

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/SB 1508

INTRODUCER: Community Affairs Committee and Senator Simpson

SUBJECT: Airport Zoning

DATE: February 24, 2016

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Price</u>	<u>Eichin</u>	<u>TR</u>	Favorable
2. <u>Cochran</u>	<u>Yeatman</u>	<u>CA</u>	Fav/CS
3. <u>Sneed</u>	<u>Kynoch</u>	<u>AP</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1508 substantially revises chapter 333, Florida Statutes, containing airport zoning provisions relating to the management of airspace and land use at or near airports. 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.
- Makes other grammatical, editorial, and conforming changes.

The bill is expected to have an indeterminate, but positive fiscal impact resulting from simplification and streamlining of state and local airport zoning processes.

The bill takes effect July 1, 2016.

II. Present Situation:

Due to the extensive chapter revision, the present situation for each section of the bill is discussed below in conjunction with the Effect of Proposed Changes.

III. Effect of Proposed Changes:

Airport Zoning

Chapter 333, F.S., contains airport zoning provisions relating to the management of airspace and land use at or near airports. Generally, the chapter:

- Addresses permitting for structures exceeding federal obstruction standards;
- Requires adoption of certain airport zoning regulations;
- Provides a process for seeking variances from the zoning regulations;
- Sets out a process for appeal of decisions based on the zoning regulations;
- Requires boards of adjustment to hear and decide appeals;
- Provides for judicial review of any board of adjustment decision; and
- Establishes penalties and remedies for violations.

The Florida Department of Transportation (FDOT) in 2012 created a stakeholder working group to address problems with implementing this chapter. Representatives from airports, local planning and zoning departments, the Florida Defense Alliance, the League of Cities, the Florida Airports Council, the real estate development community, and the FDOT participated in the working group. The FDOT advises that ch. 333, F.S., “contains outdated and inconsistent provisions when compared to applicable federal regulations, contains internal inconsistencies, and requires a local government airport protection zoning process that can be cumbersome and confusing.”¹

The FDOT advises it expects no substantive changes as a result of the bill’s proposed revisions; e.g., the existing requirements for issuance of permits are substantively unchanged. The number of permits issued or denied is not expected to change. Rather, the changes are designed to facilitate more uniform permitting, appeals, and review processes applied at the local level and provide clarity and predictability for those subject to airport zoning regulations.²

Definitions

Present Situation

Section 333.01, F.S., contains definitions related to airport zoning that need updating for internal chapter consistency and for consistency with federal regulations.

Effect of Proposed Changes

Section 1 amends s. 333.01, F.S., to provide, revise, and delete definitions to:

- Reflect terminology used in federal regulations;
- Provide for consistency with Federal Aviation Administration (FAA) advisements;
- Remove antiquated terminology;
- Delete variances from definitions to reflect the streamlined permitting process effected in the bill; and

¹ See the FDOT 2015 Agency Proposal, *Airspace and Land Use at Public Airports*, p. 1. (On file in the Senate Transportation Committee).

² Conversation with FDOT Legislative and Legal Staff during joint meeting with Senate and House staff, January 30, 2015.

- Otherwise provide clarity through editorial and grammatical changes.

Permitting for Structures Exceeding Federal Obstruction Standards

Present Situation

The Code of Federal Regulations (CFR) sets forth standards for structures that present a hazard within an area in an airport due to obstruction of the airspace required for aircraft to take off, maneuver, or land.³ Section 333.025, F.S., requires a permit from the FDOT for any proposed construction or alteration of a structure that would exceed the federal standards.⁴ A permit from the FDOT is not required if a political subdivision⁵ has adopted adequate airspace protection regulations and filed them with the FDOT.

The FDOT must issue or deny a permit within 30 days of receipt of an application for any structure that would exceed the federal obstruction standards. The FDOT is prohibited from approving a permit unless the applicant submits both documentation showing compliance with federal notification requirements and a valid aeronautical evaluation.

Effect of Proposed Changes

Section 2 amends s. 333.025, F.S., to replace the term “geographic center” with “airport reference point,” which is located at the approximate geometric center of all usable runways and to update references to current federal regulations.

