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8 SYNOPSIS: Under existing law, the Alabama Department
9 of Transportation has general supervision over all
10 phases of aeronautics within the state pertaining
11 to the planning and development of the state
12 airport system plan and the inspection,
13 acquisition, establishment, construction,
14 expansion, improvement, maintenance, management,
15 and operation of airports, restricted landing
16 areas, and other air navigation facilities. The
17 department is authorized to formulate, adopt, and
18 revise approach plans and determine airport hazard
19 areas.

20 This bill would require a person to secure a
21 permit from the department for the construction,
22 erection, alteration, modification, or replacement
23 of a structure or object of natural growth that
24 qualifies as an airport hazard.

25 This bill would provide for the permitting
26 process including criteria for issuing a permit,

1 fee amount, time periods, appeals, enforcement, and
2 conflicts with local zoning laws and ordinances.

3 This bill would specify each violation would
4 be a Class B misdemeanor.

5 Amendment 621 of the Constitution of Alabama
6 of 1901, now appearing as Section 111.05 of the
7 Official Recompilation of the Constitution of
8 Alabama of 1901, as amended, prohibits a general
9 law whose purpose or effect would be to require a
10 new or increased expenditure of local funds from
11 becoming effective with regard to a local
12 governmental entity without enactment by a 2/3 vote
13 unless: it comes within one of a number of
14 specified exceptions; it is approved by the
15 affected entity; or the Legislature appropriates
16 funds, or provides a local source of revenue, to
17 the entity for the purpose.

18 The purpose or effect of this bill would be
19 to require a new or increased expenditure of local
20 funds within the meaning of the amendment. However,
21 the bill does not require approval of a local
22 governmental entity or enactment by a 2/3 vote to
23 become effective because it comes within one of the
24 specified exceptions contained in the amendment.

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A BILL
TO BE ENTITLED

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AN ACT

Authorizing the Department of Transportation to promulgate rules to regulate the height of structures and objects of natural growth in the vicinity of public use airports; to incorporate by reference certain provisions of the Code of Federal Regulations of the United States of America; and to provide penalties; and in connection therewith would have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of Amendment 621 of the Constitution of Alabama of 1901, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known as the "Airport Airspace Safety Act of 2009."

Section 2. As used in this act, the following terms have the following meanings:

(1) AIRPORT. Any area of land, water, or man-made construction, except a restricted landing area, that is used, made available, planned, or designed for the landing and takeoff of aircraft, whether or not facilities are provided for the shelter, servicing, maintenance, or repair of aircraft, and whether or not facilities are provided for receiving and discharging passengers or cargo, so long as such area meets the minimum requirements as to size, design, surfacing, marking, equipment, and management provided by the

1 department for the area and all appurtenant areas used or
2 suitable for airport facilities and runway protection zones,
3 whether heretofore or hereafter established.

4 (2) AIRPORT HAZARD. Any structure, equipment, object
5 of natural growth, or use of land that constitutes an
6 obstruction to air navigation as set forth in 14 C.F.R.
7 Sections 77.21, 77.23, and 77.25, and for which no permit has
8 been granted under this act.

9 (3) C.F.R. The Code of Federal Regulations of the
10 United States of America.

11 (4) DEPARTMENT. The Alabama Department of
12 Transportation and any successor agency.

13 (5) FAA. The Federal Aviation Administration and any
14 successor agency.

15 (6) INTERESTED PARTY. Any person applying for a
16 permit or the owner of the airport hazard which is adversely
17 affected by a determination or order of the department.

18 (7) OBJECT OF NATURAL GROWTH. Any tree and other
19 plants.

20 (8) PERMIT. Written approval issued by the
21 department for the construction, erection, alteration,
22 modification, or replacement of any structure or object of
23 natural growth which qualifies as an airport hazard or falls
24 within the altitude requirements described in subdivision (2)
25 of subsection (b) of Section 3.

26 (9) PERSON. Any individual, partnership,
27 corporation, company, or other entity, governmental body,

1 administrative agency, personal representative, trustee, or
2 receiver.

3 (10) POLITICAL SUBDIVISION. The state and any
4 county, municipality, city, town, or subdivision thereof, or
5 any state authority, commission, district, or agency
6 authorized to establish or operate airports in the State of
7 Alabama.

