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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 2398

03/11/2019 Authored by Hornstein
The bill was read for the first time and referred to the Committee on Government Operations
03/20/2019 Adoption of Report: Re-referred to the Committee on Ways and Means

1.1 A bill for an act
1.2 relating to aeronautics; modifying provisions governing airport zoning; amending
1.3 Minnesota Statutes 2018, sections 360.013, by adding a subdivision; 360.017,
1.4 subdivision 1; 360.021, subdivision 1; 360.062; 360.063, subdivisions 1, 3; 360.064,
1.5 subdivision 1; 360.065, subdivision 1; 360.066, subdivision 1; 360.067, by adding
1.6 a subdivision; 360.071, subdivision 2; 360.305, subdivision 6; 394.22, by adding
1.7 a subdivision; 394.23; 394.231; 394.25, subdivision 3; 462.352, by adding a
1.8 subdivision; 462.355, subdivision 1; 462.357, subdivision 9, by adding a
1.9 subdivision; proposing coding for new law in Minnesota Statutes, chapter 360;
1.10 repealing Minnesota Statutes 2018, sections 360.063, subdivision 4; 360.065,
1.11 subdivision 2; 360.066, subdivisions 1a, 1b.

1.12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.13 Section 1. Minnesota Statutes 2018, section 360.013, is amended by adding a subdivision
1.14 to read:

1.15 Subd. 46a. Comprehensive plan. "Comprehensive plan" has the meaning given in
1.16 section 394.22, subdivision 9, or 462.352, subdivision 5.

1.17 Sec. 2. Minnesota Statutes 2018, section 360.017, subdivision 1, is amended to read:

1.18 Subdivision 1. Creation; authorized disbursements. (a) There is hereby created a fund
1.19 to be known as the state airports fund. The fund shall consist of all money appropriated to
1.20 it, or directed to be paid into it, by the legislature.

1.21 (b) The state airports fund shall be paid out on authorization of the commissioner and
1.22 shall be used:

1.23 (1) to acquire, construct, improve, maintain, and operate airports and other air navigation
1.24 facilities;

2.1 (2) to assist municipalities in the planning, acquisition, construction, improvement, and
 2.2 maintenance of airports and other air navigation facilities;

2.3 (3) to assist municipalities to initiate, enhance, and market scheduled air service at their
 2.4 airports;

2.5 (4) to promote interest and safety in aeronautics through education and information; and

2.6 (5) to pay the salaries and expenses of the Department of Transportation related to
 2.7 aeronautic planning, administration, and operation. All allotments of money from the state
 2.8 airports fund for salaries and expenses shall be approved by the commissioner of management
 2.9 and budget.

2.10 ~~(e) A municipality that adopts a comprehensive plan that the commissioner finds is~~
 2.11 ~~incompatible with the state aviation plan is not eligible for assistance from the state airports~~
 2.12 ~~fund.~~

2.13 Sec. 3. Minnesota Statutes 2018, section 360.021, subdivision 1, is amended to read:

2.14 Subdivision 1. **Authority to establish.** The commissioner is authorized and empowered,
 2.15 on behalf of and in the name of this state, within the limitation of available appropriations,
 2.16 to acquire, by purchase, gift, devise, lease, condemnation proceedings, or otherwise, property,
 2.17 real or personal, for the purpose of establishing and constructing restricted landing areas
 2.18 and other air navigation facilities and to acquire in like manner, own, control, establish,
 2.19 construct, enlarge, improve, maintain, equip, operate, regulate, and police such restricted
 2.20 landing areas and other air navigation facilities, either within or without this state; and to
 2.21 make, prior to any such acquisition, investigations, surveys, and plans. The commissioner
 2.22 may maintain, equip, operate, regulate, and police airports, either within or without this
 2.23 state. The operation and maintenance of airports is an essential public service. The
 2.24 commissioner may maintain at such airports facilities for the servicing of aircraft and for
 2.25 the comfort and accommodation of air travelers. The commissioner may dispose of any
 2.26 such property, airport, restricted landing area, or any other air navigation facility, by sale,
 2.27 lease, or otherwise, in accordance with the laws of this state governing the disposition of
 2.28 other like property of the state. The commissioner may not acquire or take over any restricted
 2.29 landing area, or other air navigation facility without the consent of the owner. The
 2.30 commissioner shall not acquire any additional state airports nor establish any additional
 2.31 state-owned airports. The commissioner may erect, equip, operate, and maintain on any
 2.32 airport buildings and equipment necessary and proper to maintain, and conduct such airport
 2.33 and air navigation facilities connected therewith. The commissioner shall not expend money
 2.34 for land acquisition, or for the construction, improvement, or maintenance of airports, or