If a political subdivision has adopted adequate airport protection zoning regulations, placed the regulations on file with the FDOT, *and* the political subdivision has established a permitting process, a permit from the FDOT is not required for construction or alteration of an obstruction. Upon receipt of a complete permit application, the local government must provide a copy of the application to the FDOT. The bill provides a 15-day FDOT review period following receipt of the application, which must run concurrently with the established local permitting process.

The FDOT is required to review permit applications in conformity with s. 120.60, F.S., relating to licensing. The list of factors to be considered by the FDOT is revised to remove ambiguity and duplication, and to provide clarity. The FDOT must require the owner of a permitted obstruction to install, operate, and maintain marking and lighting in conformance with FAA standards, at the owner’s expense. The denial of a permit is subjected to the administrative review provisions of the Administrative Procedures Act.

Adoption of Airport Zoning Regulations

Present Situation

Section 333.03, F.S., requires political subdivisions with an airport hazard area⁶ to adopt, administer, and enforce airport zoning regulations for the area. If the airport is owned or

³ See 14 C.F.R. part 77, subpart C (2015).

⁴ Public airports are licensed under the provisions of ch. 330, F.S.

⁵ Generally, a local governmental entity, see s. 333.01(9), F.S.

⁶ The bill redefines “airport hazard” to mean an obstruction to air navigation which affects the safe and efficient use of navigable airspace or the operation of planned or existing air navigation and communication facilities. The definition of

controlled by a political subdivision and has a hazard area outside of its territorial limits, the political subdivision and the political subdivision within which the hazard area is located must either adopt zoning regulations by interlocal agreement or create a joint airport zoning board with the power to do so. The airport zoning regulations must, at a minimum, require:

- A variance for any structure that would exceed the federal obstruction standards;
- Obstruction marking and lighting per s. 333.07(3), F.S.;
- Documentation of compliance with federal proposed construction notification and a valid aeronautical evaluation submitted by each person applying for a variance;
- Consideration of the same factors when determining whether to issue or deny a variance as required of the FDOT when considering permit applications; and
- No variance be approved solely on the basis that a structure will not exceed the federal obstruction standards.

The FDOT is required to issue copies of the federal obstruction standards in the CFR to each political subdivision with an airport hazard area, and issue certain airport zoning maps at no cost.

Interim land use compatibility zoning regulations must be adopted and must consider whether sanitary landfills are located within certain areas and whether any landfill will attract or sustain hazardous bird movements. If a public-use airport has conducted a federal noise study, residential construction and educational facilities are prohibited within the area. If no study is conducted, the same construction is prohibited within a certain distance.

Airport zoning regulations restricting new incompatible uses within runway clear zones must be adopted. Certain limited exceptions for construction of educational facilities in specified areas are authorized.

Effect of Proposed Changes

Section 3 amends s. 333.03, F.S., to eliminate the duplicative requirement for obtaining a variance for structures that would exceed federal obstruction standards, in favor of a local permitting process. Every political subdivision having an airport hazard area is required to adopt airport *protection* zoning regulations. In addition to editorial and grammatical revisions, this section revises language to:

- Replace citations to the federal obstruction standards contained in the CFR with terminology used in the CFR; i.e., permits for the “construction or alteration of any obstruction.”
- Remove the FDOT’s duty to provide copies of the federal obstruction standards contained in the CFR and to issue maps, and replace it with making the FDOT available to provide assistance with respect to the standards.
- Update citations to the CFR.
- Eliminate the reporting requirements related to birds at airports near landfills in favor of requiring the landfill operator to incorporate bird management techniques.
- Include substantial modification of existing incompatible uses in the required adopted regulations restricting such uses within runway *protection* zones.

“obstruction” is revised, also to reflect terminology used in the federal standards for determining obstructions. “Airport hazard area” is redefined in the bill to mean any area of land or water upon which an airport hazard might be established.

