

# Aircraft Pilot and Passenger Protection

This Act regulates building near public-use airports. The Act requires owners of proposed structures within a three-mile area surrounding a public-use airport to get special permits from the state aeronautics commission before building such structures.

Submitted as:

Oklahoma

[HB 2919 \(Enrolled version\)](#)

Status: Enacted into law in 2010.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as the “Aircraft Pilot and Passenger  
2 Protection Act.”

3  
4           Section 2. [*Definitions.*] As used in this Act:

5           1. “Airport reference point” is the geometrical center of all usable runways;

6           2. “Airport elevation” is the highest point of an airport’s usable runways measured in feet  
7 from mean sea level;

8           3. “Approach surface” is an imaginary surface shaped like a trapezoid:

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

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

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

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

17           4. “Commission” means the [state aeronautics commission] or a successor agency;

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

21           6. “FAA” means the Federal Aviation Administration or a successor agency to the  
22 Federal Aviation Administration;

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

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

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

33           10. “Permit” means a permit issued by the [commission] under this Act;

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

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

43 13. "Public-use airport" means a structure or an area of land or water that is designed and  
44 set aside for the landing and taking off of aircraft, is utilized or to be utilized by and in the  
45 interest of the public for the landing and taking off of aircraft and is identified by the FAA as a  
46 public-use airport. Public-use airport shall include any military airport operated by a branch of  
47 the armed services of the United States government. Public-use airport shall not include any  
48 privately owned airport for private use as identified by the FAA, or any airport owned by a  
49 municipality with a population exceeding [five hundred thousand (500,000)] according to the  
50 most recent Federal Decennial Census;

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

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

58 16. "Structure" means any constructed or installed object, including, but not limited to  
59 buildings, towers, wind turbines, smokestacks, electronic transmission or receiving towers, and  
60 antennae and overhead transmission lines. The term does not include any aviation navigational  
61 aids that are fixed by function or any construction or installed object on property owned by the  
62 federal government; and

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

66  
67 Section 3. *[Legislative Intent.]*

68 (A) It is the intent of this Act to:

69 1. Regulate obstructions to air navigation that potentially endanger the lives and  
70 property of aircraft pilots, passengers, and people who live or work in the vicinity of public-use  
71 airports; affect existing and future instrument approaches to public-use airports; reduce the size  
72 of areas available for the landing, takeoff and maneuvering of aircraft at public use airports; or  
73 impair the utility of public-use airports and the public investment therein;

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

76 3. Provide specific powers and duties to the [state aeronautics commission] in the  
77 interest of the health, safety and welfare of the public so that the state may properly fulfill its  
78 duty to ensure that land use around public-use airports is compatible with normal airport  
79 operations including the landing and takeoff of aircraft.

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

82 (C) Depending upon the type of survey used, an adjustment will be made to the  
83 horizontal and vertical measurements of a proposed structure as follows:

84	85	86	87	88
	Survey	Horizontal	Survey	Vertical
	Type	Adjustment	Type	Adjustment
88	1	+20 ft (6 m)	A	+3 ft (1 m)
89	2	+50 ft (15 m)	B	+10 ft (3 m)
90	3	+100 ft (30 m)	C	+20 ft (6 m)
91	4	+250 ft (75 m)	D	+50 ft (15 m)
92	5	+500 ft (150 m)	E	+125 ft (38 m)

93 (D) If the survey type (horizontal and vertical) is not certified by a licensed engineer or a  
94 licensed surveyor, a horizontal adjustment of plus or minus [two hundred fifty (250)] feet and a  
95 vertical adjustment of [fifty (50)] feet will be applied to the structure measurements.

96 (E) Any structure or alteration to a structure is presumed to be a hazard to air navigation  
97 if its total structure height is greater than the horizontal, conical or approach surfaces, as defined  
98 in Section 2 of this Act.

99 (F) This Act shall neither prevent nor preempt a municipality from having ordinances or  
100 regulations governing land use that may affect public-use airports.

