

SENATE BILL No. 66

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-21; IC 36-7-4-1109.5.

Synopsis: Public use airports. Requires a person to apply for and receive a permit from the department of transportation (department) in order to construct on, alter, use, develop, or modify land located not more than two miles from a public use airport. Provides that the department may not grant the permit if the proposed construction, alteration, use, development, or modification (project) may contribute to, attract, or create an airport hazard that is detrimental to aviation safety within the airport operations area. Requires a permittee, when seeking a permit for the project from a local governmental agency, to provide to the local governmental agency: (1) a copy of the permit issued by the department; and (2) evidence that every public use airport within a five mile radius of the project received notice of the permittee's application for the permit issued by the department.

Effective: July 1, 2018.

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January 3, 2018, read first time and referred to Committee on Homeland Security and Transportation.



Second Regular Session 120th General Assembly (2018)

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 2017 Regular Session of the General Assembly.

SENATE BILL No. 66

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

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

1 SECTION 1. IC 8-21-1-1 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2018]: Sec. 1. (a) The definitions in this section
3 apply throughout this article.
4 (b) "Aeronautics" means:
5 (1) transportation by aircraft;
6 (2) the operation, construction, repair, or maintenance of aircraft,
7 aircraft power plants and accessories, including the repair,
8 packing, and maintenance of parachutes;
9 (3) the design, establishment, construction, extension, operation,
10 improvement, repair, or maintenance of airports, landing fields,
11 or other air navigation facilities; and
12 (4) air instruction.
13 (c) "Aircraft" means any contrivance now known, or hereafter
14 invented, used or designed for navigation of or flight in the air.
15 (d) "Public aircraft" means an aircraft used exclusively in the
16 service of any government or of any political subdivision of a
17 government, including the government of any state but not including



1 any government owned aircraft engaged in carrying persons or property
2 for commercial purposes.

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

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

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

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

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

13 (1) airports;

14 (2) landing fields;

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

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

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

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

32 (l) "Airman" means any individual who engages, as the person in
33 command, or as pilot, mechanic, or member of the crew, in the
34 navigation of aircraft while under way and (excepting individuals
35 employed outside the United States, any individual employed outside
36 the United States, any individual employed by a manufacturer of
37 aircraft, aircraft engines, propellers, or appliances to perform duties as
38 inspector or mechanic in connection therewith, and any individual
39 performing inspection or mechanical duties in connection with aircraft
40 owned or operated by the individual) any individual who is directly in
41 charge of the inspection, maintenance, overhauling, or repair of aircraft
42 engines, propellers, or appliances and any individual who serves in the



1 capacity of aircraft dispatcher or air-traffic control-tower operator.

2 (m) "Air instruction" means the imparting of aeronautical
3 information by any aeronautics instructor or in or by any air school or
4 flying club.

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

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

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

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

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

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

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

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

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



1 otherwise hazardous to such landing or taking off. **The term includes**
 2 **a structure, object of natural growth, or use of land that attracts**
 3 **wildlife (as defined in IC 14-8-2-320(1)) and feral and domestic**
 4 **animals out of the control of their owners.**

5 (w) "CAB-certificated air carrier" means an air carrier which is
 6 operating under a valid certificate of public convenience and necessity
 7 issued by the Civil Aeronautics Board under Public Law 85-726, Title
 8 VI, Aug. 23, 1958, 72 Stat. 754, 49 U.S.C. 1371 as amended.

9 SECTION 2. IC 8-21-9-37 IS AMENDED TO READ AS
 10 FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 37. The powers, duties,
 11 and functions of the department under IC 8-21-1 shall not apply to the
 12 operation of any airport created under the authority of this chapter.
 13 However, statewide regulatory powers of the department shall
 14 ~~appertain thereto in~~ **apply to** aviation communications, air safety, or
 15 enforcement of IC 8-21-10 (the high structure safety law), **or**
 16 **enforcement of IC 8-21-10.5 (the airport hazard law).**

17 SECTION 3. IC 8-21-10.5 IS ADDED TO THE INDIANA CODE
 18 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 19 JULY 1, 2018]:

20 **Chapter 10.5. Regulation of Airport Hazards**

21 **Sec. 1. The definitions in IC 8-21-10 apply throughout this**
 22 **chapter.**

23 **Sec. 2. A person may not construct on, alter, use, develop, or**
 24 **modify land located not more than two (2) miles from a public use**
 25 **airport unless the person applies for and receives a permit for the**
 26 **construction, alteration, use, development, or modification from**
 27 **the department.**

28 **Sec. 3. The department may not issue a permit allowing a person**
 29 **to construct on, alter, use, develop, or modify land located not**
 30 **more than two (2) miles from a public use airport if the**
 31 **department, after conducting an investigation under section 7 of**
 32 **this chapter, determines that the proposed construction, alteration,**
 33 **use, development, or modification may contribute to, attract, or**
 34 **create an airport hazard that is detrimental to aviation safety**
 35 **within the airport operations area.**