- Remove the limited exceptions for construction of educational facilities when a noise study has been conducted in accordance with the federal regulations.
- Delete outdated language.
- Authorize an airport authority, local government, or other governing body operating a public-use airport to adopt more restrictive airport protection zoning regulations, per the FDOT, to allow restrictions appropriate to the local context of the airport.⁷

Guidelines Regarding Land Use near Airports

Present Situation

Section 333.065, F.S., requires the FDOT, after consultation with the Department of Economic Opportunity, local governments, and other interested persons, to adopt by rule recommended guidelines regarding compatible land uses in the vicinity of airports. The guidelines must use certain acceptable and established quantitative measures.

Effect of Proposed Changes

Section 7 repeals s. 333.065, F.S. The FDOT advises the deletion reflects completion of the FDOT Airport Compatible Land Use Guidebook.⁸

Permits, Variances, and Appeals

Present Situation

Section 333.07, F.S., authorizes any adopted airport zoning regulations to require a permit be obtained before any new structure or use is constructed or established and before any existing use or structure may be substantially changed or repaired. All such regulations must require a permit before any nonconforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted.

If a nonconforming use, structure, or tree has been abandoned or is more than 80 percent torn down or deteriorated, a permit may not be issued under certain conditions. The owner of a nonconforming structure or tree may be compelled, at the owner's expense, to undergo certain actions to conform.

Any person desiring to erect any structure, increase the height of any structure, permit the growth of any tree, or otherwise use his or her property in violation of the adopted airport zoning regulations is authorized to apply to a board of adjustment for a variance from the regulations. Conditions for allowance of variations are provided. The FDOT is authorized to appeal any variance granted and to apply for judicial relief.

As a condition of any granted permit or variance, the administrative agency or board of adjustment must require the structure or tree owner to install, operate, and maintain at the

⁷ See the FDOT document provided to staff, *Proposed ch. 333, F.S. Amendments and Legislative Support Documentation*. (On file in the Senate Transportation Committee.)

⁸ *Id.*

owner's expense marking and lighting necessary to indicate to aircraft pilots the presence of an obstruction.

Section 333.08, F.S., authorizes any affected person or taxpayer; or any governing body of a political subdivision, the FDOT, or any joint airport zoning board, to appeal any decision of an administrative agency in its administration of adopted airport zoning regulations to the board of adjustment authorized to hear and decide appeals from the decisions of such administrative agency.

Effect of Proposed Changes

Section 8 amends s. 333.07, F.S., to streamline the permitting process, repeal the duplicative variance process, and facilitate implementation of the permitting process by local entities. More specifically, rather than authorizing any adopted airport zoning regulations to require a permit be obtained before any new structure or use is constructed or established and before any existing use or structure may be substantially changed or repaired, the bill simply requires a permit to construct, alter, or allow an airport obstruction in an airport hazard area in violation of the adopted airport protection zoning regulations.

The political subdivision or its administrative agency must consider virtually the same standards as must be considered by the FDOT when issuing or denying a permit for structures exceeding federal obstruction standards. All variance provisions are removed in favor of the permitting process. In addition, provisions relating to a lien resulting from an owner's failure to take action to bring a nonconforming structure or tree into regulatory compliance are removed. The FDOT 45-day comment period is removed in favor of the shortened 15-day period of review for technical consistency described above. Obstruction marking and lighting is required in conformance with specific standards established by the FAA. Outdated language is repealed.

Section 9 repeals s. 333.08, F.S., authorizing and providing requirements for appeals of zoning regulation decisions, in favor of relocated, modified appeals language in s. 333.09, F.S.

Administration of Airport Zoning Regulations

Present Situation

Section 333.09, F.S., requires all adopted airport zoning regulations to provide for administration and enforcement by an administrative agency; by any official, board, or other existing agency of the political subdivision adopting the regulations; or by one of the subdivisions that participated in creating a joint airport zoning board adopting the regulations. The duties of any such administrative agency include hearing and deciding all permits under s. 333.07, F.S., but not any of the powers delegated to the board of adjustment.

Section 333.10, F.S., currently requires all adopted airport zoning regulations to provide for a board of adjustment to hear and decide appeals and variances.

Effect of Proposed Changes

Section 10 amends s. 333.09, F.S., to remove the list of entities that may be an administrative agency, per the FDOT, to reflect correct community planning terminology.⁹ Administration and enforcement is left to the affected political subdivision or its administrative agency. Also removed is the prohibition against an administrative agency exercising the powers delegated to the board of adjustment.

