

Aircraft Pilot and Passenger Protection

This Act regulates building near public-use airports. The Act requires owners of proposed structures within a three-mile area surrounding a public-use airport to get special permits from the state aeronautics commission before building such structures.

Submitted as:

Oklahoma

[HB 2919 \(Enrolled version\)](#)

Status: Enacted into law in 2010.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] This Act shall be cited as the “Aircraft Pilot and Passenger
2 Protection Act.”

3
4 Section 2. [*Definitions.*] As used in this Act:

5 1. “Airport reference point” is the geometrical center of all usable runways;

6 2. “Airport elevation” is the highest point of an airport’s usable runways measured in feet
7 from mean sea level;

8 3. “Approach surface” is an imaginary surface shaped like a trapezoid:

9 a. longitudinally centered on the extended runway centerline at a public-use
10 airport,

11 b. beginning [two hundred (200)] feet beyond the end of each runway pavement
12 and at the runway end elevation,

13 c. having an inner-edge width of [one thousand (1,000)] feet expanding outward
14 uniformly to a width of [sixteen thousand (16,000)] feet at the outer edge, and

15 d. sloping upward for a distance of [ten thousand (10,000)] feet at a slope of [fifty
16 (50) to one (1), with an additional forty thousand (40,000) feet at a slope of forty (40) to one (1)];

17 4. “Commission” means the [state aeronautics commission] or a successor agency;

18 5. “Conical surface” is an imaginary surface extending outward and upward from the
19 periphery of the horizontal surface at a slope of [twenty (20) to one (1) for a horizontal distance
20 of four thousand (4,000) feet];

21 6. “FAA” means the Federal Aviation Administration or a successor agency to the
22 Federal Aviation Administration;

23 7. “Horizontal surface” is an imaginary horizontal plane [one hundred fifty (150)] feet
24 above the established airport elevation, the perimeter of which is constructed by swinging arcs of
25 [ten thousand (10,000)] feet radii from a point located on the extended runway centerline [two
26 hundred (200)] feet beyond each end of runway pavement and connecting the adjacent arcs by
27 lines tangent to those arcs;

28 8. “Incompatible purpose” means the use of a building or structure as a residence,
29 educational center (including all types of primary and secondary schools, preschools, and child-
30 care facilities), places of worship, hospital, medical inpatient treatment facility,
31 nursing/convalescent home, retirement home, or similar use;

32 9. “Legal representative” means a person who is authorized to legally bind an entity;

33 10. “Permit” means a permit issued by the [commission] under this Act;

34 11. "Person" means an individual, firm, partnership, corporation, association, or body
35 politic and includes a trustee, receiver, assignee, or other similarly authorized representative of
36 any of them;

37 12. "Primary surface" is a surface longitudinally centered on a runway. When the runway
38 has a specially prepared hard surface, the primary surface extends [two hundred (200)] feet
39 beyond each end of that runway; but when the runway has no specially prepared hard surface, or
40 planned hard surface, the primary surface ends at each end of that runway. The elevation of any
41 point on the primary surface is the same as the elevation of the nearest point on the runway
42 centerline. The width of the primary surface is [one thousand (1,000)] feet;

43 13. "Public-use airport" means a structure or an area of land or water that is designed and
44 set aside for the landing and taking off of aircraft, is utilized or to be utilized by and in the
45 interest of the public for the landing and taking off of aircraft and is identified by the FAA as a
46 public-use airport. Public-use airport shall include any military airport operated by a branch of
47 the armed services of the United States government. Public-use airport shall not include any
48 privately owned airport for private use as identified by the FAA, or any airport owned by a
49 municipality with a population exceeding [five hundred thousand (500,000)] according to the
50 most recent Federal Decennial Census;

51 14. "Runway" means the portion of an airport designated as the area used for the landing
52 or takeoff of aircraft;

53 15. "Runway protection zone" is a trapezoidal zone centered along the extended runway
54 centerline, beyond each end of the primary surface, [two thousand five hundred (2,500)] feet
55 long, with an inner width of [one thousand (1,000) feet] and an outer width of [one thousand
56 seven hundred fifty (1,750)] feet. The function of the runway protection zone is to enhance the
57 protection of people and property on the ground;

58 16. "Structure" means any constructed or installed object, including, but not limited to
59 buildings, towers, wind turbines, smokestacks, electronic transmission or receiving towers, and
60 antennae and overhead transmission lines. The term does not include any aviation navigational
61 aids that are fixed by function or any construction or installed object on property owned by the
62 federal government; and

63 17. "Total structure height" means the elevation of the ground above mean sea level at
64 the structure's location, plus the height of the structure above ground level in feet, plus the
65 applicable survey type adjustment.

