

CHAPTER 2016-209

Committee Substitute for Senate Bill No. 1508

An act relating to the Airport Zoning Law of 1945; amending s. 333.01, F.S.; revising and providing definitions; amending s. 333.025, F.S.; revising requirements for a permit to construct or alter an obstruction; revising procedures for issuing such permit; revising duties of the Department of Transportation relating to issuance of the permit; providing for administrative review of a denial of a permit; amending s. 333.03, F.S.; revising requirements and procedures for certain local political subdivisions to adopt and enforce airport zoning regulations; directing the department to provide assistance to political subdivisions with regard to federal obstruction standards; providing minimum requirements for airport land use compatibility zoning regulations; directing political subdivisions to provide the department with copies of airport protection zoning regulations and airport land use compatibility zoning regulations; providing applicability and effect; amending s. 333.04, F.S.; revising provisions for incorporation of zoning regulations with a political subdivision's comprehensive regulations; revising provisions for a conflict between airport zoning regulations and other regulations; amending s. 333.05, F.S.; revising procedure for adoption of zoning regulations; revising provisions relating to an airport zoning commission; amending s. 333.06, F.S.; revising airport zoning regulation requirements; revising requirements for adoption of an airport master plan and amendments thereto; amending s. 333.07, F.S.; requiring a permit to construct, alter, or allow an airport obstruction in an airport hazard area under certain circumstances; providing conditions for issuance or denial of such permit; revising provisions to compel conformance; removing provisions for obtaining a variance to zoning regulations; removing reference to a board of adjustment; revising provisions directing a political subdivision to require an owner to install and maintain certain lighting or marking of obstructions; amending s. 333.09, F.S.; revising requirements for administration of airport protection zoning regulations; requiring the political subdivision to provide a process for permitting, notifications to the department, and enforcement; providing for appeal of decisions made by the political subdivision; amending s. 333.11, F.S.; revising provisions for judicial review of decisions by a political subdivision; revising jurisdiction of the court relating to decisions of the political subdivision; removing reference to a board of adjustment; requiring certain procedures before an appeal to a court; amending s. 333.12, F.S.; revising provisions for acquisition of property when a nonconforming obstruction is determined to be an airport hazard; amending s. 333.13, F.S.; revising penalty provisions; creating s. 333.135, F.S.; providing a timeframe for compliance by political subdivisions; repealing ss. 333.065, 333.08, 333.10, and 333.14, F.S., relating to guidelines regarding land use near airports, appeals, boards of adjustment, and a short title; reenacting s. 350.81(6), F.S., relating to communications services offered by governmental

entities, to incorporate the amendment made by the act to s. 333.01, F.S., in a reference thereto; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 333.01, Florida Statutes, is amended to read:

333.01 Definitions.—~~As used in~~ For the purpose of this chapter, the term following words, terms, and phrases shall have the meanings herein given, unless otherwise specifically defined, or unless another intention clearly appears, or the context otherwise requires:

(1) “Aeronautical study” means a Federal Aviation Administration study, conducted in accordance with the standards of 14 C.F.R. part 77, subpart C, and Federal Aviation Administration policy and guidance, on the effect of proposed construction or alteration on the operation of air navigation facilities and the safe and efficient use of navigable airspace ~~“Aeronautics” means transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants and accessories, including the repair, packing, and maintenance of parachutes; the design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports, restricted landing areas, or other air navigation facilities, and air instruction.~~

(2) “Airport” means any area of land or water designed and set aside for the landing and taking off of aircraft and utilized or to be utilized in the interest of the public for such purpose.

(3) “Airport hazard” means an obstruction to air navigation that affects the safe and efficient use of navigable airspace or the operation of planned or existing air navigation and communication facilities ~~any structure or tree or use of land which would exceed the federal obstruction standards as contained in 14 C.F.R. ss. 77.21, 77.23, 77.25, 77.28, and 77.29 and which obstructs the airspace required for the flight of aircraft in taking off, maneuvering, or landing or is otherwise hazardous to such taking off, maneuvering, or landing of aircraft and for which no person has previously obtained a permit or variance pursuant to s. 333.025 or s. 333.07.~~

(4) “Airport hazard area” means any area of land or water upon which an airport hazard might be established if not prevented as provided in this chapter.

(5) “Airport land use compatibility zoning” means airport zoning regulations governing restricting the use of land on, adjacent to, or in the immediate vicinity of airports in the manner enumerated in s. 333.03(2) to activities and purposes compatible with the continuation of normal airport operations including landing and takeoff of aircraft in order to promote public health, safety, and general welfare.

(6) “Airport layout plan” means a set of scaled drawings that provides a graphic representation of the existing and future development plan for the airport and demonstrates the preservation and continuity of safety, utility, and efficiency of the airport detailed, scale engineering drawing, including pertinent dimensions, of an airport’s current and planned facilities, their locations, and runway usage.

(7) “Airport master plan” means a comprehensive plan of an airport which typically describes current and future plans for airport development designed to support existing and future aviation demand.

(8) “Airport protection zoning regulations” means airport zoning regulations governing airport hazards.

(9) “Department” means the Department of Transportation.