3.1 for air navigation facilities for an airport, unless the ~~governmental unit~~ municipality, county,
 3.2 or joint airport zoning board involved has or is establishing a zoning authority for that
 3.3 airport, and the authority has made a good-faith showing that it is in the process of and will
 3.4 complete with due diligence, an airport zoning ordinance in accordance with sections 360.061
 3.5 to 360.074. The commissioner may provide funds to support airport safety projects that
 3.6 maintain existing infrastructure, regardless of a zoning authority's efforts to complete a
 3.7 zoning regulation. The commissioner may withhold funding from only the airport subject
 3.8 to the proposed zoning ordinance. Notwithstanding the foregoing prohibition, the
 3.9 commissioner may continue to maintain the state-owned airport at Pine Creek.

3.10 Sec. 4. Minnesota Statutes 2018, section 360.062, is amended to read:

3.11 **360.062 AIRPORT HAZARD PREVENTION; PROTECTING EXISTING**
 3.12 **NEIGHBORHOOD LAND USES.**

3.13 (a) It is hereby found that an airport hazard endangers the lives and property of users of
 3.14 the airport and of occupants of land in its vicinity, and may reduce the size of the area
 3.15 available for the landing, takeoff, and maneuvering of aircraft, thereby impairing the utility
 3.16 of the airport and the public investment therein. It is also found that the social and financial
 3.17 costs of disrupting existing land uses around airports ~~in built-up urban areas, particularly~~
 3.18 ~~established residential neighborhoods,~~ often outweigh the benefits of a reduction in airport
 3.19 hazards that might result from the elimination or removal of those uses.

3.20 (b) Accordingly, it is hereby declared: (1) ~~that~~ the creation or establishment of an airport
 3.21 hazard is a public nuisance and an injury to the community served by the airport in question;
 3.22 (2) ~~that~~ it is ~~therefor~~ necessary in the interest of the public health, public safety, and general
 3.23 welfare that the creation or establishment of airport hazards be prevented and that this should
 3.24 be accomplished to the extent legally possible, by exercise of the police power, without
 3.25 compensation; and (3) ~~that~~ the elimination or removal of existing land uses, ~~particularly~~
 3.26 ~~established residential neighborhoods in built-up urban areas,~~ or their designation as
 3.27 nonconforming uses is not in the public interest and should be avoided whenever possible
 3.28 consistent with reasonable standards of safety.

3.29 (c) It is further declared that the prevention of the creation or establishment of airport
 3.30 hazards and the elimination, removal, alteration, mitigation, or marking and lighting of
 3.31 existing airport hazards are essential public purposes services for which political subdivisions
 3.32 may raise and expend public funds and acquire land or property interests therein.

4.1 Sec. 5. Minnesota Statutes 2018, section 360.063, subdivision 1, is amended to read:

4.2 Subdivision 1. **Enforcement under police power.** (a) In order to prevent the creation
4.3 or establishment of airport hazards, every municipality having an airport hazard area within
4.4 its territorial limits may, unless a joint airport zoning board is permitted under subdivision
4.5 3, adopt, amend from time to time, administer, and enforce, under the police power and in
4.6 the manner and upon the conditions hereinafter prescribed, airport zoning regulations for
4.7 such airport hazard area, which regulations may divide such area into zones, and, within
4.8 such zones, specify the land uses permitted and regulate and restrict the height to which
4.9 structures and trees may be erected or allowed to grow.

