An Act

ENROLLED HOUSE
BILL NO. 2919

By: Morgan, Shannon, Luttrell, Williams, Cox, Wright (Harold), Ritze and Pittman of the House

and

Myers, Corn, Easley and Coates of the Senate

An Act relating to airports; creating the Aircraft Pilot and Passenger Protection Act; stating intent; defining terms; requiring permit for certain construction; declaring certain structures incompatible with act; stating requirements for permit applications for certain purposes; authorizing the Oklahoma Aeronautics Commission to investigate and evaluate certain permit applications; providing for validation of permits and requiring recording in counties; providing for duration of permits; providing for denial of permits by Commission; stating application of act; stating penalties for violations; providing for fees; authorizing Commission to promulgate rules; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 120.1 of Title 3, unless there is created a duplication in numbering, reads as follows:

A. This act shall be known and may be cited as the "Aircraft Pilot and Passenger Protection Act".

B. It is the intent of this act to:

1. Regulate obstructions to air navigation that have the potential of endangering the lives and property of aircraft pilots and passengers and those that live or work in the vicinity of public-use airports; that may affect existing and future instrument approaches to a public-use airport; and that may reduce the size of areas available for the landing, takeoff and maneuvering of aircraft thus impairing the utility of a public-use airport and the public investment therein;

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

3. Provide specific powers and duties to the Oklahoma Aeronautics Commission in the interest of the health, safety and welfare of the public so that the state may properly fulfill its duty to ensure that land use around a public-use airport is compatible with normal airport operations including the landing and takeoff of aircraft.

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

D. Depending upon the type of survey used, an adjustment will be made to the horizontal and vertical measurements of the proposed structure as follows:

Survey Type	Horizontal Adjustment	Survey Type	Vertical Adjustment
1	±20 ft (6 m)	A	+3 ft (1 m)
2	±50 ft (15 m)	B	+10 ft (3 m)
3	±100 ft (30 m)	C	+20 ft (6 m)
4	±250 ft (75 m)	D	+50 ft (15 m)
5	±500 ft (150 m)	E	+125 ft (38 m)

If the survey type (horizontal and vertical) is not certified by a licensed engineer or a licensed surveyor, a horizontal adjustment of plus or minus two hundred fifty (250) feet and a vertical

adjustment of fifty (50) feet will be applied to the structure measurements.

E. This act shall neither prevent nor preempt a municipality from having ordinances or regulations governing land use that may affect public-use airports.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 120.2 of Title 3, unless there is created a duplication in numbering, reads as follows:

As used in the Aircraft Pilot and Passenger Protection Act:

1. "Airport reference point" is the geometrical center of all usable runways;

2. "Airport elevation" is the highest point of an airport's usable runways measured in feet from mean sea level;

3. "Approach surface" is an imaginary surface shaped like a trapezoid:

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

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

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

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

4. "Commission" means the Oklahoma Aeronautics Commission or a successor agency;

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

6. "FAA" means the Federal Aviation Administration or a successor agency to the Federal Aviation Administration;

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

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

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

10. "Permit" means a permit issued by the Commission under this act;

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

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

13. "Public-use airport" means a structure or an area of land or water that is designed and set aside for the landing and taking off of aircraft, is utilized or to be utilized by and in the interest of the public for the landing and taking off of aircraft and is identified by the FAA as a public-use airport. Public-use airport shall include any military airport operated by a branch of

the armed services of the United States government. Public-use airport shall not include any privately owned airport for private use as identified by the FAA, or any airport owned by a municipality with a population exceeding five hundred thousand (500,000) according to the most recent Federal Decennial Census;

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

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

16. "Structure" means any constructed or installed object, including, but not limited to buildings, towers, wind turbines, smokestacks, electronic transmission or receiving towers, and antennae and overhead transmission lines. The term does not include:

a. any aviation navigational aids that are fixed by function, or

b. any construction or installed object on property owned by the federal government; and

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

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 120.3 of Title 3, unless there is created a duplication in numbering, reads as follows:

A. A person shall obtain a permit from the Commission prior to the construction or installation of any of the following near a public-use airport:

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

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

3. Any structure, alteration or addition to a structure that would result in a total structure height greater than the horizontal, conical or approach surfaces, as defined in Section 2 of the Aircraft Pilot and Passenger Protection Act.

B. No permit shall be required:

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

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

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

Upon receipt of such notification of the filing of a request for further aeronautical study, the Commission shall give timely notice thereof to the Oklahoma Strategic Military Planning Commission, or any successor agency, and to any military airport within Oklahoma potentially affected by the proposed construction or alteration.

The Commission further shall use its best efforts to establish regular and consistent communication with the FAA to encourage sharing of information regarding construction or alteration in a military training route or slow-speed low-altitude training route within the state of Oklahoma with appropriate state agencies and military installations.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 120.4 of Title 3, unless there is created a duplication in numbering, reads as follows:

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

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 120.5 of Title 3, unless there is created a duplication in numbering, reads as follows:

Any structure or alteration to a structure is presumed to be a hazard to air navigation if its total structure height is greater than the horizontal, conical or approach surfaces, as defined in Section 2 of the Aircraft Pilot and Passenger Protection Act.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 120.6 of Title 3, unless there is created a duplication in numbering, reads as follows:

Applications to the Commission for a permit in accordance with the provisions of the Aircraft Pilot and Passenger Protection Act for construction near a public-use airport shall include the following:

1. For construction in a primary surface or runway protection zone, under paragraph 1 of subsection A of Section 3 of this act:

a. a completed application on a form prescribed by the Commission with the following statement on the application, signed by a legal representative of the applicant:

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

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

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

a. a completed application on a form prescribed by the Commission, and

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

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 120.7 of Title 3, unless there is created a duplication in numbering, reads as follows:

A. If FAA Form 7460-1 is required, then an application for a permit pursuant to Section 3 of the Aircraft Pilot and Passenger Protection Act shall be filed at the same time the FAA Form 7460-1 is sent to the FAA, or at any time before that. If FAA Form 7460-1 is not required, then the application shall be filed at least thirty (30) days before the earlier of the following:

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

2. The date an application for a construction or building permit is to be filed with the municipality.

Upon receiving an application, the Commission shall notify a legal representative of the public-use airport owner affected by the application and solicit comments from the airport owner.