(10) “Educational facility” means any structure, land, or use thereof that includes a public or private K-12 school, charter school, magnet school, college campus, or university campus. The term does not include space used for educational purposes within a multi-tenant building.

(11) “Landfill” has the same meaning as provided in s. 403.703.

(12)(7) “Obstruction” means any object of natural growth or terrain, or permanent or temporary construction or alteration, including equipment or materials used and any permanent or temporary apparatus, or alteration of any permanent or temporary existing structure by a change in its height, including appurtenances, or lateral dimensions, including equipment or material used therein, existing or proposed, which exceeds manmade object or object of natural growth or terrain that violates the federal obstruction standards contained in 14 C.F.R. part 77, subpart C ss. 77.21, 77.23, 77.25, 77.28, and 77.29.

(13)(8) “Person” means any individual, firm, copartnership, corporation, company, association, joint-stock association, or body politic, and includes any trustee, receiver, assignee, or other similar representative thereof.

(14)(9) “Political subdivision” means the local government of any county, city, town, village, or other subdivision or agency thereof, or any district or special district, port commission, port authority, or other such agency authorized to establish or operate airports in the state.

(15) “Public-use airport” means an airport, publicly or privately owned, licensed by the state, which is open for use by the public.

(16)(10) “Runway protection clear zone” means an area at ground level beyond the runway end to enhance the safety and protection of people and property on the ground a runway clear zone as defined in 14 C.F.R. s. 151.9(b).

~~(17)(11)~~ “Structure” means any object, constructed, erected, altered, or installed by humans, including, but without limitation thereof, buildings, towers, smokestacks, utility poles, power generation equipment, and overhead transmission lines.

~~(18)~~ “Substantial modification” means any repair, reconstruction, rehabilitation, or improvement of a structure the actual cost of which equals or exceeds 50 percent of the market value of the structure.

~~(12)~~ “Tree” includes any plant of the vegetable kingdom.

Section 2. Section 333.025, Florida Statutes, is amended to read:

333.025 Permit required for obstructions structures exceeding federal obstruction standards.—

(1) A person proposing the construction or alteration of an obstruction shall obtain a permit from the department ~~In order to prevent the erection of structures dangerous to air navigation, subject to the provisions of subsections (2), (3), and (4), each person shall secure from the Department of Transportation a permit for the erection, alteration, or modification of any structure the result of which would exceed the federal obstruction standards as contained in 14 C.F.R. ss. 77.21, 77.23, 77.25, 77.28, and 77.29. However, permits from the department~~ are ~~of Transportation will be required only within an airport hazard area where federal~~ obstruction ~~standards are exceeded and if the proposed construction or alteration is within a 10-nautical-mile radius of the airport reference point, located at the approximate geometric geographical center of all usable runways of a public-use airport or a publicly owned or operated airport, a military airport, or an airport licensed by the state for public use.~~

(2) Existing, planned, and proposed ~~Affected airports will be considered as having these facilities on public-use airports contained in an which are shown on the airport master plan, on or an airport layout plan submitted to the Federal Aviation Administration Airport District Office, or in comparable military documents shall, and will be so protected from airport hazards. Planned or proposed public-use airports which are the subject of a notice or proposal submitted to the Federal Aviation Administration or to the Department of Transportation shall also be protected.~~

(3) A permit is not required for existing structures that requirements of subsection (1) shall not apply to projects which received construction permits from the Federal Communications Commission for structures exceeding federal obstruction standards before prior to May 20, 1975, and a permit is not required for provided such structures now exist; nor shall it apply to previously approved structures now existing, or any necessary replacement or repairs to such existing structures provided, so long as the height and location are ~~is~~ unchanged.

(4) ~~When political subdivisions have, in compliance with this chapter, adopted adequate airport airspace protection zoning regulations, placed in compliance with s. 333.03, and such regulations are on file with the department's Aviation and Spaceports Office Department of Transportation, and established a permitting process, a permit for such structure is shall not be required from the department of Transportation. Upon receipt of a complete permit application, the local government shall provide a copy of the application to the department's Aviation and Spaceports Office by certified mail, return receipt requested, or by delivery service that provides a receipt evidencing delivery. To evaluate technical consistency with this subsection, the department has a 15-day review period following receipt of the application, which runs concurrently with the local government permitting process. Cranes, construction equipment, and other temporary structures in use or in place for a period not to exceed 18 consecutive months are exempt from department review unless such review is requested by the department.~~

(5) ~~The department of Transportation shall, within 30 days after of the receipt of an application for a permit, issue or deny a permit for the construction or erection, alteration, or modification of an obstruction. The department shall review permit applications in conformity with s. 120.60 any structure the result of which would exceed federal obstruction standards as contained in 14 C.F.R. ss. 77.21, 77.23, 77.25, 77.28, and 77.29.~~

(6) In determining whether to issue or deny a permit, the department shall consider:

(a) The safety of persons on the ground and in the air.

(b) The safe and efficient use of navigable airspace.

(c)(a) The nature of the terrain and height of existing structures.

(d) The effect of the construction or alteration of an obstruction on the state licensing standards for a public-use airport contained in chapter 330 and rules adopted thereunder.

