

1 Senate BILL NO. 198
2 INTRODUCED BY Murray Walker Low Healy Lee

3 BY REQUEST OF THE DEPARTMENT OF COMMUNITY AFFAIRS
4 Etchart

5 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING LOCAL
6 GOVERNING BODIES TO ADOPT LAND USE REGULATIONS FOR AIRPORT
7 INFLUENCE AREAS; REQUIRING THE DEPARTMENT OF COMMUNITY
8 AFFAIRS TO IDENTIFY AIRPORT INFLUENCE AREAS AND ESTABLISH
9 CRITERIA FOR THE REGULATION OF LAND USES WITHIN THESE AREAS;
10 REPEALING SECTIONS 1-701 THROUGH 1-723, R.C.M. 1947."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Legislative finding. It is hereby found
14 that tall trees and structures and certain types of
15 development located in the vicinity of airports endanger the
16 lives and property of users of the airport and of occupants
17 of land in its vicinity. It is also found that the location
18 of tall trees and structures and certain types of
19 development near airports reduce the area available for
20 landing, taking off, and maneuvering aircraft, thus
21 destroying the utility of the airports and the public
22 investment in them. It is therefore the purpose of this act
23 to promote the public health, safety, and general welfare by
24 the development of compatible land uses in the vicinity of
25 airports.

1 Section 2. Definitions. (1) The definitions in 1-102
2 apply to this act.

3 (2) In this act the following definitions also apply:

4 (a) "Airport influence area" means all land in the
5 proximity of an airport, the use of which may be affected by
6 the airport's existence.

7 (b) "Planned airport site" means a defined area which
8 has been approved as the location of an airport by the
9 appropriate state and federal agencies.

10 (c) "Department" means the department of community
11 affairs.

12 (d) "Local government" means any county or
13 incorporated city or town having an airport influence area
14 partially or entirely within its jurisdictional limits.

15 Section 3. Designation of airport influence areas. (1)
16 The department shall, in conformance with the Montana
17 Administrative Procedure Act, designate the airport
18 influence area for every airport or planned airport site
19 within this state or any airport whose airport influence
20 area extends into this state. The designation shall be based
21 on federal aviation administration rules and guidelines. A
22 public hearing shall be held by the department in or near
23 the local governments affected by the designation.

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

1 city clerk of the affected cities and towns.

2 Section 4. 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 to
5 solely agricultural or forest uses, with the exception of
6 nonconforming uses existing on July 1, 1977, until rules are
7 adopted pursuant to this act. This restriction may not be
8 imposed for a period of more than 1 year.

9 Section 5. Submission of criteria to local government.

10 (1) The department shall submit criteria and guidelines for
11 regulation of the airport influence area to the affected
12 local government not later than 60 days after designating an
13 airport influence area.

14 (2) The criteria and guidelines shall be designed to
15 promote the public health, safety, and general welfare and
16 shall give reasonable consideration to, among other things:

17 (a) the safety of airport users and persons and
18 property in the vicinity of the airport;

19 (b) the character of the flying operations conducted
20 or expected to be conducted at the airport;

21 (c) the magnitude and duration of noise produced by
22 aircraft and the number of aircraft flybys;

23 (d) the nature of the terrain;

24 (e) the future development of the airport;

25 (f) the protection of the public investment in the

1 airport and its facilities;

2 (g) the views and mandates of the federal agency
3 charged with the fostering of civil aeronautics as to the
4 aerial surfaces necessary for safe flying operations; and

5 (h) the present and future needs of Montanans with
6 reference to the use of the airport for public
7 transportation and services.

8 (3) The criteria and guidelines shall serve as minimum
9 standards for a local government in its establishment of the
10 airport influence area regulations required by this act.

11 Section 6. Adoption of rules — approval of
12 department. (1) Within 1 year of the designation of an
13 airport influence area, each local government affected shall
14 adopt and provide for the administration of rules
15 restricting the use of land and the height to which
16 structures may be erected and trees allowed to grow within
17 the airport influence area.

18 (2) Prior to their enactment or issuance, rules,
19 variances, and amendments affecting the airport influence
20 area must be submitted by the local government to the
21 department for approval. The department must approve or
22 disapprove the proposed rules within 30 days of receiving
23 them, or approval is presumed. A local government may
24 resubmit an amended rule, variance, or amendment disapproved
25 by the department.

1 Section 7. Public hearing on rules. Before a local
2 government adopts or amends rules governing the airport
3 influence area, it must hold a public hearing thereon.
4 Unless otherwise specifically provided, when notice of a
5 hearing or other official act is required by this title, the
6 following shall apply:

7 (1) The notice shall be published two times with at
8 least 7 days separating each publication. The first
9 publication shall be no more than 21 days prior to the
10 action and the last no less than 3 days prior to the action.

11 (2) The published notice shall contain:

12 (a) the date, time, and place at which the hearing or
13 other action will occur;

14 (b) a brief statement of the action to be taken; and

15 (c) any other information required by the Montana
16 Administrative Procedure Act.

17 Section 8. State lands. When an airport influence area
18 lies partially or entirely on state-owned lands, the
19 department of state lands shall administer the affected
20 lands in conformance with the criteria and guidelines
21 prescribed by the department.

22 Section 9. Department to adopt rules if local
23 government does not. In the event that a local government
24 does not adopt reasonable and effective rules for its
25 airport influence area within 1 year after the designation

1 of that area, the department shall, as soon as practicable
2 and following the procedure prescribed in [section 7], adopt
3 reasonable and effective rules to be administered by the
4 local government. If at any time thereafter the local
5 government adopts its own rules for the airport influence
6 area, these shall supersede those promulgated by the
7 department but may be no less stringent.

8 Section 10. Amendment of criteria -- redesignation of
9 influence areas. (1) When circumstance so requires, the
10 department may amend the criteria and guidelines.

11 (2) The department may redefine the boundaries of the
12 influence area of an airport whenever an amendment to the
13 criteria and guidelines so requires or whenever the airport
14 site boundaries are altered.

15 (3) Whenever the department exercises either of these
16 prerogatives, the local government affected shall be granted
17 60 days after receipt of notice of such action to amend its
18 existing influence area rules to conform to the amendment to
19 the criteria and guidelines or the redesignation of its
20 affected influence area. If a local government fails to
21 amend its existing airport influence area rules to conform
22 to the amendment to the criteria and guidelines or the
23 redesignation of its affected influence area, the department
24 shall adopt the required amendment following the procedure
25 outlined in [section 7].

1 Section 11. Variance. (1) Any person desiring to erect
2 or increase the height of a structure, permit the growth of
3 a tree, or use his property in violation of the rules
4 adopted pursuant to this act may apply to board of airport
5 hazard adjustment for a variance from the rules.

6 (2) A variance shall be granted where a literal
7 application or enforcement of the rules would result in
8 substantial practical difficulty or unnecessary hardship and
9 where the variance would not be contrary to the public
10 interest.

11 Section 12. Permit system. (1) The rules adopted
12 pursuant to this act shall provide for a permit system for
13 erecting new structures, changing uses of land or
14 structures, and substantially altering, repairing, or
15 replacing existing structures within the airport influence
16 area.

17 (2) No material change may be made in the use of land
18 and no structure or tree may be erected, altered, planted,
19 or otherwise established in an airport influence area unless
20 a permit for the use has been granted.

21 (3) No permit may be granted which would allow the
22 establishment of an airport hazard or that would allow a
23 nonconforming use, structure, or tree to become a greater
24 hazard to air navigation than it was on the effective date
25 of the designation of the airport influence area or any

1 subsequent revisions to it or than it was prior to the
2 application for a permit.

3 Section 13. Conditions on permit or variance. Any
4 permit or variance granted pursuant to this act may require
5 the owner of the structure or tree in question to permit the
6 local government, at its expense, to install, operate, and
7 maintain the lights and markers necessary to warn pilots of
8 the presence of an airport hazard.

9 Section 14. Board of adjustment. (1) All rules adopted
10 pursuant to this act shall provide for a board of airport
11 hazard adjustment consisting of five members to be appointed
12 for terms and in the manner provided in 11-2707.

13 (2) All of the provisions of 11-2707 relating to
14 appeals and judicial review are applicable to grievances
15 relating to rules, variances, or permits.

16 (3) Where a local government has appointed a board of
17 adjustment under the provisions of 11-2707 or 16-4706, the
18 local government may designate the members of that board as
19 the board of airport hazard adjustment required by this act
20 in which case the terms of such members for purposes of this
21 act are concurrent with their terms as members of the board
22 of adjustment.

23 Section 15. Rules relative to zoning ordinances. (1)
24 If a local government has adopted a zoning ordinance, any
25 rules adopted under this act may be made a part of the

1 zoning ordinance and may be administered and enforced in
2 connection with it. However, the zoning ordinance may not
3 limit the effectiveness or scope of the rules adopted
4 pursuant to this act.

5 (2) Where a conflict exists between the rules adopted
6 pursuant to this act and any zoning ordinances or
7 resolutions applicable to the same area, the more stringent
8 limitation or requirement shall prevail.

9 Section 16. State and federal funds held back until
10 adoption of rules. (1) No state funds may be spent for air
11 navigation facilities, for land acquisition for airports and
12 air navigation facilities, or for the construction,
13 improvement, and maintenance of airports, unless the
14 affected local government has established or is in the
15 process of establishing the rules required by this act.

16 (2) The department may not approve the distribution of
17 federal funds to a local government pursuant to 1-818 unless
18 that local government has established, or is in the process
19 of establishing, the rules required by this act.

20 Section 17. Rules to be reasonable. All rules adopted
21 under this act shall be reasonable and may not require the
22 removal or alteration of any structure or tree lawfully in
23 existence when the rules become effective. Such uses are to
24 be treated as prior nonconforming uses, but rules may
25 prohibit their expansion or their reconstruction or

1 replacement following destruction or substantial damage.
2 Rules may further require that trees in place at the time
3 the rules take effect be maintained at heights attained at
4 that time.

5 Section 18. Penalty -- court action. (1) Any person
6 who violates any provision of this act or any rules adopted
7 pursuant to it is guilty of a misdemeanor and punishable by
8 a fine not to exceed \$500, imprisonment in a county jail for
9 a period not to exceed 6 months, or both. Each day a
10 violation continues to exist constitutes a separate offense.

11 (2) A municipality may institute in any court of
12 competent jurisdiction an action to prevent, restrain,
13 correct, or abate any violation of this act or the rules
14 adopted under it.

15 Section 19. Severability. If a part of this act or the
16 application thereof to any person or circumstance is held
17 invalid, the remainder of the act and the application of
18 such part to other persons or circumstances is not affected
19 thereby.

20 Section 20. Repealer -- temporary application of
21 existing rules. Sections 1-701 through 1-723, R.C.E. 1947,
22 are repealed. However, any rules adopted pursuant thereto
23 continue in full force until superseded by rules adopted
24 pursuant to this act.

-End-

STATE OF MONTANA

REQUEST NO. 165-77

FISCAL NOTE

Form BD-15

In compliance with a written request received January 24, 19 77, there is hereby submitted a Fiscal Note for Senate Bill 198 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

An act requiring local governing bodies to adopt land use regulations for airport influence areas; requiring the Department of Community Affairs to identify airport influence areas and establish criteria for the regulation of land uses within these areas.

