

SENATE BILL 361

Introduced by Thayer, et al.

2/12	Introduced
2/12	Fiscal Note Requested
2/13	First Reading
2/13	Referred to Business & Industry
2/18	Fiscal Note Received
2/19	Hearing
2/19	Fiscal Note Printed
2/21	Committee Report--Bill Passed as Amended
2/23	2nd Reading Passed
2/25	3rd Reading Passed
	Transmitted to House
3/04	First Reading
3/04	Referred to Judiciary
3/13	Hearing
3/14	Tabled in Committee

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Senate BILL NO. *361*
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INTRODUCED BY
A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE AIRPORT AUTHORITIES ACT; LIMITING THE LIABILITY OF AIRPORT AUTHORITIES, AIRPORT OPERATORS, AND AIRPORT OWNERS; EXEMPTING AIRPORT AUTHORITIES FROM STATE VACATION AND SICK LEAVE REQUIREMENTS; PROVIDING THAT OFFICERS OF AIRPORT AUTHORITIES ARE OFFICERS OF NONPROFIT CORPORATIONS AND THEREFORE IMMUNE FROM LIABILITY; ESTABLISHING AN IMPLIED COVENANT THAT CONVEYED REAL PROPERTY IS NOT WITHIN AN AIRPORT INFLUENCE AREA; PROVIDING THAT A LOCAL GOVERNMENT SHALL DESIGNATE AN AIRPORT INFLUENCE AREA; PROVIDING AIRPORT OPERATOR LATITUDE IN DETERMINING REASONABLENESS OF CHARGES; INCREASING THE AIRPORT AUTHORITY DEBT SERVICE FUND LIMIT TO REFLECT ECONOMIC CHANGE; PROVIDING AIRPORT AUTHORITIES EXEMPTIONS FROM ASSESSMENTS; PROVIDING THAT THE RIGHT OF NAVIGATION AND ITS RESULTING NOISE ARE A SERVIDUTE ATTACHED TO THE LAND; PROVIDING AIRPORT AUTHORITIES, AIRPORT OPERATORS, AND AIRPORT OWNERS PROTECTION FROM LIABILITY FOR NOISE; AMENDING SECTIONS 2-9-101, 2-9-111, 2-18-601, 27-1-732, 30-11-111, 67-1-101, 67-4-201, 67-4-202, 67-4-313, 67-5-211, 67-10-302, 67-11-211, 67-11-232, 67-11-304, 67-11-306, 70-17-101, AND 70-20-304, MCA; AND PROVIDING AN EFFECTIVE DATE."

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-9-101, MCA, is amended to read:

"2-9-101. (Temporary) Definitions. As used in parts 1 through 3 of this chapter, the following definitions apply:

(1) "Claim" means any claim against a governmental entity, for money damages only, which any person is legally entitled to recover as damages because of personal injury or property damage caused by a negligent or wrongful act or omission committed by any employee of the governmental entity while acting within the scope of his employment, under circumstances where the governmental entity, if a private person, would be liable to the claimant for such damages under the laws of the state. For purposes of this section and the limit of liability contained in 2-9-108, all claims which arise or derive from personal injury to or death of a single person, or damage to property of a person, regardless of the number of persons or entities claiming damages thereby, are considered one claim.

(2) "Employee" means an officer, employee, or servant of a governmental entity, including elected or appointed officials, and persons acting on behalf of the governmental entity in any official capacity temporarily or permanently in the service of the governmental entity whether with or without compensation, but the term employee shall not mean a



1 person or other legal entity while acting in the capacity of
2 an independent contractor under contract to the governmental
3 entity to which parts 1 through 3 apply in the event of a
4 claim.

5 (3) "Governmental entity" means and includes the state
6 and political subdivisions as herein defined.

7 (4) "Personal injury" means any injury resulting from
8 libel, slander, malicious prosecution, or false arrest, any
9 bodily injury, sickness, disease, or death sustained by any
10 person and caused by an occurrence for which the state may
11 be held liable.

12 (5) "Political subdivision" means any county, city,
13 municipal corporation, school district, special improvement
14 or taxing district, or any other political subdivision or
15 public corporation.

16 (6) "Property damage" means injury or destruction to
17 tangible property, including loss of use thereof, caused by
18 an occurrence for which the state may be held liable.

19 (7) "State" means the state of Montana or any office,
20 department, agency, authority, commission, board,
21 institution, hospital, college, university, or other
22 instrumentality thereof. (Terminates June 30, 1991--sec. 1,
23 Ch. 228, L. 1987.)

24 2-9-101. (Effective July 1, 1991) Definitions. As used
25 in parts 1 through 3 of this chapter, the following

1 definitions apply:

2 (1) "Claim" means any claim against a governmental
3 entity, for money damages only, which any person is legally
4 entitled to recover as damages because of personal injury or
5 property damage caused by a negligent or wrongful act or
6 omission committed by any employee of the governmental
7 entity while acting within the scope of his employment,
8 under circumstances where the governmental entity, if a
9 private person, would be liable to the claimant for such
10 damages under the laws of the state. For purposes of this
11 section, all claims which arise or derive from personal
12 injury to or death of a single person, or damage to property
13 of a person, regardless of the number of persons or entities
14 claiming damages thereby, are considered one claim.

15 (2) "Employee" means an officer, employee, or servant
16 of a governmental entity, including elected or appointed
17 officials, and persons acting on behalf of the governmental
18 entity in any official capacity temporarily or permanently
19 in the service of the governmental entity whether with or
20 without compensation, but the term employee shall not mean a
21 person or other legal entity while acting in the capacity of
22 an independent contractor under contract to the governmental
23 entity to which parts 1 through 3 apply in the event of a
24 claim.

25 (3) "Governmental entity" means and includes the state

1 and political subdivisions as herein defined.

2 (4) "Personal injury" means any injury resulting from
3 libel, slander, malicious prosecution, or false arrest, any
4 bodily injury, sickness, disease, or death sustained by any
5 person and caused by an occurrence for which the state may
6 be held liable.

7 (5) "Political subdivision" means any county, city,
8 municipal corporation, airport authority, school district,
9 special improvement or taxing district, or any other
10 political subdivision or public corporation.

11 (6) "Property damage" means injury or destruction to
12 tangible property, including loss of use thereof, caused by
13 an occurrence for which the state may be held liable.

14 (7) "State" means the state of Montana or any office,
15 department, agency, authority, commission, board,
16 institution, hospital, college, university, or other
17 instrumentality thereof."

18 **Section 2.** Section 2-9-111, MCA, is amended to read:

19 "2-9-111. Immunity from suit for legislative acts and
20 omissions. (1) As used in this section:

21 (a) the term "governmental entity" includes the state,
22 counties, municipalities, airport authorities, and school
23 districts;

24 (b) the term "legislative body" includes the
25 legislature vested with legislative power by Article V of

1 The Constitution of the State of Montana and any local
2 governmental entity given legislative powers by statute,
3 including school boards and airport authorities.

4 (2) A governmental entity is immune from suit for an
5 act or omission of its legislative body or a member,
6 officer, or agent thereof.

7 (3) A member, officer, or agent of a legislative body
8 is immune from suit for damages arising from the lawful
9 discharge of an official duty associated with the
10 introduction or consideration of legislation or action by
11 the legislative body.

12 (4) The immunity provided for in this section does not
13 extend to any tort committed by the use of a motor vehicle,
14 aircraft, or other means of transportation."

15 **Section 3.** Section 2-18-601, MCA, is amended to read:

16 "2-18-601. Definitions. For the purpose of this part,
17 except 2-18-620, the following definitions apply:

18 (1) "Agency" means any legally constituted department,
19 board, or commission of state, county, or city government or
20 any political subdivision thereof, except an airport
21 authority.

22 (2) "Employee" means any person employed by an agency
23 except elected state, county, and city officials,
24 schoolteachers, and persons contracted as independent
25 contractors or hired under personal services contracts.

1 (3) "Permanent employee" means an employee who is
2 assigned to a position designated as permanent on the
3 appropriate list of authorized positions referenced in
4 2-18-206 and approved as such in the biennium budget.

5 (4) "Part-time employee" means an employee who normally
6 works less than 40 hours a week.

7 (5) "Full-time employee" means an employee who normally
8 works 40 hours a week.

9 (6) "Temporary employee" means an employee assigned to
10 a position designated as temporary on the appropriate agency
11 list of authorized positions referenced in 2-18-206, created
12 for a definite period of time not to exceed 9 months.

13 (7) "Seasonal employee" means an employee assigned to a
14 position designated as seasonal on the appropriate agency
15 list of authorized positions referenced in 2-18-206 and for
16 which the agency has a permanent need but which is
17 interrupted by the seasonal nature of the assignment.

18 (8) "Vacation leave" means a leave of absence with pay
19 for the purpose of rest, relaxation, or personal business at
20 the request of the employee and with the concurrence of the
21 employer.

