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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

H.B. 490  
134<sup>th</sup> General Assembly

## Fiscal Note & Local Impact Statement

[Click here for H.B. 490's Bill Analysis](#)

**Version:** As Introduced

**Primary Sponsor:** Rep. Holmes

**Local Impact Statement Procedure Required:** No

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### Highlights

- The bill modifies the authority of the Ohio Department of Transportation's (ODOT) Office of Aviation, and the authority of airport zoning boards, to regulate obstructions to navigable airspace. These changes could result in some additional cost increases for ODOT and local airport zoning boards.
- The bill expands the types of projects for which ODOT may provide assistance or funding to local airports under the Airport Grant Program. Funding for the program consists of (1) approximately \$3.7 million from the GRF, (2) \$620,000 in aviation-related fees deposited into Fund 5W90, and (3) \$400,000 in federal funding in each fiscal year of the current biennium.
- The bill modifies existing prohibitions to reflect federal law, and grants local airport sponsors the power to initiate actions at the applicable court of jurisdiction. It is unclear as to how many potential new legal actions would occur under this authority.
- The bill modifies the definition of "airport" for purposes of zoning, thereby broadening the number and type of facilities that would qualify as an airport for zoning purposes.

### Detailed Analysis

#### Navigable airspace – overview

The bill, in order to align state law with federal law and Federal Aviation Administration (FAA) standards, modifies the authority of the Ohio Department of Transportation's (ODOT) Office of Aviation, and related authority of airport zoning commissions, to regulate obstructions to navigable airspace in conformance with updates to federal law. While federal authority primarily governs this, any individual seeking to construct or alter any applicable structures must

also apply to do so with the applicable state authorities and airport zoning commissions to obtain permits to complete any new construction or alterations. Overall, the changes to the regulating authority contained in the bill would appear to result in some minimal cost increases for the Office of Aviation. ODOT's Office of Aviation, specifically the Airport Protection Program, is funded through nonhighway-related revenues deposited into the Highway Operating Fund (Fund 7002) and paid from appropriation item 777475, Aviation Administration. Airport zoning boards may also see some minimal cost increases resulting from some provisions of the bill.

## **Permitting and applications**

The bill modifies the permitting and application process for construction or alterations of structures in navigable airspace. Specifically, the bill requires ODOT to perform its own study and determination of a permit application concurrent with FAA review. Currently, the Office of Aviation, upon receiving a permit application from the FAA, makes a determination as to whether or not the permit is in compliance. Therefore, it does not appear that there would be any additional costs related to this provision. However, by specifying that ODOT must perform this determination within ten days of the FAA submitting its report, the bill may result in faster processing of these permit applications. Overall, by most recent available data from the Office of Aviation, there are 148 noncommercial public use airports operating in Ohio.

The bill also specifies that ODOT's determination must be determined in part by certain factors contained in the FAA review study (see the LSC bill analysis for specific factors). If a permit application is denied, the bill requires ODOT to list the alterations to the construction that would allow the application to be approved. Finally, in certain cases, the bill requires ODOT to contact the impacted airport zoning commission to have the board determine if an object is a hazard to navigable airspace, and then grant or deny a permit based on that determination. Overall, the changes in the bill do not appear to significantly alter the number of permit applications submitted to the Office of Aviation.

## **Prohibitions and enforcement**

The bill clarifies current enforcement provisions related to construction without first obtaining a permit to make those penalties match those in federal law. The bill also permits an airport sponsor to initiate a court action to prevent, correct, or abate violations of the Navigable Airspace Law. While it is possible that this provision would result in some increased costs to applicable courts, the number of new or additional cases resulting from this provision would probably be quite low. The bill further modifies provisions related to liability. The bill specifies that ODOT, and the Office of Aviation, are not liable for any damages caused by a structure or object of natural growth that is an obstruction to navigable airspace under certain conditions. It is unclear as to how many such cases of damages would fall under the conditions specified in the bill, but presumably such instances would be rare.

## **Airport activities and zoning**

Currently, ODOT provides funding and assistance to certain airports with respect to funding, contracts, grants, and compliance with federal requirements. The bill adds navigable airspace and the operation of heliports, vertiports, and spaceports to the list of funded activities which ODOT may assist local airports. The bill also allows ODOT to provide counsel and services regarding FAA processes. This expands the type of projects for which ODOT may provide assistance, in particular under the Airport Grant Program.

The Airport Grant Program provides just under \$4.8 million each fiscal year for local airport assistance in the FY 2022-FY 2023 biennium. The grant money can be used for removing obstructions that are a safety hazard, maintaining and improving airport pavement, and providing lighting and navigational aids. The program also includes matching grants for 5% of total project costs for projects at general aviation airports funded by the FAA. As of this writing, there are 96 publicly owned airports in Ohio eligible for grants under the program. The Airport Grant Program is funded through a combined allocation of approximately \$3.7 million from GRF appropriation item 777471, Airport Improvements – State, an estimated \$620,000 in airport registration receipts deposited into the Airport Assistance Fund (Fund 5W90), and just over \$400,000 in federal funding through Highway Operating Fund (Fund 7002) appropriation item 777472, Airport Improvements – Federal. Due to budget reductions in the previous biennium, ODOT saw a \$3.1 million reduction in GRF allocation in FY 2020 and approximately \$1.1 million in FY 2021. With that reduced funding in FY 2021, the program supported the completion of 11 partially completed projects and seven new projects that were delayed from FY 2020.

The bill makes several changes to airport zoning. The bill shifts the responsibility of developing airport approach plans from the Office of Aviation to the local airport zoning boards. ODOT must still examine and approve these plans. The applicable local zoning boards may experience additional costs resulting from this. The bill also specifies that for the purposes of zoning, an airport constitutes an area with a hard landing surface of not less than 1,800 feet, rather than 3,500 feet as exists in current law. Presumably, this change broadens the number and type of facilities that qualify as an airport for zoning purposes. Finally, the bill specifies that local government regulations regarding navigable airspace are permitted to be stricter than those rules adopted by ODOT. It is unclear as to how many local governments would adopt regulations more stringent than rules adopted by ODOT.