(b) ~~Public and private interests and investments.~~

(e)(e) The character of existing and planned flight flying operations and planned developments at public-use of airports.

(f)(d) Federal airways, visual flight rules, flyways and corridors, and instrument approaches as designated by the Federal Aviation Administration.

(g)(e) The effect of Whether the construction or alteration of an obstruction on of the proposed structure would cause an increase in the minimum descent altitude or the decision height at the affected airport.

(f) ~~Technological advances.~~

~~(g) The safety of persons on the ground and in the air.~~

~~(h) Land use density.~~

~~(i) The safe and efficient use of navigable airspace.~~

~~(h)(j) The cumulative effects on navigable airspace of all existing obstructions structures, proposed structures identified in the applicable jurisdictions' comprehensive plans, and all other known proposed obstructions structures in the area.~~

~~(7) When issuing a permit under this section, the department of Transportation shall, as a specific condition of such permit, require the owner of the obstruction to install, operate, and maintain thereon, at the owner's expense, marking and lighting in conformance with the specific standards established by the Federal Aviation Administration of the permitted structure as provided in s. 333.07(3)(b).~~

~~(8) The department may of Transportation shall not approve a permit for the construction or alteration of an obstruction erection of a structure unless the applicant submits both documentation showing compliance with the federal requirement for notification of proposed construction or alteration and a valid aeronautical study. A evaluation, and no permit may not shall be approved solely because the Federal Aviation Administration determines that the proposed obstruction is not an airport hazard on the basis that such proposed structure will not exceed federal obstruction standards as contained in 14 C.F.R. ss. 77.21, 77.23, 77.25, 77.28, or 77.29, or any other federal aviation regulation.~~

~~(9) The denial of a permit under this section is subject to administrative review under chapter 120.~~

Section 3. Section 333.03, Florida Statutes, is amended to read:

333.03 ~~Power to adopt~~ Airport protection zoning regulations.—

~~(1)(a) In order to prevent the creation or establishment of airport hazards, Every political subdivision having an airport hazard area within its territorial limits shall, by October 1, 1977, adopt, administer, and enforce, under the police power and in the manner and upon the conditions hereinafter prescribed in this section, airport protection zoning regulations for such airport hazard area.~~

~~(b) When Where an airport is owned or controlled by a political subdivision and any other political subdivision has land upon which an obstruction may be constructed or altered, which land underlies any of the surfaces of the airport described in 14 C.F.R. part 77, subpart C, the political subdivisions airport hazard area appertaining to such airport is located wholly or partly outside the territorial limits of said political subdivision, the political subdivision owning or controlling the airport and the political subdivision within which the airport hazard area is located, shall either:~~

1. By interlocal agreement, ~~in accordance with the provisions of chapter 163,~~ adopt, administer, and enforce a set of airport protection zoning regulations applicable to the airport hazard area in question; or

2. By ordinance, regulation, or resolution ~~duly adopted,~~ create a joint airport protection zoning board ~~that,~~ ~~which board shall have the same power to adopt, administer, and enforce a set of airport protection zoning regulations applicable to the airport hazard area in question as that vested in paragraph (a) in the political subdivision within which such area is located.~~ The ~~Each~~ such joint airport protection zoning board shall have as voting members two representatives appointed by each participating political subdivision participating in its creation and in addition a chair elected by a majority of the members so appointed. However, ~~The~~ airport manager or a representative of each airport in managers of the participating affected political subdivisions shall serve on the board in a nonvoting capacity.

(c) Airport protection zoning regulations adopted under paragraph (a) shall, at as a minimum, require:

1. A permit variance for the construction or erection, alteration, ~~or modification of any obstruction structure which would cause the structure to exceed the federal obstruction standards as contained in 14 C.F.R. ss. 77.21, 77.23, 77.25, 77.28, and 77.29;~~

2. ~~Obstruction~~ Marking and lighting for obstructions structures ~~as specified in s. 333.07(3);~~

3. Documentation showing compliance with the federal requirement for notification of proposed construction or alteration of structures and a valid aeronautical study evaluation submitted by each person applying for a permit variance;

4. Consideration of the criteria in s. 333.025(6); when determining whether to issue or deny a permit variance; and

5. That a permit may not ~~no variance shall~~ be approved solely because the Federal Aviation Administration determines that the proposed obstruction is not an airport hazard on the basis that such proposed structure will not exceed federal obstruction standards as contained in 14 C.F.R. ss. 77.21, 77.23, 77.25, 77.28, or 77.29, or any other federal aviation regulation.

(d) The department shall be available to provide assistance to political subdivisions with regard to issue copies of the federal obstruction standards as contained in 14 C.F.R. ss. 77.21, 77.23, 77.25, 77.28, and 77.29 to each political subdivision having airport hazard areas and, in cooperation with political subdivisions, shall issue appropriate airport zoning maps depicting within each county the maximum allowable height of any structure or tree. Material distributed pursuant to this subsection shall be at no cost to authorized recipients.

