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Bill Analysis

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Primary Sponsor: Sen. Brenner

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SUMMARY

- Updates state law to align with current federal law and Federal Aviation Administration (FAA) regulations regarding navigable airspace and obstructions to air navigation.
- Requires any person that must file notice with the FAA regarding the proposed construction or alteration of a structure or object of natural growth because the structure or object exceeds federal obstruction standards also to apply for a permit with the Ohio Department of Transportation (ODOT).
- Removes certain current law exemptions to the requirement to obtain a permit.
- Authorizes the notice filed with the FAA regarding the proposed construction or alteration to serve as the application for the state permit, as opposed to filing a separate application as under current law.
- Requires ODOT to conduct its permit study and review concurrently with the FAA's review and to grant, deny, or grant with a waiver from obstruction standards the ODOT permit within 75 days after the FAA issues its final determination.
- Specifies when ODOT must grant or deny a permit based on both the FAA's final determination and the study and review conducted by ODOT and any impacted airport.
- Authorizes an airport sponsor and the permit applicant to submit written information and responses through the decision-making process for ODOT's consideration.
- Clarifies that structures or objects of natural growth must meet their permit's conditions and the rules and regulations that are effective at the time of their construction, initial alteration, or growth, but do not need to be changed to meet new rules or regulations, unless substantial alterations to the structure or object require a new permit.
- Allows an airport sponsor to institute a court action to prevent, correct, or abate a violation of the Navigable Airspace Law, in addition to ODOT as in current law.

- Specifies that ODOT and the Office of Aviation are not liable for damages caused by a structure or object of natural growth that obstructs the navigable airspace if:
  - A permit was not issued for the structure or object;
  - A permit was issued for the structure or object, but that structure or object is not in compliance with the permit; or
  - The Power Siting Board or an airport zoning board issued the permit.
- Clarifies and updates administrative matters related to airport terminology, funding, activities, and similar proceedings.
- Requires an airport zoning commission, rather than the Office of Aviation, to develop an airport approach plan for any airport within its jurisdiction.
- Updates outdated terminology and makes conforming and other changes in the laws governing aviation and airport zoning.
- Names the act the Airspace Protection Act.

DETAILED ANALYSIS

Navigable airspace

General authority

In the case of laws related to navigable airspace, the federal government has expressly preempted state and local laws on the subject, stating that the "United States Government has exclusive sovereignty of airspace of the United States." Federal law requires the Federal Aviation Administration (FAA) to protect navigable airspace, prescribe air traffic regulations on the flight of aircraft, and establish security provisions related to both.[1]

However, while the FAA regulates navigable airspace, it is dependent on state and local governments to manage land use, zoning, and police regulations (which are areas of law traditionally managed by state and local governments) in ways that protect and support the FAA's navigable airspace regulations. State and local governments generally fulfill this role through granting or denying building permits based on whether the object will be an obstruction and hazard to the navigable airspace.

Under current law, the Ohio Department of Transportation (ODOT) is required to adopt rules for purposes of uniformly regulating the height and location of structures and objects of natural growth within navigable airspace, based on federal air navigation rules.[2] The bill modifies ODOT's authority, the Office of Aviation's authority (within ODOT), and the related authority of

[1] 49 United States Code 40103 (PDF), which is available on the U.S. Government Information website: govinfo.gov.

[2] R.C. 4561.05 and 4561.32.

airport zoning boards, to regulate obstructions to the navigable airspace in conformance with updates to federal law.

Obstructions to navigable airspace

Under the bill, named the Airspace Protection Act, navigable airspace means the airspace that is at and above minimum flight altitudes, including the airspace needed for a safe takeoff and landing. An obstruction to that navigable airspace is any existing or proposed structure or object of natural growth that exceeds the federal obstruction standards.[3] Under federal law, when new construction or alterations to existing structures or objects of natural growth exceed specified federal parameters, the person proposing the construction or alteration must file notice with the FAA.[4] The FAA then makes a determination of whether the proposed construction or alteration will be (1) an obstruction to navigable airspace and (2) a hazard to air navigation. That determination generally results in one of three outcomes:

1. The construction or alteration is not an obstruction and not a hazard to air navigation;
2. The construction or alteration is both an obstruction and a hazard to air navigation; or
3. The construction or alteration is an obstruction, but the FAA determines it is not a hazard to air navigation.[5]

Though the FAA's determination is a necessary step, the person proposing the construction or alteration also must apply for and obtain all state and local permits related to the construction or alteration. Under the bill, any person that is required to file notice with the FAA also must apply to either ODOT, the applicable airport zoning board, or the Power Siting Board to obtain a permit prior to the construction or alterations.[6]

Permit applications

The bill simplifies the process for filing a permit application with ODOT related to a proposed structure or object of natural growth. Under current law, an applicant must either file a copy of the FAA form 7460-1 "Notice of Proposed Construction or Alteration" that was submitted to the FAA or an application form established by ODOT that contains statutorily specified information. Rather than filing both the notice with the FAA and a separate application with ODOT, the bill specifies that the submission of the FAA form 7460-1 to the FAA serves as the application for the ODOT permit as well. Relatedly, the bill removes current law provisions

[3] R.C. 4561.01(L) and (M); Section 4.

