept in separate funds designated according to the purposes for which the moneys were
10 made available, and shall be held by the state in trust for such purposes.

11 Section 17. That § 50-6A-30 be amended to read:

12 50-6A-30. Any bonds issued pursuant to this chapter by an authority shall be payable, as to
13 principal and interest, solely from revenues of an airport or ~~air navigation~~ airport facility or
14 facilities, and shall so state on their face, but if any such issue of bonds constitutes an
15 indebtedness within the meaning of any constitutional or statutory debt limitation or restriction,
16 each bond of the issue shall be an equally valid and binding special obligation of the authority
17 in accordance with its terms, in an amount proportionate to the total amount of the issue which
18 is within such limitation or restriction.

19 Section 18. That § 50-6A-38 be amended to read:

20 50-6A-38. In connection with the operation of an airport or ~~air navigation~~ airport facility
21 owned or controlled by an authority, the authority may enter into contracts, leases, and other
22 arrangements for terms not to exceed thirty years with any persons:

- 23 (1) Granting the privilege of using or improving the airport or ~~air navigation~~ airport
24 facility or any portion or facility thereof or space therein for commercial purposes;

1 (2) Conferring the privilege of supplying goods, commodities, things, services, or
2 facilities at the airport or ~~air navigation~~ airport facility; and

3 (3) Making available services to be furnished by the authority or its agents at the airport
4 or ~~air navigation~~ airport facility.

5 In each case the authority may establish the terms and conditions and fix the charges, rentals,
6 or fees for the privileges or services, which shall be reasonable and uniform for the same class
7 or privilege or service and shall be established with due regard to the property and
8 improvements used and the expenses of operation to the authority; ~~provided that~~ . However, in
9 no case ~~shall~~ may the public be deprived of its rightful, equal, and uniform use of the airport,
10 ~~air navigation~~ airport facility, or portion or facility thereof.

11 Section 19. That § 50-6A-40 be amended to read:

12 50-6A-40. Except as may be limited by the terms and conditions of any grant, loan or
13 agreement, authorized by §§ 50-6A-27 and 50-6A-28, an authority may, by sale, lease, or
14 otherwise, dispose of any airport, ~~air navigation~~ airport facility, or other property, or portion
15 thereof or interest therein, acquired pursuant to this chapter. ~~Such~~ The disposal by sale, lease,
16 or otherwise, shall be in accordance with the laws of this state governing the disposition of other
17 public property, except that in the case of disposal to another authority, a subdivision, or an
18 agency of the state or federal government for use and operation as a public airport, the sale,
19 lease, or other disposal may be effected in such manner and upon such terms as the
20 commissioners of the authority may deem in the best interest of civil aviation.

21 Section 20. That § 50-6A-41 be amended to read:

22 50-6A-41. An authority ~~is authorized to~~ may adopt, amend, and repeal such reasonable
23 resolutions, rules, regulations, and orders as it ~~shall deem~~ deems necessary for the management,
24 government, and use of any airport or ~~air navigation~~ airport facility owned by it or under its

1 control. No rule, regulation, order, or standard prescribed by the commission shall be
2 inconsistent with, or contrary to, any act of the Congress of the United States or any regulation
3 promulgated or standard established pursuant thereto. The authority shall keep on file at the
4 principal office of the authority for public inspection a copy of all its rules and regulations.

5 Section 21. That § 50-6A-45 be amended to read:

6 50-6A-45. Public agencies acting jointly pursuant to §§ 50-6A-42 to 50-6A-51, inclusive,
7 shall create a joint board which shall consist of members appointed by the governing body of
8 each participating public agency. The number to be appointed, their term and compensation, if
9 any, shall be provided for in the joint agreement. Each joint board shall organize, select officers
10 for such terms as are fixed by the agreement, and adopt and amend from time to time rules for
11 its own procedure. The joint board ~~shall have power~~ may, as agent of the participating public
12 agencies, to plan, acquire, establish, develop, construct, enlarge, improve, maintain, equip,
13 operate, regulate, protect and police any airport ~~or air navigation~~, airport facility, or airport
14 hazard to be jointly acquired, controlled and operated, ~~and the~~ The board may be authorized
15 by the participating public agencies to exercise on behalf of its constituent public agencies all
16 the powers of each with respect to the airport, ~~air navigation~~ airport facility, or airport hazard,
17 subject to the limitations of §§ 50-6A-46 to 50-6A-51, inclusive.

