

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #: HB 1379

FINAL HOUSE FLOOR ACTION:

SPONSOR(S): Miller and others

112 Y's

0 N's

**COMPANION
BILLS:** CS/SB 1508

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

HB 1379 passed the House on March 9, 2016, as CS/SB 1508 as amended. The Senate concurred in the House amendment to Senate Bill and subsequently passed the bill as amended on March 11, 2016. Part of the bill also passed the House and Senate in CS/CS/HB 7061 on March 11, 2016.

This bill updates and revises ch. 333, F.S., the "Airport Zoning Law of 1945", which governs land use and airspace management at or around airports. Originally enacted in 1945, it contains many outdated provisions and internal inconsistencies, as well as provisions that are inconsistent with current federal regulations. Likewise, stakeholders found that the local government airport protection zoning process as it currently exists is often cumbersome and confusing.

The bill implements the recommendations of a stakeholder working group, in effect modernizing the regulation of airspace and land use for affected areas and transitioning from an antiquated variance process to a more streamlined permitting process for certain structures. Generally, the bill:

- updates statutory definitions and terms in accordance with federal regulations;
- streamlines the current local airport protection zoning process to a simpler permitting model;
- provides local governments the flexibility to structure and incorporate the airport protection zoning review process into existing local zoning review processes and repeals duplicative requirements for obtaining a variance; and
- makes other grammatical, editorial, and conforming changes.

The bill does not appear to have a fiscal impact on the state, and may have an indeterminate but likely insignificant impact on local governments related to structural permitting and enforcement. Property owners near airports and development businesses will likely benefit from a more timely, consistent, and predictable land development process.

The bill was approved by the Governor on April 8, 2016, ch. 2016-209, L.O.F., and will become effective on July 1, 2016.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

The bill revises Chapter 333, F.S., governing land use and airspace management at or around airports. For ease of understanding, the analysis is arranged by section.

Current Situation

In 2012, DOT created a stakeholder working group to address problems with the state's airport zoning law and to update it to reflect current federal requirements and industry standards. The group consisted of representatives from airports, local planning/zoning departments, the Florida Defense Alliance, the Florida League of Cities, the Florida Airports Council, the real estate development community, and DOT. The group met three times between June and September 2012.

The working group determined that the law, which originally passed in 1945,¹ contains provisions that are outdated and inconsistent with federal regulations, has internal inconsistencies, and requires a local government airport protection zoning process that can be cumbersome and confusing.

Definitions (s. 333.01, F.S.)

Current Situation

Current law defines various terms as they relate to airport zoning.

Effect of the Bill

The bill implements numerous changes to definitions related to airport zoning to reflect improved consistency with federal regulations and guidance. Specifically, the bill adds the following definitions to s. 333.01, F.S.:

- Aeronautical study - a Federal Aviation Administration (FAA) review conducted pursuant to 14 C.F.R. Part 77, concerning the effect of proposed construction or alteration on the use of air navigation facilities or navigable airspace by aircraft.
- Airport master plan - a comprehensive plan of an airport that describes the immediate and long-term development plans to meet future aviation demand.
- Airport protection zoning regulations- airport zoning regulations governing airport hazards.
- Department - Department of Transportation as created under s. 20.23, F.S.
- Educational facility - any structure, land, or use thereof that includes a public or private kindergarten through twelfth grade school, charter school, magnet school, college campus, or university campus. For the purposes of Ch. 333, F.S. the term "educational facility" does not include space utilized for educational purposes within a multi-tenant building.
- Landfill - has the same meaning as in s. 403.703, F.S.²
- Public-use airport - an airport,³ publicly or privately owned, licensed by the state, which is open for use by the public.

¹ Ch. 23079, Laws of Fla.

² section 403.703(17), F.S., defines "landfill" as "any solid waste land disposal area for which a permit, other than a general permit, is required by s. 403.707 and which receives solid waste for disposal in or upon land. The term does not include a land-spreading site, an injection well, a surface impoundment, or a facility for the disposal of construction and demolition debris."

³ The bill defines "airport" as "any area of land or water designed and set aside for the landing and taking off of aircraft and utilized or to be utilized in the interest of the public for such purpose."

- Substantial modification - any repair, reconstruction, rehabilitation, or improvement of a structure when the actual cost of repair, reconstruction, rehabilitation, or improvement of the structure equals or exceeds 50 percent of the market value of the structure.

The bill also amends the following definitions:

- Airport hazard
- Airport hazard area
- Airport land use compatibility zoning
- Airport layout plan
- Obstruction
- Political subdivision
- Runway protection zone
- Structure

The bill also deletes the definition of “aeronautics” since the term is not being used. It also deletes the definition of “tree” and replaces the term with “obstruction” throughout Ch. 333, F.S., as applicable.