36 **Sec. 4. A person that applies for a permit under section 2 of this**
 37 **chapter must provide notice, at the time of the filing of the**
 38 **application, to the owner of a public use airport within five (5)**
 39 **nautical miles of the proposed construction, alteration, use,**
 40 **development, or modification.**

41 **Sec. 5. The department shall prescribe a form for the**
 42 **application for a permit under this chapter.**



1 **Sec. 6. If the department learns or has reasonable grounds to**
2 **believe that a person is conducting an activity described in section**
3 **2 of this chapter without a permit for the activity issued under this**
4 **chapter, the department may issue an order to the person to**
5 **appear before the department and show cause why a permit is not**
6 **required for the activity. The order must contain a date for the**
7 **hearing.**

8 **Sec. 7. (a) When the department receives an application for a**
9 **permit under this chapter, the department shall conduct an**
10 **investigation in accordance with federal and state laws and**
11 **regulations applicable to aviation to determine whether the activity**
12 **for which the permit application is made would have a substantial**
13 **adverse effect upon the safe and efficient use of the navigable**
14 **airspace and would contribute to, attract, or create an airport**
15 **hazard. The department may take into consideration findings and**
16 **recommendations of other governmental agencies or interested**
17 **persons concerning an activity described in section 2 of this**
18 **chapter. Findings or recommendations of other governmental**
19 **agencies or interested persons are not binding on the department.**

20 **(b) The department must consider an application for a permit**
21 **under this chapter for sixty (60) days before making a final**
22 **determination on the permit if:**

23 **(1) a public use airport is located within a five (5) nautical**
24 **mile radius of the proposed activity, regardless of county**
25 **lines; and**

26 **(2) the proposal that is the subject of the permit is:**

27 **(A) a new structure; or**

28 **(B) an existing structure to which a modification may**
29 **contribute to, attract, or create an airport hazard.**

30 **Sec. 8. (a) If the department does not issue a permit to an**
31 **applicant under this chapter, the department shall notify the**
32 **applicant of its determination in writing. The department may**
33 **serve notice to the applicant by:**

34 **(1) serving the notice personally; or**

35 **(2) sending the notice by certified mail to the applicant at the**
36 **address specified in the application.**

37 **(b) The department's determination not to issue a permit to an**
38 **applicant becomes final fifteen (15) days after the applicant**
39 **receives notice of the denial.**

40 **(c) A person may request in writing, within the fifteen (15) day**
41 **period prescribed by subsection (b), that the department hold a**
42 **hearing on the person's permit application. A hearing held under**



1 this subsection must be:

- 2 (1) open to the public; and
 3 (2) conducted in accordance with IC 4-21.5-3.

4 The person seeking the permit has the burden to show cause why
 5 the department should have granted the permit. Any interested
 6 person may appear at the hearing, either in person or by counsel,
 7 and may present any relevant evidence and testimony at the
 8 hearing.

9 Sec. 9. (a) In addition to any other remedy provided by law, the
 10 department may institute in any court of general jurisdiction an
 11 action to:

- 12 (1) prevent;
 13 (2) restrain;
 14 (3) correct; or
 15 (4) abate;

16 a violation of this chapter or of any rules or orders issued by the
 17 department under this chapter.

18 (b) A court may grant any appropriate injunctive relief
 19 required under this chapter and the applicable rules or orders
 20 issued by the department under this chapter.

21 Sec. 10. A person who violates or fails to comply with this
 22 chapter commits a Class A infraction. Each day that the violation
 23 or failure continues constitutes a separate offense.

24 Sec. 11. The requirements of this chapter do not supersede any
 25 other law.

26 SECTION 4. IC 36-7-4-1109.5 IS ADDED TO THE INDIANA
 27 CODE AS A NEW SECTION TO READ AS FOLLOWS
 28 [EFFECTIVE JULY 1, 2018]: Sec. 1109.5. (a) As used in this section,
 29 "local governmental agency" includes any agency, officer, board,
 30 or commission of a local unit of government that may issue:

- 31 (1) a permit; or
 32 (2) an approval of a land use or an approval for the
 33 construction of a development, a building, or another
 34 structure.

35 (b) A person seeking approval from a local governmental
 36 agency for a proposal or a permit under the 600 series, 800 series,
 37 and 900 series of this chapter that involves an airport hazard
 38 regulated under IC 8-21-10.5 must provide to the local
 39 governmental agency:

- 40 (1) a copy of the permit issued by the Indiana department of
 41 transportation under IC 8-21-10.5; and
 42 (2) evidence that notice was delivered to a public use airport



1 **as required in IC 8-21-10.5-4 not less than sixty (60) days**
2 **before the local governmental agency considers the proposal**
3 **or issues a permit.**