8 (11) STRUCTURE. Any man-made object constructed,
9 erected, or installed on land or water, including, but not
10 limited to, buildings, towers, smokestacks, utility poles,
11 equipment, and overhead transmission lines.

12 Section 3. (a) It is found by the Legislature that
13 an airport hazard:

14 (1) Endangers the lives and property of the
15 traveling public and persons and property in the vicinity of
16 such airport.

17 (2) Reduces the size of the area available for the
18 taking off, maneuvering, and landing of aircraft, thus
19 reducing or impairing the utility of and the public investment
20 in such airport.

21 (b) In order to prevent airport hazards, a person
22 shall secure a permit from the department for the
23 construction, erection, alteration, modification, or
24 replacement of any structure or object of natural growth
25 within the state which meets either of the following criteria:

26 (1) Qualifies as an airport hazard.

1 (2) Falls within a decision height, minimum descent
2 altitude, minimum en-route altitude, or minimum clearance
3 altitude, or which causes a minimum radar vectoring altitude
4 to be increased.

5 (c) If the applicant does not own the land on which
6 an airport hazard is to be constructed, erected, altered,
7 modified, or replaced, then the owner shall also sign the
8 application or give the applicant a power of attorney to sign
9 the application on behalf of the owner.

10 (d) Whenever a structure constituting an airport
11 hazard has been abandoned for over six months, or whenever a
12 structure or an object of natural growth is more than 50
13 percent down, destroyed, deteriorated, dead, or dying, persons
14 desiring to restore, rebuild, or replace such structure or
15 object of natural growth shall be required to obtain a permit
16 in accordance with this act.

17 (e) In determining whether to issue, deny, or
18 condition a permit, the department may consider any
19 information or circumstances it deems appropriate. In addition
20 to other considerations, the department shall consider both of
21 the following:

22 (1) Whether the applicant has complied with all
23 applicable federal requirements concerning notification of a
24 proposed structure.

25 (2) Whether the FAA has conducted an aeronautical
26 evaluation.

1 Section 4. (a) The department shall establish
2 procedures for submitting applications and issuing permits.

3 (b) (1) The department shall produce and, from time
4 to time, modify and update the forms on which the applications
5 for a permit shall be made.

6 (2) The filing fee assessed by the department may
7 not exceed five hundred dollars (\$500) per application.

8 (3) Applications containing inaccurate or incomplete
9 information, or not accompanied by the correct application
10 fee, shall be denied and returned to the applicant.

11 (4) Application fees shall be deposited in the state
12 Airports Development Fund, provided in Section 23-1-364 of the
13 Code of Alabama 1975, and used by the department to administer
14 this act.

15 (c) (1) Permits may not be required for any structure
16 or object of natural growth constructed, erected, installed,
17 replaced, modified, or repaired within the boundaries of a
18 publicly owned, public use airport located in this state.

19 (2) Permits may not be required for emergency
20 repair, modification, or replacement of airport hazards where
21 immediate action is required to preserve the health and safety
22 of persons or property.

23 (3) Notwithstanding subdivisions (1) and (2), the
24 repair may not increase the height of the structure or the
25 nature of the hazard.

26 (d) Upon receiving an application for a permit, the
27 department shall make such investigation as it deems necessary

1 to process the application. The investigation shall be
2 conducted to determine, in the opinion of the department,
3 whether the proposed structure would have a substantially
4 adverse effect upon the safe and efficient use of navigable
5 airspace and would be a hazard to air navigation if permitted.
6 The department may give consideration to the findings and
7 recommendations of other governmental agencies or interested
8 persons concerning the airport hazard; however, such findings
9 and recommendations are not binding on the department.

10 (e) (1) Within 30 days of receiving a completed
11 application, the department shall determine whether a permit
12 is to be issued, issued with conditions, or denied.

13 (2) The department shall notify the applicant in
14 writing of the determination of the department.

15 (3) Upon notifying the applicant in writing, the
16 department shall be permitted one 30-day extension to make a
17 determination. If the department has not issued a ruling
18 within the 30-day period, or 60 days if an extension is taken,
19 the application shall be considered approved.