22 (9) "Sick leave" means a leave of absence with pay for
23 a sickness suffered by an employee or his immediate family.

24 (10) "Sick-pay plan" means a plan that:

25 (a) provides for an agency to make payments in lieu of

1 wages to employees on account of sickness or accident
2 disability; and

3 (b) meets the requirements of 42 U.S.C. 409(b) or (d).

4 (11) "Transfer" means a change of employment from one
5 agency to another agency in the same jurisdiction without a
6 break in service.

7 (12) "Continuous employment" means working within the
8 same jurisdiction without a break in service of more than 5
9 working days or without a continuous absence without pay of
10 more than 15 working days.

11 (13) "Break in service" means a period of time in excess
12 of 5 working days when the person is not employed and that
13 severs continuous employment."

14 **Section 4.** Section 27-1-732, MCA, is amended to read:

15 "27-1-732. Immunity of nonprofit corporation officers,
16 directors, and volunteers. (1) No officer, director, or
17 volunteer of a nonprofit corporation is individually liable
18 for any action or omission made in the course and scope of
19 his official capacity on behalf of the nonprofit
20 corporation. This section does not apply to liability for
21 willful or wanton misconduct. The immunity granted by this
22 section does not apply to the liability of a nonprofit
23 corporation.

24 (2) For purposes of this section, "nonprofit
25 corporation" means:

1 (a) an organization exempt from taxation under section
2 501(c) of the Internal Revenue Code of 1954; or

3 (b) a corporation or organization which is eligible for
4 or has been granted by the department of revenue tax exempt
5 status under the provisions of 15-31-102; or

6 (c) an airport authority."

7 **Section 5.** Section 30-11-111, MCA, is amended to read:

8 "30-11-111. **Contract for sale of real property.** (1) No
9 agreement for the sale of real property or of any interest
10 therein is valid unless the same, or some note or memorandum
11 thereof, be in writing and subscribed by the party to be
12 charged or his agent thereunto authorized in writing; but
13 this does not abridge the power of any court to compel the
14 specific performance of any agreement for the sale of real
15 property in case of part performance thereof.

16 (2) In any agreement for the sale of real property or
17 of any interest in real property, the seller shall
18 affirmatively disclose to the purchaser whether the real
19 property is within an airport hazard area or airport
20 influence area. A person may not recover from a local
21 government, airport authority, airport operator, or airport
22 owner damages caused by normal and anticipated normal
23 airport operations by reason of the seller's failure to make
24 the disclosure required by this section. A person who
25 acquires an interest in real property with actual or

1 constructive knowledge that the property is within an
2 airport operations area may not recover damages caused by
3 normal and anticipated normal airport operations."

4 **Section 6.** Section 67-1-101, MCA, is amended to read:

5 "67-1-101. **Definitions.** Unless the context requires
6 otherwise, in this title the following definitions apply:

7 (1) "Aeronautics" means transportation by aircraft; the
8 operation, construction, repair, or maintenance of aircraft,
9 aircraft power plants and accessories, including the repair,
10 packing, and maintenance of parachutes; the design,
11 establishment, construction, extension, operation,
12 improvement, repair, or maintenance of airports, restricted
13 landing areas, or other air navigation facilities; and air
14 instruction.

15 (2) "Aeronautics instructor" means an individual
16 engaged in giving instruction or offering to give
17 instruction in aeronautics, either in flying or ground
18 subjects, or both, for hire or reward, without advertising
19 that occupation, without calling his facilities an "air
20 school" or anything equivalent to an "air school", and
21 without employing or using other instructors. It does not
22 include an instructor in a public school or university of
23 this state or an institution of higher learning accredited
24 and approved for carrying on collegiate work while engaged
25 in his duties as an instructor.

1 (3) "Air carrier" means a person or corporation owning,
2 controlling, operating, or managing aircraft as a scheduled
3 common carrier of passengers or freight for compensation
4 within this state.

5 (4) "Aircraft" means a contrivance used or designed for
6 navigation of or flight in the air.

7 (5) "Air instruction" means the imparting of
8 aeronautical information by an aeronautics instructor or in
9 or by an air school or flying club.

10 (6) "Airman" means an individual who engages, as the
11 person in command or as pilot, mechanic, or member of the
12 crew, in the navigation of aircraft while under way; an
13 individual who is directly in charge of the inspection,
14 maintenance, overhauling, or repair of aircraft engines,
15 propellers, or appliances (excepting individuals employed
16 outside the United States, an individual employed by a
17 manufacturer of aircraft, aircraft engines, propellers, or
18 appliances to perform duties as inspector or mechanic in
19 connection with them, and an individual performing
20 inspection or mechanical duties in connection with aircraft
21 owned or operated by him) and an individual who serves in
22 the capacity of aircraft dispatcher or air traffic control
23 tower operator.

24 (7) "Air navigation" means the operation or navigation
25 of aircraft in the air space over this state or upon an

1 airport or restricted landing area within this state.

2 (8) "Air navigation facility" means a facility used in,
3 available for use in, or designed for use in aid of air
4 navigation, including airports, restricted landing areas,
5 and structures, mechanisms, lights, beacons, marks,
6 communicating systems, or other instrumentalities or devices
7 used or useful as an aid or constituting an advantage or
8 convenience to the safe taking off, navigation, and landing
9 of aircraft or the safe and efficient operation or
10 maintenance of an airport or restricted area and any
11 combination of these facilities.

12 (9) "Airport" means an area of land or water, except a
13 restricted landing area, which is designed for the landing
14 and takeoff of aircraft, whether or not facilities are
15 provided for the shelter, servicing, or repair of aircraft
16 or for receiving or discharging passengers or cargo, and all
17 appurtenant areas used or suitable for airport buildings or
18 other airport facilities and all appurtenant rights-of-way.

19 (10) "Airport and landing field" means any area of land,
20 water, or both, which is used or is made available for the
21 landing and takeoff of aircraft, owned, leased, controlled,
22 operated, or maintained by the United States, the state of
23 Montana, any county thereof or any municipality, or any of
24 the authorized agencies or branches thereof within the state
25 of Montana.

1 (11) "Airport authority" or "authority" means a regional
2 airport authority or municipal airport authority created
3 under chapter 11 and the governing body of a municipality
4 which has determined to exercise the powers of a municipal
5 airport authority under 67-11-102.

6 (12) "Airport hazard" means a structure, object of
7 natural growth, or use of land which obstructs the air space
8 required for the flight of aircraft in landing or taking off
9 at an airport or restricted landing area or is otherwise
10 hazardous to landing or taking off.

11 (13) "Airport hazard area" means any area of land or
12 water upon which an airport hazard might be established if
13 not prevented as provided in this title.

14 (14) "Airport protection privileges" means easements
15 through or other interests in air space over land or water,
16 interests in airport hazards outside the boundaries of
17 airports or restricted landing areas, and other protection
18 privileges, the acquisition or control of which is necessary
19 to ensure safe approaches to the landing areas of airports
20 and restricted landing areas and the safe and efficient
21 operation thereof.

22 (15) "Air school" means a person engaged in giving or
23 offering to give instruction in aeronautics, either in
24 flying or ground subjects, or both, for or without hire or
25 reward, and advertising, representing, or holding himself

1 out as giving or offering to give that instruction. It does
2 not include a public school or university of this state or
3 an institution of higher learning accredited and approved
4 for carrying on collegiate work.

5 (16) "Board" means the board of aeronautics provided for
6 in 2-15-1812.

7 (17) "Bonds" means bonds, notes, interim certificates,
8 debentures, or similar obligations issued by an authority
9 under chapter 11.

10 (18) "Building or structure" means any edifice,
11 structure, or construction of any kind, character, or
12 description and any object of natural growth erected,
13 constructed, grown, located or proposed to be erected,
14 constructed, grown, or located within the area described in
15 67-5-201 hereof as safety zones, including any edifice,
16 structure, or construction or object within said restricted
17 zones erected, constructed, placed, or located on or over
18 land or water, or both.

19 (19) "Civil aircraft" means an aircraft other than a
20 public aircraft.

21 (20) "Commercial air operator" means any person owning,
22 controlling, operating, or managing aircraft for any
23 commercial purpose for compensation.

24 (21) "Department" means the department of commerce
25 provided for in Title 2, chapter 15, part 18.

1 (22) "Established perimeter of an airport or landing
 2 field", for the purposes of computing all distances and
 3 elevations as contemplated by chapter 5, shall be the metes
 4 and bounds and elevations along the respective sides thereof
 5 as determined by the United States government, the state of
 6 Montana, the several counties, the several municipalities,
 7 or other public authority owning, leasing, controlling,
 8 operating, or maintaining such airport or landing field, the
 9 determination and definition to be evidenced by plat showing
 10 the metes, bounds, and elevations to be filed in and among
 11 the records of said public authority for official purposes
 12 and subject to inspection and examination at all reasonable
 13 times by any interested persons.