4.10 (b) ~~For the purpose of promoting~~ In order to promote health, safety, order, convenience,
4.11 prosperity, and general welfare and for conserving to conserve property values and
4.12 ~~encouraging~~ encourage the most appropriate use of land, the municipality may regulate ~~the~~
4.13 ~~location, size and use of buildings and the density of population in that portion of an airport~~
4.14 ~~hazard area under approach zones for a distance not to exceed two miles from the airport~~
4.15 ~~boundary and in other portions of an~~ in airport hazard area may regulate by land use zoning
4.16 ~~for a distance not to exceed one mile from the airport boundary, and by height restriction~~
4.17 ~~zoning for a distance not to exceed 1-1/2 miles from the airport boundary~~ areas: (1) land
4.18 use; (2) height restrictions; (3) the location, size, and use of buildings; and (4) the density
4.19 of population.

4.20 (c) The powers granted by this subdivision may be exercised by metropolitan airports
4.21 commissions in contiguous cities of the first class in and for which they have been created.

4.22 (d) In the case of airports owned or operated by the state of Minnesota such powers shall
4.23 be exercised by the state airport zoning boards or by the commissioner of transportation as
4.24 authorized herein.

4.25 Sec. 6. Minnesota Statutes 2018, section 360.063, subdivision 3, is amended to read:

4.26 Subd. 3. **Joint airport zoning board.** (a) Where an airport is owned or controlled by a
4.27 municipality and an airport hazard area appertaining to the airport is located within the
4.28 territorial limits of another county or municipality, the municipality owning or controlling
4.29 the airport may request a county or municipality in which an airport hazard area is located:

4.30 (1) to adopt and enforce airport zoning regulations for the area in question ~~that conform~~
4.31 ~~to standards prescribed by the commissioner pursuant to subdivision 4~~ under sections
4.32 360.0655 and 360.0656; or

5.1 (2) to join in creating a joint airport zoning board pursuant to paragraph (b). The owning
5.2 or controlling municipality shall determine which of these actions it shall request, except
5.3 as provided in paragraph (e) for the Metropolitan Airports Commission. The request shall
5.4 be made by certified mail to the governing body of each county and municipality in which
5.5 an airport hazard area is located.

5.6 (b) Where an airport is owned or controlled by a municipality and an airport hazard area
5.7 appertaining to the airport is located within the territorial limits of another county or
5.8 municipality, the municipality owning or controlling the airport and the county or other
5.9 municipality within which the airport hazard area is located may, by ordinance or resolution
5.10 duly adopted, create a joint airport zoning board, which board shall have the same power
5.11 to adopt, administer, and enforce airport zoning regulations applicable to the airport hazard
5.12 area in question as that vested by subdivision 1 in the municipality within which the area
5.13 is located. A joint board shall have as members two representatives appointed by the
5.14 municipality owning or controlling the airport and two from the county or municipality, or
5.15 in case more than one county or municipality is involved two from each county or
5.16 municipality, in which the airport hazard is located, and in addition a chair elected by a
5.17 majority of the members so appointed. All members shall serve at the pleasure of their
5.18 respective appointing authority. Notwithstanding any other provision of law to the contrary,
5.19 if the owning and controlling municipality is a city of the first class it shall appoint four
5.20 members to the board, and the chair of the board shall be elected from the membership of
5.21 the board.

5.22 (c) If a county or municipality, within 60 days of receiving a request from an owning
5.23 or controlling municipality pursuant to paragraph (a), fails to adopt, or thereafter fails to
5.24 enforce, the zoning regulations or fails to join in creating a joint airport zoning board, the
5.25 owning or controlling municipality, or a joint airport zoning board created without
5.26 participation by the subdivisions which fail to join the board, may itself adopt, administer,
5.27 and enforce airport zoning regulations for the airport hazard area in question. In the event
5.28 of conflict between the regulations and airport zoning regulations adopted by the county or
5.29 municipality within which the airport hazard area is located, section 360.064, subdivision
5.30 2, applies.

