

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 ENROLLED ACT No. 257

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

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

SECTION 1. IC 8-21-1-1, AS AMENDED BY P.L.136-2018, SECTION 98, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) The definitions in this section apply throughout this article.

(b) "Aeronautics" means:

- (1) transportation by aircraft;
- (2) the operation, construction, repair, or maintenance of aircraft, aircraft power plants and accessories, including the repair, packing, and maintenance of parachutes;
- (3) the design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports, landing fields, or other air navigation facilities; and
- (4) air instruction.

(c) "Aircraft" means any contrivance used or designed for navigation of or flight in the air.

(d) "Public aircraft" means an aircraft used exclusively in the service of any government or of any political subdivision of a government, including the government of any state but not including any government owned aircraft engaged in carrying persons or property for commercial purposes.

(e) "Civil aircraft" means any aircraft other than a public aircraft.

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(f) "Airport" means any location either on land or water which is used for the landing and taking off of aircraft.

(g) "Department" refers to the Indiana department of transportation.

(h) "Landing field" means any airport which provides neither facilities nor services other than an area designated for the landing and taking off of aircraft.

(i) "Air navigation facility" means any facility other than one owned or controlled by the federal government, used in, available for use in, or designed for use in aid of air navigation, including:

(1) airports;

(2) landing fields;

(3) any structures, mechanisms, lights, beacons, marks, communicating systems, or other instrumentalities or devices used or useful as an aid, or constituting an advantage or convenience, to the safe taking-off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport or landing field; and

(4) any combination of any or all of such facilities.

(j) "Air navigation" means the operation or navigation of aircraft in the air space over this state, or upon any airport or landing field within this state.

(k) "Operation of aircraft" or "operate aircraft" means the use of aircraft for the purpose of air navigation, and includes the navigation or piloting of aircraft. Any person who causes or authorizes the operation of aircraft, whether with or without the right of legal control (in the capacity of owner, lessee, or otherwise) of the aircraft, is considered to be engaged in the operation of aircraft within the meaning of the Indiana statutes.

(l) "Airman" means any individual who engages, as the person in command, or as pilot, mechanic, or member of the crew, in the navigation of aircraft while under way and (excepting individuals employed outside the United States, any individual employed outside the United States, any individual employed by a manufacturer of aircraft, aircraft engines, propellers, or appliances to perform duties as inspector or mechanic in connection with the manufacturer's aircraft, aircraft engines, propellers, or appliances, and any individual performing inspection or mechanical duties in connection with aircraft owned or operated by the individual) any individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft engines, propellers, or appliances and any individual who serves in the capacity of aircraft dispatcher or air-traffic control-tower operator.

(m) "Air instruction" means the imparting of aeronautical



information by any aeronautics instructor or in or by any air school or flying club.

(n) "Air school" means any person engaged in giving, or offering to give, instruction in aeronautics, either in flying or ground subjects, or both, for or without hire or reward, and advertising, representing, or professing to give or offer to give such instruction.

(o) "Aeronautics instructor" means an individual engaged in giving instruction, or offering to give instruction, in aeronautics, either in flying or ground subjects, or both, for hire or reward, without advertising such occupation, without calling the individual's facilities an air school or anything equivalent thereto, and without employing or using other instructors.

(p) "Flying club" means any person other than an individual, which, neither for profit nor reward, owns, leases, or uses one (1) or more aircraft for the purpose of instruction or pleasure, or both.

(q) "Person" means any individual, firm, partnership, corporation, company, limited liability company, association, joint stock association, or body politic. The term includes any trustee, receiver, assignee, or other similar representative.

(r) "State airway" means a route in the navigable air space over and above the lands or water of Indiana designated by the department as a route suitable for air navigation.

(s) "Navigable air space" means air space above the minimum altitudes of flight prescribed by Indiana laws or by rules of the department consistent with Indiana laws.

(t) "Municipality" means any county, city, or town of Indiana and any other political subdivision, public corporation, authority, or district in Indiana which is or may be authorized by law to acquire, establish, construct, maintain, improve, and operate airports and other air navigation facilities.

(u) "Airport protection privileges" means easements through or other interests in air space over land or water, interests in airport hazards outside the boundaries of airports or landing fields, and other protection privileges, the acquisition or control of which is necessary to ensure safe approaches to the landing areas of the airports and landing fields and the safe and efficient operation of airports and landing fields.

