

SENATE BILL No. 257

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-21-10-3.

Synopsis: Military aviation. Requires that an application for a permit from the department of transportation (department) to construct or alter a tall structure must be submitted to the Military Aviation and Installation Assurance Siting Clearinghouse (Clearinghouse) for analysis of the potential effect of the construction or alteration on military operations and readiness. Provides that if the Clearinghouse determines that the construction or alteration would have an adverse effect on military operations and readiness: (1) the department shall send notice of the determination to the Indiana defense task force; and (2) the Indiana defense task force shall provide notice of the potential adverse effect to any military base potentially affected by the construction or alteration. Provides that if: (1) the applicant does not submit to the department a Determination of No Hazard to Air Navigation issued by the Federal Aviation Administration with regard to the construction or alteration; and (2) the Clearinghouse finds that the construction or alteration would have an adverse effect on military operations and readiness; a permit issued for the construction or alteration must require the applicant to enter into discussions with the United States Department of Defense components designated by the Clearinghouse regarding mitigation of the adverse effect.

Effective: July 1, 2020.

Koch

January 9, 2020, read first time and referred to Committee on Homeland Security and Transportation.



Second Regular Session of the 121st General Assembly (2020)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2019 Regular Session of the General Assembly.

SENATE BILL No. 257

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 8-21-10-3 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 3. (a) Unless a permit
3 has been issued by the department, a person may not erect, alter, or add
4 to the height of any structure which falls within any one (1) of the
5 following categories:
6 (1) Any construction or alteration of more than two hundred (200)
7 feet above ground level at its site.
8 (2) Any construction or alteration of greater height than an
9 imaginary surface extending outward and upward at one (1) of the
10 following slopes:
11 (A) One hundred (100) to one (1) for a horizontal distance of
12 twenty thousand (20,000) feet from the nearest point of the
13 nearest runway of any public-use airport with at least one (1)
14 runway more than three thousand two hundred (3,200) feet in
15 actual length, excluding heliports.
16 (B) Fifty (50) to one (1) for a horizontal distance of ten
17 thousand (10,000) feet from the nearest point of the nearest



- 1 runway of any public-use airport with its longest runway no
 2 more than three thousand two hundred (3,200) feet in actual
 3 length, excluding heliports.
- 4 (C) Twenty-five (25) to one (1) for a horizontal distance of
 5 five thousand (5,000) feet from the nearest point of the nearest
 6 landing and takeoff area of any public-use heliport.
- 7 (3) Any construction or alteration of traverse ways used, or to be
 8 used, for the passage of mobile objects if the standards set forth
 9 under subdivisions (1) and (2) would be exceeded, but only after
 10 the heights of these traverse ways are increased by:
- 11 (A) Seventeen (17) feet for an interstate highway where
 12 overcrossings are designed for a minimum of seventeen (17)
 13 feet vertical distance.
- 14 (B) Fifteen (15) feet for any other public roadway.
- 15 (C) Ten (10) feet or the height of the highest mobile object that
 16 would normally traverse the road, whichever is greater, for a
 17 private road.
- 18 (D) Twenty-three (23) feet for a railroad.
- 19 (E) For a waterway or any other traversed way not previously
 20 mentioned, an amount equal to the height of the highest
 21 mobile object that would normally traverse it.
- 22 (b) Unless:
- 23 (1) a permit for construction in a noise sensitive area has been
 24 approved by the department;
- 25 (2) the holder of a permit for construction in a noise sensitive area
 26 has filed a copy of the permit for construction in a noise sensitive
 27 area with the county recorder of the county in which the structure
 28 is located, as provided in subsection (d); and
- 29 (3) a certified copy of the recorded permit for construction in a
 30 noise sensitive area, with the recording data from the county
 31 recorder on the copy of the permit, has been received by the
 32 department;
- 33 a person may not erect a building used for a noise sensitive purpose
 34 within an area lying one thousand five hundred (1,500) feet on either
 35 side of the centerline and the extended centerline of a runway for a
 36 distance of one (1) nautical mile from the boundaries of any public use
 37 airport.
- 38 (c) A person applying for a permit under subsection (a) must
 39 provide notice, at the time of the filing of the application for a permit,
 40 to the owner of a public use airport located within a five (5) nautical
 41 mile radius surrounding the structure, regardless of county lines, if the
 42 structure that is the subject of the permit is:



- 1 (1) a new structure; or
2 (2) an existing structure to which additional height is added.
- 3 (d) A person applying for a permit for construction in a noise
4 sensitive area under subsection (b) must provide notice, at the time of
5 the filing of the application for a permit, to the owner of a public use
6 airport if the public use airport is located within a distance of one (1)
7 nautical mile from the boundary of the property that contains the
8 building used for a noise sensitive purpose.
- 9 (e) Notice under subsections (c) and (d) must be sent by certified or
10 registered mail, with return receipt requested, and must include the:
- 11 (1) name, telephone number, and a contact person for the:
12 (A) applicant;
13 (B) department; and
14 (C) plan commission that has jurisdiction over the site of the
15 structure;
16 (2) location of the structure, including a legal description;
17 (3) height of the structure; and
18 (4) Federal Aviation Administration aeronautical study number
19 assigned to the application, if applicable to the type of permit for
20 which notice is required.
- 21 (f) The applicant for a permit under subsection (b) shall record each
22 permit issued by the department in the office of the county recorder for
23 the county where the structure is located, not later than five (5)
24 business days after the department issues the permit. If a structure is
25 located in more than one (1) county, the county that contains the
26 majority of the structure is the county in which the permit must be
27 filed.
- 28 (g) A permit issued under subsection (b) is valid only after the
29 department receives a certified copy of the recorded permit with the
30 recording data from the county recorder of the county in which the
31 structure is located.
- 32 (h) A permit issued under subsection (b) must contain the following
33 statement:
34 "The permittee acknowledges for itself, its heirs, its successors,
35 and its assigns, that the real estate described in this permit
36 experiences or may experience significant levels of aircraft
37 operations, and that the permittee is erecting a building designed
38 for noise sensitive use upon the real estate, with the full
39 knowledge and acceptance of the aircraft operations as well as
40 any effects resulting from the aircraft operations."
41 (i) An applicant for a permit under subsection (a) must provide
42 written evidence to the department that the structure being constructed



1 does not violate section 7 of this chapter with regard to an existing
 2 public use airport, if a public use airport is located within a five (5)
 3 nautical mile radius surrounding the structure that is the subject of the
 4 permit.

5 (j) ~~Unless a denial of permit is issued by the department, If:~~

6 **(1) the applicant for a permit under subsection (a) submits**
 7 **with the application a Determination of No Hazard to Air**
 8 **Navigation ~~from issued by the Federal Aviation Administration~~**
 9 **to the applicant with regard to the proposed construction or**
 10 **alteration; and**

11 **(2) the department does not deny the permit;**

12 **the Determination of No Hazard to Air Navigation** is a permit under
 13 this section, and a separate permit will not be issued by the department.

14 **(k) Not later than thirty (30) days after an applicant submits an**
 15 **application to the department for a permit under subsection (a),**
 16 **the department shall submit to the Military Aviation and**
 17 **Installation Assurance Siting Clearinghouse a request for informal**
 18 **review of the proposed construction or alteration under 32 CFR**
 19 **211.7.**

20 **(l) If the informal review requested under subsection (k) results**
 21 **in notice to the department from the Military Aviation and**
 22 **Installation Assurance Siting Clearinghouse of a determination**
 23 **that the proposed construction or alteration will have an adverse**
 24 **impact on military operations and readiness (as defined in 32 CFR**
 25 **211.3):**

26 **(1) the department shall, not later than thirty (30) days after**
 27 **receiving the notice, forward a copy of the notice to the**
 28 **Indiana defense task force established by IC 4-3-21.5-3; and**

29 **(2) the Indiana defense task force shall, not later than thirty**
 30 **(30) days after receiving a copy of the notice under**
 31 **subdivision (1), provide notice of the Military Aviation and**
 32 **Installation Assurance Siting Clearinghouse's determination**
 33 **to any military base potentially affected by the construction**
 34 **or alteration.**

35 **(m) If:**

36 **(1) an applicant for a permit under subsection (a) does not**
 37 **submit with the permit application a Determination of No**
 38 **Hazard to Air Navigation issued by the Federal Aviation**
 39 **Administration to the applicant with regard to the proposed**
 40 **construction or alteration;**

41 **(2) the informal review requested under subsection (k) results**
 42 **in notice by the Military Aviation and Installation Assurance**



1 **Siting Clearinghouse that the proposed construction or**
2 **alteration will have an adverse impact on military operations**
3 **and readiness (as defined in 32 CFR 211.3); and**
4 **(3) the department issues the permit to the applicant;**
5 **the permit must require that the applicant enter into discussions**
6 **with the United States Department of Defense components**
7 **designated by the Military Aviation and Installation Assurance**
8 **Siting Clearinghouse under 32 CFR 211.7(b)(2)(iii)(A) regarding**
9 **mitigation of the adverse impact on military operations and**
10 **readiness.**

