

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: CS/CS/SB 1672

INTRODUCER: Fiscal Policy Committee; Transportation Committee; and Senators DiCeglie and Perry

SUBJECT: Temporary Airports

DATE: April 21, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Vickers	TR	Fav/CS
2.	Price	Yeatman	FP	Fav/CS
3.				

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1672 addresses temporary airport site approval by the Florida Department of Transportation (FDOT). The bill re-defines the term “temporary airport,” specifying that such an airport is one at which flight operations are conducted under visual flight rules and which is used for less than 30 consecutive days with no more than 10 operations per day. The bill requires that site approval be granted for a public or private temporary airport only after receipt of documentation in a form and manner the FDOT deems necessary to satisfy specified conditions. The bill requires a public temporary airport license or a private temporary airport registration before the operation of aircraft to or from the airport.

Upon receipt of a completed application for a public or private temporary airport site approval order, the bill requires the FDOT to publish notice of intent to approve or deny the application, as specified, sets out procedures and timelines for persons whose substantial interests may be affected by a pending order to request a hearing. The bill prohibits the FDOT from approving or denying an application less than 14 days after the date of publication of the notice and requires the FDOT to approve or deny an application no later than 30 days after the date of publication, except as provided. If site approval is granted, licensure of the public temporary airport or registration of the private temporary airport is deemed complete, and the FDOT must issue the license or registration concurrent with the site approval.

The FDOT is prohibited from approving a subsequent application for a public or private temporary airport site approval order for the same general location if the purpose or effect is to evade otherwise applicable airport permitting, licensure, or registration requirements.

Finally, the bill revises an existing exemption from the provisions of Chapter 330, F.S. (relating to regulation of aircraft, pilots, and airports) for temporary airports used exclusively for aerial application or spraying of crops on a seasonal basis by expressly restricting such temporary airports to no more than ten operations per day.

The fiscal impact of the bill is indeterminate. See the “Fiscal Impact” heading below.

The bill takes effect July 1, 2023.

II. Present Situation:

Airport Site Approval

Among other aviation-related responsibilities, the FDOT is currently charged with establishing requirements for airport¹ site approval, licensure, and registration.² The owner or lessee of any proposed airport site is required, prior to site acquisition, construction, or establishment of the proposed airport, to obtain approval of the airport site from the FDOT,³ in the absence of any applicable exemption.⁴ For example, site approval is not required for a temporary airport, used exclusively for aerial application or spraying of crops on a seasonal basis, not to include any licensed airport where permanent crop aerial application or spraying facilities are installed, if the period of operation does not exceed 30 days per calendar year.⁵

Application for site approval must be made in a form and manner prescribed by the FDOT,⁶ and the FDOT must grant the site approval if it is satisfied that:

- The site has adequate area allocated for the airport as proposed;
- The proposed airport will conform to licensing or registration requirements and will comply with the applicable local government land development regulations or zoning requirements;
- All affected airports, local governments, and property owners have been notified and any comments submitted by them have been given adequate consideration; and
- Safe air-traffic patterns can be established for the proposed airport with all existing airports and approved airport sites in its vicinity.⁷

The FDOT may grant a site approval for a public airport only after a favorable FDOT inspection of the proposed site and, for a private airport, only after receipt of documentation in a form and manner the FDOT deems necessary to satisfy the above conditions.⁸ Site approval for both

¹ “Airport” means 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. Section 330.27(2), F.S.

² Section 330.29(2), F.S.

³ Section 330.30(1)(a), F.S.

⁴ See s. 330.30(3), F.S.

⁵ Section 330.30(3)(e), F.S.

⁶ *Supra* note 3.

⁷ *Id.*

⁸ Section 330.30(1)(b)-(d), F.S. The FDOT’s rule requires public airport site approval applicants to submit a Public Airport Site Approval Application on a form incorporated by reference, along with all required supporting documentation, to the State Aviation Manager in the FDOT’s Central Office in Tallahassee. Private airport site approval applicants are required to

public and private airports may be granted subject to any reasonable conditions the FDOT deems necessary to protect the public health, safety, or welfare.⁹ Approval of a public or private airport site remains valid for two years after the date of issue, unless revoked by the FDOT¹⁰ or unless a public airport license or private airport registration is completed before the expiration date of the existing license or registration.¹¹ However, the FDOT may extend a site approval for subsequent periods of two years per extension for good cause.¹²

Airport Licensing and Registration

To be distinguished from site approval, before the *operation of aircraft* to or from a facility, the owner or lessee of any airport in this state must have either a public airport license or private airport registration.¹³ Upon granting site approval:

- For a public airport, the FDOT must issue a license after a final airport inspection finds the facility to be in compliance with all requirements for the license, which may be subject to any reasonable conditions the FDOT deems necessary to protect the public health, safety and welfare.¹⁴
- For a private airport, the FDOT must provide controlled electronic access to the state aviation facility data system to permit the applicant to complete the registration process. Private airport registration must be completed upon self-certification by the registrant of operational and configuration data deemed necessary by the FDOT.¹⁵

Each public airport license expires no later than one year after the effective date of the existing license, except that the expiration date may be adjusted to a maximum of 18 months to facilitate airport inspections, recognize seasonal airport operations, or improve administrative efficiency.¹⁶

Private airport registration remains valid so long as specific elements of airport data, established by the FDOT, are periodically recertified by the airport registrant by electronic submittal. A private airport registration not recertified in the 24-month period following the last certification expires, unless the registration period has been adjusted by the FDOT for purposes of informing private airport owners of their registration responsibilities or promoting administrative efficiency.¹⁷

The FDOT may require a new site approval for any airport if the license or registration has expired.¹⁸ If a renewal application for a public airport license has not been received by the FDOT

complete an interactive internet-based registration application and certify that the information contained therein is true and correct to the best of their knowledge, using the FDOT's electronic aviation facility data system. Rule 14-60.005(3)(a) and (b), F.A.C. *See also* Rule 14-60.005(6), F.A.C., for additional information regarding use of the private airport registration and site approval website, documentation, and records retention relating to private airport site approval applicants.

⁹ Section 330.30(1)(d), F.S.

¹⁰ *See s.* 330.30(1)(g), F.S.

¹¹ Section 330.30(1)(e), F.S.

¹² Section 330.30(1)(f), F.S.

¹³ Section 330.30(2)(a), F.S.

¹⁴ Section 330.30(2)(a)1., F.S.

¹⁵ Section 330.30(2)(a)2., F.S.

¹⁶ Section 330.30(2)(d)1., F.S.

¹⁷ Section 330.30(2)(d)2., F.S.

¹⁸ Section 330.30(2)(d)4., F.S.

or no private airport registration recertification has been accomplished within 15 days after the date of expiration, the FDOT may revoke the airport license or registration.¹⁹ Additionally, the FDOT may revoke, or refuse to allow or issue, any airport registration or certification upon specified determinations, including, but not limited to, that the airport does not comply with the conditions of the license, license renewal, or site approval.²⁰

Temporary Airports

The FDOT may license a public airport, or a private airport may register, as a *temporary* airport,²¹ provided that the airport will not endanger the public health, safety, or welfare and the airport meets the temporary airport requirements established by the FDOT.²² Such conditions include:

- Operations limited to VFR²³ flight conditions,
- Restricted approach or takeoff direction from only one end of a runway,
- Specified air-traffic pattern layouts to help prevent mid-air collision conflict with aircraft flying at another nearby airport,
- Airport noise abatement procedures to satisfy community standards, or
- Other environmental compatibility measures.²⁴

A temporary airport license or registration is valid for less than 30 days and is not renewable.²⁵

According to the FDOT's rule, due to the limitations placed on their use for a period of less than 30 days and the restriction to no more than ten operations per day, and due to a normal short lead-time prior to the necessity for activating flight operations, applicants for temporary, public or private airport sit approval "shall have a site approval process with each proposal evaluated by the FDOT based on the application. Applicants for a temporary, public or private airport site approval should contact the Department at the earliest opportunity to present their requirements and request a site proposal review and Department approval or disapproval."²⁶

¹⁹ Section 330.30(2)(d)5., F.S.

²⁰ Section 330.30(2)(e), F.S.

²¹ "Temporary airport" means any airport that will be used for a period of less than 30 days with no more than 10 operations per day. Section 330.27(7), F.S.

²² Section 330.30(2)(c), F.S.

²³ The term "VFR" (visual flight rules) is defined in federal regulation as rules that govern the procedures for conducting flight under visual conditions. The term "VFR" is also used in the United States to indicate weather conditions that are equal to or greater than minimum VFR requirements. In addition, "VFR" is used by pilots and controllers to indicate the type of flight plan. 14 C.F.R. § 170.3. Generally, persons proposing to construct, alter, activate, or deactivate a civil or joint-use airport, or to alter the status or use of such airport, are required to notify the Federal Aviation Administration. *See* 14 C.F.R. § 157.1. Although federal law does not define temporary airports, federal law contains certain exclusions from federal airport regulations, such as an airport at which flight operations will be conducted under visual flight rules and which is used or intended to be used for a period of less than 30 consecutive days with no more than 10 operations per day. 14 C.F.R. § 157.1(b).