5.31 (d) "Owning or controlling municipality," as used in this subdivision, includes:

5.32 (1) a joint airport operating board created pursuant to section 360.042 that has been
5.33 granted all the powers of a municipality in zoning matters under the agreement creating the
5.34 board;

6.1 (2) a joint airport operating board created pursuant to section 360.042 that has not been
 6.2 granted zoning powers under the agreement creating the board; provided that the board shall
 6.3 not itself adopt zoning regulations nor shall a joint airport zoning board created at its request
 6.4 adopt zoning regulations unless all municipalities that created the joint operating board join
 6.5 to create the joint zoning board; and

6.6 (3) the Metropolitan Airports Commission established and operated pursuant to chapter
 6.7 473.

6.8 (e) The Metropolitan Airports Commission shall request creation of one joint airport
 6.9 zoning board for each airport operated under its authority.

6.10 Sec. 7. Minnesota Statutes 2018, section 360.064, subdivision 1, is amended to read:

6.11 Subdivision 1. **Comprehensive regulations.** In the event that a municipality has adopted,
 6.12 or hereafter adopts, a comprehensive zoning ordinance regulating, among other things the
 6.13 height of buildings, any airport zoning regulations applicable to the same area or portion
 6.14 thereof ~~may~~ must be incorporated by reference or incorporated in and made a part of such
 6.15 comprehensive zoning regulations and be administered and enforced in connection therewith.

6.16 Sec. 8. Minnesota Statutes 2018, section 360.065, subdivision 1, is amended to read:

6.17 Subdivision 1. **Notice of proposed zoning regulations, hearing.** (a) No airport zoning
 6.18 regulations shall be adopted, amended, or changed under sections 360.011 to 360.076,
 6.19 except by action of the governing body of the municipality or county in question, or joint
 6.20 airport zoning board under section 360.0655 or 360.0656, or the boards provided for in
 6.21 section 360.063, subdivisions 3 and 7, or by the commissioner as provided in subdivisions
 6.22 6 and 8, after public hearings, at which parties in interest and citizens shall have an
 6.23 opportunity to be heard.

6.24 (b) A public hearing shall must be held on the proposed airport zoning regulations
 6.25 proposed by a municipality, county, or joint airport zoning board before they are submitted
 6.26 for approval to the commissioner and after that approval but before final adoption by the
 6.27 local zoning authority for approval. If any changes that alter the regulations placed on a
 6.28 parcel of land are made to the proposed airport zoning regulations after the initial public
 6.29 hearing, the municipality, county, or joint airport zoning board must hold a second public
 6.30 hearing before final adoption of the regulation. The commissioner may require a second
 6.31 hearing as determined necessary.

7.1 ~~(c) Notice of a hearing required pursuant to this subdivision shall~~ must be published by
 7.2 ~~the local zoning authority~~ municipality, county, or joint airport zoning board at least three
 7.3 times during the period between 15 days and five days before the hearing in an official
 7.4 newspaper and in a second newspaper designated by that authority which has a wide general
 7.5 circulation in the area affected by the proposed regulations and posted on the municipality's,
 7.6 county's, or joint airport zoning board's website. If there is not a second newspaper of wide
 7.7 general circulation in the area that the municipality, county, or joint airport zoning board
 7.8 can designate for the notice, the municipality, county, or joint airport zoning board is only
 7.9 required to publish the notice once in the official newspaper of the jurisdiction. The notice
 7.10 shall not be published in the legal notice section of a newspaper. The notice must specify
 7.11 the time, location, and purpose of the hearing, and must identify any additional location and
 7.12 time the proposed regulations will be available for public inspection. A copy of the published
 7.13 notice must be added to the record of the proceedings.