ASSUMPTION:

All necessary expenses required to implement the proposed legislation can be absorbed by current level budget.

FISCAL IMPACT:

None.

LOCAL IMPACT:

County planning boards and commissions would have some additional work in regard to establishing land use regulations around airports. No dollar estimates can be made.

Richard L. Young for
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-28-77

Approved by Comm.
on Local Government

SENATE BILL NO. 198

INTRODUCED BY MURRAY, HAZELBAKER, LOWE, HEALY, LEE, ETCHART
BY REQUEST OF THE DEPARTMENT OF COMMUNITY AFFAIRS

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING LOCAL
GOVERNING BODIES TO ADOPT LAND USE REGULATIONS FOR AIRPORT
INFLUENCE AREAS, ~~REQUIRING THE DEPARTMENT OF COMMUNITY~~
~~AND TO IDENTIFY AIRPORT INFLUENCE AREAS AND~~
ESTABLISH CRITERIA FOR THE REGULATION OF LAND USES WITHIN
THESE AREAS, ~~REPEALING SECTIONS 1-701 THROUGH 1-723, R.C.M.~~
~~1947."~~

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

Section 1. Legislative finding. It is hereby found
that tall trees and structures and certain types of
development located in the vicinity of airports endanger the
lives and property of users of the airport and of occupants
of land in its vicinity. It is also found that the location
of tall trees and structures and certain types of
development near airports reduce the area available for
landing, taking off, and maneuvering aircraft, AND INCREASE
THE LIKELIHOOD OF LEGAL ACTION AGAINST A LOCAL GOVERNMENT
FOR NOISE NUISANCE, thus destroying the utility of the
airports and the public investment in them. It is therefore
the purpose of this act to promote the public health,

safety, and general welfare by the development of compatible
land uses in the vicinity of airports.

Section 2. Definitions. (1) The definitions in 1-102
apply to this act.

(2) In this act the following definitions also apply:
(a) "Airport influence area" means all land in the
proximity of an airport, the use of which may be affected by
the airport's existence.

~~(b) "Planned airport site" means a defined area which~~
~~has been approved as the location of an airport by the~~
~~appropriate state and federal agencies. "AIRPORT" MEANS, FOR~~
~~THE PURPOSE OF THIS ACT, ONLY THOSE AIRPORTS INCLUDED ON THE~~
~~NATIONAL AIRPORT SYSTEM PLAN.~~

(c) "Department" means the department of community
affairs.

(d) "Local government" means any county or
incorporated city or town having an airport influence area
partially or entirely within its jurisdictional limits.

Section 3. Designation of airport influence areas. (1)
~~The department shall in conformance with the Montana~~
~~Administrative Procedure Act designate the airport~~
~~influence area for every airport or planned airport site~~
~~within this state or any airport whose airport influence~~
~~area extends into this state. A LOCAL GOVERNMENT WITH AN~~
~~AIRPORT SHALL DESIGNATE AN AIRPORT INFLUENCE AREA AROUND THE~~

1 AIRPORT WITHIN 3 YEARS FROM THE EFFECTIVE DATE OF THIS ACT.
 2 The designation shall be based on federal aviation
 3 administration rules and guidelines. HOWEVER, NO AIRPORT
 4 INFLUENCE AREA MAY COVER AN AREA LARGER THAN A 3-MILE RADIUS
 5 FROM THE AIRPORT REFERENCE POINT. A public hearing shall be
 6 held by the ~~department in or near the local governments~~
 7 ~~effected by the designation.~~ LOCAL GOVERNMENT FOLLOWING THE
 8 PROCEDURE PRESCRIBED IN [SECTION 7].

9 (2) A map of the designation shall be filed with the
 10 county clerk and recorder of the affected counties and the
 11 city clerk of the affected cities and towns.

12 Section 4. Temporary effect of designation. Upon the
 13 designation of an airport influence area, the use of land
 14 within the airport influence area shall be restricted to
 15 ~~solely agricultural or forest~~ NONRESIDENTIAL uses, with the
 16 exception of nonconforming uses existing on July 1, 1977,
 17 until rules are adopted pursuant to this act. This
 18 restriction may not be imposed for a period of more than 1
 19 year.

20 Section 5. ~~Submission of criteria to local governments.~~
 21 DEVELOPMENT OF CRITERIA BY A LOCAL GOVERNMENT. (1) The
 22 department LOCAL GOVERNMENT shall submit DEVISE criteria and
 23 guidelines for regulation of the airport influence area to
 24 ~~the affected local government not later than 60 days after~~
 25 ~~designating an airport influence area.~~

1 (2) The criteria and guidelines shall be designed to
 2 promote the public health, safety, and general welfare and
 3 shall, AT THE MINIMUM, give reasonable consideration to,
 4 among other things:

5 (a) the safety of airport users and persons and
 6 property in the vicinity of the airport;

7 (b) the character of the flying operations conducted
 8 or expected to be conducted at the airport;

9 (c) the magnitude and duration of noise produced by
 10 aircraft and the number of aircraft flybys;

11 (d) the nature of the terrain;

12 (e) the future development of the airport;

13 (f) the protection of the public investment in the
 14 airport and its facilities;

15 (g) the views and mandates of the federal agency
 16 charged with the fostering of civil aeronautics as to the
 17 aerial surfaces necessary for safe flying operations; and

18 (h) the present and future needs of Montanans with
 19 reference to the use of the airport for public
 20 transportation and services.

21 ~~(3) The criteria and guidelines shall serve as minimum~~
 22 ~~standards for a local government in its establishment of the~~
 23 ~~airport influence area regulations required by this act.~~

24 Section 6. Adoption of rules ~~approval of~~
 25 department. (1) Within 1 year of the designation of an

1 airport influence area, each local government affected shall
 2 adopt and provide for the administration of rules
 3 restricting the use of land and the height to which
 4 structures may be erected and trees allowed to grow within
 5 the airport influence area.

6 ~~(2) Prior to their enactment or issuance, rules,~~
 7 ~~variances, and amendments affecting the airport influence~~
 8 ~~area must be submitted by the local government to the~~
 9 ~~department for approval. The department must approve or~~
 10 ~~disapprove the proposed rules within 30 days of receiving~~
 11 ~~them or approval is presumed. A local government may~~
 12 ~~resubmit an amended rule, variance, or amendment disapproved~~
 13 ~~by the department.~~

14 Section 7. Public hearing on rules. Before a local
 15 government adopts or amends rules governing the airport
 16 influence area, it must hold a public hearing thereon.
 17 Unless otherwise specifically provided, when notice of a
 18 hearing or other official act is required by this title, the
 19 following shall apply:

20 (1) The notice shall be published two times with at
 21 least 7 days separating each publication. The first
 22 publication shall be no more than 21 days prior to the
 23 action and the last no less than 3 days prior to the action.

24 (2) The published notice shall contain:

25 (a) the date, time, and place at which the hearing or

1 other action will occur;

2 (b) a brief statement of the action to be taken; and

3 (c) any other information required by the Montana
 4 Administrative Procedure Act.

5 Section 8. State lands. When an airport influence area
 6 lies partially or entirely on state-owned lands, the
 7 department of state lands shall administer the affected
 8 lands in conformance with the criteria and guidelines
 9 prescribed by the department.

10 Section 9. ~~Department to adopt rules if local~~
 11 ~~government does not. In the event that a local government~~
 12 ~~does not adopt reasonable and effective rules for its~~
 13 ~~airport influence area within 1 year after the designation~~
 14 ~~of that area, the department shall, as soon as practicable~~
 15 ~~and following the procedure prescribed in [section 7], adopt~~
 16 ~~reasonable and effective rules to be administered by the~~
 17 ~~local government. If at any time thereafter the local~~
 18 ~~government adopts its own rules for the airport influence~~
 19 ~~area, these shall supersede those promulgated by the~~
 20 ~~department but may be no less stringent. DEPARTMENT TO~~
 21 ~~DESIGNATE INFLUENCE AREA OR TO ADOPT RULES AT REQUEST OF A~~
 22 ~~LOCAL GOVERNMENT. A LOCAL GOVERNMENT MAY REQUEST THE~~
 23 ~~DEPARTMENT TO DESIGNATE AN AIRPORT INFLUENCE AREA AROUND AN~~
 24 ~~AIRPORT WITHIN THE JURISDICTION OF THAT LOCAL GOVERNMENT. A~~
 25 ~~LOCAL GOVERNMENT MAY REQUEST THE DEPARTMENT TO DEVISE~~

1 CRITERIA, GUIDELINES, OR RULES FOR THE ADMINISTRATION OF AN
2 AIRPORT INFLUENCE AREA. ANY ACTION TAKEN BY THE DEPARTMENT
3 SHALL CONFORM TO THE REQUIREMENTS OF THIS ACT.

4 Section 10. Amendment of criteria -- redesignation of
5 influence areas. (1) When circumstance so requires, the
6 department LOCAL GOVERNMENT may amend the criteria and
7 guidelines.

8 (2) The department LOCAL GOVERNMENT may redefine the
9 boundaries of the influence area of an airport whenever an
10 amendment to the criteria and guidelines so requires or
11 whenever the airport site boundaries are altered.

12 ~~(3) Whenever the department exercises either of these~~
13 ~~prerogatives, the local government affected shall be granted~~
14 ~~60 days after receipt of notice of such action to amend its~~
15 ~~existing influence area rules to conform to the amendment to~~
16 ~~the criteria and guidelines or the redesignation of its~~
17 ~~affected influence area; if a local government fails to~~
18 ~~amend its existing airport influence area rules to conform~~
19 ~~to the amendment to the criteria and guidelines or the~~
20 ~~redesignation of its affected influence area, the department~~
21 ~~shall adopt the required amendment following the procedure~~
22 ~~outlined in [section 7].~~

23 Section 11. Variance. (1) Any person desiring to erect
24 or increase the height of a structure, permit the growth of
25 a tree, or use his property in violation of the rules

1 adopted pursuant to this act may apply to board of airport
2 hazard adjustment for a variance from the rules.

3 (2) A variance shall be granted where a literal
4 application or enforcement of the rules would result in
5 substantial practical difficulty or unnecessary hardship and
6 where the variance would not be contrary to the public
7 interest.