²⁴ Rule 14-60.005(4), F.A.C.

²⁵ Section 330.30(2)(c), F.S. The FDOT's rule provides that a temporary, public or private airport license or registration is valid only for less than 30 consecutive calendar days and is not renewable for any consecutive period of activation. Further, recurring requirements for such license or registration at the same general location will be considered on a case-by-case basis. Rule 14-60.006(5), F.A.C.

²⁶ Rule 14-60.005(3)(c), F.A.C.

The FDOT must conduct a review and detailed audit, as necessary, of the information submitted by temporary, public or private airport applicants and allow site approval for temporary airports only after the conditions described above are met. Physical inspection of the site is not required.²⁷ However, “due to the short lead time and duration, as well as urgent requirements often related to a temporary airport, the Department will not publish announcement for public review and comment regarding its *issuance of a temporary airport site approval order*. Temporary airport site approval orders shall take effect concurrent with the date of issuance.”²⁸

Florida’s Administrative Procedure Act

The Administrative Procedure Act (the APA) has been described by the Joint Administrative Procedures Committee as follows:

In Chapter 120, Florida Statutes, the Administrative Procedure Act outlines a comprehensive administrative process by which agencies exercise the authority granted by the Legislature while offering opportunities for citizen involvement. This process subjects state agencies to a uniform procedure in enacting rules *and issuing orders and allows citizens to challenge an agency’s decision*. The Administrative Procedure Act serves to protect the citizens of Florida from thousands of unauthorized rules that would otherwise be in effect.²⁹

“Agency” is defined in current law³⁰ and includes the FDOT. “Agency action” means the whole or part of a rule or order, or the equivalent, or the denial of a petition to adopt a rule or issue an order, or to initiate rulemaking.³¹

Florida law is well settled that “an agency must grant affected parties a clear point of entry,³² within a specified time after some recognizable event in investigatory or other free-form proceedings, to formal or informal proceedings.” An agency must afford the persons or entities an opportunity to question, challenge, or contest the agency action that they believe affects them.³³

Parties³⁴ shall be notified of any order and, unless waived by the parties, a copy of the order must be delivered or mailed to each party or the party’s attorney of record at the

²⁷ Rule 14-60.007(c), F.A.C.

²⁸ *Id.* Emphasis added.

²⁹ See [PocketGuideFloridaAPA.pdf \(state.fl.us\)](#) (last visited March 29, 2023). Emphasis added.

³⁰ Section 120.52(1), F.S.

³¹ Section 120.52(2), F.S.

³² See also Rule 28-106.111, F.A.C.

³³ *Capeletti Brothers, Inc. vs. State Dept. of Trans.*, 362 So.2d 346, 348 (Fla. 1st DCA 1978). Generally, formal proceedings (or hearings) are those that involve disputed issues of material fact and are conducted by the Division of Administrative Hearings, while informal proceedings are those that do not involve disputed issues of material fact and are conducted by the agency. Section 120.57(1) and (2), F.S. See s. 120.569(1), F.S., for additional information on the applicability of formal vs. informal proceedings.

³⁴ The definition of “party” under the APA, among others, means specifically named persons whose substantial interests are being determined in the proceeding and, most relevant to the bill, any other person who, as a matter of constitutional right, provision of statute, or provision of agency regulation, is entitled to participate in whole or in part in the proceeding, or whose substantial interest will be affected by proposed agency action, and who makes an appearance as a party. Section 120.52(3)(a) and (b), F.S.

address of record. Section 120.569, F.S., requires that each notice inform the recipient of any administrative hearing or judicial review that is available under that section,³⁵ s. 120.57, F.S.,³⁶ or s. 120.68, F.S.,³⁷ and indicate the procedure that must be followed to obtain the hearing or judicial review, stating the time limits that apply.

FDOT Rule Revision Activity and Current Practice

The provision in the FDOT's rule discussed above, stating that the FDOT will not publish announcement for public review and comment regarding its issuance of a temporary airport site approval order, does not comply with the requirements of the APA, as it provides no clear point of entry to afford persons or entities an opportunity to question, challenge, or contest the agency action believed to affect them; that is, no notice of issuance of an order approving or denying an application for a site approval, including informing the recipient of any administrative hearing that is available and stating applicable time limits.