Permit Required for Structures Exceeding Federal Obstruction Standards (s. 333.025, F.S.)

Current Situation

Current law provides that in order to prevent structures⁴ dangerous to air navigation from being erected, each person⁵ must secure permit from DOT to erect, alter, or modify a structure exceeding the federal obstruction standards.⁶ However, permits are only required within an airport hazard area⁷ where federal standards are exceeded and if the proposed construction is within a 10-nautical-mile radius of the geographical center of the airport.

Current law provides that affected airports are considered having those facilities which are shown on the airport master plan, or an airport layout plan,⁸ or in comparable military documents, and those facilities will be protected. Planned or proposed public-use airports which are the subject of a notice or proposal submitted to the FAA or to DOT will also be protected.

Current law provides that permit requirements do not apply if the project received construction permits from the Federal Communications Commission (FCC) prior to May 20, 1975;⁹ nor do permit requirements apply to previously approved structures now existing, or any necessary replacement or repairs to existing structures, provided that there is no change to the height and location of the structure.

Current law provides that when political subdivisions¹⁰ have adopted adequate airspace protections, which are on file with DOT, a DOT permit for the structure is not required.

Upon receipt of a permit application, DOT has 30 days to issue or deny a permit to erect, alter, or modify any structure that would exceed federal obstruction standards.

⁴ The bill defines “structure” as “any object, constructed, erected, altered, or installed, including, but without limitation thereof, buildings, towers, smokestacks, utility poles, power generation equipment and overhead transmission lines.”

⁵ The bill defines “person” as “any individual, firm, copartnership, corporation, company, association, joint-stock association, or body politic, and includes any trustee, receiver, assignee, or other similar representative thereof.”

⁶ The federal obstruction standards are contained in 14 C.F.R. §§ 77.15, 77.17, 77.19, 77.21, and 77.23.

⁷ The bill defines “airport hazard area” as “any area of land or water upon which an airport hazard might be established.”

⁸ The bill defines “airport layout plan” as “a scaled drawing, or set of drawings, in either paper or electronic form, of existing and planned airport facilities that provide a graphic representation of the existing and long-term development plan for the airport and demonstrates the preservation and continuity of safety, utility, and efficiency of the airport.”

⁹ This is provided that these structures now exist.

¹⁰ The bill defines “political subdivision” as “the local government any county, city, town, village, or other subdivision or agency thereof, or any district or special district, port commission, port authority, or other such agency authorized to establish or operate airports in the state.”

Current law provides that in determining whether to issue or deny a permit, DOT considers the following:

- The nature of the terrain and height of existing structures.
- Public and private interests and investments.
- The character of flying operations and planned developments of airports.
- Federal airways as designated by the FAA.
- Whether the construction of the proposed structure would cause an increase in the minimum descent altitude or the decision height at the affected airport.
- Technological advances.
- The safety of persons on the ground and in the air.
- Land use density.
- The safe and efficient use of navigable airspace.
- The cumulative effects on navigable airspace of all existing structures, proposed structures identified in the applicable jurisdictions' comprehensive plans, and all other known proposed structures in the area.

Current law provides that when issuing a permit, DOT shall require the obstruction¹¹ marking and lighting of the permitted obstruction.

Current law prohibits DOT from approving a permit to erect a structure unless the applicant submits documentation showing compliance with both federal notification requirements and a valid aeronautical evaluation. DOT shall not approve a permit solely on the basis that such proposed structure will not exceed federal obstruction standards or any other federal aviation regulation.

Effect of the Bill

The bill replaces the term “geographic center” with “airport reference point”, which is defined as the approximate geometric center of all usable runways at a public airport. The bill also removes a redundant reference to FAA rules governing federal obstruction standards.

The bill provides that existing, planned, and proposed facilities at public-use airports contained in an airport master plan, on an airport layout plan, or in comparable military documents will be protected from airport hazards. The bill also removes the provision that certain planned or proposed public-use airports are also protected.

The bill replaces the term “project” with “existing structures” in s. 333.025(3), F.S. and removes the conditional reference to the existence of certain structures that were permitted by the FCC prior to May 20, 1975.

The bill provides that a DOT permit is not required for a structure in a political subdivision that has adequate airport protection zoning regulations on file with DOT, and the political subdivision has established a permitting process. The bill creates a 15-day period, concurrent with the permitting process, for DOT to evaluate the permit for technical consistency. Cranes, construction equipment, and other temporary structures, in use or in place for a period not exceeding 18 consecutive months are exempt from DOT review, unless review is requested by DOT.