8 ~~(3) A VARIANCE SHALL BE GRANTED FOR A NON-CONFORMING~~
9 ~~USE WHERE THERE IS NO IMMEDIATE HAZARD TO SAFE FLYING~~
10 ~~OPERATIONS OR PERSONS AND PROPERTY IN THE VICINITY OF THE~~
11 ~~AIRPORT AND WHERE THE NOISE OR VIBRATIONS FROM NORMAL AND~~
12 ~~ANTICIPATED NORMAL OPERATIONS OF THE AIRPORT WOULD NOT BE~~
13 ~~LIKELY TO CAUSE STRUCTURAL DAMAGE.~~

14 ~~(4) WITHIN AN AIRPORT INFLUENCE AREA A PERSON WHO~~
15 ~~OBTAINS A VARIANCE FOR BUILDING A STRUCTURE WHICH IS A~~
16 ~~NON-CONFORMING USE UNDER RULES ADOPTED PURSUANT TO THIS ACT~~
17 ~~OR A PERSON WHO TAKES OR BUYS PROPERTY SUBJECT TO SUCH A~~
18 ~~VARIANCE IS ON NOTICE THAT THE AIRPORT EXISTED BEFORE THE~~
19 ~~VARIANCE WAS GRANTED AND THAT NORMAL AND ANTICIPATED NORMAL~~
20 ~~OPERATIONS OF THE AIRPORT WILL RESULT IN NOISE AND~~
21 ~~VIBRATIONS BEING PROJECTED OVER THE PROPERTY. FURTHERMORE, A~~
22 ~~PERSON USING A STRUCTURE BUILT UNDER A VARIANCE MAY NOT~~
23 ~~COLLECT DAMAGES FROM A LOCAL GOVERNMENT FOR INTERFERENCE~~
24 ~~WITH THE ENJOYMENT OF THAT STRUCTURE CAUSED BY NOISE AND~~
25 ~~VIBRATIONS FROM NORMAL AND ANTICIPATED NORMAL AIRPORT~~

1 OPERATIONS.

2 Section 12. Permit system. (1) The rules adopted
3 pursuant to this act shall provide for a permit system for
4 erecting new structures, changing uses of land or
5 structures, and substantially altering, repairing, or
6 replacing existing structures within the airport influence
7 area.

8 (2) No material change may be made in the use of land
9 and no structure or tree may be erected, altered, planted,
10 or otherwise established in an airport influence area unless
11 a permit for the use has been granted.

12 (3) No permit may be granted which would allow the
13 establishment of an airport hazard or that would allow a
14 nonconforming use, structure, or tree to become a greater
15 hazard to air navigation than it was on the effective date
16 of the designation of the airport influence area or any
17 subsequent revisions to it or than it was prior to the
18 application for a permit.

19 Section 13. Conditions on permit or variance. Any
20 permit or variance granted pursuant to this act may require
21 the owner of the structure or tree in question to permit the
22 local government, at its expense, to install, operate, and
23 maintain the lights and markers necessary to warn pilots of
24 the presence of an airport hazard.

25 Section 14. Board of adjustment. (1) All rules adopted

1 pursuant to this act shall provide for a board of airport
2 hazard adjustment consisting of five members to be appointed
3 for terms and in the manner provided in 11-2707.

4 (2) All of the provisions of 11-2707 relating to
5 appeals and judicial review are applicable to grievances
6 relating to rules, variances, or permits.

7 (3) Where a local government has appointed a board of
8 adjustment under the provisions of 11-2707 or 16-4706, the
9 local government may designate the members of that board as
10 the board of airport hazard adjustment required by this act
11 in which case the terms of such members for purposes of this
12 act are concurrent with their terms as members of the board
13 of adjustment.

14 Section 15. Rules relative to zoning ordinances. (1)
15 If a local government has adopted a zoning ordinance, any
16 rules adopted under this act may be made a part of the
17 zoning ordinance and may be administered and enforced in
18 connection with it. However, the zoning ordinance may not
19 limit the effectiveness or scope of the rules adopted
20 pursuant to this act.

21 (2) Where a conflict exists between the rules adopted
22 pursuant to this act and any zoning ordinances or
23 resolutions applicable to the same area, the more stringent
24 limitation or requirement shall prevail.

25 Section 16. ~~State and federal funds held back until~~

1 ~~adoption of rules. (1) No state funds may be spent for air~~
 2 ~~navigation facilities, for land acquisition for airports and~~
 3 ~~air navigation facilities, or for the construction~~
 4 ~~improvement and maintenance of airports, unless the~~
 5 ~~affected local government has established or is in the~~
 6 ~~process of establishing the rules required by this act.~~

7 ~~(2) The department may not approve the distribution of~~
 8 ~~federal funds to a local government pursuant to 1-818 unless~~
 9 ~~that local government has established or is in the process~~
 10 ~~of establishing the rules required by this act. DEPARTMENT~~
 11 ~~MAY APPROVE LOCAL GOVERNMENT DESIGNATION OF AIRPORT~~
 12 ~~INFLUENCE AREA AND RULES. THE LOCAL GOVERNMENT MAY SUBMIT~~
 13 ~~ITS DESIGNATION OF AN AIRPORT INFLUENCE AREA AND RULES~~
 14 ~~GOVERNING THAT AREA TO THE DEPARTMENT FOR APPROVAL. APPROVAL~~
 15 ~~BY THE DEPARTMENT SHALL MEAN THAT THE LOCAL GOVERNMENT HAS~~
 16 ~~COMPLIED WITH THIS ACT.~~

17 Section 17. Rules to be reasonable. All rules adopted
 18 under this act shall be reasonable and may not require the
 19 removal or alteration of any structure or tree lawfully in
 20 existence when the rules become effective. Such uses are to
 21 be treated as prior nonconforming uses, but rules may
 22 prohibit their expansion or their reconstruction or
 23 replacement following destruction or substantial damage.
 24 Rules may further require that trees in place at the time
 25 the rules take effect be maintained at heights attained at

1 that time.

2 Section 18. Penalty -- court action. (1) Any person
 3 who violates any provision of this act or any rules adopted
 4 pursuant to it is guilty of a misdemeanor and punishable by
 5 a fine not to exceed \$500, imprisonment in a county jail for
 6 a period not to exceed 6 months, or both. Each day a
 7 violation continues to exist constitutes a separate offense.

8 (2) A municipality may institute in any court of
 9 competent jurisdiction an action to prevent, restrain,
 10 correct, or abate any violation of this act or the rules
 11 adopted under it.

12 Section 19. Severability. ~~If a part of this act or~~
 13 ~~the application thereof to any person or circumstance is~~
 14 ~~held invalid, the remainder of the act and the application~~
 15 ~~of such part to other persons or circumstances is not~~
 16 ~~affected thereby. SEVERABILITY. IF A PART OF THIS ACT IS~~
 17 ~~INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID~~
 18 ~~PART REMAIN IN EFFECT. IF A PART OF THIS ACT IS INVALID IN~~
 19 ~~ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT~~
 20 ~~IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE~~
 21 ~~INVALID APPLICATIONS.~~

22 Section 20. Repeater. ~~temporary application of~~
 23 ~~existing rules. Sections 1-701 through 1-723, R.C.M., 1947,~~
 24 ~~are repealed. However, any rules adopted pursuant thereto~~
 25 ~~continue in full force until superseded by rules adopted~~

SB 0198/02

1 ~~pursuant to this act~~

~~-End-~~

SENATE BILL NO. 198

INTRODUCED BY MURRAY, HAZELBAKER, LOWE, HEALY, LEE, EICHART
BY REQUEST OF THE DEPARTMENT OF COMMUNITY AFFAIRS

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING LOCAL
GOVERNING BODIES TO ADOPT ~~LAND-USE~~ NOISE AND HEIGHT
REGULATIONS FOR AIRPORT INFLUENCE AREAS; ~~REQUIRING THE~~
~~DEPARTMENT OF COMMUNITY AFFAIRS~~ AND TO IDENTIFY AIRPORT
INFLUENCE AREAS AND ESTABLISH CRITERIA FOR THE REGULATION OF
~~LAND-USES~~ NOISE AND HEIGHT WITHIN THESE AREAS; ~~REPEALING~~
~~SECTIONS 1-701 THROUGH 1-723, R.C.M., 1947."~~

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

Section 1. Legislative finding. It is hereby found
that tall trees and structures and certain types of
development located in the vicinity of airports endanger the
lives and property of users of the airport and of occupants
of land in its vicinity. It is also found that the location
of tall trees and structures and certain types of
development near airports reduce the area available for
landing, taking off, and maneuvering aircraft, AND INCREASE
THE LIKELIHOOD OF LEGAL ACTION AGAINST A LOCAL GOVERNMENT
FOR NOISE NUISANCE, thus destroying the utility of the
airports and the public investment in them. It is therefore
the purpose of this act to promote the public health,

safety, and general welfare by the development of compatible
~~land-uses in the vicinity of airports~~ NOISE AND HEIGHT
REGULATIONS.

Section 2. Definitions. (1) The definitions in 1-102
apply to this act.

(2) In this act the following definitions also apply:

(a) "Airport influence area" means all land in the
proximity of an airport, the use of which may be affected by
the airport's existence.

(b) ~~"Planned airport site" means a defined area which~~
~~has been approved as the location of an airport by the~~
~~appropriate state and federal agencies.~~ "AIRPORT" MEANS, FOR
THE PURPOSE OF THIS ACT, ONLY THOSE AIRPORTS INCLUDED ON THE
NATIONAL AIRPORT SYSTEM PLAN.

(c) ~~"Department" means the department of community~~
~~affairs.~~

(d)(1) "Local government" means any county or
incorporated city or town having an airport influence area
partially or entirely within its jurisdictional limits.

Section 3. Designation of airport influence areas. (1)
~~the department shall, in conformance with the Montana~~
~~Administrative Procedure Act, designate the airport~~
~~influence area for every airport or planned airport site~~
~~within this state or any airport whose airport influence~~
~~area extends into this state.~~ A LOCAL GOVERNMENT WITH AN

1 AIRPORT SHALL DESIGNATE AN AIRPORT INFLUENCE AREA AROUND THE
 2 AIRPORT WITHIN 3 YEARS FROM THE EFFECTIVE DATE OF THIS ACT.
 3 The designation shall be based on federal aviation
 4 administration rules and guidelines. ~~HOWEVER, NO AIRPORT~~
 5 ~~INFLUENCE AREA MAY COVER AN AREA LARGER THAN A 3-mile-radius~~
 6 ~~from-the-airport-reference-point A 1/2-MILE OUT FROM THE~~
 7 ~~AIRPORT PROPERTY LINE, OR 1 MILE OUT FROM THE THRESHOLDS OF~~
 8 ~~THE PRIMARY INSTRUMENT RUNWAY, WITH RESPECT TO THE PRIMARY~~
 9 ~~INSTRUMENT RUNWAY THE AIRPORT INFLUENCE AREA SHALL NOT~~
 10 ~~EXCEED 1/2-MILE IN WIDTH, CENTERED ON THE EXTENDED RUNWAY~~
 11 ~~CENTERLINE. A public hearing shall be held by the department~~
 12 ~~in-or-near-the-local-governments-affected-by-the~~
 13 ~~designation. LOCAL GOVERNMENT FOLLOWING THE PROCEDURE~~
 14 ~~PRESCRIBED IN [SECTION 7].~~

15 (2) A map of the designation shall be filed with the
 16 county clerk and recorder of the affected counties and the
 17 city clerk of the affected cities and towns.

18 Section 4. Temporary effect of designation. Upon the
 19 designation of an airport influence area, the use of land
 20 within the airport influence area shall be restricted to
 21 ~~solely-agricultural-or-forest~~ NONRESIDENTIAL HEIGHT AND
 22 NOISE uses, with the exception of nonconforming uses
 23 existing on July 1, 1977, until rules are adopted pursuant
 24 to this act. This restriction may not be imposed for a
 25 period of more than 1 year.