Political subdivisions required to adopt airport zoning regulations must establish a process to:

- Issue or deny permits consistent with s. 333.07, F.S.;
- Provide the FDOT with a copy of a complete permit application; and
- Enforce the issuance or denial of a permit or other determination made by the administrative agency with respect to airport zoning regulations.

Appeals must be taken within a reasonable time, as provided by the political subdivision or its administrative agency, by filing a notice of appeal. An appeal stays all proceedings in the underlying action, unless the entity from which the appeal is taken certifies that a stay would cause imminent peril to life or property.

The political subdivision or its administrative agency must set a reasonable time for the hearing of appeals and decide appeals within a reasonable time. A party may appear in person, by agent, or by attorney. The subdivision or agency may affirm, reverse, or modify the decision on the permit or other determination from which the appeal is taken.

Section 11 repeals s. 333.10, F.S., currently requiring all adopted airport zoning regulations to provide for a board of adjustment to hear and decide appeals and variances, in favor of the local government permitting and appeals process established by the bill in revised s. 333.09, F.S.

Judicial Review

Present Situation

Section 333.11, F.S., authorizes any person aggrieved or any taxpayer affected by a decision of a board of adjustment, any governing body of a political subdivision, the FDOT, any joint airport zoning board, or any administrative agency to apply for judicial relief in the judicial circuit court where the board of adjustment is located. The section provides procedural provisions related to the board of adjustment, describes the court's authorized review of a decision by a board of adjustment, and prohibits judicial review of decisions other than decision of a board of adjustment.

Effect of Proposed Changes

Section 12 amends s. 333.11, F.S., to allow any person, political subdivision, or joint airport zoning board affected by a decision of a political subdivision or its administrative agency to apply for judicial relief and to remove references to the board of adjustment, but otherwise leaves the authorization to apply for judicial review in place. The judicial review prohibition is revised.

⁹ *Supra* note 7.

An appellant is required to exhaust all remedies through application for local government permits, exceptions, and appeals before seeking judicial review.

Transition Provisions

Section 15 of the bill creates s. 333.135, F.S., to:

- Provide that any airport zoning regulation in effect on July 1, 2016, and in conflict with the revised ch. 333, F.S., must be amended to conform by July 1, 2017.
- Require any political subdivision with an airport that has not adopted airport zoning regulations to do so by July 1, 2017, consistent with the revised chapter.
- Require the FDOT to administer the permitting process as provided in s. 333.025, F.S., for political subdivisions that have not yet adopted the required regulations.

Technical Revisions

Sections 4, 5, 6, 13, and 14, amending ss. 333.04, 333.05, 333.06, 333.12, and 333.13, F.S., respectively, primarily make grammatical and editorial revisions to existing language and modify sections of the chapter for internal consistency with definitions.

Section 16 repeals s. 333.14, F.S., containing the short title of ch. 333, F.S., the “Airport Zoning Law of 1945.”

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under CS/SB 1508, according to the FDOT, property owners near airports and property development businesses should benefit from a more timely, consistent, and predictable land development process. The bill’s revisions to ch. 333, F.S., are intended to save

property owners and businesses time and resources, while protecting the airspace and state aviation facilities from encroachment.¹⁰

C. **Government Sector Impact:**

According to the FDOT, by restructuring the local government process away from zoning variances to local permitting, uniformity with state permitting provisions is facilitated and local governments are granted flexibility to implement the bill's provisions consistent with existing local zoning enforcement processes and structures.¹¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 333.01, 333.025, 333.03, 333.04, 333.05, 333.06, 333.07, 333.09, 333.11, 333.12, and 333.13.

This bill creates section 333.135 of the Florida Statutes.

This bill repeals the following sections of the Florida Statutes: 333.065, 333.08, 333.10, and 333.14.

IX. Additional Information:

A. **Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on February 16, 2016:

- Removes the inappropriate use of the word “protection” from the title of s. 333.03, F.S.; and
- Adjusts an improper reference in s. 333.03(1)(b), F.S., for technical accuracy.

B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁰ *Supra* note 7.

¹¹ *Id.*