18 Section 22. That § 50-6A-47 be amended to read:

19 50-6A-47. No airport, ~~air navigation~~ airport facility, airport hazard, or real or personal
20 property, the cost of which is in excess of sums fixed therefor by the joint agreement or allotted
21 in the annual budget, may be acquired, established, or developed by the joint board without the
22 approval of the governing bodies of its constituent public agencies.

23 Section 23. That § 50-6A-50 be amended to read:

24 50-6A-50. For the purpose of providing the joint board with moneys for the necessary

1 expenditures in carrying out the provisions of §§ 50-6A-42 to 50-6A-51, inclusive, a joint fund
2 shall be created and maintained, into which shall be deposited the share of each of the
3 constituent public agencies as provided by the joint agreement. Any federal, state, or other
4 grants, contributions, or loans, and the revenues obtained from the joint ownership, control, and
5 operation of any airport or ~~air navigation~~ airport facility under the jurisdiction of the joint board
6 shall be paid into the joint fund. Disbursements from ~~such~~ the fund shall be made by order of
7 the board, subject to the limitations prescribed in §§ 50-6A-46 to 50-6A-51, inclusive.

8 Section 24. That § 50-6A-51 be amended to read:

9 50-6A-51. The joint board ~~shall~~ may not dispose of any airport, ~~air navigation~~ airport
10 facility, or real property under its jurisdiction except with the consent of the governing bodies
11 of its constituent public agencies, provided that the joint board may, without such consent, enter
12 into contracts, leases, or other arrangements contemplated by §§ 50-6A-38 and 50-6A-39.

13 Section 25. That § 50-6A-52 be amended to read:

14 50-6A-52. The acquisition of any land, or interest therein, pursuant to this chapter, the
15 planning, acquisition, establishment, development, construction, improvement, maintenance,
16 equipment, operation, regulation, and protection of airports and ~~air navigation~~ airport facilities,
17 including the acquisition or elimination of airport hazards, and the exercise of any other powers
18 herein granted to authorities and other public agencies, to be severally or jointly exercised, are
19 hereby declared to be public and governmental functions, exercised for a public purpose, and
20 matters of public necessity. All land and other property and privileges acquired and used by or
21 on behalf of any authority or other public agency in the manner and for the purposes enumerated
22 in this chapter shall and are hereby declared to be acquired and used for public and
23 governmental purposes and as a matter of public necessity.

24 Section 26. That § 50-7-2.2 be amended to read:

1 50-7-2.2. This state or any governmental agency of this state having any powers with respect
2 to planning, establishing, acquiring, developing, constructing, enlarging, improving,
3 maintaining, equipping, operating, regulating, or protecting airports or ~~air navigation~~ aviation
4 facilities within this state, may exercise those powers within any state or jurisdiction adjoining
5 this state, subject to the laws of that state or jurisdiction.

6 Section 27. That § 50-7-2.3 be amended to read:

7 50-7-2.3. Any state adjoining this state or any governmental agency thereof may plan,
8 establish, acquire, develop, construct, enlarge, improve, maintain, equip, operate, regulate, and
9 protect airports and ~~air navigation~~ airport facilities within this state, subject to the laws of this
10 state applicable to airports and ~~air navigation~~ airport facilities. The adjoining state or
11 governmental agency shall have the power of eminent domain in this state, which shall be
12 exercised in the manner provided by the laws of this state governing condemnation proceedings;
13 ~~provided that the~~ . The power of eminent domain ~~shall~~ may not be exercised unless the
14 adjoining state authorizes the exercise of that power therein by this state or any governmental
15 agency thereof having any of the powers mentioned in this section and § 50-7-2.2.

16 Section 28. That § 50-7-10 be amended to read:

17 50-7-10. The governing body of any governmental agency shall designate the department
18 as the body's agent to accept, receive, and receipt for federal moneys in the body's behalf for
19 airport purposes, and to contract for the acquisition, construction, enlargement, improvement,
20 maintenance, equipment, or operation of airports, or other ~~air navigation~~ aviation facilities. The
21 governmental agency may enter into an agreement with the department prescribing the terms
22 and conditions of the agency. The federal moneys shall be paid to the municipality or county
23 under such terms and conditions as may be imposed by the United States government in making
24 the grant.

1 Section 29. That § 50-7-11 be amended to read:

2 50-7-11. Any contract for the acquisition, construction, enlargement, improvement,
3 maintenance, equipment, or operation of any airport or any other ~~air navigation~~ aviation facility,
4 made by the governmental agency itself, or through the agency of the department, shall be made
5 pursuant to the laws of this state governing the making of like contracts.

