

FIRST REGULAR SESSION

[PERFECTED]

HOUSE BILL NO. 436

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES MERIDETH, BRITT, BERKOWITZ, MYERS, BLACK,
RICHARDSON, GRAHAM (Co-sponsors), HARTZLER, OSTMANN,
BERKSTRESSER AND BARTELSMEYER.

Read 1st time January 18, 2001, and 1000 copies ordered printed.

Read 2nd time January 22, 2001, and referred to the Committee on Local Government and Related Matters, February 8, 2001.

Reported from the Committee on Local Government and Related Matters, March 15, 2001, with recommendation that the bill Do
Pass.

Taken up for Perfection April 24, 2001. Bill ordered Perfected and printed, as amended.

TED WEDEL, Chief Clerk

1000L.01P

AN ACT

To amend chapter 305, RSMo, by adding thereto nine new sections relating to the Missouri
airport protection act.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 305, RSMo, is amended by adding thereto nine new sections, to be
2 known as sections 305.700, 305.702, 305.704, 305.706, 305.708, 305.710, 305.712, 305.714 and
3 Section 1 to read as follows:

**305.700. 1. Sections 305.700 to 305.714 may be cited as the "Missouri Airport
2 Protection Act".**

3 2. As used in sections 305.700 to 305.714, the following terms mean:

**4 (1) "Airport", an area of land or water that is used or intended to be used for the
5 landing and takeoff of aircraft, including buildings, equipment, rights-of-way, property
6 and appurtenant areas, that is open to the public;**

**7 (2) "Aviation hazard", any structure, object, or natural growth, or use of land
8 which obstructs the air space required for the flight of aircraft landing or taking off at any
9 airport or is otherwise hazardous to such landing or taking off;**

10 (3) "Commission", the Missouri highways and transportation commission;

11 (4) "FAA", the Federal Aviation Administration or its successor agency;

12 (5) "Obstruction", any structure natural or man made, penetrating the navigable
13 airspace as defined in the standards for determining obstructions and navigable airspace
14 in section 305.704;

15 (6) "Permit", an airport structure permit issued by the commission pursuant to
16 sections 305.700 to 305.714;

17 (7) "Person", an individual, firm, partnership, corporation, association or political
18 subdivision. Person includes a trustee, receiver, assignee or other similar representative
19 of a person;

20 (8) "Public airport", an airport open to the public and eligible for public funding;

21 (9) "Structure", an object constructed or installed including, but not limited to, a
22 building, tower, antenna, smokestack or overhead transmission line.

 305.702. 1. The general assembly finds an aviation hazard endangers the lives and
2 property of users of an airport and of occupants of land in its vicinity, and in effect reduces
3 the size of the area available for landing, taking off and maneuvering of aircraft, thus
4 tending to destroy or impair the utility of an airport and the public investment therein.
5 Certain structures are hazardous to aircraft in flight because of their height or location,
6 especially during periods of reduced visibility and darkness. Structures determined to be
7 hazards are not in the interest of public health, public safety or the general welfare of the
8 people of Missouri.

9 2. The commission shall establish an airspace review and permit process to regulate
10 structures that may be erected in proximity to public airports of the state and to ensure
11 that they do not interfere with air navigation.

 305.704. 1. A permit shall be required before erecting, adding to or replacing any
2 structure:

3 (1) Within twelve thousand feet of the midpoint of the primary runway and one
4 hundred feet or higher above the elevation of the public airport;

5 (2) Between twelve thousand one feet and seventeen thousand feet of the midpoint
6 of the primary runway and one hundred fifty feet or higher above the elevation of the
7 public airport.

8 2. The permit application shall include as a minimum the location of the airport,
9 including latitude and longitude, ground elevation and maximum height of the proposed
10 structure and the distance to, direction from, and elevation of the nearest airport runway.
11 The application will also include a 7.5 minute quadrangle topographical map showing the
12 location of the proposed structure and copies of any application for or determinations from
13 a FAA Form 7460-1, or other applicable federal airspace review form, if required.

14 3. The application shall be presented by mail or in person to the aviation section

15 of the commission at least thirty days prior to the date of the proposed construction. It is
16 not necessary that ownership of, option for or other possessor right to a specific location
17 site be held by the applicant before the application for a permit is filed with the
18 commission. The commission shall act upon such applications within a reasonable time.

19 **4. No application for a permit shall be required for the emergency repair or**
20 **replacement of public utility, rural electric cooperative or federally licensed radio or**
21 **television structures, other than buildings, to ensure continuity of proper customer service,**
22 **when the height of such structures is not increased by such emergency repair or**
23 **replacement.**

24 **5. Nothing in sections 305.700 to 305.714 shall be construed as prohibiting the**
25 **construction or maintenance of any structure or growth up to one hundred feet in height**
26 **above the surface of the land.**

27 **6. This section shall not apply to, nor is an application for a permit required, when**
28 **local aviation hazard zoning or regulation is equal to or more restrictive than this section.**
29 **If such zoning or regulation is more restrictive, local zoning or regulation supersedes**
30 **sections 305.700 to 305.714. Nothing contained in this section shall prevent any political**
31 **subdivision from adopting more restrictive requirements for structures within its**
32 **jurisdiction.**

305.706. 1. The commission shall investigate all permit applications that meet the
2 **criteria contained in section 305.704 and as necessary to process the application properly**
3 **pursuant to sections 305.700 to 305.714. The investigation shall consider the safety and**
4 **welfare of persons and property in the air and on the ground.**

5 **2. The commission may approve an application for a temporary structure that will**
6 **be in existence for such a short duration that it will no longer occupy the same airspace at**
7 **the time a formal application can be considered by the commission. Such approval may**
8 **be granted only if it is evident that the proposed temporary structure will not adversely**
9 **affect the safety of air navigation.**