7.14 ~~(d) Notice of a hearing shall also be mailed to the governing body of each political~~
 7.15 ~~subdivision in which property affected by the regulations is located. Notice shall~~ must be
 7.16 given by mail at least ~~15~~ ten days before each hearing to ~~any persons in municipalities that~~
 7.17 ~~own land proposed to be included in safety zone A or B as provided in the rules of the~~
 7.18 ~~Department of Transportation~~ and landowners where the location or size of a building, or
 7.19 the density of population, will be regulated. Mailed notice must also be provided at least
 7.20 ten days before each hearing to persons or municipalities that have previously requested
 7.21 such notice from the ~~authority~~ municipality, county, or joint airport zoning board. The notice
 7.22 must specify the time, location, and purpose of the hearing, and must identify any additional
 7.23 location and time the proposed regulations will be made available for public inspection.
 7.24 Mailed notice must also identify the property affected by the regulations. For the purpose
 7.25 of ~~giving~~ providing mailed notice, the ~~authority~~ municipality, county, or joint airport zoning
 7.26 board may use any appropriate records to determine the names and addresses of owners. A
 7.27 copy of the notice and a list of the owners and addresses to which the notice was sent ~~shall~~
 7.28 ~~be attested to by the responsible person and shall~~ must be ~~made a part of~~ added to the records
 7.29 of the proceedings. ~~The Failure to give~~ provide mailed notice to individual property owners;
 7.30 or ~~defects a defect~~ in the notice, ~~shall~~ does not invalidate the proceedings; ~~provided if~~ a
 7.31 bona fide attempt to comply with this subdivision ~~has been~~ was made. ~~A notice shall describe~~
 7.32 ~~the property affected by the proposed regulations and the restrictions to be imposed on the~~
 7.33 ~~property by the regulations and shall state the place and time at which the proposed~~
 7.34 ~~regulations are available for public inspection.~~

8.1 Sec. 9. **[360.0655] AIRPORT ZONING REGULATIONS BASED ON**
8.2 **COMMISSIONER'S STANDARDS; SUBMISSION PROCESS.**

8.3 Subdivision 1. **Submission to commissioner; review.** (a) Except as provided in section
8.4 360.0656, prior to adopting zoning regulations, the municipality, county, or joint airport
8.5 zoning board must submit the proposed regulations to the commissioner for the commissioner
8.6 to determine whether the regulations conform to the standards prescribed by the
8.7 commissioner. The municipality, county, or joint airport zoning board may elect to complete
8.8 custom airport zoning under section 360.0656 instead of using the commissioner's standard,
8.9 but only after providing written notice to the commissioner.

8.10 (b) Notwithstanding section 15.99, the commissioner must examine the proposed
8.11 regulations within 90 days of receipt of the regulations and report to the municipality, county,
8.12 or joint airport zoning board the commissioner's approval or objections, if any. Failure to
8.13 respond within 90 days is deemed an approval. The commissioner may request additional
8.14 information from the municipality, county, or joint airport zoning board within the 90-day
8.15 review period. If the commissioner requests additional information, the 90-day review period
8.16 is tolled until the commissioner receives information and deems the information satisfactory.

8.17 (c) If the commissioner objects on the grounds that the regulations do not conform to
8.18 the standards prescribed by the commissioner, the municipality, county, or joint airport
8.19 zoning board must make amendments necessary to resolve the objections or provide written
8.20 notice to the commissioner that the municipality, county, or joint airport zoning board will
8.21 proceed with zoning under section 360.0656.

8.22 (d) If the municipality, county, or joint airport zoning board makes revisions to the
8.23 proposed regulations after its initial public hearing, the municipality, county, or joint airport
8.24 zoning board must conduct a second public hearing on the revisions and resubmit the revised
8.25 proposed regulations to the commissioner for review. The commissioner must examine the
8.26 revised proposed regulations within 90 days of receipt to determine whether the revised
8.27 proposed regulations conform to the standards prescribed by the commissioner.