66
67 Section 3. *[Legislative Intent.]*

68 (A) It is the intent of this Act to:

69 1. Regulate obstructions to air navigation that potentially endanger the lives and
70 property of aircraft pilots, passengers, and people who live or work in the vicinity of public-use
71 airports; affect existing and future instrument approaches to public-use airports; reduce the size
72 of areas available for the landing, takeoff and maneuvering of aircraft at public use airports; or
73 impair the utility of public-use airports and the public investment therein;

74 2. Regulate the use of land in close proximity to public-use airports to ensure
75 compatibility with aircraft operations; and

76 3. Provide specific powers and duties to the [state aeronautics commission] in the
77 interest of the health, safety and welfare of the public so that the state may properly fulfill its
78 duty to ensure that land use around public-use airports is compatible with normal airport
79 operations including the landing and takeoff of aircraft.

80 (B) All heights or surfaces set forth in this Act are from the standards set forth in Subpart
81 C of Federal Aviation Regulations (FAR) Part 77.

82 (C) Depending upon the type of survey used, an adjustment will be made to the
83 horizontal and vertical measurements of a proposed structure as follows:

84	85	86	87	88
Survey	Horizontal	Survey	Vertical	
Type	Adjustment	Type	Adjustment	
88	+20 ft (6 m)	A	+3 ft (1 m)	
89	+50 ft (15 m)	B	+10 ft (3 m)	
90	+100 ft (30 m)	C	+20 ft (6 m)	
91	+250 ft (75 m)	D	+50 ft (15 m)	
92	+500 ft (150 m)	E	+125 ft (38 m)	

93 (D) If the survey type (horizontal and vertical) is not certified by a licensed engineer or a
94 licensed surveyor, a horizontal adjustment of plus or minus [two hundred fifty (250)] feet and a
95 vertical adjustment of [fifty (50)] feet will be applied to the structure measurements.

96 (E) Any structure or alteration to a structure is presumed to be a hazard to air navigation
97 if its total structure height is greater than the horizontal, conical or approach surfaces, as defined
98 in Section 2 of this Act.

99 (F) This Act shall neither prevent nor preempt a municipality from having ordinances or
100 regulations governing land use that may affect public-use airports.

101 (G) The construction of a structure for an incompatible purpose within the primary
102 surface or the runway protection zone is presumed to be incompatible with normal airport
103 operations including the landing and takeoff of aircraft.

104 (H) Any structure or alteration to a structure is presumed to be a hazard to air navigation
105 if its total structure height is greater than the horizontal, conical or approach surfaces, as defined
106 in Section 2 of this Act.

107 (I) The [commission] further shall use its best efforts to establish regular and consistent
108 communication with the FAA to encourage sharing of information regarding construction or
109 alteration in a military training route or slow-speed low-altitude training route within the state
110 with appropriate state agencies and military installations.

111 (J) The provisions of this Act shall not apply to structures that existed or have an
112 approved building permit from the local authority with jurisdiction over the property that the
113 structure is proposed to be constructed upon, prior to the effective date of this Act.

114 (K) The [commission] is authorized to promulgate any rules necessary to implement the
115 provisions of this Act.

116
117 Section 4. *[Permits for Constructing or Installing Structures Near Public-Use Airports.]*

118 (A) A person shall obtain a permit from the [commission] prior to the construction or
119 installation of any of the following near a public-use airport:

120 1. Any proposed structure for an incompatible purpose in the primary surface or
121 the runway protection zone;

122 2. Any structure, alteration or addition to a structure within [three (3)] statute
123 miles from the airport reference point of a public-use airport, that would result in a total structure
124 height in excess of [one hundred fifty (150)] feet above the established airport elevation; and

125 3. Any structure, alteration or addition to a structure that would result in a total
126 structure height greater than the horizontal, conical or approach surfaces, as defined in Section 2
127 of this Act.