The bill provides that DOT has 30 days after receiving an application to issue or deny a permit for the construction or alteration of an obstruction. The bill requires DOT to review permit applications in conformity with s. 120.60, F.S.¹²

¹¹ The bill defines “obstruction” as any object of natural growth or terrain or permanent or temporary construction or alteration, including equipment or materials used and any permanent or temporary apparatus, or alteration of any permanent or temporary existing structure by a change in its height, including appurtenances, or lateral dimensions, including equipment or material used therein, existing or proposed, which exceeds the standards contained in 14 C.F.R. §§ 77.15, 77.17, 11.19, 77.21, and 77.23.

¹² section 120.60, F.S., relates to licensing.

The bill adds the following criteria for DOT to consider when granting or denying a permit:

- The effect of the construction or alteration of an obstruction on the state licensing standards for a public-use airport.¹³

The bill modifies the following criteria for DOT to consider in granting or denying a permit:

- The character of existing and planned flight operations and developments at public-use airports.
- Federal airways, visual flight rules, flyways and corridors, and instrument approaches as designated by the FAA.
- The cumulative effects on navigable airspace of all existing obstructions and all other known proposed obstructions in the area.

The bill deletes the following criteria for DOT to consider in granting or denying a permit:

- Technological advances
- Land use density.

The bill provides that when issuing a permit, DOT must require the owner of the obstruction to install, operate, and maintain, at his or her own expense, marking and lighting in conformance with FAA standards.

The bill provides that DOT shall not approve the construction or alteration of an obstruction unless documentation is submitted that it is in compliance with certain standards. The bill changes the term “aeronautical evaluation” to “aeronautical study,” which the bill defines.

The bill creates s. 333.025(9), F.S., providing that the denial of a permit is subject to the administrative review under the Florida Administrative Procedures Act.¹⁴

Power to Adopt Airport Zoning Regulations (s. 333.03, F.S.)

Current Situation

Current law provides that every political subdivision with an airport hazard¹⁵ area has until October 1, 1977, to adopt, administer, and enforce airport zoning regulations for the airport hazard area.

Current law provides where an airport is owned or controlled by a political subdivision and any airport hazard area related to the airport is located in whole or in part outside of the political subdivision, the political subdivision owning or controlling the airport and the political subdivision where the airport hazard area is located, shall either:

- By interlocal agreement, adopt, administer, and enforce airport zoning regulations applicable to the airport hazard area; or
- create a joint airport zoning board, with the same power to adopt, administer, and enforce airport zoning regulations applicable to the airport hazard area.

Current law provides that airport zoning regulations shall, as a minimum, require:

- A variance for the erection, alteration, or modification of any structure that would cause the structure to exceed the federal obstruction standards;
- obstruction marking and lighting for structures;
- documentation showing compliance with the federal requirement for notification of proposed construction and a valid aeronautical evaluation submitted by each person applying for a variance;

¹³ The state licensing standards for a public-use airport are contained in Ch. 330, F.S., and Rule 14-60, F.A.C.

¹⁴ Ch. 120, F.S.

¹⁵ The bill defines “airport hazard” as “any obstruction to air navigation that affects the safe and efficient use of navigable airspace or the operation of planned or existing air navigation and communication facilities.”

- consideration of the criteria in s. 333.025(6), F.S., when determining whether to issue or deny a variance; and
- that no variance shall be approved solely on the basis that such proposed structure will not exceed federal obstruction standards or any other federal aviation regulation.

Current law requires DOT to issue copies of the federal obstruction standards to each political subdivision with an airport hazard area. Additionally, DOT must, in cooperation with political subdivisions, issue appropriate airport zoning maps depicting within each county the maximum allowable height of any structure or tree.

Current law provides that interim airport land use compatibility zoning¹⁶ regulations shall be adopted. When political subdivisions have land development regulations addressing land use consistent with Ch. 333, F.S, the political subdivision is not required to adopt airport land use compatibility regulations. Interim land use compatibility regulations are required to consider the following:

- Whether sanitary landfills are located within the following areas:
 - Within 10,000 feet from the nearest point of any runway used or planned to be used by turbojet or turboprop aircraft.
 - Within 5,000 feet from the nearest point of any runway used only by piston-type aircraft.
 - Outside the perimeters defined above, but still within the lateral limits of the civil airport imaginary surfaces. Current law advises a case-by-case review of such landfills.
- Whether any landfill is located and constructed so that it attracts or sustains hazardous bird movements. The political subdivision shall request a report from the airport on such bird feeding or roosting areas that are known to the airport. In preparing its report, the airport, considers whether the landfill will incorporate bird management techniques or other practices to minimize bird hazards to airborne aircraft. The airport has 30 days to respond to the request.
- Where an airport authority or other governing body has conducted a noise study¹⁷ neither residential construction nor any educational facility¹⁸ with the exception of aviation school facilities, shall be permitted within the area contiguous to the airport defined by an outer noise contour that is considered incompatible with that type of construction.
- Where an airport authority or other governing body operating an airport has not conducted a noise study, neither residential construction nor any educational facility except for of aviation school facilities, shall be permitted within an area contiguous to the airport measuring one-half the length of the longest runway on either side of and at the end of each runway centerline.

