

SECOND REGULAR SESSION

SENATE BILL NO. 725

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR CHILDERS.

Pre-filed December 1, 2001, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

2499S.011

AN ACT

To amend chapter 305, RSMo, by adding thereto nine new sections relating to the Missouri airport protection act.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 305, RSMo, is amended by adding thereto nine new sections, to be known as sections 305.700, 305.702, 305.704, 305.706, 305.708, 305.710, 305.712, 305.714 and 305.716, to read as follows:

305.700. 1. Sections 305.700 to 305.716 may be cited as the "Missouri Airport Protection Act".

2. As used in sections 305.700 to 305.716, the following terms mean:

(1) "Airport", an area of land or water that is used or intended to be used for the landing and takeoff of aircraft, including buildings, equipment, rights-of-way, property and appurtenant areas, that is open to the public;

(2) "Aviation hazard", any structure, object, or natural growth, or use of land which obstructs the air space required for the flight of aircraft landing or taking off at any airport or is otherwise hazardous to such landing or taking off;

(3) "Commission", the Missouri highways and transportation commission;

(4) "FAA", the Federal Aviation Administration or its successor agency;

(5) "Obstruction", any structure natural or man made, penetrating the navigable airspace as defined in the standards for determining obstructions and navigable airspace in section 305.704;

(6) "Permit", an airport structure permit issued by the commission pursuant to sections 305.700 to 305.716;

(7) "Person", an individual, firm, partnership, corporation, association or political subdivision. Person includes a trustee, receiver, assignee or other similar representative of a person;

(8) "Public airport", an airport open to the public and eligible for public funding;

(9) "Structure", an object constructed or installed including, but not limited to, a building, tower, antenna, smokestack or overhead transmission line.

305.702. 1. The general assembly finds an aviation hazard endangers the lives and property of users of an airport and of occupants of land in its vicinity, and in effect reduces the size of the area available for landing, taking off and maneuvering of aircraft, thus tending to destroy or impair the utility of an airport and the public investment therein. Certain structures are hazardous to aircraft in flight because of their height or location, especially during periods of reduced visibility and darkness. Structures determined to be hazards are not in the interest of public health, public safety or the general welfare of the people of Missouri.

2. The commission shall establish an airspace review and permit process to regulate structures that may be erected in proximity to public airports of the state and to ensure that they do not interfere with air navigation.

305.704. 1. A permit shall be required before erecting, adding to or replacing any structure:

(1) Within twelve thousand feet of the midpoint of the primary runway and one hundred feet or higher above the elevation of the public airport;

(2) Between twelve thousand one feet and seventeen thousand feet of the midpoint of the primary runway and one hundred fifty feet or higher above the elevation of the public airport.

2. The permit application shall include as a minimum the

location of the airport, including latitude and longitude, ground elevation and maximum height of the proposed structure and the distance to, direction from, and elevation of the nearest airport runway. The application will also include a 7.5 minute quadrangle topographical map showing the location of the proposed structure and copies of any application for or determinations from a FAA Form 7460-1, or other applicable federal airspace review form, if required.

3. The application shall be presented by mail or in person to the aviation section of the commission at least thirty days prior to the date of the proposed construction. It is not necessary that ownership of, option for or other possessor right to a specific location site be held by the applicant before the application for a permit is filed with the commission. The commission shall act upon such applications within a reasonable time.

4. No application for a permit shall be required for the emergency repair or replacement of public utility, rural electric cooperative or federally licensed radio or television structures, other than buildings, to ensure continuity of proper customer service, when the height of such structures is not increased by such emergency repair or replacement.

5. Nothing in sections 305.700 to 305.716 shall be construed as prohibiting the construction or maintenance of any structure or growth up to one hundred feet in height above the surface of the land.

6. This section shall not apply to, nor is an application for a permit required, when local aviation hazard zoning or regulation is equal to or more restrictive than this section. If such zoning or regulation is more restrictive, local zoning or regulation supersedes sections 305.700 to 305.716. Nothing contained in this section shall prevent any political subdivision from adopting more restrictive requirements for structures within its jurisdiction.

305.706. 1. The commission shall investigate all permit applications that meet the criteria contained in section 305.704 and as necessary to process the application properly pursuant to sections 305.700 to 305.716. The investigation shall consider the safety and welfare of persons and property in the air and on the ground.

2. The commission may approve an application for a temporary

structure that will be in existence for such a short duration that it will no longer occupy the same airspace at the time a formal application can be considered by the commission. Such approval may be granted only if it is evident that the proposed temporary structure will not adversely affect the safety of air navigation.

3. In cases where the FAA has determined that an aeronautical study is needed, the commission will withhold permit approval until the FAA has completed its study. Sufficient grounds for denial of a permit include objection or determination of a hazard by the FAA, violation of a federal aviation regulation, raising of established approach or vectoring minimums. Considering all information supplied by the applicant and other pertinent information available, the commission shall make a determination to approve or deny the permit within a reasonable time.