1 Section 5. ~~Submission of criteria to local governments~~
 2 DEVELOPMENT OF CRITERIA BY A LOCAL GOVERNMENT. (1) The
 3 department LOCAL GOVERNMENT shall submit DEVISE criteria and
 4 guidelines for regulation of the airport influence area to
 5 ~~the-affected-local-government-not-later-than-60-days-after~~
 6 ~~designating-an-airport-influence-area.~~

7 (2) The criteria and guidelines shall be designed to
 8 promote the public health, safety, and general welfare and
 9 shall, AT THE MINIMUM, give reasonable consideration to,
 10 among other things:

11 (a) the safety of airport users and persons and
 12 property in the vicinity of the airport;

13 (b) the character of the flying operations conducted
 14 or expected to be conducted at the airport;

15 (c) the magnitude and duration of noise produced by
 16 aircraft and the number of aircraft flybys;

17 (d) the nature of the terrain;

18 (e) the future development of the airport;

19 (f) the protection of the public investment in the
 20 airport and its facilities;

21 (g) the views and mandates of the federal agency
 22 charged with the fostering of civil aeronautics as to the
 23 aerial surfaces necessary for safe flying operations; and

24 (h) the present and future needs of Montanans with
 25 reference to the use of the airport for public

1 transportation and services.

2 ~~(3) The criteria and guidelines shall serve as minimum~~
 3 ~~standards for a local government in its establishment of the~~
 4 ~~airport influence area regulations required by this act.~~

5 Section 6. Adoption of rules ~~approval~~ of
 6 department. (1) Within 1 year of the designation of an
 7 airport influence area, each local government affected shall
 8 adopt and provide for the administration of rules
 9 restricting the use of land and the height to which
 10 structures may be erected and trees allowed to grow within
 11 the airport influence area.

12 ~~(2) Prior to their enactment or issuance, rules,~~
 13 ~~variances, and amendments affecting the airport influence~~
 14 ~~area must be submitted by the local government to the~~
 15 ~~department for approval. The department must approve or~~
 16 ~~disapprove the proposed rules within 30 days of receiving~~
 17 ~~them, or approval is presumed. A local government may~~
 18 ~~resubmit an amended rule, variance, or amendment disapproved~~
 19 ~~by the department.~~

20 Section 7. Public hearing on rules. Before a local
 21 government adopts or amends rules governing the airport
 22 influence area, it must hold a public hearing thereon.
 23 Unless otherwise specifically provided, when notice of a
 24 hearing or other official act is required by this title, the
 25 following shall apply:

1 (1) The notice shall be published two times with at
 2 least 7 days separating each publication. The first
 3 publication shall be no more than 21 days prior to the
 4 action and the last no less than 3 days prior to the action.

5 (2) The published notice shall contain:

6 (a) the date, time, and place at which the hearing or
 7 other action will occur;

8 (b) a brief statement of the action to be taken; and,

9 ~~(c) any other information required by the Montana~~
 10 ~~Administrative Procedure Act.~~

11 Section 8. State lands. When an airport influence area
 12 lies partially or entirely on state-owned lands, the
 13 department of state lands shall administer the affected
 14 lands in conformance with the criteria and guidelines
 15 prescribed by the department LOCAL GOVERNING BODY.

16 ~~Section 9. Department to adopt rules if local~~
 17 ~~government does not. In the event that a local government~~
 18 ~~does not adopt reasonable and effective rules for its~~
 19 ~~airport influence area within 1 year after the designation~~
 20 ~~of that area, the department shall, as soon as practicable~~
 21 ~~and following the procedure prescribed in [section 7], adopt~~
 22 ~~reasonable and effective rules to be administered by the~~
 23 ~~local governments. If at any time thereafter the local~~
 24 ~~government adopts its own rules for the airport influence~~
 25 ~~area, these shall supersede those promulgated by the~~

~~1 department but may be no less stringent. DEPARTMENT IS~~
~~2 RESIGNATE INFLUENCE AREA OR TO ADOPT RULES AT REQUEST OF A~~
~~3 LOCAL GOVERNMENT. A LOCAL GOVERNMENT MAY REQUEST THE~~
~~4 DEPARTMENT TO DESIGNATE AN AIRPORT INFLUENCE AREA AROUND AN~~
~~5 AIRPORT WITHIN THE JURISDICTION OF THAT LOCAL GOVERNMENT. A~~
~~6 LOCAL GOVERNMENT MAY REQUEST THE DEPARTMENT TO REVISE~~
~~7 CRITERIA, GUIDELINES, OR RULES FOR THE ADMINISTRATION OF AN~~
~~8 AIRPORT INFLUENCE AREA. ANY ACTION TAKEN BY THE DEPARTMENT~~
~~9 SHALL CONFORM TO THE REQUIREMENTS OF THIS ACT.~~

10 Section 9. Amendment of criteria -- redesignation of
 11 influence areas. (1) When circumstance so requires, the
 12 department LOCAL GOVERNMENT may amend the criteria and
 13 guidelines.

14 (2) The department LOCAL GOVERNMENT may redefine the
 15 boundaries of the influence area of an airport whenever an
 16 amendment to the criteria and guidelines so requires or
 17 whenever the airport site boundaries are altered.

~~18 (3) Whenever the department exercises either of these~~
~~19 prerogatives, the local government affected shall be granted~~
~~20 60 days after receipt of notice of such action to amend its~~
~~21 existing influence area rules to conform to the amendment to~~
~~22 the criteria and guidelines or the redesignation of its~~
~~23 affected influence area. If a local government fails to~~
~~24 amend its existing airport influence area rules to conform~~
~~25 to the amendment to the criteria and guidelines or the~~

~~1 redesignation of its affected influence area, the department~~
~~2 shall adopt the required amendment following the procedure~~
~~3 outlined in [section 7].~~

4 Section 10. Variance. (1) Any person desiring to erect
 5 or increase the height of a structure, permit the growth of
 6 a tree, or use his property in violation of the rules
 7 adopted pursuant to this act may apply to board of airport
 8 hazards adjustment for a variance from the rules.

9 (2) A variance shall be granted where a literal
 10 application or enforcement of the rules would result in
 11 substantial practical difficulty or unnecessary hardship and
 12 where the variance would not be contrary to the public
 13 interest.

~~14 (3) A VARIANCE SHALL BE GRANTED FOR A NON-CONFORMING~~
~~15 USE WHERE THERE IS NO IMMEDIATE HAZARD TO SAFE FLYING~~
~~16 OPERATIONS OR PERSONS AND PROPERTY IN THE VICINITY OF THE~~
~~17 AIRPORT AND WHERE THE NOISE OR VIBRATIONS FROM NORMAL AND~~
~~18 ANTICIPATED NORMAL OPERATIONS OF THE AIRPORT WOULD NOT BE~~
~~19 LIKELY TO CAUSE STRUCTURAL DAMAGE.~~

~~20 (4) WITHIN AN AIRPORT INFLUENCE AREA A PERSON WHO~~
~~21 OBTAINS A VARIANCE FOR BUILDING A STRUCTURE WHICH IS A~~
~~22 NON-CONFORMING USE UNDER RULES ADOPTED PURSUANT TO THIS ACT~~
~~23 OR A PERSON WHO TAKES OR BUYS PROPERTY SUBJECT TO SUCH A~~
~~24 VARIANCE IS ON NOTICE THAT THE AIRPORT EXISTED BEFORE THE~~
~~25 VARIANCE WAS GRANTED AND THAT NORMAL AND ANTICIPATED NORMAL~~

1 OPERATIONS OF THE AIRPORT WILL RESULT IN NOISE AND
 2 VIBRATIONS BEING PROJECTED OVER THE PROPERTY. FURTHERMORE, A
 3 PERSON USING A STRUCTURE BUILT UNDER A VARIANCE MAY NOT
 4 COLLECT DAMAGES FROM A LOCAL GOVERNMENT FOR INTERFERENCE
 5 WITH THE ENJOYMENT OF THAT STRUCTURE CAUSED BY NOISE AND
 6 VIBRATIONS FROM NORMAL AND ANTICIPATED NORMAL AIRPORT
 7 OPERATIONS.

8 Section 11. Permit system. (1) The rules adopted
 9 pursuant to this act shall provide for a permit system for
 10 erecting new structures, changing uses of land or
 11 structures, and substantially altering, repairing, or
 12 replacing existing structures within the airport influence
 13 area.

14 (2) No material change may be made in the use of land
 15 and no structure or tree may be erected, altered, planted,
 16 or otherwise established in an airport influence area unless
 17 a permit for the use has been granted.

18 (3) No permit may be granted which would allow the
 19 establishment of an airport hazard or that would allow a
 20 nonconforming use, structure, or tree to become a greater
 21 hazard to air navigation than it was on the effective date
 22 of the designation of the airport influence area or any
 23 subsequent revisions to it or than it was prior to the
 24 application for a permit.

25 Section 12. Conditions on permit or variance. Any

1 permit or variance granted pursuant to this act may require
 2 the owner of the structure or tree in question to permit the
 3 local government, at its expense, to install, operate, and
 4 maintain the lights and markers necessary to warn pilots of
 5 the presence of an airport hazard.

6 Section 13. Board of adjustment. (1) All rules adopted
 7 pursuant to this act shall provide for a board of airport
 8 hazard adjustment consisting of five members to be appointed
 9 for terms and in the manner provided in 11-2707.

10 (2) All of the provisions of 11-2707 relating to
 11 appeals and judicial review are applicable to grievances
 12 relating to rules, variances, or permits.

13 (3) Where a local government has appointed a board of
 14 adjustment under the provisions of 11-2707 or 16-4706, the
 15 local government may designate the members of that board as
 16 the board of airport hazard adjustment required by this act
 17 in which case the terms of such members for purposes of this
 18 act are concurrent with their terms as members of the board
 19 of adjustment.

20 Section 14. Rules relative to zoning ordinances. (1)
 21 If a local government has adopted a zoning ordinance, any
 22 rules adopted under this act may be made a part of the
 23 zoning ordinance and may be administered and enforced in
 24 connection with it. However, the zoning ordinance may not
 25 limit the effectiveness or scope of the rules adopted

1 pursuant to this act.

2 (2) Where a conflict exists between the rules adopted
3 pursuant to this act and any zoning ordinances or
4 resolutions applicable to the same area, the more stringent
5 limitation or requirement shall prevail.