Current law requires airport zoning regulations restricting new incompatible uses, activities, or construction within runway clear zones, including uses, activities, or construction in runway clear zones which are incompatible with normal airport operations or endanger public health, safety, and welfare by resulting in congregations of people, emissions of light or smoke, or attraction of birds. These regulations shall prohibit the construction of an educational facility at either end of a runway of an airport within an area which extends five miles in a direct line along the centerline of the runway, and which has a width measuring one-half the length of the runway. Exceptions approving construction of an educational facility within the delineated area shall only be granted when the political subdivision administering the zoning regulations makes specific findings detailing how the public policy reasons for allowing the construction outweigh health and safety concerns.

Current law requires DOT to provide technical assistance to any political subdivision requesting assistance in preparing an airport zoning code. A copy of all local airport zoning codes, rules, and regulations, and amendments and proposed and granted variances, must be filed with DOT.

¹⁶ The bill defines “airport land use compatibility zoning” as “airport zoning regulations governing the use of land on, adjacent to, or in the immediate vicinity of airports.”

¹⁷ A noise study is conducted in accordance with 14 C.F.R. § 150.

¹⁸ section 1013.01(6), F.S., defines “educational facilities” as “the buildings and equipment, structures, and special educational use areas that are built, installed, or established to serve primarily the educational purposes and secondarily the social and recreational purposes of the community and which may lawfully be used as authorized by the Florida Statutes and approved by boards.”

Current law provides that nothing shall be construed to require the removal, change, or to interfere with the continued use or adjacent expansion of any educational structure or site in existence on July 1, 1993, or be construed to prohibit the construction of any new structure for which a site has been determined as provided in former s. 235.19, F.S., as of July 1, 1993.

Effect of the Bill

The bill amends the title of s. 333.03, F.S., to “Airport protection zoning regulations.”

The bill amends s. 333.03(1)(a), F.S., removing the October 1, 1977 deadline, clarifying language, and specifying airport protection zoning regulations.

The bill amends s. 333.03(1)(b), F.S., removing antiquated legal phrasing, providing clarity and specificity, and deleting unnecessary statutory references.

The bill amends s. 333.03(1)(c), F.S., reflecting the conversion from a variance process to a permitting process. The bill also removes references to FAA rules.

The bill amends s. 333.03(1)(d), F.S., removing the requirement that DOT issue copies of the federal obstruction standards. The paragraph now provides that DOT is available to assist political subdivisions with regard to federal obstruction standards.

The bill amends s. 333.03(2), F.S., modifying the text to require political subdivisions adopt, administer, and enforce airport land use compatibility zoning regulations.

The bill amends s. 333.03(2)(a), F.S., prohibiting any new and restricting any existing landfills in the areas above. The text is also modified to reflect current aviation terminology regarding the types of aircraft and to update a C.F.R. reference.

The bill amends s. 333.03(2)(b), F.S., eliminating statutory redundancy.

The bill amends s. 333.03(2)(c), F.S., allowing for alternative noise studies approved by the FAA in lieu of a noise study provided for in 14 C.F.R. Part 150.

The bill amend s. 333.03(2)(d), F.S., removing the term “publicly-owned” and a reference to a definition for educational facility in Ch. 1013, F.S.

The bill redesignates the previous s. 333.03(3), F.S., as s. 333.03(2)(e), F.S., and amends this provision to reflect revised statutory intent, removing redundancy and antiquated aviation terminology and reflecting the purpose of runway protection zones¹⁹ as defined and described in FAA AC 15-5300-13A.²⁰

The bill repeals s. 333.03(4), F.S., preventing redundancy due to changes to the permitting process.

The bill redesignates the previous s. 333.03(5), F.S., as s. 333.03(3), F.S., providing clarity and specificity and to reflect a conversion to a permitting process by requiring all updates and amendments to local airport zoning codes, rules, and regulations to be filed with DOT within 30 days after adoption.

¹⁹ The bill defines “runway protection zone” as an area at ground level beyond the runway end to enhance the safety and protection of people and property on the ground.

²⁰ FAA AC 15-5300-13A is available at:

http://www.faa.gov/airports/resources/advisory_circulars/index.cfm/go/document.current/documentNumber/150_5300-13 (last visited January 7, 2016).

The bill redesignates the previous s. 333.03(6), F.S., as s. 333.03(4), F.S., removing the provision prohibiting the construction of a new site as determined by the former s. 235.19, F.S., as of July 1, 1993.

The bill creates a new s. 333.03(5), F.S., providing that nothing precludes another governing body operating a public-use airport from establishing airport zoning regulations stricter than provided in state law in order to protect the health, safety and welfare of the public in the air and on the ground.