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

104 (H) Any structure or alteration to a structure is presumed to be a hazard to air navigation  
105 if its total structure height is greater than the horizontal, conical or approach surfaces, as defined  
106 in Section 2 of this Act.

107 (I) The [commission] further shall use its best efforts to establish regular and consistent  
108 communication with the FAA to encourage sharing of information regarding construction or  
109 alteration in a military training route or slow-speed low-altitude training route within the state  
110 with appropriate state agencies and military installations.

111 (J) The provisions of this Act shall not apply to structures that existed or have an  
112 approved building permit from the local authority with jurisdiction over the property that the  
113 structure is proposed to be constructed upon, prior to the effective date of this Act.

114 (K) The [commission] is authorized to promulgate any rules necessary to implement the  
115 provisions of this Act.

116  
117 Section 4. *[Permits for Constructing or Installing Structures Near Public-Use Airports.]*

118 (A) A person shall obtain a permit from the [commission] prior to the construction or  
119 installation of any of the following near a public-use airport:

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

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

125 3. Any structure, alteration or addition to a structure that would result in a total  
126 structure height greater than the horizontal, conical or approach surfaces, as defined in Section 2  
127 of this Act.

128 (B) Applications to the [commission] for a permit in accordance with the provisions of  
129 this Act for construction near a public-use airport shall include the following:

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

132 a. a completed application on a form prescribed by the [commission] with  
133 the following statement on the application, signed by a legal representative of the applicant:

134  
135 “The applicant acknowledges for itself, its heirs, its successors, and its assigns,  
136 that the real estate described in this application is located in the primary surface or  
137 the runway protection zone of a public-use airport, and that the applicant is  
138 building a structure upon this real estate, with the full knowledge and acceptance  
139 that it may be incompatible with normal airport operations including the landing  
140 and takeoff of aircraft.”

141  
142 b. if required, a copy of the FAA Form 7460-1, “Notice of Proposed  
143 Construction or Alteration”, as described in 14 CFR part 77, sub-part B, Section 17, to be  
144 submitted to the FAA; and

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

147 a. a completed application on a form prescribed by the [commission], and

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

149 (C) If FAA Form 7460-1 is required, then the application for a permit pursuant to this Act  
150 Section shall be filed at the same time the FAA Form 7460-1 is sent to the FAA, or any time  
151 before that. If FAA Form 7460-1 is not required, then the application shall be filed at least [thirty  
152 (30)] days before the earlier of the following:

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

154 2. The date an application for a construction or building permit is to be filed with  
155 a municipality as required under [insert citation].

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

163 (E) Upon receipt of such notification of the filing of a request for further aeronautical  
164 study, the [commission] shall give timely notice thereof to the [state strategic military planning  
165 commission], or any successor agency, and to any military airport within this state potentially  
166 affected by the proposed construction or alteration.

167 (F) Upon receiving an application, the [commission] shall notify a legal representative of  
168 the public-use airport owner affected by the application and solicit comments from the airport  
169 owner.

170 (G) In determining whether to issue a permit, the [commission] shall consider:

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

172 2. Public and private interests and investments;

173 3. The character of flying operations and planned developments of the affected  
174 airport;

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

177 5. Technological advances;

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

- 179 7. Land use density;
- 180 8. Comments from all interested people; and
- 181 9. Applicable findings and determinations of other government agencies.

182 (H) If FAA Form 7460-1 is required, then the [commission] shall notify the applicant of  
183 its determination within [thirty (30)] days of the FAA completing its aeronautical study. If the  
184 applicant has not been notified by the [commission] of its determination within [thirty (30)] days  
185 of the FAA completing its aeronautical study, then the applicant shall notify the [commission]  
186 that it has not received notice of the [commission’s] determination. The [commission] shall then  
187 have [seven (7)] working days from the date of the applicant’s notice to notify the applicant of its  
188 determination. Nothing herein precludes the [commission] from making its determination before  
189 the FAA completes its aeronautical study.