14 (23) "Flying club" means a person other than an
 15 individual which, neither for profit nor reward, owns,
 16 leases, or uses one or more aircraft for the purpose of
 17 instruction or pleasure, or both.

18 (24) "Governing body" means ~~bodies--and--boards--by~~
 19 ~~whatever-names-they-are-known-having-charge-of-finances--and~~
 20 ~~management---of--a--municipality~~ a city commission, town
 21 council, or county commission and the boards, departments,
 22 and divisions of those entities by whatever names they are
 23 known that have charge of finances and management of a
 24 municipality or a county.

25 (25) "Height of buildings and structures" means, for the

1 purposes of chapter 5, the vertical distance measured from
 2 the ground or surface level of the airport or landing field
 3 on the side adjacent to the said building or structure to
 4 the level of the highest point of the building or structure.

5 (26) "Municipal airport authority" or "municipal
 6 authority" means a municipal airport authority created under
 7 67-11-102.

8 (27) "Municipality" or "political subdivision" means a
 9 county, city, village, or town of this state and any other
 10 political subdivision, public corporation, authority, or
 11 district in this state authorized by law to acquire,
 12 establish, construct, maintain, improve, and operate
 13 airports and other air navigation facilities.

14 (28) "Navigable air space" means air space above the
 15 minimum altitudes of flight prescribed by the laws of this
 16 state or by regulations of the department.

17 (29) "Operation of aircraft" or "operate aircraft" means
 18 the use of aircraft for the purpose of air navigation and
 19 includes the navigation or piloting of aircraft. A person
 20 who causes or authorizes the operation of aircraft, whether
 21 with or without the right of legal control (in the capacity
 22 of owner, lessee, or otherwise) of the aircraft, operates
 23 the aircraft.

24 (30) "Person" means an individual, firm, partnership,
 25 corporation (private, municipal, or public), company,

1 association, joint-stock association, or body politic and
2 includes a trustee, receiver, assignee, or other similar
3 representative.

4 (31) "Public aircraft" means an aircraft used
5 exclusively in the service of any government or of a
6 political subdivision of a government, including the
7 government of a state, territory, or possession of the
8 United States, or the District of Columbia but not including
9 a government-owned aircraft engaged in carrying persons or
10 property for commercial purposes.

11 (32) "Real property" means lands, structures, buildings,
12 and interests in land, including lands under water and
13 riparian rights, and all things and rights usually included
14 within the term real property, including not only fee simple
15 absolute but also all lesser interests, such as easements,
16 rights-of-way, uses, leases, licenses, and all other
17 incorporeal hereditaments and every estate, interest, or
18 right, legal or equitable, pertaining to real property.

19 (33) "Regional airport authority" or "regional
20 authority" means a regional airport authority created under
21 67-11-103.

22 (34) "Restricted landing area" means an area of land,
23 water, or both, which is used or is made available for the
24 landing and takeoff of aircraft, the use of which shall,
25 except in case of emergency, be only as provided by the

1 department.

2 (35) "State airway" means a route in the navigable air
3 space over and above the lands or waters of this state,
4 designated by the department as a route suitable for air
5 navigation.

6 (36) "Structure" means any object constructed or
7 installed by man, including, but without limitation,
8 buildings, towers, smokestacks, and overhead transmission
9 lines.

10 (37) "Tree" means any object of natural growth."

11 **Section 7.** Section 67-4-201, MCA, is amended to read:

12 **"67-4-201. Designation of airport influence areas.** (1)
13 A local government with an airport shall designate an
14 airport influence area around the airport ~~within 3 years~~
15 ~~from July 17, 1977.~~ The designation shall be based on federal
16 aviation administration rules and guidelines. However, no
17 airport influence area may extend more than 10,000 feet out
18 from the thresholds of the primary instrument approach
19 runway or exceed 1 mile in width on each side of the primary
20 instrument approach runway and its extended centerline. A
21 public hearing shall be held by the local government
22 following the procedure prescribed in 67-4-302.

23 (2) A map of the designation shall be filed with the
24 county clerk and recorders of the affected counties and the
25 city clerks of the affected cities and towns."

1 **Section 8.** Section 67-4-202, MCA, is amended to read:

2 "67-4-202. Temporary effect of designation. Upon the
3 designation of an airport influence area, the use of land
4 within the airport influence area shall be restricted as to
5 height consistent with part 77, federal aeronautics
6 regulations, until rules are adopted pursuant to this
7 chapter. This restriction does not affect nonconforming uses
8 and areas already zoned on July 1, 1977, and may not be
9 imposed for a period of more than 1 year. After the
10 designation of an airport influence area, no person may
11 recover from a local government, airport authority, airport
12 operator, or airport owner damages caused by noise and
13 vibrations from normal and anticipated normal airport
14 operations."

15 **Section 9.** Section 67-4-313, MCA, is amended to read:

16 "67-4-313. Variance. (1) Any person desiring to erect
17 or increase the height of a structure, permit the growth of
18 a tree, or use his property in violation of the rules
19 adopted pursuant to this chapter may apply to the board of
20 airport hazard adjustment for a variance from the rules.

21 (2) A variance shall be granted where a literal
22 application or enforcement of the rules would result in
23 substantial practical difficulty or unnecessary hardship and
24 where the variance would not be contrary to the public
25 interest.

1 (3) A variance shall be granted for a nonconforming use
2 where there is no immediate hazard to safe flying operations
3 or persons and property in the vicinity of the airport and
4 where the noise or vibrations from normal and anticipated
5 normal operations of the airport would not be likely to
6 cause structural damage.

7 (4) Within an airport influence area a person who
8 obtains a variance for building a structure which is a
9 nonconforming use under rules adopted pursuant to this
10 chapter or a person who takes or buys property subject to
11 such a variance is on notice that the airport existed before
12 the variance was granted and that normal and anticipated
13 normal operations of the airport will result in noise and
14 vibrations being projected over the property. Furthermore, a
15 person using a structure built under a variance may not
16 collect damages from a local government, airport authority,
17 airport operator, or airport owner for interference with the
18 enjoyment of that structure caused by noise and vibrations
19 from normal and anticipated normal airport operations."

20 **Section 10.** Section 67-5-211, MCA, is amended to read:

21 "67-5-211. Enforcement. It shall be the duty and
22 authority of every public body or governmental authority
23 owning, operating, or maintaining a public airport or
24 landing field or that creates a municipal or regional
25 airport authority for that purpose to enforce the provisions

1 of this chapter as pertains to areas surrounding the
 2 particular airport under the control of such body or
 3 authority, the same to be enforced in either the court of
 4 law or of equity in the state of Montana having jurisdiction
 5 of such action. Cases are to be instituted in the name of
 6 the governmental body charged hereunder with the enforcement
 7 hereof. Such action may be to prevent the erection,
 8 construction, or maintenance of such buildings or other
 9 structures or parts of buildings or structures as may exceed
 10 the height limits fixed by this law or to restrain, correct,
 11 or abate any such violation and to prevent the occupancy and
 12 use of any part of a building or structure erected in
 13 violation of this law."

14 **Section 11.** Section 67-10-302, MCA, is amended to read:

15 "67-10-302. Granting of operation and use privileges.

16 (1) In operating an airport or air navigation facility
 17 owned, leased, or controlled by a municipality, such
 18 municipality may, except as may be limited by the terms and
 19 conditions of any grant, loan, or agreement pursuant to
 20 67-10-405, enter into contracts, leases, and other
 21 arrangements for a term not exceeding 20 years with any
 22 persons:

23 (a) granting the privilege of using or improving such
 24 airport or air navigation facility or any portion or
 25 facility thereof or space therein for commercial purposes;

1 (b) conferring the privilege of supplying goods,
 2 commodities, things, services, or facilities at such airport
 3 or air navigation facility; or

4 (c) making available services to be furnished by the
 5 municipality or its agents at such airport or air navigation
 6 facility.

7 (2) In each case the municipality may establish the
 8 terms and conditions and fix the charges, rentals, or fees
 9 for the privileges or services, which shall be reasonable
 10 and uniform for the same class of privilege or service ~~and~~
 11 ~~shall--be--established--with--due--regard--to--the--property--and~~
 12 ~~improvements--used--and--the--expenses--of--operation--to--the~~
 13 ~~municipality.~~

14 (3) Except as may be limited by the terms and
 15 conditions of any grant, loan, or agreement pursuant to
 16 67-10-405, a municipality may by contract, lease, or other
 17 arrangement, upon a consideration fixed by it, grant to any
 18 qualified person for a term not to exceed 20 years the
 19 privilege of operating, as agent of the municipality or
 20 otherwise, any airport owned or controlled by the
 21 municipality; provided that no such person shall be granted
 22 any authority to operate such an airport other than as a
 23 public airport or to enter into any contracts, leases, or
 24 other arrangements in connection with the operation of the
 25 airport which the municipality might not have undertaken

1 under subsections (1) and (2) of this section."

