

THE HOUSE OF REPRESENTATIVES
Monday, March 1, 2010

Committee Substitute for
House Bill No. 2919

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 2919 - By: SHANNON AND MORGAN of the House.

An Act relating to airports; creating the Aircraft Pilot and Passenger Protection Act; stating intent; defining terms; declaring certain structures incompatible with act; requiring permit for certain construction; stating requirements for permit applications for certain purposes; authorizing the Oklahoma Aeronautics Commission to investigate and evaluate certain permit applications; providing for validation of permits and requiring recording in counties; providing for duration of permits; providing for denial of permits by Commission; stating application of act; stating penalties for violations; providing for fees; authorizing Commission to promulgate rules; providing for codification; providing for noncodification; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

1 SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma
2 Statutes as Section 120.1 of Title 3, unless there is created a duplication in numbering,
3 reads as follows:

4 A. This act shall be known and may be cited as the “Aircraft Pilot and Passenger
5 Protection Act”.

6 B. It is the intent of this act to regulate the height of structures near public-use
7 airports, thereby protecting the safety and welfare of the flying public; to restrict the use
8 of land in the immediate vicinity of the airport to activities compatible with aircraft

1 operations; to protect the public investment in airport infrastructure; to provide specific
2 powers and duties to the Oklahoma Aeronautics Commission and to provide penalties for
3 violations of this act.

4 C. Nothing in this act shall prevent or preempt a municipality from adopting
5 ordinances or regulations governing land use that may affect public-use airports.

6 SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma
7 Statutes as Section 120.2 of Title 3, unless there is created a duplication in numbering,
8 reads as follows:

9 As used in this act:

- 10 1. "Airport reference point" is the geometrical center of all usable runways;
- 11 2. "Airport elevation" is the highest point of an airport's usable runways measured
12 in feet from mean sea level;
- 13 3. "Commission" means the Oklahoma Aeronautics Commission or a successor
14 agency;
- 15 4. "FAA" means the Federal Aviation Administration or a successor agency to the
16 Federal Aviation Administration;
- 17 5. "Legal representative" means an official of the airport sponsor who is authorized
18 to legally bind the airport sponsor;
- 19 6. "Noise-sensitive area" means an area lying one thousand five hundred (1,500)
20 feet on either side of the centerline and the extended centerline of a runway for a
21 distance of one (1) statute mile from the end of a runway at any public-use airport;

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 7. “Noise-sensitive purpose” means the use of a building or structure as a residence,
2 school, church, child-care facility, medical facility, retirement home, nursing home or
3 similar use;

4 8. “Permit” means a permit issued by the Commission under this act;

5 9. “Person” means an individual, firm, partnership, corporation, association, or
6 body politic and includes a trustee, receiver, assignee, or other similarly authorized
7 representative of any of them;

8 10. “Public-use airport” means a structure or an area of land or water that is
9 designed and set aside for the landing and taking off of aircraft, is utilized or to be
10 utilized by and in the interest of the public for the landing and taking off of aircraft and
11 is identified by the FAA as a public-use airport. The term does not include:

- 12 a. any privately owned airport for private use as identified by the FAA, or
13 b. any military airport solely occupied by any branch of the federal
14 government using that airport for military air purposes;

15 11. “Runway” means the portion of an airport designated as the area used for the
16 landing or takeoff of aircraft; and

17 12. “Structure” means any constructed or installed object, including, but not limited
18 to, cranes, buildings, towers, wind turbines, smokestacks, electronic transmission or
19 receiving towers, and antennae and overhead transmission lines.

20 SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma
21 Statutes as Section 120.3 of Title 3, unless there is created a duplication in numbering,
22 reads as follows:

1 The construction of a structure used for a noise-sensitive purpose, as defined in
2 Section 2 of this act, within a noise-sensitive area, as defined in Section 2 of this act,
3 constitutes an incompatible use of land near a public-use airport and is regulated by this
4 act.