Comprehensive Zoning Regulations; Most Stringent to Prevail Where Conflicts Occur (s. 333.04, F.S.)

Current Situation

Incorporation

Current law provides that if a political subdivision has a comprehensive zoning ordinance regulating, among other things, the height of buildings, structures, and natural objects, and uses of property, any airport zoning regulations applicable to the same area or portion of the area may be incorporated in and made a part of such comprehensive zoning regulations, and be administered and enforced in connection with the comprehensive zoning regulations.

Conflict

Current law provides that if there is a conflict between any airport zoning regulations and any other regulations applicable to the same area, the more stringent limitation or requirement governs and prevails.

Effect of the Bill

The bill amends s. 333.04(1), F.S., changing zoning ordinance to “zoning plan or policy.” The bill also adds “protection” to the phrase “airport zoning regulations.”

The bill amends s. 333.04(2), F.S., providing that it refers to “airport protection zoning” and to change the word “trees” to “vegetation.”

Procedure for Adoption of Zoning Regulations (s. 333.05, F.S.)

Current Situation

Notice and Hearing

Current law provides that airport zoning regulations shall not be adopted, amended, or changed except by action of the legislative body of the political subdivision, or the joint board after a public hearing where interested parties and citizens may be heard.

Airport Zoning Commission

Current law provides that prior to the initial zoning of any airport area, the political subdivision or joint airport zoning board appoints an airport zoning commission. The airport zoning commission recommends the boundaries of the various zones to be established and the regulations to be adopted. Where a city plan commission or comprehensive zoning commission already exists, it may be appointed as the airport zoning commission.

Effect of the Bill

The bill amends s. 333.05, F.S., providing internal consistency with definitions and to reflect correct community planning terminology.

Airport Zoning Requirements (s. 333.06, F.S.)

Current Situation

Reasonableness

Current law provides that all airport zoning regulations shall be reasonable and not impose any requirement or restriction which is not reasonably necessary. In determining what regulations it may adopt, the following must be considered:

- The character of the flying operations expected to be conducted at the airport;
- the nature of the terrain within the airport hazard area and runway clear zones;
- the character of the neighborhood;
- the uses to which the property to be zoned is put and adaptable; and
- the impact of any new use, activity, or construction on the airport's operating capability and capacity.

Independent Justification

Current law provides that the purpose of all airport zoning regulations is to provide both airspace protection and land use compatible with airport operations. Each aspect requires independent justification in order to promote the public interest in safety, health, and general welfare. Specifically, construction in a runway clear zone which does not exceed airspace height restrictions is not evidence per se that such use, activity, or construction is compatible with airport operations.

Nonconforming Uses

Current law prohibits airport zoning regulations from requiring the removal, lowering, or other change of any structure or tree not conforming to the regulations when adopted or amended, or otherwise interfere with the continuance of any nonconforming use, except as provided in s. 333.07(1) and (3), F.S.

Adoption of Airport Master Plan and Notice to Affected Local Governments

Current law requires that an each public airport licensed by DOT prepare an airport master plan.

Effect of the Bill

The bill amends s. 333.06, F.S. deleting the term "runway clear zone" and replacing it with "runway protection zone."²¹ The bill also modifies the statute for internal consistency with definitions.

Guidelines Regarding Land Use Near Airports (s. 333.065, F.S.)

Current Situation

Current law provides that DOT, after consultation with the Department of Economic Opportunity, local governments, and other interested persons, is required to adopt by rule recommended guidelines regarding compatible land uses in the vicinity of airports.

Effect of the Bill

The bill repeals s. 333.065, F.S. According to DOT, this is due to the completion of its Airport Compatibility Land Use Guidebook.²²

Permits and Variances (s. 333.07, F.S.)

Current Situation

Permits

Current law provides that any airport zoning regulations may require that a permit be obtained before any new structure or use may be constructed or established and before any existing use or structure is substantially changed or substantially altered or repaired. All such regulations shall provide that before

²¹ According to DOT, this is consistent with FAA AC 150/5300-13A.

²² A copy of DOT's Airport Compatibility Land Use Guidebook is available at: <http://www.dot.state.fl.us/aviation/compland.shtm> (last visited January 6, 2016).

any nonconforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted, a permit must be secured from the administrative agency authorized to administer and enforce the regulations. A permit may not be granted that would allow the establishment or creation of an airport hazard or would permit a nonconforming structure or tree or nonconforming use to be made or become higher or to become a greater hazard to air navigation than it was when the applicable regulation was adopted or than it is when the application for a permit is made.