6 ~~Section 16. State and federal funds held back until
7 adoption of rules. (1) No state funds may be spent for air
8 navigation facilities, for land acquisition for airports and
9 air navigation facilities, or for the construction,
10 improvement, and maintenance of airports, unless the
11 affected local government has established or is in the
12 process of establishing the rules required by this act.~~

13 ~~(2) The department may not approve the distribution of
14 federal funds to a local government pursuant to 1-818 unless
15 that local government has established or is in the process
16 of establishing the rules required by this act. DEPARTMENT
17 MAY APPROVE LOCAL GOVERNMENT DESIGNATION OF AIRPORT
18 INFLUENCE AREA AND RULES. THE LOCAL GOVERNMENT MAY SUBMIT
19 ITS DESIGNATION OF AN AIRPORT INFLUENCE AREA AND RULES
20 GOVERNING THAT AREA TO THE DEPARTMENT FOR APPROVAL. APPROVAL
21 BY THE DEPARTMENT SHALL MEAN THAT THE LOCAL GOVERNMENT HAS
22 COMPLIED WITH THIS ACT.~~

23 Section 15. Rules to be reasonable. All rules adopted
24 under this act shall be reasonable and may not require the
25 removal or alteration of any structure or tree lawfully in

1 existence when the rules become effective. Such uses are to
2 be treated as prior nonconforming uses, but rules may
3 prohibit their expansion or their reconstruction or
4 replacement following destruction or substantial damage.
5 Rules may further require that trees in place at the time
6 the rules take effect be maintained at heights attained at
7 that time.

8 Section 16. Penalty -- court action. (1) Any person
9 who violates any provision of this act or any rules adopted
10 pursuant to it is guilty of a misdemeanor and punishable by
11 a fine not to exceed \$500, imprisonment in a county jail for
12 a period not to exceed 6 months, or both. Each day a
13 violation continues to exist constitutes a separate offense.

14 (2) A municipality LOCAL GOVERNING BODY may institute
15 in any court of competent jurisdiction an action to prevent,
16 restrain, correct, or abate any violation of this act or the
17 rules adopted under it.

18 Section 17. Severability. ~~if a part of this act or
19 the application thereof to any person or circumstance is
20 held invalid, the remainder of the act and the application
21 of such part to other persons or circumstances is not
22 affected thereby. SEVERABILITY. IF A PART OF THIS ACT IS
23 INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID
24 PART REMAIN IN EFFECT. IF A PART OF THIS ACT IS INVALID IN
25 ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT~~

1 IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE
2 INVALID APPLICATIONS.

3 ~~Section 18-- Repealer-----temporary--application--of~~
4 ~~existing--rules--Sections 1-70i through 1-723--R#6#4--1947~~
5 ~~are--repealed--However--any--rules--adopted--pursuant--thereto~~
6 ~~continue--in--full--force--until--superseded--by--rules--adopted~~
7 ~~pursuant--to--this--act~~

-End-

HOUSE OF REPRESENTATIVES

April 6, 1977

COMMITTEE OF THE WHOLE amendments to SENATE BILL NO. 198, as follows:

1. Amend page 4, section 5, line 23.

Following: "operations"

Strike: "; and"

Insert: "."

2. Amend page 12, section 15, line 6.

Following: "maintained"

Insert: "by the local government, at its expense,"

AS AMENDED BE CONCURRED IN

April 2, 1977

Page 2

HOUSE COMMITTEE ON LOCAL GOVERNMENT AMENDMENTS TO SENATE BILL 198

10. Amend page 4, section 5, lines 24 through line 1 on page 5.

Following: line 23

Strike: lines 24 through line 1 on page 5 in their entirety

11. Amend page 11, section 15, line 23.

Following: "reasonable"

Insert: "- prior nonconforming uses"

12. Amend page 12, section 15, line 2.

Following: "uses,"

Insert: "which may continue,"

13. Amend page 12, section 15, line 7.

Following: "time."

Insert: "Land in existing residential subdivisions or platted
for residential subdivision at the time rules are adopted
may continue to be used for residential purposes."

HOUSE OF REPRESENTATIVES

April 2, 1977

HOUSE COMMITTEE ON LOCAL GOVERNMENT AMENDMENTS TO SENATE BILL 198

1. Amend title, lines 6 and 7.

Following: "NOISE"

Strike: "AND"

Insert: ", "

Following: "HEIGHT"

Insert: ", AND LAND USE"

2. Amend title, line 10.

Following: "NOISE"

Strike: "AND"

Insert: ", "

Following: "HEIGHT"

Insert: ", AND LAND USE"

3. Amend page 2, section 1, lines 2 and 3.

Following: "NOISE"

Strike: "AND"

Insert: ", "

Following: "HEIGHT"

Insert: ", and land use"

4. Amend page 3, section 3, lines 6 through 10.

Following: "point"

Strike: lines 6 through 10 in their entirety

5. Amend page 3, section 3, line 11.

Following: line 10

Strike: "CENTERLINE"

Insert: "3-mile radius from the airport reference point"

6. Amend page 3, section 4, lines 21 and 22.

Following: "NONRESIDENTIAL"

Strike: "HEIGHT AND NOISE"

Insert: "nonresidential"

7. Amend page 4, section 5, line 7.

Following: "guidelines"

Insert: "for noise regulations"

8. Amend page 4, section 5, line 9.

Following: line 8

Insert: "the criteria and guidelines for height and land use regulations shall be designed solely to promote the public safety. The criteria and guidelines"

9. Amend page 4, section 5, lines 19 and 20.

Following: line 18

Strike: lines 19 and 20 in their entirety

Renumber: subsequent subsections

SENATE BILL NO. 198

INTRODUCED BY MURRAY, HAZELBAKER, LOWE, HEALY, LEE, ETCHART
BY REQUEST OF THE DEPARTMENT OF COMMUNITY AFFAIRS

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING LOCAL GOVERNING BODIES TO ADOPT ~~LAND-USE~~ NOISE AND HEIGHT, AND LAND USE REGULATIONS FOR AIRPORT INFLUENCE AREAS; ~~REQUIRING THE DEPARTMENT OF COMMUNITY AFFAIRS AND TO IDENTIFY AIRPORT INFLUENCE AREAS AND ESTABLISH CRITERIA FOR THE REGULATION OF LAND-USES~~ NOISE AND HEIGHT, AND LAND USE WITHIN THESE AREAS; ~~REPEALING SECTIONS 1-701 THROUGH 1-723, R.C.M. 1947."~~

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

Section 1. Legislative finding. It is hereby found that tall trees and structures and certain types of development located in the vicinity of airports endanger the lives and property of users of the airport and of occupants of land in its vicinity. It is also found that the location of tall trees and structures and certain types of development near airports reduce the area available for landing, taking off, and maneuvering aircraft, AND INCREASE THE LIKELIHOOD OF LEGAL ACTION AGAINST A LOCAL GOVERNMENT FOR NOISE NUISANCE, thus destroying the utility of the airports and the public investment in them. It is therefore the purpose of this act to promote the public health,

safety, and general welfare by the development of compatible ~~land uses in the vicinity of airports~~ NOISE AND HEIGHT, AND LAND USE REGULATIONS.

Section 2. Definitions. (1) The definitions in 1-102 apply to this act.

(2) In this act the following definitions also apply:

(a) "Airport influence area" means all land in the proximity of an airport, the use of which may be affected by the airport's existence.

(b) ~~"Planned airport site" means a defined area which has been approved as the location of an airport by the appropriate state and federal agencies.~~ "AIRPORT" MEANS, FOR THE PURPOSE OF THIS ACT, ONLY THOSE AIRPORTS INCLUDED ON THE NATIONAL AIRPORT SYSTEM PLAN.

~~(c) "Department" means the department of community affairs.~~

~~(d)(1)~~ "Local government" means any county or incorporated city or town having an airport influence area partially or entirely within its jurisdictional limits.

Section 3. Designation of airport influence areas. (1) ~~The department shall, in conformance with the Montana Administrative Procedure Act, designate the airport influence area for every airport or planned airport site within this state or any airport whose airport influence area extends into this state.~~ A LOCAL GOVERNMENT WITH AN

1 ~~AIRPORT SHALL DESIGNATE AN AIRPORT INFLUENCE AREA AROUND THE~~
 2 ~~AIRPORT WITHIN 3 YEARS FROM THE EFFECTIVE DATE OF THIS ACT.~~
 3 The designation shall be based on federal aviation
 4 administration rules and guidelines. ~~HOWEVER, NO AIRPORT~~
 5 ~~INFLUENCE AREA MAY COVER AN AREA LARGER THAN A 3-mile radius~~
 6 ~~from the airport reference point A 1/2-MILE BUT FROM THE~~
 7 ~~AIRPORT PROPERTY LINE, OR 1 MILE OUT FROM THE THRESHOLDS OF~~
 8 ~~THE PRIMARY INSTRUMENT RUNWAY, WITH RESPECT TO THE PRIMARY~~
 9 ~~INSTRUMENT RUNWAY THE AIRPORT INFLUENCE AREA SHALL NOT~~
 10 ~~EXCEED 1/2 MILE IN WIDTH, CENTERED ON THE EXTENDED RUNWAY~~
 11 ~~GENTERLINE 3-MILE RADIUS FROM THE AIRPORT REFERENCE POINT. A~~
 12 public hearing shall be held by the department in or near
 13 the local governments affected by the designation. LOCAL
 14 GOVERNMENT FOLLOWING THE PROCEDURE PRESCRIBED IN [SECTION
 15 7]a

16 (2) A map of the designation shall be filed with the
 17 county clerk and recorder of the affected counties and the
 18 city clerk of the affected cities and towns.

19 Section 4. Temporary effect of designation. Upon the
 20 designation of an airport influence area, the use of land
 21 within the airport influence area shall be restricted to
 22 ~~solely agricultural or forest~~ NONRESIDENTIAL HEIGHT AND
 23 NOISE NONRESIDENTIAL uses, with the exception of
 24 nonconforming uses existing on July 1, 1977, until rules are
 25 adopted pursuant to this act. This restriction may not be

1 imposed for a period of more than 1 year.

2 Section 5. ~~Submission of criteria to local government~~
 3 DEVELOPMENT OF CRITERIA BY A LOCAL GOVERNMENT. (1) The
 4 department LOCAL GOVERNMENT shall submit DEVISE criteria and
 5 guidelines for regulation of the airport influence area to
 6 the affected local government not later than 60 days after
 7 designating an airport influence area.

8 (2) The criteria and guidelines FOR NOISE REGULATIONS
 9 shall be designed to promote the public health, safety, and
 10 general welfare and THE CRITERIA AND GUIDELINES FOR HEIGHT
 11 AND LAND USE REGULATION, shall be designed solely to promote
 12 THE PUBLIC SAFETY. THE CRITERIA AND GUIDELINES shall, AT THE
 13 MINIMUM, give reasonable consideration to, among other
 14 things:

15 (a) the safety of airport users and persons and
 16 property in the vicinity of the airport;

17 (b) the character of the flying operations conducted
 18 or expected to be conducted at the airport;

19 (c) the magnitude and duration of noise produced by
 20 aircraft and the number of aircraft flybys;

21 (d) the nature of the terrain;

22 (e) the future development of the airport;

23 ~~(f) the protection of the public investment in the~~
 24 ~~airport and its facilities;~~

25 (g) the views and mandates of the federal agency

1 charged with the fostering of civil aeronautics as to the
2 aerial surfaces necessary for safe flying operations; and,

3 ~~(h) the present and future needs of Montanans with~~
4 ~~reference to the use of the airport for public~~
5 ~~transportation and services;~~

6 ~~(j) The criteria and guidelines shall serve as minimum~~
7 ~~standards for a local government in its establishment of the~~
8 ~~airport influence area regulations required by this act.~~

9 Section 6. Adoption of rules ~~approval~~ of
10 department. ~~(1)~~ Within 1 year of the designation of an
11 airport influence area, each local government affected shall
12 adopt and provide for the administration of rules
13 restricting the use of land and the height to which
14 structures may be erected and trees allowed to grow within
15 the airport influence area.