(2) In the manner provided in subsection (1), political subdivisions shall adopt, administer, and enforce interim airport land use compatibility zoning regulations shall be adopted. Airport land use compatibility zoning regulations shall, at a minimum, address ~~When political subdivisions have adopted land development regulations in accordance with the provisions of chapter 163 which address the use of land in the manner consistent with the provisions herein, adoption of airport land use compatibility regulations pursuant to this subsection shall not be required. Interim airport land use compatibility zoning regulations shall consider the following:~~

(a) Prohibiting any new landfills and restricting any existing ~~Whether sanitary landfills are located within the following areas:~~

1. Within 10,000 feet from the nearest point of any runway used or planned to be used by turbine ~~turboprop or turbojet~~ aircraft.

2. Within 5,000 feet from the nearest point of any runway used only by nonturbine ~~piston-type~~ aircraft.

3. Outside the perimeters defined in subparagraphs 1. and 2., but still within the lateral limits of the civil airport imaginary surfaces defined in 14 C.F.R. s. 77.19 ~~part 77.25~~. Case-by-case review of such landfills is advised.

(b) Where ~~Whether~~ any landfill is located and constructed so that it attracts or sustains hazardous bird movements from feeding, water, or roosting areas into, or across, the runways or approach and departure patterns of aircraft. The operator of such a landfill must be required to ~~political subdivision shall request from the airport authority or other governing body operating the airport a report on such bird feeding or roosting areas that at the time of the request are known to the airport. In preparing its report, the authority, or other governing body, shall consider whether the landfill will incorporate bird management techniques or other practices to minimize bird hazards to airborne aircraft. The airport authority or other governing body shall respond to the political subdivision no later than 30 days after receipt of such request.~~

(c) Where an airport authority or other governing body operating a publicly owned, public-use airport has conducted a noise study in accordance with the provisions of 14 C.F.R. part 150 or where a public-use airport owner has established noise contours pursuant to another public study approved by the Federal Aviation Administration. Noncompatible land uses, as established in the noise study under Appendix A to 14 C.F.R. part 150 or as a part of an alternative public study approved by the Federal Aviation Administration, are not permitted within the noise contours established by such study, except where such land use is specifically contemplated by such study with appropriate mitigation or similar techniques described in the study, neither residential construction nor any educational facility as defined in chapter 1013, with the exception of aviation school facilities, shall be permitted within the area contiguous to the airport defined by an outer noise contour that is considered incompatible with that type of construction by 14

C.F.R. part 150, Appendix A or an equivalent noise level as established by other types of noise studies.

(d) Where an airport authority or other governing body operating a publicly owned, public-use airport has not conducted a noise study, ~~neither Residential construction and nor any educational facility as defined in chapter 1013, with the exception of an aviation school facility facilities, are not~~ shall be permitted within an area contiguous to the airport measuring one-half the length of the longest runway on either side of and at the end of each runway centerline.

~~(e)(3) Restricting In the manner provided in subsection (1), airport zoning regulations shall be adopted which restrict new incompatible uses, activities, or substantial modifications to existing incompatible uses construction within runway protection clear zones, including uses, activities, or construction in runway clear zones which are incompatible with normal airport operations or endanger public health, safety, and welfare by resulting in congregations of people, emissions of light or smoke, or attraction of birds. Such regulations shall prohibit the construction of an educational facility of a public or private school at either end of a runway of a publicly owned, public-use airport within an area which extends 5 miles in a direct line along the centerline of the runway, and which has a width measuring one-half the length of the runway. Exceptions approving construction of an educational facility within the delineated area shall only be granted when the political subdivision administering the zoning regulations makes specific findings detailing how the public policy reasons for allowing the construction outweigh health and safety concerns prohibiting such a location.~~

~~(4) The procedures outlined in subsections (1), (2), and (3) for the adoption of such regulations are supplemental to any existing procedures utilized by political subdivisions in the adoption of such regulations.~~

~~(3)(5) Political subdivisions shall provide The Department of Transportation shall provide technical assistance to any political subdivision requesting assistance in the preparation of an airport zoning code: a copy of all local airport protection zoning codes, rules, and regulations and airport land use compatibility zoning regulations, together with any related amendments, to the department's Aviation and Spaceports Office within 30 days after adoption, and amendments and proposed and granted variances thereto, shall be filed with the department.~~

~~(4)(6) Nothing in Subsection (2) does not or subsection (3) shall be construed to require the removal, alteration, sound conditioning, or other change to, or to interfere with the continued use or adjacent expansion of, any educational facility structure or site in existence on July 1, 1993, or be construed to prohibit the construction of any new structure for which a site has been determined as provided in former s. 235.19, as of July 1, 1993.~~

(5) This section does not preclude an airport authority, political subdivision or its administrative agency, or other governing body operating a public-use airport from establishing airport zoning regulations more restrictive than prescribed in this section in order to protect the health, safety, and welfare of the public in the air and on the ground.