[4] 14 Code of Federal Regulations (C.F.R.) part 77.

[5] 14 C.F.R. §77.31.

[6] R.C. 4561.31. The type of structure or object of natural growth and the location of that structure or object determine which local or state entity receives the permit application. A person must apply to an airport zoning board for a permit instead of ODOT when the board has adopted airport zoning regulations authorized under the Revised Code that govern the geographic location of the applicable structure or object of natural growth.

relating to the timing of the ODOT application, since the timing is concurrent with the federal regulations for the FAA notice.[7]

ODOT action on applications

The bill requires ODOT to conduct its own study and review of a permit application concurrent with the FAA review. Within 75 days of the FAA's final determination, ODOT must either grant the permit, deny the permit, or grant the permit with a waiver from obstruction standards. ODOT's actions are determined in part by the FAA's determination. Specifically:

1. If the proposed construction or alteration does not meet the federal notification standards, ODOT must notify the applicant that no permit is required;
2. If the FAA issues a determination that the proposed construction or alteration is a hazard to air navigation, ODOT must deny the permit;
3. If the FAA issues a determination that the proposed construction or alteration is not a hazard to air navigation and the structure or object is not an obstruction to navigable airspace, ODOT must issue the permit;
4. If the FAA issues a determination that the proposed construction or alteration is not a hazard to air navigation, but the structure or object **is** an obstruction to navigable airspace, ODOT must make a determination over whether to issue the permit or not.

In making a determination regarding situations described in (4) above, ODOT must contact the applicable airport sponsor within five business days after receipt of the FAA's final determination. (An airport sponsor is the controlling body of any regional airport authority, port authority, public university or college, county, or municipal corporation, or the owner or private entity that controls a privately owned airport or medical use heliport.)[8] ODOT must request a written decision from that airport sponsor as to whether the structure or object is a hazard to the airport's navigable airspace and/or whether any modifications would allow the obstruction to exist in the navigable airspace.

The airport sponsor must respond to ODOT within 60 days after the FAA's final determination. If the airport sponsor objects to an FAA determination of no hazard, the sponsor must list the specific aeronautical impacts that the obstruction would have to its facility or to the navigable airspace of the airport. The response must also include any proposed conditions or modifications that would allow the obstruction to exist. Within five days of receipt of the airport sponsor's response, ODOT must forward that response to the permit applicant. The permit applicant may then submit additional information within seven days of receipt. ODOT must consider any additional submitted information in making its decision regarding the permit application.

If ODOT denies a permit, ODOT must indicate if any modifications to the height or location of the structure or growth would allow ODOT to issue the permit. ODOT also must issue an

[7] R.C. 4561.33.

[8] R.C. 4561.01(F).

opinion on any application for a permit indicating all of the factors it considered in its decision. ODOT must give that opinion to the applicant and any applicable airport sponsor. Appeals of ODOT's decisions may be made in accordance with the Administrative Procedure Act.[9]

ODOT must adopt updated rules related to the permit process and information included in the Department's decisions. That information may include the results of any studies or investigations, FAA technical manuals, advisory circulars, airport design standards, airspace procedures, and U.S. terminal procedures. The consideration of safety must continue to be paramount over economic or technical factors for ODOT's decisions.[10]

Prohibitions and enforcement

As stated previously, any person that is required to file notice with the FAA also must apply for a permit with ODOT, the applicable airport zoning board, or the Power Siting Board. The person must do so before the person may install, erect, construct, establish, or alter any structure or object of natural growth. Failure to do so is a third degree misdemeanor. Relatedly, a person must comply with the terms and conditions of any issued permits and ODOT's related rules and regulations. Failure to do so is a first degree misdemeanor.[11]

The above requirements and related prohibitions simplify and clarify current law. Under current law, a person must not install or substantially change a structure or object of natural growth if it reasonably is expected to penetrate specified imaginary surfaces surrounding an airport, without first obtaining a permit or an amended permit. Current law provides two exceptions to the prohibitions, specifically, (1) for structures and objects that are within ten feet or 20% higher than the original, and (2) for structures and objects built prior to June 1, 1991. The bill replaces the outdated references to the airport's specified surfaces and clarifies that if notice is required from the FAA, then a state/local permit is also required. The simplification and clarification make the current exceptions also unnecessary. These changes conform state law to federal laws and regulations and take into account all areas impacted by air navigation, rather than just the areas surrounding an airport.[12]

Regarding enforcement actions, the bill allows an airport sponsor to institute a court action to prevent, correct, or abate a violation of the Navigable Airspace Law. Under current law, only ODOT may institute an enforcement action.[13]

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[9] R.C. 4561.34

[10] R.C. 4561.32.

[11] R.C. 4561.31.

[12] R.C. 4561.31. Federal laws related to navigable airspace address the height of a structure or object of natural growth regardless of where it is located and beyond just the areas immediately surrounding an airport.