Current law provides that whenever the administrative agency determines that a nonconforming use or nonconforming structure or tree has been abandoned or is more than 80 percent torn down, destroyed, deteriorated, or decayed, it may not grant a permit that would allow the structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations. Whether application is made for a permit or not, the agency may by appropriate action, compel the owner of the nonconforming structure or tree, at his or her own expense, to lower, remove, reconstruct, or equip such object as may be necessary to conform to the regulations. If the owner of the nonconforming structure or tree does not comply with the order within 10 days, the agency may report the violation to the political subdivision involved, who, through its appropriate agency, may proceed to have the object lowered, removed, reconstructed, or equipped, and assess its cost and expense thereof upon the object or the land where it is or was located, and, unless such an assessment is paid within 90 days from the service of notice on the owner or the owner's agent, of such object or land, the sum shall be a lien on said land, and shall bear interest at an annual rate of six percent, and shall be collected in the same manner as the political subdivision collects property taxes, or, the political subdivision may enforce the lien in the manner provided for enforcement of liens.²³

Current law provides that except as provided, applications for permits shall be granted, provided the matter applied for meets the provisions Ch. 333, F.S., and the regulations adopted and in force.

Variances

Current law provides that any person desiring use his or her property in violation of airport zoning regulations or any land development regulation adopted pertaining to airport land use compatibility, may apply to the board of adjustment for a variance from the zoning regulations. When filing the application, the applicant forwards a copy to DOT. DOT has 45 days to comment or waive the right to comment to the applicant and the board of adjustment. DOT must include in its comments its explanation for any objections. If DOT fails to comment within 45 days, it waives its right to comment. The board of adjustment may proceed with its consideration of the application only after it receives DOT's comments or DOT waives its right to comment. Noncompliance is grounds to appeal and to apply for judicial relief. Such variances may only be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and where the relief granted would not be contrary to the public interest but would do substantial justice and be in accordance with the spirit of airport zoning regulations and Ch. 333, F.S. However, any variance may be allowed subject to any reasonable conditions that the board of adjustment deems necessary.

Current law allows DOT to appeal any variance granted and apply for judicial relief.

Current law provides that in granting any permit or variance the administrative agency or board of adjustment shall require the owner of the structure or tree to install, operate, and maintain, at his or her own expense, marking and lighting as may be necessary to indicate to aircraft pilots the presence of an obstruction.

Obstruction marking and lighting

Current law provides that marking and lighting shall conform to the specific standards established in DOT rule.

²³ The enforcement of statutory liens is provided for in Ch. 85, F.S.

Current law provides that existing structures not in compliance on October 1, 1988, shall be required to comply the earliest of whenever the existing lighting requires replacement, or within 5 years of October 1, 1988.

Effect of the Bill

The bill amends the title of s. 333.07, F.S., to “Local government permitting of airspace obstructions”.

Permits

The bill amends ss. 333.07(1)(a) and (b), F.S., reflecting the conversion from a variance to a permitting process, for internal consistency with definitions, and removing antiquated legal phrasing.

The bill deletes s. 333.07(1)(c), F.S., removing statutory redundancy.

Variances

The bill deletes s. 333.07(2), F.S., reflecting the conversion from a variance process to a permitting process.

Considerations when issuing or denying permits

The bill creates s. 333.07(2), F.S. relating to considerations when issuing or denying a permit. In determining whether to issue or deny a permit, the political subdivision or its administrative agency considers the impact of the following, as applicable:

- The safety of persons on the ground and in the air.
- The safe and efficient use of navigable airspace.
- The nature of the terrain and height of existing structures.
- The effect of the construction or alteration on the state licensing standards for a public-use airport contained in Ch. 330, F.S., and rules adopted thereunder..
- The character of existing and planned flight operations and developments at public-use airports.
- Federal airways, visual flight rules, flyways and corridors, and instrument approaches as designated by the FAA.
- Effect of the construction or alteration of the proposed structure on the minimum descent altitude or the decision height at the affected airport.
- The cumulative effect on navigable airspace of all existing structures, and all other known proposed structures in the area.
- Additional requirements adopted by the political subdivision pertinent to evaluation and protection of airspace and airport operations.

Obstruction marking and lighting

The bill amends ss. 333.07(3)(a) and (b), F.S., for internal consistency with definitions and with FAA AC 70/7460-1K.²⁴ The bill removes s. 333.07(3)(b), F.S., requiring such marking and lighting to conform to DOT standards established by rule. The bill also removes s. 333.07(3)(c), F.S., which contains an obsolete date.

Appeals (s. 333.08, F.S.)

Current Situation

Current law provides that any person aggrieved, or taxpayer affected, by any decision of an administrative agency in the administration of airport zoning regulations; or any governing body of a political subdivision, or DOT, or any joint airport zoning board, which believes that an administrative agency’s decision is an improper application of airport zoning regulations of concern to the governing body or board, may appeal to the board of adjustment authorized to hear and decide appeals from the decisions of such administrative agency.