5 SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma
6 Statutes as Section 120.4 of Title 3, unless there is created a duplication in numbering,
7 reads as follows:

8 A person shall obtain a permit from the Oklahoma Aeronautics Commission prior to
9 the construction, installation or alteration of any of the following:

- 10 1. Any structure to be constructed for a noise-sensitive purpose in a noise-sensitive
11 area;
- 12 2. Any structure that would result in a total structure height in excess of one
13 hundred fifty (150) feet above the established airport elevation and within three (3)
14 statute miles of a public-use airport measured from the airport reference point; or
- 15 3. Any structure that is of greater height than a surface shaped like a trapezoid:
 - 16 a. longitudinally centered on the extended runway centerline,
 - 17 b. beginning two hundred (200) feet beyond the end of each runway
18 pavement and at the runway end elevation,
 - 19 c. having an inner edge width of one thousand (1,000) feet expanding
20 outward uniformly to a width of sixteen thousand (16,000) feet at the
21 outer edge, and

1 d. sloping upward for a distance of eleven thousand (11,000) feet at a
2 slope of fifty (50) to one (1), with an additional forty thousand (40,000)
3 feet at a slope of forty (40) to one (1).

4 SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma
5 Statutes as Section 120.5 of Title 3, unless there is created a duplication in numbering,
6 reads as follows:

7 Any structure or alteration to a structure, including a mobile structure is presumed
8 to be a hazard to air navigation if it is of greater height than any of the following heights
9 or surfaces:

10 1. A horizontal plane one hundred fifty (150) feet above the established airport
11 elevation, the perimeter of which is constructed by swinging arcs of ten thousand
12 (10,000) feet radii from a point located on the extended runway centerline two hundred
13 (200) feet beyond each end of runway pavement and connecting the adjacent arcs by lines
14 tangent to those arcs with a surface extending outward and upward from the perimeter
15 of this horizontal plane at a slope of twenty (20) to one (1) for a horizontal distance of
16 four thousand (4,000) feet; and

17 2. A surface shaped like a trapezoid:
18 a. longitudinally centered on the extended runway centerline,
19 b. beginning two hundred (200) feet beyond the end of each runway
20 pavement and at the runway end elevation,

- 1 c. having an inner edge width of one thousand (1,000) feet expanding
2 outward uniformly to a width of sixteen thousand (16,000) feet at the
3 outer edge, and
4 d. sloping upward for a distance of eleven thousand (11,000) feet at a
5 slope of fifty (50) to one (1), with an additional forty thousand (40,000)
6 feet at a slope of forty (40) to one (1).

7 SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma
8 Statutes as Section 120.6 of Title 3, unless there is created a duplication in numbering,
9 reads as follows:

10 Any person required to apply for a permit in accordance with the provisions of this
11 act shall provide written notice to the airport owner of a public-use airport thirty (30)
12 days prior to applying for a permit from the Oklahoma Aeronautics Commission. The
13 notice shall be sent by certified or registered mail, with return receipt requested, and
14 must include the following:

- 15 1. Contact details of the applicant; i.e., name, telephone number and mailing
16 address;
17 2. Intended use of the structure;
18 3. Location of the structure, including the latitude and longitude accurate to within
19 the nearest one-hundredth of a second based on the North American Datum of 1983
20 (NAD83);

1 4. Elevation of the ground above mean sea level (AMSL), elevation of the structure
2 AMSL and height of the structure above ground level (AGL) in feet measured accurate to
3 within twenty (20) feet horizontally and three (3) feet vertically;

4 5. A copy of the seven-and-one-half-minute U.S. Geological Survey Quadrangle
5 Map with the precise site location marked, on eight and one-half by eleven paper; and

6 6. A copy of the Form 7460-1 as defined in 14 CFR part 77, sub-part A, Section 17
7 that has been filed with the FAA, along with a copy of the FAA determination, including
8 comments by the FAA, if any.

