

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1065

Aircraft Safety

SPONSOR(S): Plakon

TIED BILLS:

IDEN./SIM. BILLS: SB 1864

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Roads, Bridges & Ports Policy Committee	19 Y, 0 N, As CS	Cater	Miller
2)	Economic Development & Community Affairs Policy Council		Cater	Tinker
3)				
4)				
5)				

SUMMARY ANALYSIS

The Federal Aviation Administration (FAA) requires airports to take immediate action to alleviate wildlife hazards when they are detected. However, wildlife management is governed by multiple federal and state agencies, some of which have overlapping jurisdictions. In addressing hazardous wildlife, airports face a series of complex laws that may contradict each other and making it difficult to properly manage wildlife. Additionally, failing to properly manage wildlife could lead to civil judgments against airports as well as criminal charges.

The bill creates the "Airline Safety and Wildlife Protection Act of Florida."

The bill creates s. 379.2293, relating to airport activities within the scope of a permit or other authorization for depredation or harassment. The bill provides legislative findings that an airport's ability to manage wildlife hazards is necessary to prevent jeopardy to human life or aircraft safety. Additionally, the Legislature intends that the management of wildlife for these purposes not be subject to any sort of sanction and that these authorizations not be superseded by other state or local agencies.

The bill provides that an airport authority or entity owning an airport is not subject to administrative, civil, or criminal penalties, restrictions, liabilities, or other restriction when taking an authorized action to protect human life or aircraft safety from wildlife hazards. The bill provides that the immunity extends to officers, employees, contractors or its employees, or a member of the airports governing body to the extent the person's actions are authorized by or within the scope of this law.

The bill defines "authorized action taken for the purpose of protecting human life or aircraft safety from wildlife hazards" as an action authorized within the scope of various federal and state regulations and permits. If an authorized action conflicts with another regulation, the bill provides that this section of law will prevail.

There may be a reduction in expenses to airports and airport authorities due to decreased litigation costs.

This act shall take effect upon becoming law.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

According to the Airports Council International-North America, between 1997 and 2007 over 82,000 wildlife strikes against airplanes were reported to the Federal Aviation Administration (FAA). About 85 percent of these strikes involved commercial aircraft. While almost 98 percent of the strikes involve birds, aircraft have also struck animals such as deer, elk, alligators and some smaller animals.<sup>1</sup>

Wildlife strikes resulting in serious consequences are rare, with over 87 percent of strikes having no effect on flight. The most common effect on flight is a precautionary landing. Between 1990 and 2007, 43 aircraft hulls were lost to wildlife strikes, with only two of those hulls belonging to commercial aircraft. During that time, 840 million landings and takeoffs took place, meaning there was only one aircraft lost for every 1.9 million landings and takeoffs. Between 1990 and 2007, 11 fatalities were attributed to wildlife strikes.<sup>2</sup>

While these strikes are very rare, according to the FAA, wildlife strikes worldwide cost civil aviation \$1.2 billion annually.<sup>3</sup>

Under federal law, airports are required to "undertake immediate action to alleviate wildlife hazards when they are detected."<sup>4</sup>

When an aircraft operated by an air carrier has wildlife go into its engine, receives substantial damage from a wildlife strike, or experiences multiple wildlife strikes, the airport is required to have a wildlife hazard assessment be conducted by qualified experts. The FAA reviews these assessments and determines if the airport must develop a wildlife hazard management plan.<sup>5</sup>

Airports use various methods to mitigate wildlife hazards including habitat modification (i.e. eliminating wildlife attracting vegetation), habitat exclusion (e.g., fences), repellants (e.g. sound cannons, dogs)

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<sup>1</sup> Airports Council International-North America, *Wildlife Hazard Management-What Airports Are Doing to Reduce the Risk*.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> 14 C.F.R. 139.337

<sup>5</sup> Airports Council International-North America, *Wildlife Hazard Management-What Airports Are Doing to Reduce the Risk*.

and wildlife relocation. As a last resort, airports will use lethal means, but only after other means have failed.<sup>6</sup>

Wildlife is managed through various federal, state, and local laws and regulations, some of which overlap. Some of the agencies involved include the United States Fish and Wildlife Service, the United States Environmental Protection Agency, the United States Department of Agriculture, state wildlife agencies, water management districts, and environmental protection agencies. Additionally, local government regulations may also impact airport wildlife management programs.<sup>7</sup>

In addressing hazardous wildlife, airports face a series of complex laws that may contradict each other and make it difficult for the airport to properly manage wildlife.<sup>8</sup> Additionally, failing to properly manage wildlife could lead to civil judgments against airports as well as criminal charges.<sup>9</sup>

## Proposed Changes

The bill creates the “Airline Safety and Wildlife Protection Act of Florida.”