8.28 (e) If, after a second review period, the commissioner determines that the municipality,
8.29 county, or joint airport zoning board failed to submit proposed regulations that conform to
8.30 the commissioner's standards, the commissioner must provide a final written decision to
8.31 the municipality, county, or joint airport zoning board.

8.32 (f) The municipality, county, or joint airport zoning board must not adopt regulations
8.33 or take other action until the proposed regulations are approved by the commissioner.

9.1 (g) The commissioner may approve local zoning ordinances that are more stringent than
 9.2 the commissioner's standards.

9.3 (h) If the commissioner approves the proposed regulations, the municipality, county, or
 9.4 joint airport zoning board may adopt the regulations.

9.5 (i) A copy of the adopted regulations must be filed with the county recorder in each
 9.6 county that contains a zoned area subject to the regulations.

9.7 (j) Substantive rights that existed and had been exercised prior to August 1, 2019, are
 9.8 not affected by the filing of the regulations.

9.9 Subd. 2. **Protection of existing land uses.** (a) In order to ensure minimum disruption
 9.10 of existing land uses, the commissioner's airport zoning standards and local airport zoning
 9.11 ordinances or regulations adopted under this section must distinguish between the creation
 9.12 or establishment of a use and the elimination of an existing use, and must avoid the
 9.13 elimination, removal, or reclassification of existing uses to the extent consistent with
 9.14 reasonable safety standards. The commissioner's standards must include criteria for
 9.15 determining when an existing land use may constitute an airport hazard so severe that public
 9.16 safety considerations outweigh the public interest in preventing disruption to that land use.

9.17 (b) Airport zoning regulations that classify as a nonconforming use or require
 9.18 nonconforming use classification with respect to any existing low-density structure or
 9.19 existing isolated low-density building lots must be adopted under sections 360.061 to
 9.20 360.074.

9.21 (c) A local airport zoning authority may classify a land use described in paragraph (b)
 9.22 as an airport hazard if the authority finds that the classification is justified by public safety
 9.23 considerations and is consistent with the commissioner's airport zoning standards. Any land
 9.24 use described in paragraph (b) that is classified as an airport hazard must be acquired, altered,
 9.25 or removed at public expense.

9.26 (d) This subdivision must not be construed to affect the classification of any land use
 9.27 under any zoning ordinances or regulations not adopted under sections 360.061 to 360.074.

9.28 **Sec. 10. [360.0656] CUSTOM AIRPORT ZONING STANDARDS.**

9.29 Subdivision 1. **Custom airport zoning standards; factors.** (a) Notwithstanding section
 9.30 360.0655, a municipality, county, or joint airport zoning board must provide notice to the
 9.31 commissioner when the municipality, county, or joint airport zoning board intends to establish
 9.32 and adopt custom airport zoning regulations under this section.

10.1 (b) Airport zoning regulations submitted to the commissioner under this subdivision are
10.2 not subject to the commissioner's zoning regulations under section 360.0655 or Minnesota
10.3 Rules, part 8800.2400.

10.4 (c) When developing and adopting custom airport zoning regulations under this section,
10.5 the municipality, county, or joint airport zoning board must include in the record a detailed
10.6 analysis that explains how the proposed custom airport zoning regulations addressed the
10.7 following factors to ensure a reasonable level of safety:

10.8 (1) the location of the airport, the surrounding land uses, and the character of
10.9 neighborhoods in the vicinity of the airport, including:

10.10 (i) the location of vulnerable populations, including schools, hospitals, and nursing
10.11 homes, in the airport hazard area;

10.12 (ii) the location of land uses that attract large assemblies of people in the airport hazard
10.13 area;

10.14 (iii) the availability of contiguous open spaces in the airport hazard area;

10.15 (iv) the location of wildlife attractants in the airport hazard area;