9 SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma
10 Statutes as Section 120.7 of Title 3, unless there is created a duplication in numbering,
11 reads as follows:

12 Applications to the Oklahoma Aeronautics Commission for a permit in accordance
13 with the provisions of this act for construction near a public-use airport shall include the
14 following:

15 1. For construction in a noise-sensitive area, a person applying for a permit in
16 accordance with paragraph 1 of Section 4 of this act must provide the following
17 documents to the Commission:

- 18 a. a complete copy of the notice, including all attachments mailed to the
19 airport owner of a public-use airport in accordance with Section 6 of
20 this act and the comments received from the airport owner,
21 b. the following statement on the applicant's letterhead, signed by a legal
22 representative:

- 1 "The applicant acknowledges for itself, its heirs, its successors, and its
2 assigns, that the real estate described in this permit experiences or
3 may experience significant levels of aircraft noise, and that the
4 applicant is erecting a building designed for noise-sensitive use upon
5 the real estate, with the full knowledge and acceptance of the aircraft
6 noise as well as any effects resulting from aircraft operations.",
- 7 c. a copy of the FAA determination on the proposed construction based on
8 the form 7460-1 as defined in 14 CFR part 77, sub-part A, Section 17,
9 previously submitted to the FAA and provided to the airport owner per
10 Section 6 of this act, and
- 11 d. a completed application in the form prescribed by the Commission; and
- 12 2. For construction or alteration of a structure near a public-use airport a person
13 applying for a permit in accordance with paragraph 2 or 3 of Section 4 of this act must
14 provide the following documents to the Commission:
- 15 a. a complete copy of the notice, including all attachments submitted to
16 the airport owner of a public-use airport in accordance with Section 6
17 of this act and the comments received from the airport owner,
- 18 b. a copy of the FAA determination on the proposed construction based on
19 the form 7460-1 as defined in 14 CFR part 77, sub-part A, Section 17,
20 submitted to the FAA and provided to the airport owner per Section 6
21 of this act, and
- 22 c. a completed application in the form prescribed by the Commission.

1 SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma
2 Statutes as Section 120.8 of Title 3, unless there is created a duplication in numbering,
3 reads as follows:

4 A. Upon receiving an application for a permit, the Oklahoma Aeronautics
5 Commission shall determine whether the proposed structure erected in the proposed
6 location is a structure for a noise-sensitive purpose in a noise-sensitive area per Section 3
7 of this act and/or whether a structure would be a hazard to air navigation if constructed
8 per Section 5 of this act. The Commission may take into consideration findings and
9 recommendations of other governmental agencies or interested persons concerning the
10 proposed structure; however, such findings or recommendations are not binding on the
11 Commission.

12 B. The Commission may consider an application for a permit for a period of sixty
13 (60) days before making a final determination.

14 SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma
15 Statutes as Section 120.9 of Title 3, unless there is created a duplication in numbering,
16 reads as follows:

17 Once a permit is issued by the Oklahoma Aeronautics Commission, the applicant
18 shall be required to complete the following steps to complete the permit process:

19 1. The applicant or applicants for a permit under Section 4 of this act shall record
20 each permit issued by the Commission in the office of the county clerk for the county
21 where the structure is located not later than thirty (30) business days after the
22 Commission issues the permit. If a structure is located in more than one county, the

1 county that contains the majority of the structure is the county in which the permit must
2 be filed. A permit issued under paragraph 1 of Section 4 of this act shall contain the
3 following statement: "The permittee acknowledges for itself, its heirs, its successors, and
4 its assigns, that the real estate described in this permit experiences or may experience
5 significant levels of aircraft noise, and that the permittee is erecting a building designed
6 for noise-sensitive purpose upon the real estate, with the full knowledge and acceptance
7 of the aircraft noise as well as any effects resulting from the aircraft operations.";

8 2. A permit issued in accordance with the provisions of Section 4 of this act is valid
9 only after the Commission receives a certified copy of the recorded permit with the
10 recording data from the county clerk of the county in which the structure is located; and

11 3. Every permit granted by the Commission shall specify obstruction markers,
12 markings, lighting, or other visual or aural identification required to be installed on or in
13 the vicinity of the structure, if any. The identification characteristics required shall
14 conform to federal laws and regulations or as prescribed by the Commission. Failure to
15 maintain obstruction lights in an operable condition is a violation of this act.