Section 4. Section 333.04, Florida Statutes, is amended to read:

333.04 Comprehensive plans or policies zoning regulations; most stringent zoning regulations to prevail where conflicts occur.—

(1) INCORPORATION.—~~If In the event that a political subdivision has adopted, or hereafter adopts, a comprehensive plan or policy that regulates zoning ordinance regulating, among other things, the height of buildings, structures, and natural objects, and uses of property, any airport zoning regulations applicable to the same area or portion thereof may be incorporated in and made a part of such comprehensive plan or policy zoning regulations, and be administered and enforced in connection therewith.~~

(2) CONFLICT.—~~If there is a In the event of conflict between any airport zoning regulations adopted under this chapter and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or vegetation trees, the use of land, or any other matter, and whether such regulations were adopted by the political subdivision that which adopted the airport zoning regulations or by some other political subdivision, the more stringent limitation or requirement shall govern and prevail.~~

Section 5. Section 333.05, Florida Statutes, is amended to read:

333.05 Procedure for adoption of zoning regulations.—

(1) NOTICE AND HEARING.—~~No Airport zoning regulations may not shall be adopted, amended, or repealed changed under this chapter except by action of the legislative body of the political subdivision or affected subdivisions in question, or the joint board provided for in s. 333.03(1)(b) 2. 333.03(1)(b) by the bodies therein provided and set forth, after a public hearing on the adoption, amendment, or repeal in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. Notice of the hearing shall be published at least once a week for 2 consecutive weeks in a newspaper an official paper, or a paper of general circulation, in the political subdivision or subdivisions where in which are located the airport zoning regulations are areas to be adopted, amended, or deleted zoned.~~

(2) AIRPORT ZONING COMMISSION.—~~Before Prior to the initial zoning of any airport area under this chapter, the political subdivision or joint airport zoning board that which is to adopt, administer, and enforce the regulations shall appoint a commission, to be known as the airport zoning commission, to recommend the boundaries of the various zones to be~~

established and the regulations to be adopted therefor. ~~The~~ Such commission shall make a preliminary report and hold public hearings on the preliminary report thereon before submitting its final report., ~~and~~ The legislative body of the political subdivision or the joint airport zoning board may ~~shall~~ not hold its public hearings or take any action until it has received the final report of the ~~such~~ commission, and at least 15 days have elapsed ~~shall elapse~~ between the receipt of the final report of the commission and the hearing to be held by the legislative body or the latter board. Where a planning city plan ~~commission, airport commission,~~ or comprehensive zoning commission already exists, it may be appointed as the airport zoning commission.

Section 6. Section 333.06, Florida Statutes, is amended to read:

333.06 Airport zoning regulation requirements.—

(1) REASONABLENESS.—All airport zoning regulations adopted under this chapter shall be reasonable and ~~none~~ not impose any requirement or restriction that ~~which~~ is not reasonably necessary to effectuate the purposes of this chapter. In determining what regulations it may adopt, each political subdivision and joint airport zoning board shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the nature of the terrain within the airport hazard area and runway protection clear zones, the character of the neighborhood, the uses to which the property to be zoned is put and adaptable, and the impact of any new use, activity, or construction on the airport's operating capability and capacity.

(2) INDEPENDENT JUSTIFICATION.—The purpose of all airport zoning regulations adopted under this chapter is to provide ~~both~~ airspace protection and land ~~uses~~ use compatible with airport operations. Each aspect of this purpose requires independent justification in order to promote the public interest in safety, health, and general welfare. Specifically, construction in a runway protection clear zone which does not exceed airspace height restrictions is not conclusive ~~evidene~~e ~~per se~~ that such use, activity, or construction is compatible with airport operations.

(3) NONCONFORMING USES.—~~No~~ Airport protection zoning regulations adopted under this chapter may not ~~shall~~ require the removal, lowering, or other change or alteration of any obstruction ~~structure or tree~~ not conforming to the regulations when adopted or amended, or otherwise interfere with the continuance of any nonconforming use, except as provided in s. 333.07(1) and (3).

(4) ADOPTION OF AIRPORT MASTER PLAN AND NOTICE TO AFFECTED LOCAL GOVERNMENTS.—An airport master plan shall be prepared by each public-use ~~publicly owned and operated~~ airport licensed by the department of ~~Transportation~~ under chapter 330. The authorized entity having responsibility for governing the operation of the airport, when ~~either~~ requesting from or submitting to a state or federal governmental agency with funding or approval jurisdiction a “finding of no significant impact,” an

environmental assessment, a site-selection study, an airport master plan, or any amendment to an airport master plan, shall submit simultaneously a copy of said request, submittal, assessment, study, plan, or amendments by certified mail to all affected local governments. For the purposes of this subsection, “affected local government” ~~means~~ is defined as any city or county having jurisdiction over the airport and any city or county located within 2 miles of the boundaries of the land subject to the airport master plan.