2 **Section 12.** Section 67-11-211, MCA, is amended to read:

3 "67-11-211. Granting of operation and use privileges.

4 (1) In connection with the operation of an airport or air
5 navigation facility owned or controlled by an authority, the
6 authority may enter into contracts, leases, and other
7 arrangements for terms not to exceed 30 years with any
8 persons:

9 (a) granting the privilege of using or improving the
10 airport or air navigation facility or any portion or
11 facility thereof or space therein for commercial purposes;

12 (b) conferring the privilege of supplying goods,
13 commodities, things, services, or facilities at the airport
14 or air navigation facility; and

15 (c) making available services to be furnished by the
16 authority or its agents at the airport or air navigation
17 facility.

18 (2) In each case the authority may establish the terms
19 and conditions and fix the charges, rentals, or fees for the
20 privileges or services, which must be reasonable and uniform
21 for the same class of privilege or service ~~and--must--be~~
22 ~~established-with-due-regard-to-the-property-and-improvements~~
23 ~~used--and--the--expenses--of--operation--to--the--authority;~~
24 provided that in no case may the public be deprived of its
25 rightful, equal, and uniform use of the airport, air

1 navigation facility, or portion of facility thereof.

2 (3) Except as may be limited by the terms and
3 conditions of any grant, loan, or agreement authorized by
4 67-11-305, an authority may by contract, lease, or other
5 arrangement, upon a consideration fixed by it, grant to any
6 qualified person for a term not to exceed 30 years the
7 privilege of operating, as agent of the authority or
8 otherwise, any airport owned or controlled by the authority;
9 provided that no person may be granted any authority to
10 operate an airport other than as a public airport or to
11 enter into any contracts, leases, or other arrangements in
12 connection with the operation of the airport which the
13 authority might not have undertaken under subsections (1)
14 and (2) of this section."

15 **Section 13.** Section 67-11-232, MCA, is amended to read:

16 "67-11-232. Airport property -- disposal. Except as may
17 be limited by the terms and conditions of any grant, loan,
18 or agreement authorized by 67-11-305, an authority may, by
19 sale, lease, or otherwise, dispose of any airport, air
20 navigation facility, or other property or portion thereof or
21 interest therein acquired pursuant to this chapter. Such
22 disposal by sale, lease, or otherwise shall be in accordance
23 with the adopted rules of the authority or the laws of this
24 state governing the disposition-of-other-public disposal of
25 county property, except that in the case of disposal to

1 another authority, a municipality, or an agency of the state
 2 or federal government for use and operation as a public
 3 airport, the sale, lease, or other disposal may be effected
 4 in such manner and upon such terms as the commissioners of
 5 the authority may deem in the best interest of civil
 6 aviation."

7 **Section 14.** Section 67-11-304, MCA, is amended to read:

8 "67-11-304. **Debt service fund.** An airport authority may
 9 create a debt service fund and accumulate therein the sum of
 10 \$5 \$10 million together with interest thereon for the use,
 11 repairs, maintenance, and capital outlays of an airport."

12 **Section 15.** Section 67-11-306, MCA, is amended to read:

13 "67-11-306. **Tax exemption.** Any property in this state
 14 acquired by an authority for airport purposes, pursuant to
 15 the provisions of this chapter, and any income derived by
 16 the authority from the ownership, operation, or control
 17 thereof shall be exempt from taxation and assessments to the
 18 same extent as other property used for public purpose."

19 **Section 16.** Section 70-17-101, MCA, is amended to read:

20 "70-17-101. **Servitudes attached to land.** The following
 21 land burdens or servitudes upon land may be attached to
 22 other land as incidents or appurtenances and are then called
 23 easements:

- 24 (1) the right of pasture;
 25 (2) the right of fishing;

- 1 (3) the right of taking game;
 2 (4) the right-of-way;
 3 (5) the right of taking water, wood, minerals, and
 4 other things;
 5 (6) the right of transacting business upon land;
 6 (7) the right of conducting lawful sports upon land;
 7 (8) the right of receiving air, light, or heat from or
 8 over or discharging the same upon or over land;
 9 (9) the right of receiving water from or discharging
 10 the same upon land;
 11 (10) the right of flooding land;
 12 (11) the right of having water flow without diminution
 13 or disturbance of any kind;
 14 (12) the right of using a wall as a party wall;
 15 (13) the right of receiving more than natural support
 16 from adjacent land or things affixed thereto;
 17 (14) the right of having the whole of a division fence
 18 maintained by a coterminous owner;
 19 (15) the right of having public conveyances stopped or
 20 of stopping the same on land;
 21 (16) the right of a seat in church;
 22 (17) the right of burial;
 23 (18) the right of conserving open space to preserve
 24 park, recreational, historic, aesthetic, cultural, and
 25 natural values on or related to land;

1 (19) the right of receiving sunlight or wind for
 2 recognized nonfossil forms of energy generation; and
 3 (20) the right of navigation and resulting noise
 4 intrusion."

5 **Section 17.** Section 70-20-304, MCA, is amended to read:

6 **"70-20-304. Implied covenants -- free from encumbrance.**

7 (1) From the use of the word "grant" in any conveyance by
 8 which an estate of inheritance or fee simple or possessory
 9 title is to be passed, the following covenants and none
 10 other on the part of the grantor for himself and his heirs
 11 to the grantee, his heirs, and assigns are implied unless
 12 restrained by express terms contained in such conveyance:

13 (a) that previous to the time of the execution of such
 14 conveyance the grantor has not conveyed the same estate or
 15 any right, title, or interest therein to any person other
 16 than the grantee;

17 (b) that such estate is at the time of the execution of
 18 such conveyance free from encumbrances done, made, or
 19 suffered by the grantor or any person claiming under him; and
 20 and

21 (c) that the estate is at the time of the execution of
 22 the conveyance not within an airport influence area and is
 23 not adversely affected by noise, vibrations, or other
 24 incidents of operation from an airport.

25 (2) Such covenants may be sued upon in the same manner

1 as if they had been expressly inserted in the conveyance."

2 **NEW SECTION. Section 18. Airport noise.** No cause of
 3 action exists or may be asserted against an airport
 4 authority, airport operator, airport owner, or local
 5 government for damages to persons or property by reason of
 6 noise generated in conjunction with the operation of an
 7 airport.

8 **NEW SECTION. Section 19. Requirements for approval of**
 9 **grant of immunity to public entity from suit --**
 10 **severability.** Because the amendment to 2-9-111 grants
 11 immunity from suit to airport authorities, a vote of
 12 two-thirds of the members of each house of the legislature
 13 is required for enactment of the amendment to 2-9-111. If
 14 the amendment to 2-9-111 is not approved by the required
 15 vote, the amendment is void and the remaining sections of
 16 [this act] are valid and remain in effect in all valid
 17 applications upon enactment.

18 **NEW SECTION. Section 20. Effective date.** [This act] is
 19 effective July 1, 1991.

-End-

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0361, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to generally revise the Airport Authorities Act; limiting the liability of airport authorities, airport operators, and airport owners; exempting airport authorities from state vacation and sick leave requirements; providing that officers of airport authorities are officers of nonprofit corporations and therefore immune from liability; establishing an implied covenant that conveyed real property is not within an airport influence area; providing that a local government shall designate an airport influence area; providing airport operator latitude in determining reasonableness of charges; increasing the airport authority debt service fund limit to reflect economic change; providing airport authorities exemptions from assessments; providing that the right of navigation and its resulting noise are a servitude attached to the land; providing airport authorities, airport operators, and airport owners protection from liability for noise; amending existing statutes; and providing an effective date.

ASSUMPTIONS:


1. The proposed legislation does not impact the revenues or expenditures of any state agency or state operated airports.

FISCAL IMPACT:

None.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

The proposed legislation essentially coaligns the Airport Authorities Act with other state laws pertaining to local governments. The proposed legislation does not appear to cause local governments to perform functions or responsibilities which they are not currently performing.



 ROD SUNDSTED, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning 2-16-91



 GENE THAYER, PRIMARY SPONSOR DATE
 3-8-91

Fiscal Note for SB0361, as introduced.