6 Section 30. That § 50-9-1 be amended to read:

7 50-9-1. Any person or organization who intends to construct or alter a structure shall submit
8 an application and obtain an approval permit from the commission for any construction or
9 alteration that:

- 10 (1) Exceeds two hundred feet above ground level;
- 11 (2) Is within twenty thousand feet of a state approved public airport or military airport
12 that has at least one runway more than three thousand two hundred feet in actual
13 length and the construction or alteration exceeds a one hundred to one surface ratio
14 from any point on the runway;
- 15 (3) Is within ten thousand feet of a state approved public airport or military airport that
16 has its longest runway no more than three thousand two hundred feet in actual length
17 and the construction or alteration exceeds a fifty to one surface ratio from any point
18 on the runway;
- 19 (4) Is within five thousand feet of a state approved public heliport and the construction
20 or alteration exceeds a twenty-five to one surface ratio; or
- 21 (5) Is a highway, railroad, or other traverse way that the prescribed adjusted height
22 exceeds the standards provided in this section.

23 No application is needed if the construction or alteration of a structure would be shielded by an
24 existing structure of a permanent and substantial character within the corporate limits of a

1 municipality or by natural terrain or topographic features of equal or greater height. It must be
2 evident beyond any reasonable doubt that the construction or alteration of the structure so
3 shielded does not adversely affect safety in ~~air navigation~~. ~~For the purposes of this section, the~~
4 ~~term, structure, means any object constructed by human action~~ aviation.

5 Any person or organization, who intends to construct or alter a structure that exceeds two
6 hundred feet above ground level and that is outside the zones described in this section and who
7 has obtained a Federal Aviation Administration determination of no hazard, may provide that
8 determination to the commission prior to the start of construction in lieu of the application and
9 permit required by this chapter.

10 Section 31. That § 50-9-10 be amended to read:

11 50-9-10. If conflicting jurisdiction arises over the control of the erection of a building,
12 structure, tower, or hazard in relation to an airport, airway, or ~~air navigation~~ airport facility
13 between the commission and any political subdivision of the state, the commission may
14 overrule, change, modify, or amend zoning rules and regulations adopted by any political
15 subdivision or by any airport zoning board created by a political subdivision under the laws of
16 this state, after a public hearing in which all parties have been given an opportunity to be heard.

17 Section 32. That § 50-9-13 be amended to read:

18 50-9-13. Any anemometer tower that is fifty feet in height above the ground or higher, that
19 is located outside the exterior boundaries of any municipality, and whose appearance is not
20 otherwise mandated by state or federal law shall be marked, painted, flagged, or otherwise
21 constructed to be recognizable in clear air during daylight hours. Any anemometer tower that
22 was erected before July 1, 2010 shall be marked as required in this section within one year after
23 July 1, 2010. Any anemometer tower that is erected on or after July 1, 2010 shall be marked as
24 required in this section at the time it is erected. Marking required under this section includes

1 marking the anemometer tower, guy wires, and accessory facilities as follows:

2 (1) The top one-third of the anemometer tower shall be painted in equal, alternating
3 bands of aviation orange and white, beginning with orange at the top of the tower and
4 ending with orange at the bottom of the marked portion of the tower;

5 (2) Two marker balls shall be attached to and evenly spaced on each of the outside guy
6 wires;

7 ~~The area surrounding each point where a guy wire is anchored to the ground~~ Where
8 an anemometer tower has guy wires anchored to the ground, the anchor points shall
9 have a contrasting appearance with any surrounding vegetation. If the adjacent land
10 is grazed, ~~the area surrounding~~ the anchor point shall be fenced. ~~For purposes of this~~
11 ~~section, the term, area surrounding the anchor point, means~~ The fenced area shall be
12 an area not less than sixty-four square feet whose outer boundary is at least four feet
13 from the anchor point; and

14 (4) One or more seven-foot safety sleeves shall be placed at each anchor point and shall
15 extend from the anchor point along each guy wire attached to the anchor point.

16 A violation of this section is a Class 2 misdemeanor.

17 Section 33. That § 50-10-10 be amended to read:

18 50-10-10. If advisable to facilitate the enforcement of zoning regulations adopted pursuant
19 to this chapter, a system may be established for granting permits to establish or construct new
20 structures and other uses and to replace existing structures and other uses or make substantial
21 changes therein or substantial repairs thereof. Before any nonconforming structure or tree may
22 be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted, a
23 permit shall be secured from the administrative agency authorized to administer and enforce the
24 regulations, authorizing such replacement, change, or repair. No permit may be granted that

1 would allow the structure or tree in question to be made higher or become a greater hazard to
2 ~~air navigation~~ aviation than it was when the applicable regulation was adopted. If the
3 administrative agency determines that a nonconforming structure or tree has been abandoned
4 or more than eighty percent physically deteriorated, or decayed, no permit may be granted that
5 would allow the structure or tree to exceed the applicable height limit or otherwise deviate from
6 the zoning regulations. Except as indicated all applications for permits for replacement, change,
7 or repair of nonconforming uses shall be granted.