²⁴ A copy of FAA AC 70/7460-1K is available at:

http://www.faa.gov/regulations_policies/advisory_circulars/index.cfm/go/document.current/documentNumber/70_7460-1 (last visited January 6, 2016).

Current law provides that all appeals are to be taken within a reasonable time, by filing a notice of appeal with the agency from which appeal is taken and with the board. The notice of appeal must specify the grounds of the appeal.

Current law provides that an appeal stays all proceedings in furtherance of the action appealed from, unless the agency from which the appeal is taken certifies to the board, after the notice of appeal has been filed, that by reason of the facts stated in the certification that a stay would, in its opinion, cause imminent peril to life or property. In such cases, proceedings shall not be stayed otherwise than by an order of the board on notice to the agency from which the appeal is taken and on due cause shown.

Current law provides that the board shall fix a reasonable time for the hearing of appeals, give public notice and due notice to the parties, and make its decision within a reasonable time.

Current law provides that the board may reverse or affirm wholly or partly, or modify, the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the administrative agency from which the appeal is taken.

Effect of the Bill

The bill repeals s. 333.08, F.S., and moves the text into a new s. 333.09(3), F.S.

Administration of Airport Zoning Regulations (s. 333.09, F.S.)

Current Situation

Current law requires that all airport zoning regulations provide for their administration and enforcement by an administrative agency. The administrative agency may be an agency created by such regulations or any official, board, or other existing agency of the political subdivision adopting the regulations or of one of the political subdivisions which participated in the creation of the joint airport zoning board. Such administrative agency may not be or include any member of the board of adjustment. The duties of any administrative agency include hearing and deciding all permits, deciding all matters under s. 333.07(3), F.S., as they pertain to the agency, and all other matters under the state's airport zoning law, which applies to the agency, but the agency shall not have or exercise any of the powers delegated to the board of adjustment.

Effect of the Bill

Administration

The bill provides that all airport zoning regulations shall provide for the administration and enforcement of those regulations by the political subdivision or its administrative agency. The duties of any administrative agency shall include that of hearing and deciding all permits, as they pertain to such agency, and all other matters under Ch. 333, F.S. applying to the agency.

Local Government Process

The bill creates s. 333.09(2), F.S., providing for a local government permitting process. Any political subdivision required to adopt airport zoning regulations must provide a process to:

- Issue and deny permits.
- Provide DOT with a copy of a complete application.
- Enforce the issuance or denial a permit or other determination made by the administrative agency with respect to airport zoning regulations.

Where a political subdivision already has a zoning board or permitting body, the existing zoning board or permitting body may implement the permitting and appeals process.

Appeals

The bill moves the substance of s. 333.08, F.S. to a newly created s. 333.09(3), F.S., relating to appeals. The language is modified to reflect the conversion from the variance process to a permitting process and to clean-up and update various provisions.

Board of Adjustment (s. 333.10, F.S.)

Current Situation

Current law provides that all airport zoning regulations must provide for a board of adjustment having and exercising the following powers:

- To hear and decide appeals from any order, requirement, decision, or determination made by the administrative agency in the enforcement of the airport zoning regulations.
- To hear and decide any special exceptions to the terms of the airport zoning regulations upon which such board may be required to pass under such regulations.
- To hear and decide specific variances.

An existing zoning board may be appointed as the board of adjustment.

The majority vote of the board's members is sufficient to reverse any order, requirement, decision, or determination of the administrative agency, or to decide in favor of the applicant on any matter upon which it is required to pass under the airport zoning regulations, or to effect any variation in such regulations.

The board of adjustment is required to adopt rules in accordance with the ordinance or resolution creating it.

Effect of the Bill

The bill repeals s. 333.10, F.S., reflecting the conversion from the variance process to a permitting process.

Judicial Review (s. 333.11, F.S.)

Current Situation

Current law provides that any person aggrieved, or taxpayer affected, by any decision of a board of adjustment, or any governing body of a political subdivision or DOT or any joint airport zoning board, or of any administrative agency, may apply for judicial relief. The appeal must be filed within 30 days after the board of adjustment renders its decision. Review shall be by petition for writ of certiorari, governed by the Florida Rules of Appellate Procedure.

Upon presentation of such petition to the court, the court may allow a writ of certiorari, directed to the board of adjustment, to review the board's decision. The allowance of the writ does not stay the proceedings upon the decision appealed from, but the court may, under certain circumstances, grant a restraining order.

The court has exclusive jurisdiction to affirm, modify, or set aside the decision brought up for review and if need be, order further proceedings by the board of adjustment. The findings of fact by the board of adjustment, if supported by substantial evidence, shall be accepted by the court as conclusive, and no objection to a board of adjustment decision shall be considered by the court unless such objection shall have been urged before the board of adjustment, or, if it was not so urged, unless there were reasonable grounds for failure to do so.