(v) "Airport hazard" means any structure, object of natural growth, or use of land, which obstructs the air space required for the flight of aircraft in landing or taking off at any airport or landing field or is otherwise hazardous to such landing or taking off.

(w) "CAB-certificated air carrier" means an air carrier which is



operating under a valid certificate of public convenience and necessity issued by the Civil Aeronautics Board under Public Law 85-726, Title VI, Aug. 23, 1958, 72 Stat. 754, 49 U.S.C. 1371 as amended.

(x) "Adverse impact on military operations and readiness" has the meaning set forth in 32 CFR 211.3.

(y) "Energy facility" means any structure that provides for the generation or transmission of electrical energy.

SECTION 2. IC 8-21-10-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) Unless a permit has been issued by the department, a person may not erect, alter, or add to the height of any structure which falls within any one (1) of the following categories:

(1) Any construction or alteration of more than two hundred (200) feet above ground level at its site.

(2) Any construction or alteration of greater height than an imaginary surface extending outward and upward at one (1) of the following slopes:

(A) One hundred (100) to one (1) for a horizontal distance of twenty thousand (20,000) feet from the nearest point of the nearest runway of any public-use airport with at least one (1) runway more than three thousand two hundred (3,200) feet in actual length, excluding heliports.

(B) Fifty (50) to one (1) for a horizontal distance of ten thousand (10,000) feet from the nearest point of the nearest runway of any public-use airport with its longest runway no more than three thousand two hundred (3,200) feet in actual length, excluding heliports.

(C) Twenty-five (25) to one (1) for a horizontal distance of five thousand (5,000) feet from the nearest point of the nearest landing and takeoff area of any public-use heliport.

(3) Any construction or alteration of traverse ways used, or to be used, for the passage of mobile objects if the standards set forth under subdivisions (1) and (2) would be exceeded, but only after the heights of these traverse ways are increased by:

(A) Seventeen (17) feet for an interstate highway where overcrossings are designed for a minimum of seventeen (17) feet vertical distance.

(B) Fifteen (15) feet for any other public roadway.

(C) Ten (10) feet or the height of the highest mobile object that would normally traverse the road, whichever is greater, for a private road.

(D) Twenty-three (23) feet for a railroad.



(E) For a waterway or any other traversed way not previously mentioned, an amount equal to the height of the highest mobile object that would normally traverse it.

(b) Unless:

- (1) a permit for construction in a noise sensitive area has been approved by the department;
- (2) the holder of a permit for construction in a noise sensitive area has filed a copy of the permit for construction in a noise sensitive area with the county recorder of the county in which the structure is located, as provided in subsection (d); and
- (3) a certified copy of the recorded permit for construction in a noise sensitive area, with the recording data from the county recorder on the copy of the permit, has been received by the department;

a person may not erect a building used for a noise sensitive purpose within an area lying one thousand five hundred (1,500) feet on either side of the centerline and the extended centerline of a runway for a distance of one (1) nautical mile from the boundaries of any public use airport.

(c) A person applying for a permit under subsection (a) must provide notice, at the time of the filing of the application for a permit, to the owner of a public use airport located within a five (5) nautical mile radius surrounding the structure, regardless of county lines, if the structure that is the subject of the permit is:

- (1) a new structure; or
- (2) an existing structure to which additional height is added.

(d) A person applying for a permit for construction in a noise sensitive area under subsection (b) must provide notice, at the time of the filing of the application for a permit, to the owner of a public use airport if the public use airport is located within a distance of one (1) nautical mile from the boundary of the property that contains the building used for a noise sensitive purpose.

(e) Notice under subsections (c) and (d) must be sent by certified or registered mail, with return receipt requested, and must include the:

- (1) name, telephone number, and a contact person for the:
 - (A) applicant;
 - (B) department; and
 - (C) plan commission that has jurisdiction over the site of the structure;
- (2) location of the structure, including a legal description;
- (3) height of the structure; and
- (4) Federal Aviation Administration aeronautical study number



assigned to the application, if applicable to the type of permit for which notice is required.

(f) The applicant for a permit under subsection (b) shall record each permit issued by the department in the office of the county recorder for the county where the structure is located, not later than five (5) business days after the department issues the permit. If a structure is located in more than one (1) county, the county that contains the majority of the structure is the county in which the permit must be filed.

(g) A permit issued under subsection (b) is valid only after the department receives a certified copy of the recorded permit with the recording data from the county recorder of the county in which the structure is located.