128 (B) Applications to the [commission] for a permit in accordance with the provisions of
129 this Act for construction near a public-use airport shall include the following:

130 1. For construction in a primary surface or runway protection zone under
131 paragraph 1 of subsection A of this Section:

132 a. a completed application on a form prescribed by the [commission] with
133 the following statement on the application, signed by a legal representative of the applicant:

134
135 “The applicant acknowledges for itself, its heirs, its successors, and its assigns,
136 that the real estate described in this application is located in the primary surface or
137 the runway protection zone of a public-use airport, and that the applicant is
138 building a structure upon this real estate, with the full knowledge and acceptance
139 that it may be incompatible with normal airport operations including the landing
140 and takeoff of aircraft.”

141
142 b. if required, a copy of the FAA Form 7460-1, “Notice of Proposed
143 Construction or Alteration”, as described in 14 CFR part 77, sub-part B, Section 17, to be
144 submitted to the FAA; and

145 2. For construction or alteration of a structure in a horizontal, conical, or approach
146 surface under paragraph 2 or 3 of subsection A of this section:

147 a. a completed application on a form prescribed by the [commission], and

148 b. a copy of FAA Form 7460-1, to be submitted to the FAA.

149 (C) If FAA Form 7460-1 is required, then the application for a permit pursuant to this Act
150 Section shall be filed at the same time the FAA Form 7460-1 is sent to the FAA, or any time
151 before that. If FAA Form 7460-1 is not required, then the application shall be filed at least [thirty
152 (30)] days before the earlier of the following:

153 1. The date the proposed construction or alteration is to begin; or

154 2. The date an application for a construction or building permit is to be filed with
155 a municipality as required under [insert citation].

156 (D) Any person required to notify the FAA of any proposed construction or alteration
157 pursuant to Subpart B of Section 77.13 of the Federal Aviation Regulations Part 77, that in
158 response receives an acknowledgement from the FAA that further aeronautical study is required
159 to determine whether the proposed construction or alteration would be a hazard to air navigation,
160 shall, upon requesting further aeronautical study by the FAA, concurrently notify the
161 [commission] of the request and shall provide the [commission] with true and correct copies of
162 all relevant filings made with the FAA.

163 (E) Upon receipt of such notification of the filing of a request for further aeronautical
164 study, the [commission] shall give timely notice thereof to the [state strategic military planning
165 commission], or any successor agency, and to any military airport within this state potentially
166 affected by the proposed construction or alteration.

167 (F) Upon receiving an application, the [commission] shall notify a legal representative of
168 the public-use airport owner affected by the application and solicit comments from the airport
169 owner.

170 (G) In determining whether to issue a permit, the [commission] shall consider:

171 1. The nature of the terrain and height of existing structures;

172 2. Public and private interests and investments;

173 3. The character of flying operations and planned developments of the affected
174 airport;

175 4. Whether the construction of the proposed structure would cause an increase in
176 the minimum descent altitude or the decision height at the affected airport;

177 5. Technological advances;

178 6. The safety of people on the ground and in the air;

- 179 7. Land use density;
- 180 8. Comments from all interested people; and
- 181 9. Applicable findings and determinations of other government agencies.

182 (H) If FAA Form 7460-1 is required, then the [commission] shall notify the applicant of
183 its determination within [thirty (30)] days of the FAA completing its aeronautical study. If the
184 applicant has not been notified by the [commission] of its determination within [thirty (30)] days
185 of the FAA completing its aeronautical study, then the applicant shall notify the [commission]
186 that it has not received notice of the [commission’s] determination. The [commission] shall then
187 have [seven (7)] working days from the date of the applicant’s notice to notify the applicant of its
188 determination. Nothing herein precludes the [commission] from making its determination before
189 the FAA completes its aeronautical study.

190 (I) If FAA Form 7460-1 is not required, then the [commission] shall notify the applicant
191 of its determination within [sixty (60)] days of filing the application. If the applicant has not been
192 notified by the [commission] of its determination within [sixty (60)] days of filing the
193 application, then the applicant shall notify the [commission] that it has not received notice of the
194 [commission’s] determination. The [commission] shall then have [seven (7)] working days from
195 the date of the applicant’s notice to notify the applicant of its determination.