16 SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma
17 Statutes as Section 120.10 of Title 3, unless there is created a duplication in numbering,
18 reads as follows:

19 A permit issued in accordance with the provisions of Section 4 of this act is valid
20 only if the proposed structure has been constructed within five (5) years of the issuance
21 of a permit by the Commission pursuant to Section 9 of this act.

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma
2 Statutes as Section 120.11 of Title 3, unless there is created a duplication in numbering,
3 reads as follows:

4 A. If the Oklahoma Aeronautics Commission determines that a permit should not
5 be issued under the provisions of this act, the Commission shall notify the applicant in
6 writing of its determination. The notification may be served by delivering it personally
7 to the applicant or by sending it by certified or registered mail to the applicant at the
8 address specified in the application.

9 B. The determination is final thirty (30) days after notification of the determination
10 is served, unless the applicant, within the thirty-day period, requests reconsideration in
11 writing to the Commission and provides written evidence that the structure does not
12 violate the provisions of this act. The Commission shall consider the additional written
13 evidence provided for an additional period of thirty (30) days from the receipt of the
14 request. The Commission shall notify the applicant of its determination as specified in
15 subsection A of this section. In the event of a second denial by the Commission of the
16 permit request, the applicant can request a hearing before the Commission with
17 reference to the application. A hearing under this section shall be open to the public.
18 Any person interested may appear and be heard either in person or by counsel and may
19 present pertinent evidence and testimony. At the hearing, the applicant has the burden
20 to show cause why the Commission should have granted the permit to erect the proposed
21 structure.

1 SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma
2 Statutes as Section 120.12 of Title 3, unless there is created a duplication in numbering,
3 reads as follows:

4 The provisions of this act shall not apply to structures that existed prior to the
5 effective date of this act. Any alterations to such existing structures would be covered by
6 the provisions of this act.

7 SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma
8 Statutes as Section 120.13 of Title 3, unless there is created a duplication in numbering,
9 reads as follows:

10 Each violation of this act, or rulings promulgated by the Oklahoma Aeronautics
11 Commission pursuant to this act, shall constitute a misdemeanor punishable by a fine of
12 not more than Five Hundred Dollars (\$500.00). Each day that such a violation or failure
13 continues constitutes a separate offense. In addition, the Commission may institute in
14 any court of general jurisdiction, an action to prevent, restrain, correct, or abate any
15 violation of this act or of any rules or orders the Commission issued or ordered under this
16 act. The court may grant such relief, by way of injunction, which may be mandatory, or
17 otherwise, as may be necessary under this act and the applicable rules or orders of the
18 Commission issued under this act.

19 SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma
20 Statutes as Section 120.14 of Title 3, unless there is created a duplication in numbering,
21 reads as follows:

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~~Strike thru~~ language denotes deletion from present Statutes.

1 The Oklahoma Aeronautics Commission shall prepare and charge a schedule of
2 reasonable fees for services rendered, not to exceed Two Hundred Dollars (\$200.00) per
3 permit application.

4 SECTION 15. NEW LAW A new section of law not to be codified in the
5 Oklahoma Statutes reads as follows:

6 The Oklahoma Aeronautics Commission is authorized to promulgate any rules
7 necessary to implement the provisions of this act.

8 SECTION 16. It being immediately necessary for the preservation of the public
9 peace, health and safety, an emergency is hereby declared to exist, by reason whereof
10 this act shall take effect and be in full force from and after its passage and approval.

11 COMMITTEE REPORT BY: COMMITTEE ON TRANSPORTATION, dated 02-25-10 -
12 DO PASS, As Amended and Coauthored.