16 ~~(2) Prior to their enactment or issuance, rules,~~
17 ~~variances, and amendments affecting the airport influence~~
18 ~~area must be submitted by the local government to the~~
19 ~~department for approval. The department must approve or~~
20 ~~disapprove the proposed rules within 30 days of receiving~~
21 ~~them, or approval is presumed. A local government may~~
22 ~~resubmit an amended rule, variance, or amendment disapproved~~
23 ~~by the department.~~

24 Section 7. Public hearing on rules. Before a local
25 government adopts or amends rules governing the airport

1 influence area, it must hold a public hearing thereon.
2 Unless otherwise specifically provided, when notice of a
3 hearing or other official act is required by this title, the
4 following shall apply:

5 (1) The notice shall be published two times with at
6 least 7 days separating each publication. The first
7 publication shall be no more than 21 days prior to the
8 action and the last no less than 3 days prior to the action.

9 (2) The published notice shall contain:

10 (a) the date, time, and place at which the hearing or
11 other action will occur;

12 (b) a brief statement of the action to be taken; and,

13 ~~(c) any other information required by the Montana~~
14 ~~Administrative Procedure Act.~~

15 Section 8. State lands. When an airport influence area
16 lies partially or entirely on state-owned lands, the
17 department of state lands shall administer the affected
18 lands in conformance with the criteria and guidelines
19 prescribed by the department LOCAL GOVERNING BODY.

20 ~~Section 9. Department to adopt rules if local~~
21 ~~government does not. In the event that a local government~~
22 ~~does not adopt reasonable and effective rules for its~~
23 ~~airport influence area within 1 year after the designation~~
24 ~~of that area, the department shall, as soon as practicable~~
25 ~~and following the procedure prescribed in [section 7], adopt~~

1 reasonable and effective rules to be administered by the
 2 local government. If at any time thereafter the local
 3 government adopts its own rules for the airport influence
 4 area, these shall supersede those promulgated by the
 5 department but may be no less stringent. ~~DEPARTMENT TO~~
 6 ~~DESIGNATE INFLUENCE AREA OR TO ADOPT RULES AT REQUEST OF A~~
 7 ~~LOCAL GOVERNMENT. A LOCAL GOVERNMENT MAY REQUEST THE~~
 8 ~~DEPARTMENT TO DESIGNATE AN AIRPORT INFLUENCE AREA AROUND AN~~
 9 ~~AIRPORT WITHIN THE JURISDICTION OF THAT LOCAL GOVERNMENT. A~~
 10 ~~LOCAL GOVERNMENT MAY REQUEST THE DEPARTMENT TO DEVISE~~
 11 ~~CRITERIA, GUIDELINES, OR RULES FOR THE ADMINISTRATION OF AN~~
 12 ~~AIRPORT INFLUENCE AREA. ANY ACTION TAKEN BY THE DEPARTMENT~~
 13 ~~SHALL CONFORM TO THE REQUIREMENTS OF THIS ACT.~~

14 Section 9. Amendment of criteria -- redesignation of
 15 influence areas. (1) When circumstance so requires, the
 16 department LOCAL GOVERNMENT may amend the criteria and
 17 guidelines.

18 (2) The department LOCAL GOVERNMENT may redefine the
 19 boundaries of the influence area of an airport whenever an
 20 amendment to the criteria and guidelines so requires or
 21 whenever the airport site boundaries are altered.

22 ~~(3) Whenever the department exercises either of these~~
 23 ~~prerogatives, the local government affected shall be granted~~
 24 ~~60 days after receipt of notice of such action to amend its~~
 25 ~~existing influence area rules to conform to the amendment to~~

1 the criteria and guidelines or the redesignation of its
 2 affected influence area. If a local government fails to
 3 amend its existing airport influence area rules to conform
 4 to the amendment to the criteria and guidelines or the
 5 redesignation of its affected influence area, the department
 6 shall adopt the required amendment following the procedure
 7 outlined in [section 7].

8 Section 10. Variance. (1) Any person desiring to erect
 9 or increase the height of a structure, permit the growth of
 10 a tree, or use his property in violation of the rules
 11 adopted pursuant to this act may apply to board of airport
 12 hazard adjustment for a variance from the rules.

13 (2) A variance shall be granted where a literal
 14 application or enforcement of the rules would result in
 15 substantial practical difficulty or unnecessary hardship and
 16 where the variance would not be contrary to the public
 17 interest.

18 ~~(3) A VARIANCE SHALL BE GRANTED FOR A NON-CONFORMING~~
 19 ~~USE WHERE THERE IS NO IMMEDIATE HAZARD TO SAFE FLYING~~
 20 ~~OPERATIONS OR PERSONS AND PROPERTY IN THE VICINITY OF THE~~
 21 ~~AIRPORT AND WHERE THE NOISE OR VIBRATION, FROM NORMAL AND~~
 22 ~~ANTICIPATED NORMAL OPERATIONS OF THE AIRPORT WOULD NOT BE~~
 23 ~~LIKELY TO CAUSE STRUCTURAL DAMAGE.~~

24 ~~(4) WITHIN AN AIRPORT INFLUENCE AREA A PERSON WHO~~
 25 ~~OBTAINS A VARIANCE FOR BUILDING A STRUCTURE WHICH IS A~~

1 NON-CONFORMING USE UNDER RULES ADOPTED PURSUANT TO THIS ACT
 2 OR A PERSON WHO TAKES OR BUYS PROPERTY SUBJECT TO SUCH A
 3 VARIANCE IS ON NOTICE THAT THE AIRPORT EXISTED BEFORE THE
 4 VARIANCE WAS GRANTED AND THAT NORMAL AND ANTICIPATED NORMAL
 5 OPERATIONS OF THE AIRPORT WILL RESULT IN NOISE AND
 6 VIBRATIONS BEING PROJECTED OVER THE PROPERTY. FURTHERMORE, A
 7 PERSON USING A STRUCTURE BUILT UNDER A VARIANCE MAY NOT
 8 COLLECT DAMAGES FROM A LOCAL GOVERNMENT FOR INTERFERENCE
 9 WITH THE ENJOYMENT OF THAT STRUCTURE CAUSED BY NOISE AND
 10 VIBRATIONS FROM NORMAL AND ANTICIPATED NORMAL AIRPORT
 11 OPERATIONS.

12 Section 11. Permit system. (1) The rules adopted
 13 pursuant to this act shall provide for a permit system for
 14 erecting new structures, changing uses of land or
 15 structures, and substantially altering, repairing, or
 16 replacing existing structures within the airport influence
 17 area.

18 (2) No material change may be made in the use of land
 19 and no structure or tree may be erected, altered, planted,
 20 or otherwise established in an airport influence area unless
 21 a permit for the use has been granted.

22 (3) No permit may be granted which would allow the
 23 establishment of an airport hazard or that would allow a
 24 nonconforming use, structure, or tree to become a greater
 25 hazard to air navigation than it was on the effective date

1 of the designation of the airport influence area or any
 2 subsequent revisions to it or than it was prior to the
 3 application for a permit.

4 Section 12. Conditions on permit or variance. Any
 5 permit or variance granted pursuant to this act may require
 6 the owner of the structure or tree in question to permit the
 7 local government, at its expense, to install, operate, and
 8 maintain the lights and markers necessary to warn pilots of
 9 the presence of an airport hazard.

10 Section 13. Board of adjustment. (1) All rules adopted
 11 pursuant to this act shall provide for a board of airport
 12 hazard adjustment consisting of five members to be appointed
 13 for terms and in the manner provided in 11-2707.

14 (2) All of the provisions of 11-2707 relating to
 15 appeals and judicial review are applicable to grievances
 16 relating to rules, variances, or permits.

17 (3) Where a local government has appointed a board of
 18 adjustment under the provisions of 11-2707 or 16-4706, the
 19 local government may designate the members of that board as
 20 the board of airport hazard adjustment required by this act
 21 in which case the terms of such members for purposes of this
 22 act are concurrent with their terms as members of the board
 23 of adjustment.

24 Section 14. Rules relative to zoning ordinances. (1)
 25 If a local government has adopted a zoning ordinance, any

1 rules adopted under this act may be made a part of the
2 zoning ordinance and may be administered and enforced in
3 connection with it. However, the zoning ordinance may not
4 limit the effectiveness or scope of the rules adopted
5 pursuant to this act.

6 (2) Where a conflict exists between the rules adopted
7 pursuant to this act and any zoning ordinances or
8 resolutions applicable to the same area, the more stringent
9 limitation or requirement shall prevail.

10 ~~Section 16. State and federal funds held back until~~
11 ~~adoption of rules. (1) No state funds may be spent for air~~
12 ~~navigation facilities, for land acquisition for airports and~~
13 ~~air navigation facilities, or for the construction,~~
14 ~~improvement, and maintenance of airports, unless the~~
15 ~~affected local government has established or is in the~~
16 ~~process of establishing the rules required by this act.~~

17 ~~(2) The department may not approve the distribution of~~
18 ~~federal funds to a local government pursuant to 1-810 unless~~
19 ~~that local government has established, or is in the process~~
20 ~~of establishing, the rules required by this act. DEPARTMENT~~
21 ~~MAY APPROVE LOCAL GOVERNMENT DESIGNATION OF AIRPORT~~
22 ~~INFLUENCE AREA AND RULES. THE LOCAL GOVERNMENT MAY SUBMIT~~
23 ~~ITS DESIGNATION OF AN AIRPORT INFLUENCE AREA AND RULES~~
24 ~~GOVERNING THAT AREA TO THE DEPARTMENT FOR APPROVAL. APPROVAL~~
25 ~~BY THE DEPARTMENT SHALL MEAN THAT THE LOCAL GOVERNMENT HAS~~

1 ~~COMPLIED WITH THIS ACT.~~

2 Section 15. Rules to be reasonable ~~--~~ PRIOR
3 NONCONFORMING USES. All rules adopted under this act shall
4 be reasonable and may not require the removal or alteration
5 of any structure or tree lawfully in existence when the
6 rules become effective. Such uses are to be treated as prior
7 nonconforming uses, WHICH MAY CONTINUE but rules may
8 prohibit their expansion or their reconstruction or
9 replacement following destruction or substantial damage.
10 Rules may further require that trees in place at the time
11 the rules take effect be maintained BY THE LOCAL GOVERNMENT,
12 AT ITS EXPENSE, at heights attained at that time. LAND IN
13 EXISTING RESIDENTIAL SUBDIVISIONS OR PLATTED FOR RESIDENTIAL
14 SUBDIVISION AT THE TIME RULES ARE ADOPTED MAY CONTINUE TO BE
15 USED FOR RESIDENTIAL PURPOSES.