20 (4) If an application is denied, the department
21 shall set forth the reasons for such denial and shall state
22 the requirements or conditions, if any, under which the
23 application might be approved.

24 (5) The determination shall be final 21 days after
25 the date of the written determination unless, within the
26 21-day period, the applicant requests a hearing before the
27 department concerning the determination or, within 30 days

1 after the date of the written determination, the applicant
2 requests a hearing pursuant to the Alabama Administrative
3 Procedure Act.

4 (f) Any interested party who is aggrieved by a
5 determination or order of the department may request a hearing
6 pursuant to the Alabama Administrative Procedure Act. Any such
7 hearing shall be requested within 30 days after the date of
8 the order or determination by the department. Any appeal from
9 a final order of the department shall be to the Circuit Court
10 of Montgomery County and shall be governed by the Alabama
11 Administrative Procedure Act.

12 (g) If an application is denied or conditionally
13 approved by the department, the applicant may not submit the
14 same application, re-file an application for the same airport
15 hazard, or request modification of the conditions of the
16 previously issued permit for six months from the date of the
17 issuance of the previous determination.

18 (h) If the department has reasonable grounds to
19 believe that a person is constructing, erecting, installing,
20 altering, modifying, or replacing a structure or object of
21 natural growth which qualifies as an airport hazard without a
22 permit having been issued by the department, the department
23 may issue an order to such persons to appear before the
24 department and show cause why a permit is not required. A date
25 for the hearing shall be set out in the order. The department
26 may petition a court of competent jurisdiction for an
27 injunction ordering that construction of the offending

1 structure or object of natural growth cease until the
2 requirements of this act are complied with.

3 (i) The department may condition a permit on the
4 permittee's installing and maintaining such marking or
5 lighting, or both, as may be necessary to indicate to pilots
6 the presence of an airport hazard. Such markings and lighting
7 shall be installed, operated, and maintained at the sole
8 expense of the permittee and shall conform to standards
9 established by the department.

10 (j) The department, through appropriate legal
11 action, may compel the owner of an existing airport hazard, at
12 the sole expense of the owner, to remove the hazard or take
13 such other action as shall be required to comply with this
14 act. If the owner of the airport hazard does not comply with
15 the order of the department, the department may petition a
16 court of competent jurisdiction to order the owner of the
17 airport hazard to remove the hazard or take such other action
18 as shall be required to conform to the requirements of this
19 act.

20 Section 5. The permitting requirements of Section 4
21 shall not apply to structures that have received construction
22 permits from the Federal Communications Commission prior to
23 the effective date of this act. Permits shall be required for
24 structures approved by the FCC prior to the effective date of
25 this act that are replaced, rebuilt, altered, or modified
26 after the effective date of this act if the new or modified
27 structure constitutes an airport hazard.

1 Section 6. In the event of conflict between the
2 requirements of this act and zoning laws or ordinances that
3 regulate the height and location of airport hazards, and that
4 meet or exceed the standards contained in 14 C.F.R. Sections
5 77.21, 77.23, and 77.25, that have been duly adopted by
6 political subdivisions where an airport is located, the local
7 zoning laws and ordinances shall control. If a political
8 subdivision has qualifying local zoning laws and ordinances,
9 but grants a variance or exception, or fails to enforce the
10 zoning laws or ordinances, then a permit for any structure or
11 object of natural growth constituting an airport hazard shall
12 be required in accordance with this act.

13 Section 7. Each violation of this act or any order,
14 ruling, or rule promulgated by the department pursuant to this
15 act shall constitute a Class B misdemeanor and each day a
16 violation continues shall constitute a separate offense. The
17 department may institute, in any court of competent
18 jurisdiction, a civil action to enjoin, restrain, prevent,
19 abate, or correct any violation of this act and violation of
20 any determination, order, or ruling of the department.

21 Section 8. Although this bill would have as its
22 purpose or effect the requirement of a new or increased
23 expenditure of local funds, the bill is excluded from further
24 requirements and application under Amendment 621, now
25 appearing as Section 111.05 of the Official Recompilation of
26 the Constitution of Alabama of 1901, as amended, because the

1 bill defines a new crime or amends the definition of an
2 existing crime.

3 Section 9. This act shall become effective
4 immediately following its passage and approval by the
5 Governor, or its otherwise becoming law.