B. In determining whether to issue a permit, the Commission shall consider:

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

2. Public and private interests and investments;

3. The character of flying operations and planned developments of an airport;

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

5. Technological advances;

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

7. Land use density;

8. Comments from all interested persons; and

9. Findings and determinations of other government agencies.

C. If FAA Form 7460-1 is required, then the Commission shall notify the applicant of its determination within thirty (30) days of the FAA completing its aeronautical study. If the applicant has not been notified by the Commission of its determination within thirty (30) days of the FAA completing its aeronautical study, then the applicant shall notify the Commission that it has not received notice of the Commission's determination. The Commission shall then have seven (7) working days from the date of the applicant's notice to notify the applicant of its determination. Nothing herein precludes the Commission from making its determination before the FAA completes its aeronautical study.

D. If FAA Form 7460-1 is not required, then the Commission shall notify the applicant of its determination within sixty (60) days of filing the application. If the applicant has not been notified by the Commission of its determination within sixty (60) days of filing the application, then the applicant shall notify the Commission that it has not received notice of the Commission's determination. The Commission shall then have seven (7) working days from the date of the applicant's notice to notify the applicant of its determination.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 120.8 of Title 3, unless there is created a duplication in numbering, reads as follows:

Once a permit is issued by the Commission, the applicant shall be required to complete the following steps to complete the permit process:

1. The applicant for a permit under Section 3 of the Aircraft Pilot and Passenger Protection Act shall record each permit issued by the Commission in the office of the county clerk for the county where the structure is located not later than thirty (30) business days after the Commission issues the permit. If a structure is located in more than one county, the county that contains the majority of the structure is the county in which the permit must be filed. A permit issued under paragraph 1 of subsection A of Section 3 of this act shall contain the following statement:

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

2. A permit issued in accordance with the provisions of Section 3 of this act is valid only after the Commission receives a certified copy of the recorded permit with the recording data from the county clerk of the county in which the structure is located; and

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

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 120.9 of Title 3, unless there is created a duplication in numbering, reads as follows:

A permit issued in accordance with the provisions of Section 3 of the Aircraft Pilot and Passenger Protection Act is valid only if the proposed structure has been constructed within ten (10) years of the issuance of a permit by the Commission pursuant to Section 8 of this act.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 120.10 of Title 3, unless there is created a duplication in numbering, reads as follows:

A. If the Commission determines that a permit should not be issued under the provisions of the Aircraft Pilot and Passenger Protection Act, the Commission shall notify the applicant in writing of its determination. The notification may be served by delivering it personally to the applicant or by sending it by certified or registered mail to the applicant at the address specified in the application.

B. The determination is final thirty (30) days after notification of the determination is served, unless the applicant, within the thirty-day period, requests reconsideration in writing to the Commission and provides written evidence showing why the application should have been granted. The Commission has up to a period of thirty (30) days from the receipt of the request. The Commission shall notify the applicant of its determination as specified in subsection A of this section. In the event of a second denial by the Commission of the permit request, the applicant can request a hearing before the Commission with reference to the application. A hearing under this section shall be open to the public. The applicant may appear and be heard either in person or by counsel and may present pertinent evidence and testimony. At the hearing, the applicant has the burden to show cause why the Commission should have granted the permit to erect the proposed structure.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 120.11 of Title 3, unless there is created a duplication in numbering, reads as follows:

The provisions of the Aircraft Pilot and Passenger Protection Act shall not apply to structures that existed or have an approved building permit from the local authority with jurisdiction over the property that the structure is proposed to be constructed upon, prior to the effective date of this act.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 120.12 of Title 3, unless there is created a duplication in numbering, reads as follows:

Each violation of the Aircraft Pilot and Passenger Protection Act, or rulings promulgated by the Commission pursuant to this act, shall constitute a misdemeanor punishable by a fine of not more than Five Hundred Dollars ($500.00). Each day that such a violation or failure continues constitutes a separate offense. In addition, the Commission may institute in any court of general jurisdiction, an

action to prevent, restrain, correct, or abate any violation of this act, or any rules adopted or orders issued by the Commission pursuant to this act. The court may grant such relief, by way of injunction, which may be mandatory, or otherwise, as may be necessary under this act and the applicable rules or orders of the Commission issued under this act.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 120.13 of Title 3, unless there is created a duplication in numbering, reads as follows:

The Commission shall prepare and charge a schedule of reasonable fees for services rendered, not to exceed Two Hundred Dollars ($200.00) per permit application.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 120.14 of Title 3, unless there is created a duplication in numbering, reads as follows:

The Commission is authorized to promulgate any rules necessary to implement the provisions of the Aircraft Pilot and Passenger Protection Act.

SECTION 15. This act shall become effective October 1, 2010.

Passed the House of Representatives the 27th day of May, 2010.

Presiding Officer of the House of Representatives

Passed the Senate the 28th day of May, 2010.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Governor this 28th

day of May, 20 10,

at 8:45 **o'clock** P **M.**

By:

Approved by the Governor of the State of Oklahoma the 7th **day of**

June, 20 10, **at** 6:50 **o'clock** P **M.**

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this

8th **day of** June, 20 10,

at 4:38 **o'clock** P. **M.**

By: M. Susan Lowe