Section 7. Section 333.07, Florida Statutes, is amended to read:

333.07 Local government permitting of airspace obstructions ~~Permits and variances.—~~

(1) PERMITS.—

(a) A person proposing to construct, alter, or allow an airport obstruction in an airport hazard area in violation of the airport protection zoning regulations adopted under this chapter shall apply for a permit. A ~~Any~~ airport zoning regulations adopted under this chapter may require that a permit be obtained before any new structure or use may be constructed or established and before any existing use or structure may be substantially changed or substantially altered or repaired. In any event, however, all such regulations shall provide that before any nonconforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted, a permit must be secured from the administrative agency authorized to administer and enforce the regulations, authorizing such replacement, change, or repair. No permit ~~may not shall be issued granted that would allow the establishment or creation of an airport hazard or that would permit a nonconforming obstruction structure or tree or nonconforming use to be made or become higher or to become a greater hazard to air navigation than it was when the applicable airport protection zoning regulation was adopted that allowed the establishment or creation of the obstruction or than it is when the application for a permit is made.~~

(b) Whenever the political subdivision or its administrative agency ~~determines that a nonconforming obstruction use or nonconforming structure or tree has been abandoned or that is more than 80 percent of the obstruction is torn down, destroyed, deteriorated, or decayed, a no permit~~ may not shall be granted that would allow the obstruction said structure or tree to exceed the applicable height limit or otherwise deviate from the airport protection zoning regulations,; and, Regardless of whether an application is made for a permit under this subsection or not, the said agency may by appropriate action, compel the owner of the nonconforming obstruction may be required structure or tree, at his or her own expense, to lower, remove, reconstruct, alter, or equip such obstruction object as may be necessary to conform to the current airport protection zoning regulations. If the owner of the nonconforming obstruction fails or refuses structure or tree shall neglect or refuse to comply with such requirement within order for 10 days after notice thereof, the administrative said agency may report the

violation to the political subdivision involved therein, which subdivision, through its appropriate agency, may proceed to have the obstruction object so lowered, removed, reconstructed, altered, or equipped; and assess the cost and expense thereof upon the owner of the obstruction object or the land whereon it is or was located; and, unless such an assessment is paid within 90 days from the service of notice thereof on the owner or the owner's agent, of such object or land, the sum shall be a lien on said land, and shall bear interest thereafter at the rate of 6 percent per annum until paid, and shall be collected in the same manner as taxes on real property are collected by said political subdivision, or, at the option of said political subdivision, said lien may be enforced in the manner provided for enforcement of liens by chapter 85.

~~(e) Except as provided herein, applications for permits shall be granted, provided the matter applied for meets the provisions of this chapter and the regulations adopted and in force hereunder.~~

(2) CONSIDERATIONS WHEN ISSUING OR DENYING PERMITS.— In determining whether to issue or deny a permit, the political subdivision or its administrative agency shall consider the following, as applicable:

(a) The safety of persons on the ground and in the air.

(b) The safe and efficient use of navigable airspace.

(c) The nature of the terrain and height of existing structures.

(d) The effect of the construction or alteration on the state licensing standards for a public-use airport contained in chapter 330 and rules adopted thereunder.

(e) The character of existing and planned flight operations and developments at public-use airports.

(f) Federal airways, visual flight rules, flyways and corridors, and instrument approaches as designated by the Federal Aviation Administration.

(g) The effect of the construction or alteration of the proposed structure on the minimum descent altitude or the decision height at the affected airport.

(h) The cumulative effects on navigable airspace of all existing structures and all other known proposed structures in the area.

(i) Additional requirements adopted by the political subdivision or administrative agency pertinent to evaluation and protection of airspace and airport operations.

~~(2) VARIANCES.—~~

~~(a) Any person desiring to erect any structure, increase the height of any structure, permit the growth of any tree, or otherwise use his or her property in violation of the airport zoning regulations adopted under this chapter or any land development regulation adopted pursuant to the provisions of chapter 163 pertaining to airport land use compatibility, may apply to the board of adjustment for a variance from the zoning regulations in question. At the time of filing the application, the applicant shall forward to the department by certified mail, return receipt requested, a copy of the application. The department shall have 45 days from receipt of the application to comment and to provide its comments or waiver of that right to the applicant and the board of adjustment. The department shall include its explanation for any objections stated in its comments. If the department fails to provide its comments within 45 days of receipt of the application, its right to comment is waived. The board of adjustment may proceed with its consideration of the application only upon the receipt of the department's comments or waiver of that right as demonstrated by the filing of a copy of the return receipt with the board. Noncompliance with this section shall be grounds to appeal pursuant to s. 333.08 and to apply for judicial relief pursuant to s. 333.11. Such variances may only be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and where the relief granted would not be contrary to the public interest but would do substantial justice and be in accordance with the spirit of the regulations and this chapter. However, any variance may be allowed subject to any reasonable conditions that the board of adjustment may deem necessary to effectuate the purposes of this chapter.~~

~~(b) The Department of Transportation shall have the authority to appeal any variance granted under this chapter pursuant to s. 333.08, and to apply for judicial relief pursuant to s. 333.11.~~

(3) OBSTRUCTION MARKING AND LIGHTING.—

~~(a) When issuing a ~~In granting any permit or variance under this section, the political subdivision or its administrative agency or board of adjustment shall require the owner of the obstruction structure or tree in question to install, operate, and maintain thereon, at the owner's his or her own expense, such marking and lighting in conformance with the specific standards established by the Federal Aviation Administration as may be necessary to indicate to aircraft pilots the presence of an obstruction.~~~~

~~(b) Such marking and lighting shall conform to the specific standards established by rule by the Department of Transportation.~~