SB 361

APPROVED BY COMM. ON
BUSINESS & INDUSTRY

1 SENATE BILL NO. 361

2 INTRODUCED BY THAYER, SWYSGOOD, HAMMOND, MAZUREK, DOHERTY,

3 NOBLE, CRIPPEN, RYE

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE

6 AIRPORT AUTHORITIES ACT; LIMITING THE LIABILITY OF AIRPORT

7 AUTHORITIES, AIRPORT OPERATORS, AND AIRPORT OWNERS;

8 EXEMPTING AIRPORT AUTHORITIES FROM STATE VACATION AND SICK

9 LEAVE REQUIREMENTS; PROVIDING THAT OFFICERS OF AIRPORT

10 AUTHORITIES ARE OFFICERS OF NONPROFIT CORPORATIONS AND

11 THEREFORE IMMUNE FROM LIABILITY; ESTABLISHING AN IMPLIED

12 COVENANT THAT CONVEYED REAL PROPERTY IS NOT WITHIN AN

13 AIRPORT INFLUENCE AREA; PROVIDING THAT A LOCAL GOVERNMENT

14 SHALL DESIGNATE AN AIRPORT INFLUENCE AREA; PROVIDING AIRPORT

15 OPERATOR LATITUDE IN DETERMINING REASONABLENESS OF CHARGES;

16 INCREASING THE AIRPORT AUTHORITY DEBT SERVICE FUND LIMIT TO

17 REFLECT ECONOMIC CHANGE; PROVIDING AIRPORT AUTHORITIES

18 EXEMPTIONS FROM ASSESSMENTS; PROVIDING THAT THE RIGHT OF

19 NAVIGATION AND ITS RESULTING NOISE ARE A SERVITUDE ATTACHED

20 TO THE LAND; PROVIDING--AIRPORT--AUTHORITIES,--AIRPORT

21 OPERATORS,--AND--AIRPORT--OWNERS--PROTECTION--FROM--LIABILITY--FOR

22 NOISE; AMENDING SECTIONS 2-9-101, 2-9-111, 2-18-601,

23 27-1-732, 30-11-111, 67-1-101, 67-4-201, 67-4-202, 67-4-313,

24 67-5-211, 67-10-302, 67-11-211, 67-11-232, 67-11-304,

25 67-11-306, 70-17-101, AND 70-20-304, MCA; AND PROVIDING AN

1 EFFECTIVE DATE."

2

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

4 **Section 1.** Section 2-9-101, MCA, is amended to read:

5 "2-9-101. (Temporary) Definitions. As used in parts 1

6 through 3 of this chapter, the following definitions apply:

7 (1) "Claim" means any claim against a governmental

8 entity, for money damages only, which any person is legally

9 entitled to recover as damages because of personal injury or

10 property damage caused by a negligent or wrongful act or

11 omission committed by any employee of the governmental

12 entity while acting within the scope of his employment,

13 under circumstances where the governmental entity, if a

14 private person, would be liable to the claimant for such

15 damages under the laws of the state. For purposes of this

16 section and the limit of liability contained in 2-9-108, all

17 claims which arise or derive from personal injury to or

18 death of a single person, or damage to property of a person,

19 regardless of the number of persons or entities claiming

20 damages thereby, are considered one claim.

21 (2) "Employee" means an officer, employee, or servant

22 of a governmental entity, including elected or appointed

23 officials, and persons acting on behalf of the governmental

24 entity in any official capacity temporarily or permanently

25 in the service of the governmental entity whether with or



1 without compensation, but the term employee shall not mean a
2 person or other legal entity while acting in the capacity of
3 an independent contractor under contract to the governmental
4 entity to which parts 1 through 3 apply in the event of a
5 claim.

6 (3) "Governmental entity" means and includes the state
7 and political subdivisions as herein defined.

8 (4) "Personal injury" means any injury resulting from
9 libel, slander, malicious prosecution, or false arrest, any
10 bodily injury, sickness, disease, or death sustained by any
11 person and caused by an occurrence for which the state may
12 be held liable.

13 (5) "Political subdivision" means any county, city,
14 municipal corporation, school district, special improvement
15 or taxing district, or any other political subdivision or
16 public corporation.

17 (6) "Property damage" means injury or destruction to
18 tangible property, including loss of use thereof, caused by
19 an occurrence for which the state may be held liable.

20 (7) "State" means the state of Montana or any office,
21 department, agency, authority, commission, board,
22 institution, hospital, college, university, or other
23 instrumentality thereof. (Terminates June 30, 1991--sec. 1,
24 Ch. 228, L. 1987.)

25 2-9-101. (Effective July 1, 1991) Definitions. As used

1 in parts 1 through 3 of this chapter, the following
2 definitions apply:

3 (1) "Claim" means any claim against a governmental
4 entity, for money damages only, which any person is legally
5 entitled to recover as damages because of personal injury or
6 property damage caused by a negligent or wrongful act or
7 omission committed by any employee of the governmental
8 entity while acting within the scope of his employment,
9 under circumstances where the governmental entity, if a
10 private person, would be liable to the claimant for such
11 damages under the laws of the state. For purposes of this
12 section, all claims which arise or derive from personal
13 injury to or death of a single person, or damage to property
14 of a person, regardless of the number of persons or entities
15 claiming damages thereby, are considered one claim.

16 (2) "Employee" means an officer, employee, or servant
17 of a governmental entity, including elected or appointed
18 officials, and persons acting on behalf of the governmental
19 entity in any official capacity temporarily or permanently
20 in the service of the governmental entity whether with or
21 without compensation, but the term employee shall not mean a
22 person or other legal entity while acting in the capacity of
23 an independent contractor under contract to the governmental
24 entity to which parts 1 through 3 apply in the event of a
25 claim.

1 (3) "Governmental entity" means and includes the state
2 and political subdivisions as herein defined.

3 (4) "Personal injury" means any injury resulting from
4 libel, slander, malicious prosecution, or false arrest, any
5 bodily injury, sickness, disease, or death sustained by any
6 person and caused by an occurrence for which the state may
7 be held liable.

8 (5) "Political subdivision" means any county, city,
9 municipal corporation, airport authority, school district,
10 special improvement or taxing district, or any other
11 political subdivision or public corporation.

12 (6) "Property damage" means injury or destruction to
13 tangible property, including loss of use thereof, caused by
14 an occurrence for which the state may be held liable.

15 (7) "State" means the state of Montana or any office,
16 department, agency, authority, commission, board,
17 institution, hospital, college, university, or other
18 instrumentality thereof."

19 **Section 2.** Section 2-9-111, MCA, is amended to read:

20 "2-9-111. Immunity from suit for legislative acts and
21 omissions. (1) As used in this section:

22 (a) the term "governmental entity" includes the state,
23 counties, municipalities, airport authorities, and school
24 districts;

25 (b) the term "legislative body" includes the

1 legislature vested with legislative power by Article V of
2 The Constitution of the State of Montana and any local
3 governmental entity given legislative powers by statute,
4 including school boards and airport authorities.

5 (2) A governmental entity is immune from suit for an
6 act or omission of its legislative body or a member,
7 officer, or agent thereof.

8 (3) A member, officer, or agent of a legislative body
9 is immune from suit for damages arising from the lawful
10 discharge of an official duty associated with the
11 introduction or consideration of legislation or action by
12 the legislative body.

13 (4) The immunity provided for in this section does not
14 extend to any tort committed by the use of a motor vehicle,
15 aircraft, or other means of transportation."

16 **Section 3.** Section 2-18-601, MCA, is amended to read:

17 "2-18-601. Definitions. For the purpose of this part,
18 except 2-18-620, the following definitions apply:

19 (1) "Agency" means any legally constituted department,
20 board, or commission of state, county, or city government or
21 any political subdivision thereof, except an airport
22 authority.

23 (2) "Employee" means any person employed by an agency
24 except elected state, county, and city officials,
25 schoolteachers, and persons contracted as independent

1 contractors or hired under personal services contracts.

2 (3) "Permanent employee" means an employee who is
3 assigned to a position designated as permanent on the
4 appropriate list of authorized positions referenced in
5 2-18-206 and approved as such in the biennium budget.

6 (4) "Part-time employee" means an employee who normally
7 works less than 40 hours a week.

8 (5) "Full-time employee" means an employee who normally
9 works 40 hours a week.

10 (6) "Temporary employee" means an employee assigned to
11 a position designated as temporary on the appropriate agency
12 list of authorized positions referenced in 2-18-206, created
13 for a definite period of time not to exceed 9 months.

14 (7) "Seasonal employee" means an employee assigned to a
15 position designated as seasonal on the appropriate agency
16 list of authorized positions referenced in 2-18-206 and for
17 which the agency has a permanent need but which is
18 interrupted by the seasonal nature of the assignment.

19 (8) "Vacation leave" means a leave of absence with pay
20 for the purpose of rest, relaxation, or personal business at
21 the request of the employee and with the concurrence of the
22 employer.

23 (9) "Sick leave" means a leave of absence with pay for
24 a sickness suffered by an employee or his immediate family.

25 (10) "Sick-pay plan" means a plan that:

1 (a) provides for an agency to make payments in lieu of
2 wages to employees on account of sickness or accident
3 disability; and

4 (b) meets the requirements of 42 U.S.C. 409(b) or (d).

5 (11) "Transfer" means a change of employment from one
6 agency to another agency in the same jurisdiction without a
7 break in service.