(h) A permit issued under subsection (b) must contain the following statement:

"The permittee acknowledges for itself, its heirs, its successors, and its assigns, that the real estate described in this permit experiences or may experience significant levels of aircraft operations, and that the permittee is erecting a building designed for noise sensitive use upon the real estate, with the full knowledge and acceptance of the aircraft operations as well as any effects resulting from the aircraft operations."

(i) An applicant for a permit under subsection (a) must provide written evidence to the department that the structure being constructed does not violate section 7 of this chapter with regard to an existing public use airport, if a public use airport is located within a five (5) nautical mile radius surrounding the structure that is the subject of the permit.

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

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

(2) the department does not deny the permit;

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

(k) The department shall not issue a permit under subsection (a) for construction or alteration of an energy facility that will result in a structure that is more than two hundred (200) feet above ground level at its site unless the applicant for the permit submits to the department documentation from the Military Aviation and



Installation Assurance Siting Clearinghouse indicating:

- (1) that a formal review of the construction or alteration under 32 CFR 211.6 resulted in a determination that the construction or alteration will not have an adverse impact on military operations and readiness; or**
- (2) that:**
 - (A) a formal review of the construction or alteration under 32 CFR 211.6 resulted in a determination that the proposed project will have an adverse impact on military operations and readiness; and**
 - (B) the applicant has:**
 - (i) resolved any identified adverse impact to the satisfaction of the United States Department of Defense; or**
 - (ii) entered into a mitigation agreement with the United States Department of Defense to mitigate the adverse impact.**

SECTION 3. IC 36-7-4-1603, AS ADDED BY P.L.126-2011, SECTION 50, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1603. (a) The following have standing to obtain judicial review of a zoning decision:

- (1) A person to whom the zoning decision is specifically directed.
- (2) A person aggrieved by the zoning decision who participated in the board hearing that led to the decision, either:
 - (A) by appearing at the hearing in person, by agent, or by attorney and presenting relevant evidence; or
 - (B) by filing with the board a written statement setting forth any facts or opinions relating to the decision.
- (3) A person that is a public use airport owner or operator has standing to obtain judicial review of a zoning decision that may have a negative impact on the safety of civilian or military flight operations to or from the airport.**
- ~~(3)~~ **(4) A person otherwise aggrieved or adversely affected by the zoning decision.**

- (b) A person has standing under subsection ~~(a)(3)~~ **(a)(4)** only if:
 - (1) the zoning decision has prejudiced or is likely to prejudice the interests of the person;
 - (2) the person was eligible for an initial notice of a hearing under this chapter, was not notified of the hearing in substantial compliance with this chapter, and did not have actual notice of the hearing before the last date in the hearing that the person could object or otherwise intervene to contest the zoning decision;



(3) the person's asserted interests are among those that the board was required to consider when it made the challenged zoning decision; and

(4) a judgment in favor of the person would substantially eliminate or redress the prejudice to the person caused or likely to be caused by the zoning decision.

SECTION 4. IC 36-7-4-1606, AS ADDED BY P.L.126-2011, SECTION 53, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1606. (a) Venue is in the judicial district where the land affected by the zoning decision is located.

(b) If more than one (1) person may be aggrieved by the zoning decision, only one (1) proceeding for review may be had, and the court in which a petition for review is first properly filed has jurisdiction.

(c) The rules of procedure governing civil actions in the courts govern pleadings and requests under this chapter for a change of judge or change of venue to another judicial district described in subsection (a).

(d) Each person who:

(1) was a petitioner or applicant at the hearing before the board; or

(2) is aggrieved by the zoning decision and entered a written appearance as an adverse party to the petitioner or applicant before the board hearing that led to the zoning decision, as described in section 920(h) of this chapter;

is a party to the petition for review.

(e) Any other person who participated, in the manner described in section 1603(a)(2) of this chapter, in the board hearing that led to the zoning decision may, not later than five (5) days after the decision is made, file with the board a written request that the person receive notice of any petition for review that may be filed. The written request must include the person's full name and correct mailing address and a reference to the board's docket number relative to the zoning decision.

(f) Any person who has standing under section 1603(a)(2), ~~or~~ 1603(a)(3), **or 1603(a)(4)** of this chapter has an unconditional right to intervene in a proceeding for review. A motion to intervene in a proceeding for review shall be filed in the manner provided by the rules of procedure governing civil actions in courts.

SECTION 5. **An emergency is declared for this act.**



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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