10 **3. In cases where the FAA has determined that an aeronautical study is needed, the**
11 **commission will withhold permit approval until the FAA has completed its study.**
12 **Sufficient grounds for denial of a permit include objection or determination of a hazard**
13 **by the FAA, violation of a federal aviation regulation, raising of established approach or**
14 **vectoring minimums. Considering all information supplied by the applicant and other**
15 **pertinent information available, the commission shall make a determination to approve or**
16 **deny the permit within a reasonable time.**

305.708. If the application is approved by the commission, a permit shall be issued
2 **to the applicant. If, upon investigation, the commission determines that a permit should**

3 be denied or that the height or location should be other than applied for, the commission
4 shall notify the applicant in writing. The notification may be sent by first class mail to the
5 applicant at the address specified in the application. The determination is final thirty days
6 after notification of the determination is served, unless the applicant, within the thirty-day
7 period, appeals the determination in writing to the commission and requests a hearing.
8 Such hearing shall be conducted pursuant to section 305.712.

305.710. 1. A permit shall specify any obstruction markings, lighting or other
2 visual or aural identification required to be installed on or in the vicinity of the structure,
3 if any. The identification characteristics shall be in accordance with federal laws and
4 regulations. All obstruction lights required pursuant to this section shall be maintained
5 in an operable condition.

6 2. If ordered by the commission, the owner of a nonconforming structure that is
7 permanently out of service or partially dismantled, destroyed, deteriorated or decayed
8 shall demolish or remove that structure at the owner's expense.

305.712. 1. An appeal hearing pursuant to this section shall be conducted within
2 forty-five days of the appeal request and shall be open to the public. Any person interested
3 may appear and be heard either in person or by counsel and may present evidence and
4 testimony. The review board for such appeal shall be made up of two representatives from
5 the commission, two members from the state aviation advisory committee, and one member
6 from the closest airport as affected by the site where the structure is proposed. If the
7 proposed structure is associated with a telecommunications tower or antenna, two
8 representatives from the Missouri Telecommunications Industry Association shall also be
9 on the review board. The findings of the review board on any appeal of an application
10 shall be considered to be the final administrative action.

11 2. Within thirty days after the issuance of an order by the commission, a person
12 aggrieved by the order may appeal to the review board in subsection 1 of this section, or
13 have the action of the commission reviewed by the circuit court in the manner provided for
14 the review of orders of other administrative bodies of this state. A decision of the review
15 board pursuant to subsection 1 of this section may also be appealed pursuant to this
16 subsection.

305.714. 1. The commission shall adopt and promulgate, and may from time to
2 time amend or rescind, reasonable rules and fees for the administration of sections 305.700
3 to 305.714. The commission shall prescribe and furnish forms necessary for the
4 administration of sections 305.700 to 305.714.

5 2. The commission shall determine whether violations of sections 305.700 to
6 305.714, or any rules promulgated pursuant to sections 305.700 to 305.714 have occurred

7 or are threatened. A notification of a violation or threat of violation shall be sent by
8 certified mail, to the person who owns or controls the structure or land in violation thereof.
9 The notice shall state the location, type of structure and the reasons the structure is or
10 would be in violation of such sections or such regulations. The person shall be requested
11 to correct the violation within thirty days of the notice or show cause to the commission
12 why compliance should not be enforced.

13 3. The person to whom the notice is directed pursuant to this section may show
14 cause why enforcement should be withheld by filing a written request for a hearing. Such
15 hearing shall be conducted pursuant to section 305.712. Such request shall state, if
16 applicable, facts sufficient to show:

17 (1) The structure is not an obstruction as defined by section 305.700 to 305.714 or
18 any rules promulgated pursuant to sections 305.700 to 305.714;

19 (2) The structure is in the airspace of the airport, but it is not an obstruction to the
20 safety of air navigation; and

21 (3) Any other facts the petitioner deems relevant that would relieve him or her from
22 the terms of the order, including a request for an extension of time to remove the structure.

23 4. The commission may order action be instituted in the appropriate court of
24 jurisdiction for the enforcement of applicable statutes, rules, regulations, and orders issued
25 pursuant to sections 305.700 to 305.714 and shall investigate violations or threats of
26 violation of sections 305.700 to 305.714 or rules promulgated pursuant to sections 305.700
27 to 305.714. Any person seeking judicial review of any such statute or rule shall be deemed
28 to have exhausted all administrative review procedures.

29 5. In addition to any other remedy, the commission may institute in a court of
30 competent jurisdiction an action to enjoin, restrain, correct or abate a violation of sections
31 305.700 to 305.714 or rules promulgated pursuant to sections 305.700 to 305.714.

32 6. Sections 305.700 to 305.714, or any rule promulgated pursuant to sections
33 305.700 to 305.714, shall not be construed to require the removal, lowering or other change
34 or alteration of any structure not conforming to sections 305.700 to 305.714, or any rule
35 promulgated pursuant to such sections, prior to August 28, 2001, or as otherwise interfere
36 with the continuance of any nonconforming use. Sections 305.700 to 305.714, or any rule
37 promulgated pursuant to such sections, shall not require any change in the construction,
38 alteration or intended use of any structure, provided that such construction or alteration
39 was begun prior to August 28, 2001, and is diligently prosecuted after August 28, 2001.

40 7. No rule or portion of a rule promulgated pursuant to sections 305.700 to 305.714
41 shall take effect unless such rule has been promulgated pursuant to chapter 536, RSMo.

Section 1. The Commission is prohibited from expending funds, which are

2 **presumed for or dedicated to highway use as described in Chapter 142, in the enforcement**
3 **of sections 305.700 to 305.714.**