8 (12) "Continuous employment" means working within the
9 same jurisdiction without a break in service of more than 5
10 working days or without a continuous absence without pay of
11 more than 15 working days.

12 (13) "Break in service" means a period of time in excess
13 of 5 working days when the person is not employed and that
14 severs continuous employment."

15 **Section 4.** Section 27-1-732, MCA, is amended to read:

16 **"27-1-732. Immunity of nonprofit corporation officers,**
17 **directors, and volunteers.** (1) No officer, director, or
18 volunteer of a nonprofit corporation is individually liable
19 for any action or omission made in the course and scope of
20 his official capacity on behalf of the nonprofit
21 corporation. This section does not apply to liability for
22 willful or wanton misconduct. The immunity granted by this
23 section does not apply to the liability of a nonprofit
24 corporation.

25 (2) For purposes of this section, "nonprofit

1 corporation" means:

2 (a) an organization exempt from taxation under section
3 501(c) of the Internal Revenue Code of 1954; or

4 (b) a corporation or organization which is eligible for
5 or has been granted by the department of revenue tax exempt
6 status under the provisions of 15-31-102; or

7 (c) an airport authority."

8 **Section 5.** Section 30-11-111, MCA, is amended to read:

9 "30-11-111. **Contract for sale of real property.** (1) No
10 agreement for the sale of real property or of any interest
11 therein is valid unless the same, or some note or memorandum
12 thereof, be in writing and subscribed by the party to be
13 charged or his agent thereunto authorized in writing; but
14 this does not abridge the power of any court to compel the
15 specific performance of any agreement for the sale of real
16 property in case of part performance thereof.

17 ~~(2) In any agreement for the sale of real property or~~
18 ~~of any interest in real property, the seller shall~~
19 ~~affirmatively disclose to the purchaser whether the real~~
20 ~~property is within an airport hazard area or airport~~
21 ~~influence area. A person may not recover from a local~~
22 ~~government, airport authority, airport operator, or airport~~
23 ~~owner damages caused by normal and anticipated normal~~
24 ~~airport operations by reason of the seller's failure to make~~
25 ~~the disclosure required by this section.~~ A person who

1 acquires an interest in real property with actual or
2 constructive knowledge that the property is within an
3 airport operations area may not recover damages caused by
4 normal and anticipated normal airport operations."

5 **Section 6.** Section 67-1-101, MCA, is amended to read:

6 "67-1-101. **Definitions.** Unless the context requires
7 otherwise, in this title the following definitions apply:

8 (1) "Aeronautics" means transportation by aircraft; the
9 operation, construction, repair, or maintenance of aircraft,
10 aircraft power plants and accessories, including the repair,
11 packing, and maintenance of parachutes; the design,
12 establishment, construction, extension, operation,
13 improvement, repair, or maintenance of airports, restricted
14 landing areas, or other air navigation facilities; and air
15 instruction.

16 (2) "Aeronautics instructor" means an individual
17 engaged in giving instruction or offering to give
18 instruction in aeronautics, either in flying or ground
19 subjects, or both, for hire or reward, without advertising
20 that occupation, without calling his facilities an "air
21 school" or anything equivalent to an "air school", and
22 without employing or using other instructors. It does not
23 include an instructor in a public school or university of
24 this state or an institution of higher learning accredited
25 and approved for carrying on collegiate work while engaged

1 in his duties as an instructor.

2 (3) "Air carrier" means a person or corporation owning,
3 controlling, operating, or managing aircraft as a scheduled
4 common carrier of passengers or freight for compensation
5 within this state.

6 (4) "Aircraft" means a contrivance used or designed for
7 navigation of or flight in the air.

8 (5) "Air instruction" means the imparting of
9 aeronautical information by an aeronautics instructor or in
10 or by an air school or flying club.

11 (6) "Airman" means an individual who engages, as the
12 person in command or as pilot, mechanic, or member of the
13 crew, in the navigation of aircraft while under way; an
14 individual who is directly in charge of the inspection,
15 maintenance, overhauling, or repair of aircraft engines,
16 propellers, or appliances (excepting individuals employed
17 outside the United States, an individual employed by a
18 manufacturer of aircraft, aircraft engines, propellers, or
19 appliances to perform duties as inspector or mechanic in
20 connection with them, and an individual performing
21 inspection or mechanical duties in connection with aircraft
22 owned or operated by him) and an individual who serves in
23 the capacity of aircraft dispatcher or air traffic control
24 tower operator.

25 (7) "Air navigation" means the operation or navigation

1 of aircraft in the air space over this state or upon an
2 airport or restricted landing area within this state.

3 (8) "Air navigation facility" means a facility used in,
4 available for use in, or designed for use in aid of air
5 navigation, including airports, restricted landing areas,
6 and structures, mechanisms, lights, beacons, marks,
7 communicating systems, or other instrumentalities or devices
8 used or useful as an aid or constituting an advantage or
9 convenience to the safe taking off, navigation, and landing
10 of aircraft or the safe and efficient operation or
11 maintenance of an airport or restricted area and any
12 combination of these facilities.

13 (9) "Airport" means an area of land or water, except a
14 restricted landing area, which is designed for the landing
15 and takeoff of aircraft, whether or not facilities are
16 provided for the shelter, servicing, or repair of aircraft
17 or for receiving or discharging passengers or cargo, and all
18 appurtenant areas used or suitable for airport buildings or
19 other airport facilities and all appurtenant rights-of-way.

20 (10) "Airport and landing field" means any area of land,
21 water, or both, which is used or is made available for the
22 landing and takeoff of aircraft, owned, leased, controlled,
23 operated, or maintained by the United States, the state of
24 Montana, any county thereof or any municipality, or any of
25 the authorized agencies or branches thereof within the state

1 of Montana.

2 (11) "Airport authority" or "authority" means a regional
3 airport authority or municipal airport authority created
4 under chapter 11 and the governing body of a municipality
5 which has determined to exercise the powers of a municipal
6 airport authority under 67-11-102.

7 (12) "Airport hazard" means a structure, object of
8 natural growth, or use of land which obstructs the air space
9 required for the flight of aircraft in landing or taking off
10 at an airport or restricted landing area or is otherwise
11 hazardous to landing or taking off.

12 (13) "Airport hazard area" means any area of land or
13 water upon which an airport hazard might be established if
14 not prevented as provided in this title.

15 (14) "Airport protection privileges" means easements
16 through or other interests in air space over land or water,
17 interests in airport hazards outside the boundaries of
18 airports or restricted landing areas, and other protection
19 privileges, the acquisition or control of which is necessary
20 to ensure safe approaches to the landing areas of airports
21 and restricted landing areas and the safe and efficient
22 operation thereof.

23 (15) "Air school" means a person engaged in giving or
24 offering to give instruction in aeronautics, either in
25 flying or ground subjects, or both, for or without hire or

1 reward, and advertising, representing, or holding himself
2 out as giving or offering to give that instruction. It does
3 not include a public school or university of this state or
4 an institution of higher learning accredited and approved
5 for carrying on collegiate work.

6 (16) "Board" means the board of aeronautics provided for
7 in 2-15-1812.

8 (17) "Bonds" means bonds, notes, interim certificates,
9 debentures, or similar obligations issued by an authority
10 under chapter 11.

11 (18) "Building or structure" means any edifice,
12 structure, or construction of any kind, character, or
13 description and any object of natural growth erected,
14 constructed, grown, located or proposed to be erected,
15 constructed, grown, or located within the area described in
16 67-5-201 hereof as safety zones, including any edifice,
17 structure, or construction or object within said restricted
18 zones erected, constructed, placed, or located on or over
19 land or water, or both.

20 (19) "Civil aircraft" means an aircraft other than a
21 public aircraft.

22 (20) "Commercial air operator" means any person owning,
23 controlling, operating, or managing aircraft for any
24 commercial purpose for compensation.

25 (21) "Department" means the department of commerce

1 provided for in Title 2, chapter 15, part 18.

2 (22) "Established perimeter of an airport or landing
3 field", for the purposes of computing all distances and
4 elevations as contemplated by chapter 5, shall be the metes
5 and bounds and elevations along the respective sides thereof
6 as determined by the United States government, the state of
7 Montana, the several counties, the several municipalities,
8 or other public authority owning, leasing, controlling,
9 operating, or maintaining such airport or landing field, the
10 determination and definition to be evidenced by plat showing
11 the metes, bounds, and elevations to be filed in and among
12 the records of said public authority for official purposes
13 and subject to inspection and examination at all reasonable
14 times by any interested persons.

15 (23) "Flying club" means a person other than an
16 individual which, neither for profit nor reward, owns,
17 leases, or uses one or more aircraft for the purpose of
18 instruction or pleasure, or both.

19 (24) "Governing body" means ~~bodies--and--boards--by~~
20 ~~whatever-names-they-are-known-having-charge-of-finances--and~~
21 ~~management---of--a--municipality~~ a city commission, town
22 council, or county commission and the boards, departments,
23 and divisions of those entities by whatever names they are
24 known that have charge of finances and management of a
25 municipality or a county.