190 (I) If FAA Form 7460-1 is not required, then the [commission] shall notify the applicant  
191 of its determination within [sixty (60)] days of filing the application. If the applicant has not been  
192 notified by the [commission] of its determination within [sixty (60)] days of filing the  
193 application, then the applicant shall notify the [commission] that it has not received notice of the  
194 [commission’s] determination. The [commission] shall then have [seven (7)] working days from  
195 the date of the applicant’s notice to notify the applicant of its determination.

196 (J) Once a permit is issued by the [commission], the applicant shall be required to  
197 complete the following steps to complete the permit process:

198 1. The applicant for a permit under this Act shall record each permit issued by the  
199 [commission] in the office of the county clerk for the county where the structure is located not  
200 later than [thirty (30)] business days after the [commission] issues the permit. If a structure is  
201 located in more than one county, the county that contains the majority of the structure is the  
202 county in which the permit must be filed. A permit issued under paragraph 1 of subsection A of  
203 Section 3 of this Act shall contain the following statement:

204  
205 “The permittee acknowledges for itself, its heirs, its successors, and its assigns,  
206 that the real estate described in this permit is located within the primary surface or  
207 the runway protection zone of a public-use airport, and that the permittee is  
208 building a structure upon this real estate with the full knowledge and acceptance  
209 that it may be incompatible with normal airport operations including the landing  
210 and takeoff of aircraft.”

211  
212 2. A permit issued in accordance with the provisions of this Act is valid only after  
213 the [commission] receives a certified copy of the recorded permit with the recording data from  
214 the county clerk of the county in which the structure is located; and

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

218 (K) A permit issued in accordance with the provisions of this Act is valid only if the  
219 proposed structure has been constructed within [ten (10)] years of the issuance of a permit by the  
220 [commission] pursuant to this Act.

221 (L) 1. If the [commission] determines that a permit should not be issued under the  
222 provisions of this Act, the [commission] shall notify the applicant in writing of its determination.  
223 The notification may be served by delivering it personally to the applicant or by sending it by  
224 certified or registered mail to the applicant at the address specified in the application.

225 2. The determination is final [thirty (30)] days after notification of the  
226 determination is served, unless the applicant, within the [thirty-day] period, requests  
227 reconsideration in writing to the [commission] and provides written evidence showing why the

228 application should have been granted. The [commission] has up to a period of [thirty (30)] days  
229 from the receipt of the request. The [commission] shall notify the applicant of its determination  
230 as specified in paragraph 1 of subsection L of this section. In the event of a second denial by the  
231 [commission] of the permit request, the applicant can request a hearing before the [commission]  
232 with reference to the application. A hearing under this section shall be open to the public. The  
233 applicant may appear and be heard either in person or by counsel and may present pertinent  
234 evidence and testimony. At the hearing, the applicant has the burden to show cause why the  
235 [commission] should have granted the permit to erect the proposed structure.

236 (M) The [commission] shall prepare and charge a schedule of reasonable fees for services  
237 rendered, not to exceed [two hundred dollars (\$200.00)] per permit application.

238 (N) No permit shall be required:

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

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

244

245 Section 5. [*Penalties.*] Each violation of this Act, or rulings promulgated by the  
246 [commission] pursuant to this Act, shall constitute a misdemeanor punishable by a fine of not  
247 more than [five hundred dollars (\$500.00)]. Each day that such a violation or failure continues  
248 constitutes a separate offense. In addition, the [commission] may institute in any court of general  
249 jurisdiction, an action to prevent, restrain, correct, or abate any violation of this Act, or any rules  
250 adopted or orders issued by the [commission] pursuant to this Act. A court may grant such relief,  
251 by way of injunction, which may be mandatory, or otherwise, as may be necessary under this Act  
252 and the applicable rules or orders of the [commission] issued under this Act.

253

254 Section 6. [*Severability.*] [Insert severability clause.]

255

256 Section 7. [*Repealer.*] [Insert repealer clause.]

257

258 Section 8. [*Effective Date.*] [Insert effective date.]