305.708. If the application is approved by the commission, a permit shall be issued to the applicant. If, upon investigation, the commission determines that a permit should be denied or that the height or location should be other than applied for, the commission shall notify the applicant in writing. The notification may be sent by first class mail to the applicant at the address specified in the application. The determination is final thirty days after notification of the determination is served, unless the applicant, within the thirty-day period, appeals the determination in writing to the commission and requests a hearing. Such hearing shall be conducted pursuant to section 305.712.

305.710. 1. A permit shall specify any obstruction markings, lighting or other visual or aural identification required to be installed on or in the vicinity of the structure, if any. The identification characteristics shall be in accordance with federal laws and regulations. All obstruction lights required pursuant to this section shall be maintained in an operable condition.

2. If ordered by the commission, the owner of a nonconforming structure that is permanently out of service or partially dismantled, destroyed, deteriorated or decayed shall demolish or remove that structure at the owner's expense.

305.712. 1. An appeal hearing pursuant to this section shall be

conducted within forty-five days of the appeal request and shall be open to the public. Any person interested may appear and be heard either in person or by counsel and may present evidence and testimony. The review board for such appeal shall be made up of two representatives from the commission, two members from the state aviation advisory committee, and one member from the closest airport as affected by the site where the structure is proposed. If the proposed structure is associated with a telecommunications tower or antenna, two representatives from the Missouri Telecommunications Industry Association shall also be on the review board. The findings of the review board on any appeal of an application shall be considered to be the final administrative action.

2. Within thirty days after the issuance of an order by the commission, a person aggrieved by the order may appeal to the review board in subsection 1 of this section, or have the action of the commission reviewed by the circuit court in the manner provided for the review of orders of other administrative bodies of this state. A decision of the review board pursuant to subsection 1 of this section may also be appealed pursuant to this subsection.

305.714. 1. The commission shall adopt and promulgate, and may from time to time amend or rescind, reasonable rules and fees for the administration of sections 305.700 to 305.716. The commission shall prescribe and furnish forms necessary for the administration of sections 305.700 to 305.716.

2. The commission shall determine whether violations of sections 305.700 to 305.716, or any rules promulgated pursuant to sections 305.700 to 305.716 have occurred or are threatened. A notification of a violation or threat of violation shall be sent by certified mail, to the person who owns or controls the structure or land in violation thereof. The notice shall state the location, type of structure and the reasons the structure is or would be in violation of such sections or such regulations. The person shall be requested to correct the violation within thirty days of the notice or show cause to the commission why compliance should not be enforced.

3. The person to whom the notice is directed pursuant to this section may show cause why enforcement should be withheld by filing

a written request for a hearing. Such hearing shall be conducted pursuant to section 305.712. Such request shall state, if applicable, facts sufficient to show:

(1) The structure is not an obstruction as defined by sections 305.700 to 305.716 or any rules promulgated pursuant to sections 305.700 to 305.716;

(2) The structure is in the airspace of the airport, but it is not an obstruction to the safety of air navigation; and

(3) Any other facts the petitioner deems relevant that would relieve him or her from the terms of the order, including a request for an extension of time to remove the structure.

4. The commission may order action be instituted in the appropriate court of jurisdiction for the enforcement of applicable statutes, rules, regulations, and orders issued pursuant to sections 305.700 to 305.716 and shall investigate violations or threats of violation of sections 305.700 to 305.716 or rules promulgated pursuant to sections 305.700 to 305.716. Any person seeking judicial review of any such statute or rule shall be deemed to have exhausted all administrative review procedures.

5. In addition to any other remedy, the commission may institute in a court of competent jurisdiction an action to enjoin, restrain, correct or abate a violation of sections 305.700 to 305.716 or rules promulgated pursuant to sections 305.700 to 305.716.

6. Sections 305.700 to 305.716, or any rule promulgated pursuant to sections 305.700 to 305.716, shall not be construed to require the removal, lowering or other change or alteration of any structure not conforming to sections 305.700 to 305.716, or any rule promulgated pursuant to such sections, prior to August 28, 2001, or as otherwise interfere with the continuance of any nonconforming use. Sections 305.700 to 305.716, or any rule promulgated pursuant to such sections, shall not require any change in the construction, alteration or intended use of any structure, provided that such construction or alteration was begun prior to August 28, 2002, and is diligently prosecuted after August 28, 2002.

7. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in sections

305.700 to 305.716 shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2002, shall be invalid and void.

305.716. The commission is prohibited from expending funds, which are presumed for or dedicated to highway use as described in chapter 142, RSMo, in the enforcement of sections 305.700 to 305.714.

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