1 (25) "Height of buildings and structures" means, for the
2 purposes of chapter 5, the vertical distance measured from
3 the ground or surface level of the airport or landing field
4 on the side adjacent to the said building or structure to
5 the level of the highest point of the building or structure.

6 (26) "Municipal airport authority" or "municipal
7 authority" means a municipal airport authority created under
8 67-11-102.

9 (27) "Municipality" or "political subdivision" means a
10 county, city, village, or town of this state and any other
11 political subdivision, public corporation, authority, or
12 district in this state authorized by law to acquire,
13 establish, construct, maintain, improve, and operate
14 airports and other air navigation facilities.

15 (28) "Navigable air space" means air space above the
16 minimum altitudes of flight prescribed by the laws of this
17 state or by regulations of the department.

18 (29) "Operation of aircraft" or "operate aircraft" means
19 the use of aircraft for the purpose of air navigation and
20 includes the navigation or piloting of aircraft. A person
21 who causes or authorizes the operation of aircraft, whether
22 with or without the right of legal control (in the capacity
23 of owner, lessee, or otherwise) of the aircraft, operates
24 the aircraft.

25 (30) "Person" means an individual, firm, partnership,

1 corporation (private, municipal, or public), company,
2 association, joint-stock association, or body politic and
3 includes a trustee, receiver, assignee, or other similar
4 representative.

5 (31) "Public aircraft" means an aircraft used
6 exclusively in the service of any government or of a
7 political subdivision of a government, including the
8 government of a state, territory, or possession of the
9 United States, or the District of Columbia but not including
10 a government-owned aircraft engaged in carrying persons or
11 property for commercial purposes.

12 (32) "Real property" means lands, structures, buildings,
13 and interests in land, including lands under water and
14 riparian rights, and all things and rights usually included
15 within the term real property, including not only fee simple
16 absolute but also all lesser interests, such as easements,
17 rights-of-way, uses, leases, licenses, and all other
18 incorporeal hereditaments and every estate, interest, or
19 right, legal or equitable, pertaining to real property.

20 (33) "Regional airport authority" or "regional
21 authority" means a regional airport authority created under
22 67-11-103.

23 (34) "Restricted landing area" means an area of land,
24 water, or both, which is used or is made available for the
25 landing and takeoff of aircraft, the use of which shall,

1 except in case of emergency, be only as provided by the
2 department.

3 (35) "State airway" means a route in the navigable air
4 space over and above the lands or waters of this state,
5 designated by the department as a route suitable for air
6 navigation.

7 (36) "Structure" means any object constructed or
8 installed by man, including, but without limitation,
9 buildings, towers, smokestacks, and overhead transmission
10 lines.

11 (37) "Tree" means any object of natural growth."

12 **Section 7.** Section 67-4-201, MCA, is amended to read:

13 **"67-4-201. Designation of airport influence areas.** (1)
14 A local government with an airport shall designate an
15 airport influence area around the airport ~~within 3 years~~
16 ~~from July 17, 1977.~~ The designation shall be based on federal
17 aviation administration rules and guidelines. However, no
18 airport influence area may extend more than 10,000 feet out
19 from the thresholds of the primary instrument approach
20 runway or exceed 1 mile in width on each side of the primary
21 instrument approach runway and its extended centerline. A
22 public hearing shall be held by the local government
23 following the procedure prescribed in 67-4-302.

24 (2) A map of the designation shall be filed with the
25 county clerk and recorders of the affected counties and the

1 city clerks of the affected cities and towns."

2 **Section 8.** Section 67-4-202, MCA, is amended to read:

3 "67-4-202. **Temporary effect of designation.** Upon the
4 designation of an airport influence area, the use of land
5 within the airport influence area shall be restricted as to
6 height consistent with part 77, federal aeronautics
7 regulations, until rules are adopted pursuant to this
8 chapter. This restriction does not affect nonconforming uses
9 and areas already zoned on July 1, 1977, and may not be
10 imposed for a period of more than 1 year. After the
11 designation of an airport influence area, no person may
12 recover from a local government, airport authority, airport
13 operator, or airport owner damages caused by noise and
14 vibrations from normal and anticipated normal airport
15 operations."

16 **Section 9.** Section 67-4-313, MCA, is amended to read:

17 "67-4-313. **Variance.** (1) Any person desiring to erect
18 or increase the height of a structure, permit the growth of
19 a tree, or use his property in violation of the rules
20 adopted pursuant to this chapter may apply to the board of
21 airport hazard adjustment for a variance from the rules.

22 (2) A variance shall be granted where a literal
23 application or enforcement of the rules would result in
24 substantial practical difficulty or unnecessary hardship and
25 where the variance would not be contrary to the public

1 interest.

2 (3) A variance shall be granted for a nonconforming use
3 where there is no immediate hazard to safe flying operations
4 or persons and property in the vicinity of the airport and
5 where the noise or vibrations from normal and anticipated
6 normal operations of the airport would not be likely to
7 cause structural damage.

8 (4) Within an airport influence area a person who
9 obtains a variance for building a structure which is a
10 nonconforming use under rules adopted pursuant to this
11 chapter or a person who takes or buys property subject to
12 such a variance is on notice that the airport existed before
13 the variance was granted and that normal and anticipated
14 normal operations of the airport will result in noise and
15 vibrations being projected over the property. Furthermore, a
16 person using a structure built under a variance may not
17 collect damages from a local government, airport authority,
18 airport operator, or airport owner for interference with the
19 enjoyment of that structure caused by noise and vibrations
20 from normal and anticipated normal airport operations."

21 **Section 10.** Section 67-5-211, MCA, is amended to read:

22 "67-5-211. **Enforcement.** It shall be the duty and
23 authority of every public body or governmental authority
24 owning, operating, or maintaining a public airport or
25 landing field or that creates a municipal or regional

1 airport authority for that purpose to enforce the provisions
 2 of this chapter as pertains to areas surrounding the
 3 particular airport under the control of such body or
 4 authority, the same to be enforced in either the court of
 5 law or of equity in the state of Montana having jurisdiction
 6 of such action. Cases are to be instituted in the name of
 7 the governmental body charged hereunder with the enforcement
 8 hereof. Such action may be to prevent the erection,
 9 construction, or maintenance of such buildings or other
 10 structures or parts of buildings or structures as may exceed
 11 the height limits fixed by this law or to restrain, correct,
 12 or abate any such violation and to prevent the occupancy and
 13 use of any part of a building or structure erected in
 14 violation of this law."

15 **Section 11.** Section 67-10-302, MCA, is amended to read:

16 **"67-10-302. Granting of operation and use privileges.**

17 (1) In operating an airport or air navigation facility
 18 owned, leased, or controlled by a municipality, such
 19 municipality may, except as may be limited by the terms and
 20 conditions of any grant, loan, or agreement pursuant to
 21 67-10-405, enter into contracts, leases, and other
 22 arrangements for a term not exceeding 20 years with any
 23 persons:

24 (a) granting the privilege of using or improving such
 25 airport or air navigation facility or any portion or

1 facility thereof or space therein for commercial purposes;

2 (b) conferring the privilege of supplying goods,
 3 commodities, things, services, or facilities at such airport
 4 or air navigation facility; or

5 (c) making available services to be furnished by the
 6 municipality or its agents at such airport or air navigation
 7 facility.

8 (2) In each case the municipality may establish the
 9 terms and conditions and fix the charges, rentals, or fees
 10 for the privileges or services, which shall be reasonable
 11 and uniform for the same class of privilege or service and
 12 ~~shall be established with due regard to the property and~~
 13 ~~improvements used and the expenses of operation to the~~
 14 ~~municipality.~~

15 (3) Except as may be limited by the terms and
 16 conditions of any grant, loan, or agreement pursuant to
 17 67-10-405, a municipality may by contract, lease, or other
 18 arrangement, upon a consideration fixed by it, grant to any
 19 qualified person for a term not to exceed 20 years the
 20 privilege of operating, as agent of the municipality or
 21 otherwise, any airport owned or controlled by the
 22 municipality; provided that no such person shall be granted
 23 any authority to operate such an airport other than as a
 24 public airport or to enter into any contracts, leases, or
 25 other arrangements in connection with the operation of the

1 airport which the municipality might not have undertaken
2 under subsections (1) and (2) of this section."

3 **Section 12.** Section 67-11-211, MCA, is amended to read:

4 **"67-11-211. Granting of operation and use privileges.**

5 (1) In connection with the operation of an airport or air
6 navigation facility owned or controlled by an authority, the
7 authority may enter into contracts, leases, and other
8 arrangements for terms not to exceed 30 years with any
9 persons:

10 (a) granting the privilege of using or improving the
11 airport or air navigation facility or any portion or
12 facility thereof or space therein for commercial purposes;

13 (b) conferring the privilege of supplying goods,
14 commodities, things, services, or facilities at the airport
15 or air navigation facility; and

16 (c) making available services to be furnished by the
17 authority or its agents at the airport or air navigation
18 facility.