If airport zoning regulations, although generally reasonable, are held by a court to interfere with the use and enjoyment of a particular structure or parcel of land to such an extent, or to be so onerous in their application to such a structure or parcel of land, as to constitute a taking or deprivation of that property in violation of the State Constitution or the Constitution of the United States, such holding does not

affect the application of the regulations to other structures and parcels of land, or other regulations that are not involved in the particular decision.

Current law provides that no appeal is permitted to any courts, save and except an appeal from a decision of the board of adjustment, the appeal provided being from such final decision of the board of adjustment. The appellant is required to exhaust his or her remedies of application for permits, exceptions and variances, and appeal to the board of adjustment, and gaining a determination by said board, before being permitted to appeal to the court.

Effect of the Bill

The bill amends s. 333.11(1), F.S., removing references to the board of adjustment and DOT. The bill also changes one reference to the board of adjustment to political subdivision to reflect other changes being made to Ch. 333, F.S.

The bill repeals ss. 333.11(2) and (3), F.S., reflecting the conversion from a variance process to a permitting process.

The bill amends s. 333.011(4), F.S., modifying it for clarity and specificity and for consistency with Ch. 163, F.S.

The bill amends s. 333.011(5), F.S., removing the phrase “although generally reasonable.”

The bill amends s. 311.11(6), F.S., providing that a judicial appeal may not be permitted to any courts, until the appellant has exhausted all of its remedies through the application for political subdivision permits, exceptions, and appeals.

Acquisition of Air Rights (s. 333.12, F.S.)

Current Situation

Current law provides that when it is desired to remove, lower, or otherwise terminate a nonconforming structure or use; or the approach protection necessary cannot, due to constitutional limitations, be provided by airport regulations; or it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations, the political subdivision within which the property or nonconforming use is located, or the political subdivision owning or operating the airport or being served by it, may acquire, by purchase, grant, or condemnation such air right, navigation easement, or other estate, portion or interest in the property or nonconforming structure or use or such interest in the air above such property, tree, structure, or use, in question, as may be necessary to effectuate the purposes of Ch. 333, F.S., and in so doing, if by condemnation, to have the right to take immediate possession of the property, interest in property, air right, or other right sought to be condemned. In the case of the purchase of any property or any easement or estate or interest therein or the acquisition by the power of eminent domain the political subdivision making such purchase or exercising such power shall in addition to the damages for the taking, injury or destruction of property also pay the cost of the removal and relocation of any structure or any public utility which is required to be moved to a new location.

Effect of the Bill

The bill amends s. 333.12, F.S. for clarity, specificity, and internal consistency with definitions, including the replacement of “navigation easement” with the more accurate term “avigation easement.”²⁵

Enforcement and Remedies (s. 333.13, F.S.)

Current Situation

Current law provides for the enforcement of Ch. 333, F.S., and appropriate remedies.

²⁵ An avigation easement is the conveyance of airspace over another property for use by the airport.

Effect of the Bill

The bill amends s. 333.13(3), F.S., changing a reference to the Department of Transportation to “the department” for internal consistency with the definitions provided in s. 333.01, F.S.

Transition Provisions (s. 333.135, F.S)

Current Situation

Currently Ch. 333, F.S., does not contain any transition provisions.

Effect of the Bill

The bill creates s. 333.135, F.S., providing transition provisions regarding the changes made to Ch. 333, F.S. The bill provides that any airport zoning regulation in effect on July 1, 2016, which include provisions conflicting with Ch. 333, F.S., shall be amended to conform to the requirements of Ch. 333, F.S., by July 1, 2017.

Any political subdivisions having an airport within its territorial limits, which have not adopted airport zoning regulations, shall by July 1, 2017, adopt airport zoning regulations for such airport. The regulations must be consistent with Ch. 333, F.S.

For those political subdivisions that have not yet adopted airport protection zoning regulations, DOT will administer the permitting process as provided in s. 333.025, F.S.

Short Title (s. 333.14, F.S.)

Current Situation

Current law provides the short title “Airport Zoning Law of 1945.”

Effect of the Bill

The bill repeals s. 333.14, F.S., eliminating a short title for Ch. 333., F.S.

Statute Reenactment / Florida Transportation Code (s. 350.81(6), F.S.)

The bill reenacts s. 350.81(6), F.S., relating to communication services offered by local governments to incorporate the changes made by the bill to s. 333.01, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Political subdivisions that have an airport but no airport zoning regulations may see an indeterminate, but likely insignificant, increase to expenditures related to structural permitting and enforcement.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

DOT has indicated that property owners near airports and development businesses should benefit from a more timely, consistent, and predictable land development process.

D. FISCAL COMMENTS:

None.