~~(c) Existing structures not in compliance on October 1, 1988, shall be required to comply whenever the existing marking requires refurbishment, whenever the existing lighting requires replacement, or within 5 years of October 1, 1988, whichever occurs first.~~

Section 8. Section 333.09, Florida Statutes, is amended to read:

333.09 Administration of airport zoning regulations.—

(1) ADMINISTRATION.—All airport zoning regulations adopted under this chapter shall provide for the administration and enforcement of such regulations by the political subdivision or its ~~an~~ administrative agency which may be an agency created by such regulations or any official, board, or other existing agency of the political subdivision adopting the regulations or of one of the political subdivisions which participated in the creation of the joint airport zoning board adopting the regulations, if satisfactory to that political subdivision, but in no case shall such administrative agency be or include any member of the board of adjustment. The duties of an any administrative agency designated pursuant to this chapter shall include that of hearing and deciding all permits under s. ~~333.07~~ 333.07(1), deciding all matters under s. ~~333.07(3)~~; as they pertain to such agency; and all other matters under this chapter applying to such said agency, but such agency shall not have or exercise any of the powers herein delegated to the board of adjustment.

(2) LOCAL GOVERNMENT PROCESS.—

(a) A political subdivision required to adopt airport zoning regulations under this chapter shall provide a process to:

- 1. Issue or deny permits consistent with s. 333.07.
- 2. Provide the department with a copy of a complete application consistent with s. 333.025(4).
- 3. Enforce the issuance or denial of a permit or other determination made by the administrative agency with respect to airport zoning regulations.

(b) If a zoning board or permitting body already exists within a political subdivision, the zoning board or permitting body may implement the airport zoning regulation permitting and appeals processes.

(3) APPEALS.—

(a) A person, a political subdivision or its administrative agency, or a joint airport zoning board that contends that a decision made by a political subdivision or its administrative agency is an improper application of airport zoning regulations may use the process established for an appeal.

(b) All appeals taken under this section must be taken within a reasonable time, as provided by the political subdivision or its administrative agency, by filing with the entity from which appeal is taken a notice of appeal specifying the grounds for appeal.

(c) An appeal shall stay all proceedings in the underlying action appealed from, unless the entity from which the appeal is taken certifies, pursuant to the rules for appeal, that by reason of the facts stated in the

certificate a stay would, in its opinion, cause imminent peril to life or property. In such cases, proceedings shall not be stayed except by order of the political subdivision or its administrative agency on notice to the entity from which the appeal is taken and for good cause shown.

(d) The political subdivision or its administrative agency shall set a reasonable time for the hearing of appeals, give public notice and due notice to the parties in interest, and decide the issue within a reasonable time. Upon the hearing, any party may appear in person, by agent, or by attorney.

(e) The political subdivision or its administrative agency may, in conformity with this chapter, affirm, reverse, or modify the decision on the permit or other determination from which the appeal is taken.

Section 9. Section 333.11, Florida Statutes, is amended to read:

333.11 Judicial review.—

~~(1) A Any person, aggrieved, or taxpayer affected, by any decision of a board of adjustment, or any governing body of a political subdivision, or the Department of Transportation or any joint airport zoning board affected by a decision of a political subdivision, or its of any administrative agency hereunder, may apply for judicial relief to the circuit court in the judicial circuit where the political subdivision board of adjustment is located within 30 days after rendition of the decision by the board of adjustment. Review shall be by petition for writ of certiorari, which shall be governed by the Florida Rules of Appellate Procedure.~~

~~(2) Upon presentation of such petition to the court, it may allow a writ of certiorari, directed to the board of adjustment, to review such decision of the board. The allowance of the writ shall not stay the proceedings upon the decision appealed from, but the court may, on application, on notice to the board, on due hearing and due cause shown, grant a restraining order.~~

~~(3) The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by the writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.~~

~~(2)(4) The court has shall have exclusive jurisdiction to affirm, reverse, or modify, or set aside the decision on the permit or other determination from which the appeal is taken brought up for review, in whole or in part, and, if appropriate need be, to order further proceedings by the political subdivision or its administrative agency board of adjustment. The findings of fact by the political subdivision or its administrative agency board, if supported by substantial evidence, shall be accepted by the court as conclusive, and an no objection to a decision of the political subdivision or its administrative agency may not board shall be considered by the court unless such objection~~

~~was raised in the underlying proceeding shall have been urged before the board, or, if it was not so urged, unless there were reasonable grounds for failure to do so.~~

~~(3)(5)~~ In any case in which airport zoning regulations adopted under this chapter, although generally reasonable, are held by a court to interfere with the use and enjoyment of a particular structure or parcel of land to such an extent, or to be so onerous in their application to such a structure or parcel of land, as to constitute a taking or deprivation of that property in violation of the State Constitution or the Constitution of the United States, such holding shall not affect the application of such regulations to other structures and parcels of land, or such regulations as are not involved in the particular decision.