19 (2) In each case the authority may establish the terms
20 and conditions and fix the charges, rentals, or fees for the
21 privileges or services, which must be reasonable and uniform
22 for the same class of privilege or service ~~and--must--be~~
23 ~~established-with-due-regard-to-the-property-and-improvements~~
24 ~~used--and--the--expenses--of--operation--to--the--authority;~~
25 provided that in no case may the public be deprived of its

1 rightful, equal, and uniform use of the airport, air
2 navigation facility, or portion of facility thereof.

3 (3) Except as may be limited by the terms and
4 conditions of any grant, loan, or agreement authorized by
5 67-11-305, an authority may by contract, lease, or other
6 arrangement, upon a consideration fixed by it, grant to any
7 qualified person for a term not to exceed 30 years the
8 privilege of operating, as agent of the authority or
9 otherwise, any airport owned or controlled by the authority;
10 provided that no person may be granted any authority to
11 operate an airport other than as a public airport or to
12 enter into any contracts, leases, or other arrangements in
13 connection with the operation of the airport which the
14 authority might not have undertaken under subsections (1)
15 and (2) of this section."

16 **Section 13.** Section 67-11-232, MCA, is amended to read:

17 **"67-11-232. Airport property -- disposal.** Except as may
18 be limited by the terms and conditions of any grant, loan,
19 or agreement authorized by 67-11-305, an authority may, by
20 sale, lease, or otherwise, dispose of any airport, air
21 navigation facility, or other property or portion thereof or
22 interest therein acquired pursuant to this chapter. Such
23 disposal by sale, lease, or otherwise shall be in accordance
24 with the adopted rules of the authority or the laws of this
25 state governing the ~~disposition-of-other-public~~ disposal of

1 county property, except that in the case of disposal to
 2 another authority, a municipality, or an agency of the state
 3 or federal government for use and operation as a public
 4 airport, the sale, lease, or other disposal may be effected
 5 in such manner and upon such terms as the commissioners of
 6 the authority may deem in the best interest of civil
 7 aviation."

8 **Section 14.** Section 67-11-304, MCA, is amended to read:

9 **"67-11-304. Debt service fund.** An airport authority may
 10 create a debt service fund and accumulate therein the sum of
 11 \$5 \$10 million together with interest thereon for the use,
 12 repairs, maintenance, and capital outlays of an airport."

13 **Section 15.** Section 67-11-306, MCA, is amended to read:

14 **"67-11-306. Tax exemption.** Any property in this state
 15 acquired by an authority for airport purposes, pursuant to
 16 the provisions of this chapter, and any income derived by
 17 the authority from the ownership, operation, or control
 18 thereof shall be exempt from taxation and assessments to the
 19 same extent as other property used for public purpose."

20 **Section 16.** Section 70-17-101, MCA, is amended to read:

21 **"70-17-101. Servitudes attached to land.** The following
 22 land burdens or servitudes upon land may be attached to
 23 other land as incidents or appurtenances and are then called
 24 easements:

25 (1) the right of pasture;

- 1 (2) the right of fishing;
- 2 (3) the right of taking game;
- 3 (4) the right-of-way;
- 4 (5) the right of taking water, wood, minerals, and
- 5 other things;
- 6 (6) the right of transacting business upon land;
- 7 (7) the right of conducting lawful sports upon land;
- 8 (8) the right of receiving air, light, or heat from or
- 9 over or discharging the same upon or over land;
- 10 (9) the right of receiving water from or discharging
- 11 the same upon land;
- 12 (10) the right of flooding land;
- 13 (11) the right of having water flow without diminution
- 14 or disturbance of any kind;
- 15 (12) the right of using a wall as a party wall;
- 16 (13) the right of receiving more than natural support
- 17 from adjacent land or things affixed thereto;
- 18 (14) the right of having the whole of a division fence
- 19 maintained by a coterminous owner;
- 20 (15) the right of having public conveyances stopped or
- 21 of stopping the same on land;
- 22 (16) the right of a seat in church;
- 23 (17) the right of burial;
- 24 (18) the right of conserving open space to preserve
- 25 park, recreational, historic, aesthetic, cultural, and

1 natural values on or related to land;

2 (19) the right of receiving sunlight or wind for
3 recognized nonfossil forms of energy generation; and

4 (20) the right of navigation and resulting noise
5 intrusion."

6 **Section 17.** Section 70-20-304, MCA, is amended to read:

7 **"70-20-304. Implied covenants -- free from encumbrance.**

8 (1) From the use of the word "grant" in any conveyance by
9 which an estate of inheritance or fee simple or possessory
10 title is to be passed, the following covenants and none
11 other on the part of the grantor for himself and his heirs
12 to the grantee, his heirs, and assigns are implied unless
13 restrained by express terms contained in such conveyance:

14 (a) that previous to the time of the execution of such
15 conveyance the grantor has not conveyed the same estate or
16 any right, title, or interest therein to any person other
17 than the grantee;

18 (b) that such estate is at the time of the execution of
19 such conveyance free from encumbrances done, made, or
20 suffered by the grantor or any person claiming under him; and

21 and
22 (c) that the estate is at the time of the execution of
23 the conveyance not within an airport influence area and is
24 not adversely affected by noise, vibrations, or other
25 incidents of operation from an airport.

1 (2) Such covenants may be sued upon in the same manner
2 as if they had been expressly inserted in the conveyance."

3 ~~NEW SECTION. Section 18. Airport noise. No cause of~~
4 ~~action exists or may be asserted against an airport~~
5 ~~authority, airport operator, airport owner, or local~~
6 ~~government for damages to persons or property by reason of~~
7 ~~noise generated in conjunction with the operation of an~~
8 ~~airport.~~

9 NEW SECTION. Section 18. Requirements for approval of
10 grant of immunity to public entity from suit --
11 severability. Because the amendment to 2-9-111 grants
12 immunity from suit to airport authorities, a vote of
13 two-thirds of the members of each house of the legislature
14 is required for enactment of the amendment to 2-9-111. If
15 the amendment to 2-9-111 is not approved by the required
16 vote, the amendment is void and the remaining sections of
17 [this act] are valid and remain in effect in all valid
18 applications upon enactment.

19 NEW SECTION. Section 19. Effective date. [This act] is
20 effective July 1, 1991.

-End-

1 SENATE BILL NO. 361
2 INTRODUCED BY THAYER, SWYSGOOD, HAMMOND, MAZUREK, DOHERTY,
3 NOBLE, CRIPPEN, RYE
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
6 AIRPORT AUTHORITIES ACT; LIMITING THE LIABILITY OF AIRPORT
7 AUTHORITIES, AIRPORT OPERATORS, AND AIRPORT OWNERS;
8 EXEMPTING AIRPORT AUTHORITIES FROM STATE VACATION AND SICK
9 LEAVE REQUIREMENTS; PROVIDING THAT OFFICERS OF AIRPORT
10 AUTHORITIES ARE OFFICERS OF NONPROFIT CORPORATIONS AND
11 THEREFORE IMMUNE FROM LIABILITY; ESTABLISHING AN IMPLIED
12 COVENANT THAT CONVEYED REAL PROPERTY IS NOT WITHIN AN
13 AIRPORT INFLUENCE AREA; PROVIDING THAT A LOCAL GOVERNMENT
14 SHALL DESIGNATE AN AIRPORT INFLUENCE AREA; PROVIDING AIRPORT
15 OPERATOR LATITUDE IN DETERMINING REASONABLENESS OF CHARGES;
16 INCREASING THE AIRPORT AUTHORITY DEBT SERVICE FUND LIMIT TO
17 REFLECT ECONOMIC CHANGE; PROVIDING AIRPORT AUTHORITIES
18 EXEMPTIONS FROM ASSESSMENTS; PROVIDING THAT THE RIGHT OF
19 NAVIGATION AND ITS RESULTING NOISE ARE A SERVITUDE ATTACHED
20 TO THE LAND; ~~PROVIDING--AIRPORT--AUTHORITIES,--AIRPORT~~
21 ~~OPERATORS,--AND--AIRPORT--OWNERS--PROTECTION--FROM--LIABILITY--FOR~~
22 NOISE; AMENDING SECTIONS 2-9-101, 2-9-111, 2-18-601,
23 27-1-732, 30-11-111, 67-1-101, 67-4-201, 67-4-202, 67-4-313,
24 67-5-211, 67-10-302, 67-11-211, 67-11-232, 67-11-304,
25 67-11-306, 70-17-101, AND 70-20-304, MCA; AND PROVIDING AN

There are no changes in this bill, and will not be reprinted. Please refer to yellow copy for complete text.