[13] R.C. 4561.39.

Applicability to existing structures

The bill clarifies a "grandfather" provision in current law that applies to structures or objects of natural growth that are in existence prior to the adoption or amendment of the laws governing obstructions to the navigable airspace. Under that provision, if a structure or object becomes nonconforming because of changes to the law or because ODOT issues a new rule or order, the law, rule, or order does not require changes to that structure or object. The bill clarifies this provision of law by instead specifying that:

1. The law governing obstructions to the navigable airspace cannot be construed to require the removal or lowering of, or the making of any other change to, any structure or object that was in existence prior to October 15, 1991, or for which a permit, a written statement of no permit required, or a permit with waiver from obstruction standards was issued by ODOT, unless the structure or object was altered in a way contrary to the terms and conditions of its issued permit or the changes relate to lighting of the structure or object; and
2. Any permitted structure or object of natural growth is subject to the laws and rules effective on the permit's issued date. However, any substantial change or growth to that structure or object is subject to the laws and rules that are effective on the date of the change or growth.[14]

ODOT liability

The bill provides that ODOT and the Office of Aviation within ODOT are not liable for any damages caused by a structure or object of natural growth that is an obstruction to the navigable airspace if any of the following applies:

1. The structure or object was installed, erected, constructed, established, changed, or altered without a permit;
2. A permit was issued for the structure or object, but the structure or object was not installed, erected, constructed, established, changed, or altered in compliance with the terms and conditions of the permit;
3. The Power Siting Board issued the certificate pursuant to which the structure or object was installed, erected, constructed, established, changed, or altered; or
4. An airport zoning board issued the permit under which the structure or object was installed, erected, constructed, established, changed, or altered.[15]

Airports, airport activities, and airport zoning

Under current law, ODOT works closely with airports in the state and with the local authorities in charge of those airports. ODOT especially assists with funding, contracts, grants, and ensuring that airports meet any federal requirements in association with such funding. The

[14] R.C. 4561.37.

[15] R.C. 4561.40.

bill adds the protection of navigable airspace and the operation of heliports, vertiports, and spaceports to the types of funded activities, along with expanding the list of types of local authorities that control airports in the state. It also clarifies that ODOT may furnish technical counsel and services regarding the location and operation of airports to any private entity, in addition to a governmental entity as in current law. The bill then allows ODOT to provide counsel and services regarding the FAA's processes, including the process for petitioning the FAA for discretionary review of an obstruction or air hazard determination.[16]

In addition to the above, ODOT must approve all airports, landing fields, and landing areas before they can be used for commercial purposes and issue a certificate of approval to those that are approved. The bill clarifies that ODOT will conduct an inspection before approval and requires ODOT to establish, by rule, the documents and the information that must be filed with ODOT before granting or issuing approvals (current law requires the completion of a "complete plan"). The bill also clarifies that inspection and approval are required for all airports (whether publicly or privately owned) and that landing areas include landing areas located on public waters.[17]

The bill also shifts responsibility for developing an airport approach plan from the Office of Aviation to the local airport zoning commission. The Office will still review and approve the plans, but the zoning commissions must develop the plan based on state and federal rules and regulations, local conditions, and characteristics of the specific airport and its air traffic.[18]

For purposes of the law governing airport zoning, the bill clarifies that an airport includes an area with a hard landing surface of not less than 1,800 feet rather than 3,500 feet as in current law. Thus, the bill broadens the facilities that constitute an airport.[19] Additionally, it eliminates a provision of law that declares obstructions to be prima facie reasonable in an airport hazard area when the obstruction is either of the following, whichever is greater:

1. 40 feet or less above the airport elevation; or
2. Three feet for each 100 feet or fraction thereof that the obstruction is distant from the nearest point in the perimeter of the airport.[20]

Technical and conforming changes

The bill updates outdated terminology and makes conforming changes in the laws governing aviation and airport zoning. For example, an "aviator license" is changed to a pilot

[16] R.C. 4561.06, 4561.08, and 4561.09. The bill also clarifies that an airport does not include any federal navigable waterway or military airport owned by the United States government, and it eliminates an outdated requirement that ODOT prepare a plan for a system of airways. R.C. 4561.01(C) and 4561.06.

[17] R.C. 4561.11.

[18] R.C. 4563.08.

[19] R.C. 4563.01.

[20] R.C. 4563.03.

certification or authorization, and "airperson" is changed to "air crew." Finally, references to federal laws and regulations are updated to the current citations.[21]

HISTORY

Action	Date
Introduced	05-26-26

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[21] R.C. 4561.01, 4561.021, 4561.05, 4561.06, 4561.12, 4561.14, 4561.15, 4561.341, 4561.35, 4561.36, 4561.38, 4561.39, 4561.99, 4563.01, 4563.03, 4563.031, 4563.032, 4563.04, 4563.05, 4563.06, 4563.07, 4563.09, 4563.10, 4563.11, 4563.12, 4563.13, 4563.16, 4563.18, 4563.20, 4563.21, and 4906.10; R.C. 4561.30, repealed.