~~(4)(6)~~ ~~A judicial~~ ~~No~~ ~~appeal to any court may not~~ ~~shall be~~ ~~or is~~ ~~permitted~~ ~~under this section~~ ~~until the appellant has exhausted all of its remedies~~ ~~through application for local government permits, exceptions, and appeals,~~ ~~to any courts, as herein provided, save and except an appeal from a decision~~ ~~of the board of adjustment, the appeal herein provided being from such final~~ ~~decision of such board only, the appellant being hereby required to exhaust~~ ~~his or her remedies hereunder of application for permits, exceptions and~~ ~~variances, and appeal to the board of adjustment, and gaining a determina-~~ ~~tion by said board, before being permitted to appeal to the court hereunder.~~

Section 10. Section 333.12, Florida Statutes, is amended to read:

333.12 Acquisition of air rights.—~~If~~ ~~In any case which:~~ it is desired to remove, lower or otherwise terminate a nonconforming obstruction is determined to be an airport hazard and the owner will not remove, lower, or otherwise eliminate it structure or use; ~~if~~ or the approach protection necessary cannot, because of constitutional limitations, be provided by airport regulations under this chapter; or if it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations, the political subdivision within which the property or nonconforming obstruction use is located, or the political subdivision owning or operating the airport or being served by it, may acquire, by purchase, grant, or condemnation in the manner provided by chapter 73, such property, air right, aviation navigation easement, or other estate, portion, or interest in the property or nonconforming obstruction structure or use or such interest in the air above such property, ~~tree, structure, or use, in question,~~ as may be necessary to effectuate the purposes of this chapter, and ~~in so doing,~~ if by condemnation, may to have the right to take immediate possession of the property, interest in property, air right, or other right sought to be condemned, at the time, and in the manner and form, and as authorized by chapter 74. If the political subdivision acquires any ~~In the case of the purchase of any property, or any easement, or estate or interest therein by purchase or the acquisition of the same by the power of eminent domain,~~ the political subdivision ~~making such purchase or exercising such power shall,~~ in addition to the damages for the taking, injury, or destruction of property, also pay the cost of the removal and

relocation of any structure or any public utility ~~that must~~ which is required to be moved to a new location.

Section 11. Section 333.13, Florida Statutes, is amended to read:

333.13 Enforcement and remedies.—

(1) ~~A Each~~ violation of this chapter or of any airport zoning regulations, orders, or rulings ~~adopted promulgated~~ or made under pursuant to this chapter ~~is shall constitute~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and each day a violation continues to exist ~~constitutes shall constitute~~ a separate offense.

(2) In addition, the political subdivision or agency adopting the airport zoning regulations under this chapter may institute in any court of competent jurisdiction an action to prevent, restrain, correct, or abate ~~a any~~ violation of this chapter, ~~any or~~ of airport zoning regulations adopted under this chapter, or of any order or ruling made in connection with their administration or enforcement, and the court shall adjudge to the plaintiff such relief, by way of injunction (which may be mandatory) or otherwise, as may be proper under all the facts and circumstances of the case in order to fully effectuate the purposes of this chapter and of the regulations adopted and orders and rulings made pursuant thereto.

(3) The department of ~~Transportation~~ may institute a civil action for injunctive relief in the appropriate circuit court to prevent violation of ~~any provision of~~ this chapter.

Section 12. Section 333.135, Florida Statutes, is created to read:

333.135 Transition provisions.—

(1) For those political subdivisions that have not adopted airport zoning regulations pursuant to this chapter, the department shall administer the permitting process as provided in s. 333.025.

(2) By July 1, 2017:

(a) Any airport zoning regulation in effect on July 1, 2016, that includes provisions in conflict with this chapter shall be amended to conform to the requirements of this chapter.

(b) Any political subdivision having an airport within its territorial limits which has not adopted airport zoning regulations shall adopt airport zoning regulations consistent with this chapter.

Section 13. Sections 333.065, 333.08, 333.10, and 333.14, Florida Statutes, are repealed.

Section 14. For the purpose of incorporating the amendment made by this act to section 333.01, Florida Statutes, in a reference thereto, subsection (6) of section 350.81, Florida Statutes, is reenacted to read:

350.81 Communications services offered by governmental entities.—

(6) To ensure the safe and secure transportation of passengers and freight through an airport facility, as defined in s. 159.27(17), an airport authority or other governmental entity that provides or is proposing to provide communications services only within the boundaries of its airport layout plan, as defined in s. 333.01(6), to subscribers which are integral and essential to the safe and secure transportation of passengers and freight through the airport facility, is exempt from this section. An airport authority or other governmental entity that provides or is proposing to provide shared-tenant service under s. 364.339, but not dial tone enabling subscribers to complete calls outside the airport layout plan, to one or more subscribers within its airport layout plan which are not integral and essential to the safe and secure transportation of passengers and freight through the airport facility is exempt from this section. An airport authority or other governmental entity that provides or is proposing to provide communications services to one or more subscribers within its airport layout plan which are not integral and essential to the safe and secure transportation of passengers and freight through the airport facility, or to one or more subscribers outside its airport layout plan, is not exempt from this section. By way of example and not limitation, the integral, essential subscribers may include airlines and emergency service entities, and the nonintegral, nonessential subscribers may include retail shops, restaurants, hotels, or rental car companies.

Section 15. This act shall take effect July 1, 2016.

Approved by the Governor April 8, 2016.

Filed in Office Secretary of State April 8, 2016.