16 Section 16. Penalty -- court action. (1) Any person
17 who violates any provision of this act or any rules adopted
18 pursuant to it is guilty of a misdemeanor and punishable by
19 a fine not to exceed \$500, imprisonment in a county jail for
20 a period not to exceed 6 months, or both. Each day a
21 violation continues to exist constitutes a separate offense.

22 (2) A municipality LOCAL GOVERNING BODY may institute
23 in any court of competent jurisdiction an action to prevent,
24 restrain, correct, or abate any violation of this act or the
25 rules adopted under it.

1 Section 17. ~~Severability.---if--a--part--of--this--act--or~~
2 ~~the--application--thereof--to--any--person--or--circumstance--is~~
3 ~~held--invalid,--the--remainder--of--the--act--and--the--application~~
4 ~~of--such--part--to--other--persons--or--circumstances--is--not~~
5 ~~effected--thereby.~~ SEVERABILITY. IF A PART OF THIS ACT IS
6 INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID
7 PART REMAIN IN EFFECT. IF A PART OF THIS ACT IS INVALID IN
8 ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT
9 IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE
10 INVALID APPLICATIONS.

11 ~~Section 18. Repealer.-----temporary--application--of~~
12 ~~existing--rules.---Sections--1-701--through--1-723,--R.C.M.--1947,~~
13 ~~are--repealed.---However,--any--rules--adopted--pursuant--thereto~~
14 ~~continue--in--full--force--until--superseded--by--rules--adopted~~
15 ~~pursuant--to--this--act.~~

SENATE BILL NO. 198

INTRODUCED BY MURRAY, HAZELBAKER, LONE, HEALY, LEE, ETCHART
BY REQUEST OF THE DEPARTMENT OF COMMUNITY AFFAIRS

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING LOCAL
GOVERNING BODIES TO ADOPT ~~LAND-USE~~ NOISE AND, HEIGHT, AND
LAND USE REGULATIONS FOR AIRPORT INFLUENCE AREAS; ~~REQUIRING
THE--DEPARTMENT-OF-COMMUNITY-AFFAIRS~~ AND TO IDENTIFY AIRPORT
INFLUENCE AREAS AND ESTABLISH CRITERIA FOR THE REGULATION OF
~~LAND-USES~~ NOISE AND, HEIGHT, AND LAND USE WITHIN THESE
AREAS; ~~REPEALING SECTIONS 1-701 THROUGH 1-723, R.C.M. 1947."~~

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

Section 1. Legislative finding. It is hereby found
that tall trees and structures and certain types of
development located in the vicinity of airports endanger the
lives and property of users of the airport and of occupants
of land in its vicinity. It is also found that the location
of tall trees and structures and certain types of
development near airports reduce the area available for
landing, taking off, and maneuvering aircraft, AND INCREASE
THE LIKELIHOOD OF LEGAL ACTION AGAINST A LOCAL GOVERNMENT
FOR NOISE NUISANCE, thus destroying the utility of the
airports and the public investment in them. It is therefore
the purpose of this act to promote the public health,

safety, and general welfare by the development of compatible
~~land-uses-in-the-vicinity-of-airports~~ NOISE AND, HEIGHT, AND
LAND USE REGULATIONS.

Section 2. Definitions. (1) The definitions in 1-102
apply to this act.

(2) In this act the following definitions also apply:

(a) "Airport influence area" means all land in the
proximity of an airport, the use of which may be affected by
the airport's existence.

(b) ~~"Planned airport site" means a defined area which
has been approved as the location of an airport by the
appropriate state and federal agencies.~~ "AIRPORT" MEANS, FOR
THE PURPOSE OF THIS ACT, ONLY THOSE AIRPORTS INCLUDED ON THE
NATIONAL AIRPORT SYSTEM PLAN.

~~(c) "Department" means the department of community
affairs.~~

~~(d)(1) "Local government" means any county or
incorporated city or town having an airport influence area
partially or entirely within its jurisdictional limits.~~

Section 3. Designation of airport influence areas. (1)
~~The department shall, in conformance with the Montana
Administrative Procedure Act, designate the airport
influence area for every airport or planned airport site
within this state or any airport whose airport influence
area extends into this state.~~ A LOCAL GOVERNMENT WITH AN

REFERENCE BILL: Includes Free Joint
Conference Committee Report
Dated 4-16-77

1 ~~AIRPORT SHALL DESIGNATE AN AIRPORT INFLUENCE AREA AROUND THE~~
 2 ~~AIRPORT WITHIN 3 YEARS FROM THE EFFECTIVE DATE OF THIS ACT.~~
 3 The designation shall be based on federal aviation
 4 administration rules and guidelines. ~~HOWEVER, NO AIRPORT~~
 5 ~~INFLUENCE AREA MAY COVER AN AREA LARGER THAN A~~ EXTEND MORE
 6 ~~THAN 10,000 FEET OUT FROM THE THRESHOLDS OF THE PRIMARY~~
 7 ~~INSTRUMENT APPROACH RUNWAY OR EXCEED ONE MILE IN WIDTH ON~~
 8 ~~EACH SIDE OF THE PRIMARY INSTRUMENT APPROACH RUNWAY AND ITS~~
 9 ~~EXTENDED 3-mile-radius-from-the-airport-reference-point A~~
 10 ~~1/2-MILE BUT FROM THE AIRPORT PROPERTY LINE, OR 1 MILE BUT~~
 11 ~~FROM THE THRESHOLDS OF THE PRIMARY INSTRUMENT RUNWAY, WITH~~
 12 ~~RESPECT TO THE PRIMARY INSTRUMENT RUNWAY THE AIRPORT~~
 13 ~~INFLUENCE AREA SHALL NOT EXCEED 1/2 MILE IN WIDTH, CENTERED~~
 14 ~~ON THE EXTENDED RUNWAY CENTERLINE 3-MILE RADIUS FROM THE~~
 15 ~~AIRPORT REFERENCE POINT CENTERLINE. A public hearing shall~~
 16 be held by the department in or near the local governments
 17 affected by the designation. LOCAL GOVERNMENT FOLLOWING THE
 18 PROCEDURE PRESCRIBED IN [SECTION 7].

19 (2) A map of the designation shall be filed with the
 20 county clerk and recorder of the affected counties and the
 21 city clerk of the affected cities and towns.

22 Section 4. ~~Temporary effect of designation. Upon the~~
 23 ~~designation of an airport influence area, the use of land~~
 24 ~~within the airport influence area shall be restricted to~~
 25 ~~solely agricultural or forest~~ NONRESIDENTIAL HEIGHT AND

1 ~~NOISE NONRESIDENTIAL HEIGHT AND NOISE uses with the~~
 2 ~~exception of nonconforming uses existing on July 1, 1977~~
 3 ~~until rules are adopted pursuant to this act. This~~
 4 ~~restriction may not be imposed for a period of more than 1~~
 5 ~~year. TEMPORARY EFFECT OF DESIGNATION. UPON THE DESIGNATION~~
 6 ~~OF AN AIRPORT INFLUENCE AREA, THE USE OF LAND WITHIN THE~~
 7 ~~AIRPORT INFLUENCE AREA SHALL BE RESTRICTED AS TO HEIGHT~~
 8 ~~CONSISTENT WITH PART 77, FEDERAL AERONAUTICS REGULATIONS,~~
 9 ~~UNTIL RULES ARE ADOPTED PURSUANT TO THIS ACT. THIS~~
 10 ~~RESTRICTION DOES NOT AFFECT NON-CONFORMING USES AND AREAS~~
 11 ~~ALREADY ZONED ON JULY 1, 1977, AND MAY NOT BE IMPOSED FOR A~~
 12 ~~PERIOD OF MORE THAN 1 YEAR. AFTER THE DESIGNATION OF AN~~
 13 ~~AIRPORT INFLUENCE AREA, NO PERSON MAY RECOVER FROM A LOCAL~~
 14 ~~GOVERNMENT DAMAGES CAUSED BY NOISE AND VIBRATIONS FROM~~
 15 ~~NORMAL AND ANTICIPATED NORMAL AIRPORT OPERATIONS.~~

16 Section 5. ~~Submission of criteria to local governments~~
 17 ~~DEVELOPMENT OF CRITERIA BY A LOCAL GOVERNMENT. (1) The~~
 18 ~~department LOCAL GOVERNMENT shall submit DEVISE criteria and~~
 19 ~~guidelines for regulation of the airport influence area to~~
 20 ~~the affected local government not later than 60 days after~~
 21 ~~designating an airport influence area.~~

22 (2) The criteria and guidelines FOR NOISE REGULATIONS
 23 shall be designed to promote the public health, safety, and
 24 general welfare and THE CRITERIA AND GUIDELINES FOR HEIGHT
 25 AND LAND USE REGULATIONS SHALL BE DESIGNED SOLELY TO PROMOTE

1 ~~THE PUBLIC SAFETY, THE CRITERIA AND GUIDELINES~~ shall, ~~AT THE~~
2 ~~MINIMUM,~~ give reasonable consideration to, among other
3 things:

4 (a) the safety of airport users and persons and
5 property in the vicinity of the airport;

6 (b) the character of the flying operations conducted
7 or expected to be conducted at the airport;

8 (c) the magnitude and duration of noise produced by
9 aircraft and the number of aircraft flybys;

10 (d) the nature of the terrain;

11 (e) the future development of the airport;

12 ~~(f) the protection of the public investment in the~~
13 ~~airport and its facilities;~~

14 ~~(g) (F) the views and mandates of the federal agency~~
15 ~~charged with the fostering of civil aeronautics as to the~~
16 ~~aerial surfaces necessary for safe flying operations; and,~~

17 ~~(h) the present and future needs of Montanans with~~
18 ~~reference to the use of the airport for public~~
19 ~~transportation and services;~~

20 ~~(i) The criteria and guidelines shall serve as minimum~~
21 ~~standards for a local government in its establishment of the~~
22 ~~airport influence area regulations required by this act;~~

23 Section 6. Adoption of rules ~~approval~~ of
24 department. ~~(j)~~ Within 1 year of the designation of an
25 airport influence area, each local government affected shall

1 adopt and provide for the administration of rules
2 restricting ~~the use of land~~ and the height to which
3 structures may be erected and trees allowed to grow within
4 the airport influence area.

5 ~~(2) Prior to their enactment or issuance, rules,~~
6 ~~variances, and amendments affecting the airport influence~~
7 ~~area must be submitted by the local government to the~~
8 ~~department for approval. The department must approve or~~
9 ~~disapprove the proposed rules within 30 days of receiving~~
10 ~~them, or approval is presumed. A local government may~~
11 ~~resubmit an amended rule, variance, or amendment disapproved~~
12 ~~by the department.~~

13 Section 7. Public hearing on rules. Before a local
14 government adopts or amends rules governing the airport
15 influence area, it must hold a public hearing thereon.
16 Unless otherwise specifically provided, when notice of a
17 hearing or other official act is required by this title, the
18 following shall apply:

19 (1) The notice shall be published two times with at
20 least 7 days separating each publication. The first
21 publication shall be no more than 21 days prior to the
22 action and the last no less than 3 days prior to the action.

