

HOUSE BILL 732

IN THE HOUSE

February 10, 1979	Introduced and referred to Committee on Local Government.
February 12, 1979	Rereferred to Committee on Judiciary.
February 20, 1979	Committee recommend bill, do pass.
February 21, 1979	Second reading, as amended.
February 22, 1979	Considered correctly engrossed.
February 23, 1979	Third reading, passed.

IN THE SENATE

February 23, 1979	Introduced and referred to Committee on Local Government.
March 15, 1979	Committee recommend bill, not concurred.

IN THE HOUSE

March 16, 1979	Returned from Senate.
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House BILL NO. 732

INTRODUCED BY Reynolds

A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE LOCAL GOVERNMENTS TO ADOPT NOISE AND LAND-USE REGULATIONS FOR AIRPORT INFLUENCE AREAS; PROVIDING FOR FEDERAL AND STATE FUNDS TO BE WITHHELD UNTIL SUCH REGULATIONS ARE ADOPTED; AMENDING SECTIONS 67-4-201 THROUGH 67-4-203, 67-4-301, 67-4-303, AND 67-4-313, MCA."

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

Section 1. Section 67-4-201, MCA, is amended to read:

"67-4-201. Designation of airport influence areas. (1)

A local government with an airport shall designate an airport influence area around the airport within 3 years from July 1, 1977. The designation shall be based on federal aviation administration rules and guidelines. However, no airport influence area may extend more than 10,000 feet out from the thresholds of the primary instrument--approach runway or exceed 1 mile in width on each side of the primary instrument--approach runway and its extended centerline. A public hearing shall be held by the local government following the procedure prescribed in 67-4-302.

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

city clerks of the affected cities and towns."

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

"67-4-202. Temporary effect of designation. Upon the designation of an airport influence area, the use of land within the airport influence area shall be restricted as to height consistent with part 77, federal aeronautics aviation regulations, until rules are adopted pursuant to this chapter. This restriction does not affect nonconforming uses and areas already zoned on July 1, 1977, and may not be imposed for a period of more than 1 year. ~~The use of land within the airport influence area shall be restricted as to its use as of July 1, 1979. This restriction may not be imposed for a period of more than 1 year.~~ After the designation of an airport influence area, no person may recover from a local government damages caused by noise and vibrations from normal and anticipated normal airport operations."

Section 3. Section 67-4-203, MCA, is amended to read:

"67-4-203. Development of criteria for regulation of influence area. (1) The local government shall devise criteria and guidelines for regulation of the airport influence area.

(2) The criteria and guidelines for noise, heights, and ~~land-use~~ regulations shall be designed to promote the public health, safety, and general welfare, and the criteria and

1 guidelines for noise, height, and land use regulations shall  
 2 be designed solely to promote the public health, safety, and  
 3 general welfare. The criteria and guidelines shall, at the  
 4 minimum, give reasonable consideration to, among other  
 5 things:

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

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

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

12 (d) the nature of the terrain;

13 (e) the future development of the airport;

14 (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."

17 Section 4. Section 67-4-301, MCA, is amended to read:

18 "67-4-301. Local government to adopt rules. Within 1  
 19 year of the designation of an airport influence area, each  
 20 local government affected shall adopt and provide for the  
 21 administration of rules restricting the use of land and the  
 22 height to which structures may be erected and trees allowed  
 23 to grow within the airport influence area."

24 Section 5. Section 67-4-303, MCA, is amended to read:

25 "67-4-303. Rules to be reasonable -- prior

1 nonconforming uses. All rules adopted under this chapter  
 2 shall be reasonable and may not require the removal or  
 3 alteration of any structure or tree lawfully in existence  
 4 when the rules become effective. Such uses are to be treated  
 5 as prior nonconforming uses which may continue, but rules  
 6 may prohibit their expansion or their reconstruction or  
 7 replacement following destruction or substantial damage.  
 8 Rules may further require that trees in place at the time  
 9 the rules take effect be maintained by the local government,  
 10 at its expense, at heights attained at that time. Land in  
 11 existing residential subdivisions ~~or platted for residential~~  
 12 ~~subdivision at the time rules are adopted~~ as of July 1,  
 13 1979, may continue to be used for residential purposes."

14 Section 6. Section 67-4-313, MCA, is amended to read:

15 "67-4-313. Variance. (1) Any person desiring to erect  
 16 or increase the height of a structure, permit the growth of  
 17 a tree, or use his property in violation of the rules  
 18 adopted pursuant to this chapter may apply to the board of  
 19 airport hazard adjustment for a variance from the rules.

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

25 (3) A variance shall be granted for a nonconforming

1 use where there is no immediate hazard to safe flying  
2 operations or persons and property in the vicinity of the  
3 airport and where the noise or vibrations from normal and  
4 anticipated normal operations of the airport would not be  
5 likely to cause structural damage.

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

19 NEW SECTION. Section 7. State and federal funds to be  
20 withheld until adoption of rules. (1) No state funds may be  
21 spent for air navigation facilities, land acquisition for  
22 airports or air navigation facilities, or for the  
23 construction, improvement, or maintenance of airports until  
24 the affected local government has initiated the adoption of  
25 rules pursuant to [this act].

1 (2) The department may not approve the distribution of  
2 federal funds to a local government pursuant to 67-10-405  
3 until the local government has initiated the establishment  
4 of rules pursuant to [this act].

5 Section 9. 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.

-End-

## 1 HOUSE BILL NO. 732

2 INTRODUCED BY HARPER

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4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE LOCAL  
5 GOVERNMENTS TO ADOPT NOISE AND LAND-USE REGULATIONS FOR  
6 AIRPORT INFLUENCE AREAS; PROVIDING FOR FEDERAL AND STATE  
7 FUNDS TO BE WITHHELD UNTIL SUCH REGULATIONS ARE ADOPTED;  
8 AMENDING SECTIONS 67-4-201 THROUGH 67-4-203, 67-4-301,  
9 67-4-303, AND 67-4-313, MCA; ~~AND PROVIDING AN EFFECTIVE~~  
10 ~~DATE."~~

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13 "67-4-201. Designation of airport influence areas. (1)

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22 public hearing shall be held by the local government  
23 following the procedure prescribed in 67-4-302.

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1 county clerk and recorders of the affected counties and the  
2 city clerks of the affected cities and towns."

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11 imposed for a period of more than 1 year. ~~The use of land~~  
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 10 the rules take effect be maintained by the local government,  
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 12 existing residential subdivisions ~~or-platted-for-residential~~  
 13 ~~subdivision--at--the--time--rules--are--adopted~~ ~~as-of-duty-in~~  
 14 ~~1979, FOR WHICH A FINAL PLAT HAS BEEN FILED AS OF THE~~  
 15 ~~EFFECTIVE DATE OF THIS ACT~~ may continue to be used for  
 16 residential purposes."

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11 one or more of its applications, the part remains in effect  
12 in all valid applications that are severable from the  
13 invalid applications.

14 SECTION 9. EFFECTIVE DATE. THIS ACT IS EFFECTIVE UPON  
15 PASSAGE AND APPROVAL.

-End-