196 (J) Once a permit is issued by the [commission], the applicant shall be required to
197 complete the following steps to complete the permit process:

198 1. The applicant for a permit under this Act shall record each permit issued by the
199 [commission] in the office of the county clerk for the county where the structure is located not
200 later than [thirty (30)] business days after the [commission] issues the permit. If a structure is
201 located in more than one county, the county that contains the majority of the structure is the
202 county in which the permit must be filed. A permit issued under paragraph 1 of subsection A of
203 Section 3 of this Act shall contain the following statement:

204
205 “The permittee acknowledges for itself, its heirs, its successors, and its assigns,
206 that the real estate described in this permit is located within the primary surface or
207 the runway protection zone of a public-use airport, and that the permittee is
208 building a structure upon this real estate with the full knowledge and acceptance
209 that it may be incompatible with normal airport operations including the landing
210 and takeoff of aircraft.”

211
212 2. A permit issued in accordance with the provisions of this Act is valid only after
213 the [commission] receives a certified copy of the recorded permit with the recording data from
214 the county clerk of the county in which the structure is located; and

215 3. Every permit granted by the [commission] shall specify that obstruction
216 markers, markings, lighting, or other visual or aural identification required to be installed on or
217 in the vicinity of the structure shall conform to federal laws and regulations.

218 (K) A permit issued in accordance with the provisions of this Act is valid only if the
219 proposed structure has been constructed within [ten (10)] years of the issuance of a permit by the
220 [commission] pursuant to this Act.

221 (L) 1. If the [commission] determines that a permit should not be issued under the
222 provisions of this Act, the [commission] shall notify the applicant in writing of its determination.
223 The notification may be served by delivering it personally to the applicant or by sending it by
224 certified or registered mail to the applicant at the address specified in the application.

225 2. The determination is final [thirty (30)] days after notification of the
226 determination is served, unless the applicant, within the [thirty-day] period, requests
227 reconsideration in writing to the [commission] and provides written evidence showing why the

228 application should have been granted. The [commission] has up to a period of [thirty (30)] days
229 from the receipt of the request. The [commission] shall notify the applicant of its determination
230 as specified in paragraph 1 of subsection L of this section. In the event of a second denial by the
231 [commission] of the permit request, the applicant can request a hearing before the [commission]
232 with reference to the application. A hearing under this section shall be open to the public. The
233 applicant may appear and be heard either in person or by counsel and may present pertinent
234 evidence and testimony. At the hearing, the applicant has the burden to show cause why the
235 [commission] should have granted the permit to erect the proposed structure.

236 (M) The [commission] shall prepare and charge a schedule of reasonable fees for services
237 rendered, not to exceed [two hundred dollars (\$200.00)] per permit application.

238 (N) No permit shall be required:

239 1. For mobile or temporary equipment used to construct or install a new structure
240 or to perform routine maintenance, repairs, or replace parts of an existing structure; or

241 2. To repair, replace, or alter an existing structure that would not result in a total
242 structure height greater than the horizontal, conical or approach surfaces as defined in section 2
243 of this Act, or change the location of an existing structure.

244

245 Section 5. [*Penalties.*] Each violation of this Act, or rulings promulgated by the
246 [commission] pursuant to this Act, shall constitute a misdemeanor punishable by a fine of not
247 more than [five hundred dollars (\$500.00)]. Each day that such a violation or failure continues
248 constitutes a separate offense. In addition, the [commission] may institute in any court of general
249 jurisdiction, an action to prevent, restrain, correct, or abate any violation of this Act, or any rules
250 adopted or orders issued by the [commission] pursuant to this Act. A court may grant such relief,
251 by way of injunction, which may be mandatory, or otherwise, as may be necessary under this Act
252 and the applicable rules or orders of the [commission] issued under this Act.

253

254 Section 6. [*Severability.*] [Insert severability clause.]

255

256 Section 7. [*Repealer.*] [Insert repealer clause.]

257

258 Section 8. [*Effective Date.*] [Insert effective date.]