23 (2) The published notice shall contain:

24 (a) the date, time, and place at which the hearing or
25 other action will occur;

1 (b) a brief statement of the action to be taken; ~~and,~~
 2 ~~(c) any other information required by the Montana~~
 3 ~~Administrative Procedure Act.~~

4 Section 8. State lands. When an airport influence area
 5 lies partially or entirely on state-owned lands, the
 6 department of state lands shall administer the affected
 7 lands in conformance with the criteria and guidelines
 8 prescribed by the department LOCAL GOVERNING BODY.

9 ~~Section 9. Department to adopt rules if local~~
 10 ~~government does not. In the event that a local government~~
 11 ~~does not adopt reasonable and effective rules for its~~
 12 ~~airport influence area within 2 year after the designation~~
 13 ~~of that area, the department shall, as soon as practicable~~
 14 ~~and following the procedure prescribed in {section 7}, adopt~~
 15 ~~reasonable and effective rules to be administered by the~~
 16 ~~local governments. If at any time thereafter the local~~
 17 ~~government adopts its own rules for the airport influence~~
 18 ~~area, these shall supersede those promulgated by the~~
 19 ~~department but may be no less stringent. DEPARTMENT TO~~
 20 ~~DESIGNATE INFLUENCE AREA OR TO ADOPT RULES AT REQUEST OF A~~
 21 ~~LOCAL GOVERNMENT. A LOCAL GOVERNMENT MAY REQUEST THE~~
 22 ~~DEPARTMENT TO DESIGNATE AN AIRPORT INFLUENCE AREA AROUND AN~~
 23 ~~AIRPORT WITHIN THE JURISDICTION OF THAT LOCAL GOVERNMENT. A~~
 24 ~~LOCAL GOVERNMENT MAY REQUEST THE DEPARTMENT TO DEVISE~~
 25 ~~CRITERIA, GUIDELINES, OR RULES FOR THE ADMINISTRATION OF AN~~

1 ~~AIRPORT INFLUENCE AREA. ANY ACTION TAKEN BY THE DEPARTMENT~~
 2 ~~SHALL CONFORM TO THE REQUIREMENTS OF THIS ACT.~~

3 Section 9. Amendment of criteria -- redesignation of
 4 influence areas. (1) When circumstance so requires, the
 5 department LOCAL GOVERNMENT may amend the criteria and
 6 guidelines.

7 (2) The department LOCAL GOVERNMENT may redefine the
 8 boundaries of the influence area of an airport whenever an
 9 amendment to the criteria and guidelines so requires or
 10 whenever the airport site boundaries are altered.

11 (3) ~~Whenever the department exercises either of these~~
 12 ~~prerogatives, the local government affected shall be granted~~
 13 ~~60 days after receipt of notice of such action to amend its~~
 14 ~~existing influence area rules to conform to the amendment to~~
 15 ~~the criteria and guidelines or the redesignation of its~~
 16 ~~affected influence areas. If a local government fails to~~
 17 ~~amend its existing airport influence area rules to conform~~
 18 ~~to the amendment to the criteria and guidelines or the~~
 19 ~~redesignation of its affected influence area, the department~~
 20 ~~shall adopt the required amendment following the procedure~~
 21 ~~outlined in {section 7}.~~

22 Section 10. Variance. (1) Any person desiring to erect
 23 or increase the height of a structure, permit the growth of
 24 a tree, or use his property in violation of the rules
 25 adopted pursuant to this act may apply to board of airport

1 hazard adjustment for a variance from the rules.

2 (2) A variance shall be granted where a literal
3 application or enforcement of the rules would result in
4 substantial practical difficulty or unnecessary hardship and
5 where the variance would not be contrary to the public
6 interest.

7 (3) A VARIANCE SHALL BE GRANTED FOR A NON-CONFORMING
8 USE WHERE THERE IS NO IMMEDIATE HAZARD TO SAFE FLYING
9 OPERATIONS OR PERSONS AND PROPERTY IN THE VICINITY OF THE
10 AIRPORT AND WHERE THE NOISE OR VIBRATIONS FROM NORMAL AND
11 ANTICIPATED NORMAL OPERATIONS OF THE AIRPORT WOULD NOT BE
12 LIKELY TO CAUSE STRUCTURAL DAMAGE.

13 (4) WITHIN AN AIRPORT INFLUENCE AREA A PERSON WHO
14 OBTAINS A VARIANCE FOR BUILDING A STRUCTURE WHICH IS A
15 NON-CONFORMING USE UNDER RULES ADOPTED PURSUANT TO THIS ACT
16 OR A PERSON WHO TAKES OR BUYS PROPERTY SUBJECT TO SUCH A
17 VARIANCE IS ON NOTICE THAT THE AIRPORT EXISTED BEFORE THE
18 VARIANCE WAS GRANTED AND THAT NORMAL AND ANTICIPATED NORMAL
19 OPERATIONS OF THE AIRPORT WILL RESULT IN NOISE AND
20 VIBRATIONS BEING PROJECTED OVER THE PROPERTY. FURTHERMORE, A
21 PERSON USING A STRUCTURE BUILT UNDER A VARIANCE MAY NOT
22 COLLECT DAMAGES FROM A LOCAL GOVERNMENT FOR INTERFERENCE
23 WITH THE ENJOYMENT OF THAT STRUCTURE CAUSED BY NOISE AND
24 VIBRATIONS FROM NORMAL AND ANTICIPATED NORMAL AIRPORT
25 OPERATIONS.

1 Section 11. Permit system. (1) The rules adopted
2 pursuant to this act shall provide for a permit system for
3 erecting new structures, changing uses of land or
4 structures, and substantially altering, repairing, or
5 replacing existing structures within the airport influence
6 area.

7 (2) No material change may be made in the use of land
8 and no structure or tree may be erected, altered, planted,
9 or otherwise established in an airport influence area unless
10 a permit for the use has been granted.

11 (3) No permit may be granted which would allow the
12 establishment of an airport hazard or that would allow a
13 nonconforming use, structure, or tree to become a greater
14 hazard to air navigation than it was on the effective date
15 of the designation of the airport influence area or any
16 subsequent revisions to it or than it was prior to the
17 application for a permit.

18 Section 12. Conditions on permit or variance. Any
19 permit or variance granted pursuant to this act may require
20 the owner of the structure or tree in question to permit the
21 local government, at its expense, to install, operate, and
22 maintain the lights and markers necessary to warn pilots of
23 the presence of an airport hazard.

24 Section 13. Board of adjustment. (1) All rules adopted
25 pursuant to this act shall provide for a board of airport

1 hazard adjustment consisting of five members to be appointed
2 for terms and in the manner provided in 11-2707.

3 (2) All of the provisions of 11-2707 relating to
4 appeals and judicial review are applicable to grievances
5 relating to rules, variances, or permits.

6 (3) Where a local government has appointed a board of
7 adjustment under the provisions of 11-2707 or 16-4706, the
8 local government may designate the members of that board as
9 the board of airport hazard adjustment required by this act
10 in which case the terms of such members for purposes of this
11 act are concurrent with their terms as members of the board
12 of adjustment.

13 Section 14. Rules relative to zoning ordinances. (1)
14 If a local government has adopted a zoning ordinance, any
15 rules adopted under this act may be made a part of the
16 zoning ordinance and may be administered and enforced in
17 connection with it. However, the zoning ordinance may not
18 limit the effectiveness or scope of the rules adopted
19 pursuant to this act.

20 (2) Where a conflict exists between the rules adopted
21 pursuant to this act and any zoning ordinances or
22 resolutions applicable to the same area, the more stringent
23 limitation or requirement shall prevail.

24 Section 16. ~~State and federal funds held back until~~
25 ~~adoption of rules. (1) No state funds may be spent for air~~

1 ~~navigation facilities, for land acquisition for airports and~~
2 ~~air navigation facilities, or for the construction,~~
3 ~~improvement, and maintenance of airports, unless the~~
4 ~~affected local government has established or is in the~~
5 ~~process of establishing the rules required by this act.~~

6 ~~(2) The department may not approve the distribution of~~
7 ~~federal funds to a local government pursuant to 1-810 unless~~
8 ~~that local government has established, or is in the process~~
9 ~~of establishing, the rules required by this act. DEPARTMENT~~
10 ~~MAY APPROVE LOCAL GOVERNMENT DESIGNATION OF AIRPORT~~
11 ~~INFLUENCE AREA AND RULES. THE LOCAL GOVERNMENT MAY SUBMIT~~
12 ~~ITS DESIGNATION OF AN AIRPORT INFLUENCE AREA AND RULES~~
13 ~~GOVERNING THAT AREA TO THE DEPARTMENT FOR APPROVAL. APPROVAL~~
14 ~~BY THE DEPARTMENT SHALL MEAN THAT THE LOCAL GOVERNMENT HAS~~
15 ~~COMPLIED WITH THIS ACT.~~

16 Section 15. Rules to be reasonable ~~and~~ PRIOR
17 NONCONFORMING USES. All rules adopted under this act shall
18 be reasonable and may not require the removal or alteration
19 of any structure or tree lawfully in existence when the
20 rules become effective. Such uses are to be treated as prior
21 nonconforming uses, WHICH MAY CONTINUE but rules may
22 prohibit their expansion or their reconstruction or
23 replacement following destruction or substantial damage.
24 Rules may further require that trees in place at the time
25 the rules take effect be maintained BY THE LOCAL GOVERNMENT.

1 AT ITS EXPENSE, at heights attained at that time. LAND IN
 2 EXISTING RESIDENTIAL SUBDIVISIONS OR PLATTED FOR RESIDENTIAL
 3 SUBDIVISION AT THE TIME RULES ARE ADOPTED MAY CONTINUE TO BE
 4 USED FOR RESIDENTIAL PURPOSES.

5 Section 16. Penalty -- court action. (1) Any person
 6 who violates any provision of this act or any rules adopted
 7 pursuant to it is guilty of a misdemeanor and punishable by
 8 a fine not to exceed \$500, imprisonment in a county jail for
 9 a period not to exceed 6 months, or both. Each day a
 10 violation continues to exist constitutes a separate offense.

11 (2) A municipality LOCAL GOVERNING BODY may institute
 12 in any court of competent jurisdiction an action to prevent,
 13 restrain, correct, or abate any violation of this act or the
 14 rules adopted under it.

15 Section 17. ~~Severability. If a part of this act or~~
 16 ~~the application thereof to any person or circumstance is~~
 17 ~~held invalid, the remainder of the act and the application~~
 18 ~~of such part to other persons or circumstances is not~~
 19 ~~affected thereby.~~ SEVERABILITY. IF A PART OF THIS ACT IS
 20 INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID
 21 PART REMAIN IN EFFECT. IF A PART OF THIS ACT IS INVALID IN
 22 ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT
 23 IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE
 24 INVALID APPLICATIONS.

25 ~~Section 18. Repeater. Temporary application of~~

1 ~~existing rules. Sections 1-701 through 1-723, R.C.M. 1947,~~
 2 ~~are repeated. However, any rules adopted pursuant thereto~~
 3 ~~continue in full force until superseded by rules adopted~~
 4 ~~pursuant to this act.~~

-End-