The bill creates s. 379.2293, F.S., relating to airport activities within the scope of a permit or other authorization for depredation or harassment.

The bill provides legislative findings and declarations that having the ability to manage wildlife hazards in a manner consistent with federal and state law is necessary for airports to prevent jeopardy to human life or aircraft safety. The bill provides legislative intent that airports taking action within its authorizations to manage wildlife not be subject to penalties, restrictions, liabilities, or sanctions and that the authorization not be superseded by actions of other state and local agencies.

The bill provides that notwithstanding any other provision of law to the contrary, an airport authority or any other entity owning or operating an airport is not subject to any administrative, civil, or criminal penalty, restriction, liability, or other sanction with respect to any authorized action taken for the purpose of protecting human life or aircraft safety from wildlife hazards.

The bill applies to an airport as defined in s. 330.27(2), F.S. This statute defines “airport” as “an area of land or water used for, or intended to be used for, landing and takeoff of aircraft, including appurtenant areas, buildings, facilities, or rights-of-way necessary to facilitate such use or intended use.”

The bill defines, for purposes of this section, “authorized action taken for the purpose of protecting human life or aircraft safety from wildlife hazards” as an action authorized by or within the scope of any of the following:

- The airport’s wildlife hazard management plan, as approved by the FAA.<sup>10</sup>
- A depredation permit issued by the United States Fish and Wildlife Service.<sup>11</sup>
- A standing order of the United States Fish and Wildlife Service.
- Rule 68A-9.010(4)<sup>12</sup> or rule 68A-27.002,<sup>13</sup> F.A.C. or a permit authorizing the harassment of wildlife issue by the Fish and Wildlife Conservation Commission.

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<sup>6</sup> *Id.*

<sup>7</sup> Dale, Larry; *Personal Liability in the Aftermath of Bird Strikes-A Costly Consideration.*

<sup>8</sup> Airports Council International-North America, *Wildlife Hazard Management-What Airports Are Doing to Reduce the Risk.*

<sup>9</sup> Dale, Larry; *Personal Liability in the Aftermath of Bird Strikes-A Costly Consideration.*

<sup>10</sup> 14 C.F.R. 337

<sup>11</sup> 50 CFR 21.41. The United States Fish and Wildlife Service issues depredation permits “to allow the taking of migratory birds which are causing serious damage to public or private property, pose a health or safety hazard, or are damaging agricultural crops or wildlife. [http://www.fws.gov/pacific/migratorybirds/depredation\\_permits.htm](http://www.fws.gov/pacific/migratorybirds/depredation_permits.htm) (March 9, 2009).

<sup>12</sup> Rule 68A-9.010(4), F.A.C., addresses the taking nuisance wildlife on airport property.

<sup>13</sup> Rule 68-A-27.002, F.S., provides for the harassment of endangered, threatened, and species of special concern on airport

The bill provides that if an action authorized above conflicts or appears to conflict with a development permit, land-development regulation, local comprehensive plan, or other environmental or land-use law, rule, restriction, or requirement, the authorization described above shall apply.

The bill provides that in addition to an airport authority or the owner or operator of an airport, the bill's immunities also apply to officers, employees, contractors, or employees of a contractor, or a member of the airport's governing body. However, this immunity only applies to the extent that the actions of the officer, employee, contractor, contractor's employee, or member are authorized by or within the scope of one or more of the legal authorities described above.

This act shall take effect upon becoming law.

**B. SECTION DIRECTORY:**

Section 1 Provides a short title.

Section 2 Creates s. 379.2293, F.S., relating to airport activities within the scope of a permit or other authorization for depredation or harassment; provides legislative findings; provides immunities from certain penalties when airports take action to protect human life or aircraft safety from wildlife hazards; defines "authorized action taken for purposes of protecting human life or aircraft safety from wildlife hazards" provides this section prevails over conflicting restrictions or requirements; provides immunities with respect to authorized actions by certain individuals.

Section 3 Provides an effective date.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None

2. Expenditures:

None

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None

2. Expenditures:

Local airports and airport authorities could potentially see a reduction in litigation expense associated with civil actions and enforcement proceedings.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill may reduce the number of wildlife related strikes against aircraft. This will reduce the costs to air carriers and private aircraft owners associated with such strikes.

**D. FISCAL COMMENTS:**

None

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenue in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

None

#### B. RULE-MAKING AUTHORITY:

None

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 11, 2009, the Roads, Bridges, & Ports Policy Committee adopted one amendment to provide a definition of "airport."

The bill was reported favorably as a Committee Substitute.