In recognition of this noncompliance, the FDOT advises that it is currently in the process of holding informal stakeholder meetings for proposed revisions to Rule Chapter 14-60, relating to airport licensing, registration, and airspace protection, as part of updates needed since the last revisions occurred in 2004. The FDOT is still gathering comments from interested stakeholders³⁸ and anticipates starting the rulemaking process to revise and update that rule chapter after the 2023 Legislative Session. The FDOT further advises that it does publish a notice of pending airport site approval in the Florida Administrative Register (FAR)³⁹ and waits 14 days after publication of the notice before issuing any airport site approval order.⁴⁰

III. Effect of Proposed Changes:

Definition

The bill amends s. 330.27(7), F.S., revising the definition of "temporary airport" to align it more closely with federal law containing certain exclusions from federal airport regulations.⁴¹ The bill re-defines the term "temporary airport" to mean an airport at which flight operations are conducted under visual flight rules established by the Federal Aviation Administration and which is used for less than 30 consecutive days with no more than 10 operations per day.

Site Approvals, Requirements, Effective Period, Revocation

The bill amends s. 330.30, F.S., in various locations to further clarify the distinction between public and private airports and the applicability of the provisions of that section to those airports.

The bill adds paragraph (d) to s. 330.30(1), F.S., providing that site approval must be granted for a public or private temporary airport after receipt of documentation in a form and manner the

³⁵ Decisions which affect substantial interests.

³⁶ Additional procedures applicable to hearings involving disputed issues of material fact, formal and informal proceedings.

³⁷ Judicial review. Section 120.569(1), F.S.

³⁸ Telephone conversation with FDOT staff, March 28, 2023.

³⁹ See the FDOT email to committee staff, March 27, 2023 (on file in the Senate Transportation Committee).

⁴⁰ *Supra* note 38.

⁴¹ *Supra* note 23.

FDOT deems necessary to satisfy the conditions for granting such an approval.⁴² The bill requires such documentation to be included with the application for a public or private temporary airport site approval order.⁴³

The bill amends s. 330.30(2), F.S., requiring the owner or lessee of any airport to have a public airport license, a private airport registration, a public temporary airport license, or a private temporary airport registration before the operation of aircraft to or from the airport.

For an application for a public or private temporary airport site approval order, the bill requires the FDOT, upon receipt of a completed application, to publish in the next available publication of the FAR notice of intent to approve or deny the application. The notice must inform the recipient of any administrative hearing that is available, indicate the procedure that must be followed to obtain the hearing, and state that a request for hearing must be submitted no later than 14 days after the date of publication. The bill prohibits the FDOT from approving or denying an application less than 14 days after the date of publication. The FDOT must approve or deny an application no later than 30 days after the date of the publication, unless a hearing is requested. If site approval is granted, licensure of the public temporary airport or registration of the private temporary airport is deemed complete, and the FDOT must issue the license or registration concurrent with the approval.

The bill removes current law providing that the FDOT may license a public airport or a private airport may register as a temporary airport provided that the airport will not endanger the public health, safety, or welfare and the airport meets the temporary airport requirements established by the FDOT. The FDOT is prohibited from approving a subsequent application for a public or private temporary airport site approval order for the same general location if the purpose or effect is to evade otherwise applicable airport permitting, licensure, or registration requirements.

Lastly, the bill revises the exemption providing that site approval is not required for a temporary airport⁴⁴ used exclusively for aerial application or spraying of crops on a seasonal basis, not to include any licensed airport where permanent crop aerial application or spraying facilities are installed, if the period of operation does not exceed 30 days per calendar year. Rather than rely on a cross-reference to the definition of “temporary airport,” which includes restricting temporary airports to no more than 10 operations per day, the bill strikes the cross-reference and inserts the restriction expressly.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁴² Listed at the top of p. 2.

⁴³ The FDOT advises, however, that most of the delay associated with site approval applications results from the fact that the information provided is incomplete; therefore, the application is incomplete. *Supra* note 38.

⁴⁴ Defined in s. 330.27(7), F.S., as any airport that will be used for a period of less than 30 days with no more than 10 operations per day.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate but likely insignificant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 330.27 and 330.30.

IX. Additional Information:

- A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Fiscal Policy on April 20, 2023:

The committee substitute:

- Further distinguishes between public and private temporary airports to improve clarity.
- Provides additional detail for purposes of compliance with the Administrative Procedures Act.
- Requires the FDOT to issue a temporary public airport license or a private temporary airport registration concurrent with airport site approval.

CS by Transportation on April 4, 2023:

The committee substitute:

- Revises the content of the FDOT notice to be published in the Florida Administrative Register to ensure compliance with Florida's Administration Procedure Act.
- Prohibits the FDOT from approving or denying a completed temporary site approval and registration application sooner than 14 days after the date of publication and requires the FDOT to approve or deny an application no later than 30 days after the date of publication.
- Deems registration complete if temporary site approval is granted.

B. Amendments:

None.