8 Section 34. That § 50-10-32 be amended to read:

9 50-10-32. Terms in §§ 50-10-33 to 50-10-35, inclusive, mean:

- 10 (1) "Centerline," a line extended through the midpoint of each end of a runway;
- 11 (2) "Compatible land use," a use of land adjacent to a military airport that does not
12 endanger the health, safety, or welfare of the owners, occupants, or users of the land
13 because of levels of noise or vibrations or the risk of personal injury or property
14 damage created by the operations of the military airport, including the taking off and
15 landing of military aircraft;
- 16 (3) "Controlled compatible land use area," any area of land located outside military
17 airport boundaries and within a rectangle bounded by lines located no farther than
18 one and one-half statute miles from the centerline of an instrument or primary
19 runway and lines located no farther than five statute miles from each end of the paved
20 surface of an instrument or primary runway unless noise standards exceed these
21 distances;
- 22 (4) "Instrument runway," any existing or planned military runway of at least three
23 thousand two hundred feet which serves or will serve an instrument landing
24 procedure prescribed by Federal Aviation Administration Order 8260.3B "United

1 States Standard for Terminal Instrument Procedures";

2 (5) ~~"Military airport," any area of land or water, publicly or privately owned, designed~~
3 ~~and set aside for the landing and taking off of military aircraft and used in the interest~~
4 ~~of the public for that purpose;~~

5 ~~(6)~~ "Military airport hazard," any structure or obstruction that obstructs the air space
6 required for the taking off, landing, or flight of military aircraft or that interferes with
7 visual, radar, radio, or other systems for tracking, monitoring, controlling, or
8 acquiring data relating to military aircraft;

9 ~~(7)~~ (6) "Military airport hazard area," an area of land or water on which a military
10 airport hazard may exist;

11 ~~(8)~~ (7) "Military airport zoning regulation," a military airport hazard area zoning
12 regulation and a military airport compatible land use zoning regulation
13 adopted under §§ 50-10-32 to 50-10-35, inclusive;

14 ~~(9)~~ (8) "Obstruction," any structure, object of natural growth, or other object,
15 including a mobile object, that exceeds a height established by C.F.R. 14
16 Federal Aviation Regulations Part 77 "Objects Affecting Navigable Airspace"
17 or by a military airport hazard area zoning standard;

18 ~~(10)~~ (9) "Political subdivision," any municipality or county;

19 ~~(11)~~ (10) "Primary runway," any existing or planned paved runway, as shown on the
20 official military airport layout plan, of at least three thousand two hundred feet
21 on which a majority of the approaches to and departures from the military
22 airport occur;

23 ~~(12)~~ (11) "Runway," a defined area of a military airport prepared for the landing and
24 taking off of military aircraft along its length.

1 Section 35. That § 50-10-34 be amended to read:

2 50-10-34. Any political subdivision in which a military airport hazard area is located may
3 adopt, administer, and enforce, under its police power, military airport hazard area zoning
4 regulations for the military airport hazard area to prevent the creation of a military airport
5 hazard. The military airport hazard area zoning regulations may divide a military airport hazard
6 area into zones and for each zone:

- 7 (1) Specify the land uses permitted;
- 8 (2) Regulate the type and density of structures; and
- 9 (3) Restrict the height of structures and obstructions to prevent the creation of an
10 obstruction to flight operations or ~~air navigation~~ aviation.

11 Section 36. That § 50-9-12 be repealed.

12 ~~50-9-12. For purposes of § 50-9-13, the term, anemometer, means an instrument for~~
13 ~~measuring and recording the speed of the wind. For purposes of § 50-9-13, the term,~~
14 ~~anemometer tower, means a structure, including all guy wires and accessory facilities, on which~~
15 ~~an anemometer is mounted for the purposes of documenting whether a site has wind resources~~
16 ~~sufficient for the operation of a wind turbine generator.~~

17 Section 37. That § 50-10-33 be repealed.

18 ~~50-10-33. For the purposes of §§ 50-10-32 to 50-10-35, inclusive, a military airport is an~~
19 ~~airport used by the state or a political subdivision of the state, or by the United States for~~
20 ~~national defense purposes or for any federal program relating to flight.~~