10.16 (v) airport ownership or control of the federal Runway Protection Zone and the
10.17 department's Clear Zone;

10.18 (vi) land uses that create or cause interference with the operation of radio or electronic
10.19 facilities used by the airport or aircraft;

10.20 (vii) land uses that make it difficult for pilots to distinguish between airport lights and
10.21 other lights, result in glare in the eyes of pilots using the airport, or impair visibility in the
10.22 vicinity of the airport;

10.23 (viii) land uses that otherwise inhibit a pilot's ability to land, take off, or maneuver the
10.24 aircraft;

10.25 (ix) airspace protection to prevent the creation of air navigation hazards in the airport
10.26 hazard area; and

10.27 (x) the social and economic costs of restricting land uses;

10.28 (2) the airport's type of operations and how the operations affect safety surrounding the
10.29 airport;

10.30 (3) the accident rate at the airport compared to a statistically significant sample, including
10.31 an analysis of accident distribution based on the rate with a higher accident incidence;

11.1 (4) the planned land uses within an airport hazard area, including any applicable platting,
11.2 zoning, comprehensive plan, or transportation plan; and

11.3 (5) any other information relevant to safety or the airport.

11.4 Subd. 2. **Submission to commissioner; review.** (a) Except as provided in section
11.5 360.0655, prior to adopting zoning regulations, the municipality, county, or joint airport
11.6 zoning board must submit its proposed regulations and the supporting record to the
11.7 commissioner for review. The commissioner must determine whether the proposed custom
11.8 airport zoning regulations and supporting record (1) evaluate the criteria under subdivision
11.9 1, and (2) provide a reasonable level of safety.

11.10 (b) Notwithstanding section 15.99, the commissioner must examine the proposed
11.11 regulations within 90 days of receipt of the regulations and report to the municipality, county,
11.12 or joint airport zoning board the commissioner's approval or objections, if any. Failure to
11.13 respond within 90 days is deemed an approval. The commissioner may request additional
11.14 information from the municipality, county, or joint airport zoning board within the 90-day
11.15 review period.

11.16 (c) If the commissioner objects on the grounds that the regulations do not provide a
11.17 reasonable level of safety, the municipality, county, or joint airport zoning board must
11.18 review, consider, and provide a detailed explanation demonstrating how it evaluated the
11.19 objections and what action it took or did not take in response to the objections. If the
11.20 municipality, county, or joint airport zoning board submits amended regulations after its
11.21 initial public hearing, the municipality, county, or joint airport zoning board must conduct
11.22 a second public hearing on the revisions and resubmit the revised proposed regulations to
11.23 the commissioner for review. The commissioner must examine the revised proposed
11.24 regulations within 90 days of receipt of the regulations. If the commissioner requests
11.25 additional information, the 90-day review period is tolled until satisfactory information is
11.26 received by the commissioner. Failure to respond within 90 days is deemed an approval.

11.27 (d) If, after the second review period, the commissioner determines that the municipality,
11.28 county, or joint airport zoning board failed to submit proposed regulations that provide a
11.29 reasonable level of safety, the commissioner must provide a final written decision to the
11.30 municipality, county, or joint airport zoning board.

11.31 (e) A municipality, county, or joint airport zoning board is prohibited from adopting
11.32 custom regulations or taking other action until the proposed regulations are approved by
11.33 the commissioner.

12.1 (f) If the commissioner approves the proposed regulations, the municipality, county, or
 12.2 joint airport zoning board may adopt the regulations.

12.3 (g) A copy of the adopted regulations must be filed with the county recorder in each
 12.4 county that contains a zoned area subject to the regulations.

12.5 (h) Substantive rights that existed and had been exercised prior to August 1, 2019, are
 12.6 not affected by the filing of the regulations.

12.7 Sec. 11. Minnesota Statutes 2018, section 360.066, subdivision 1, is amended to read:

12.8 Subdivision 1. **Reasonableness.** ~~Standards of the commissioner~~ Zoning standards defining
 12.9 airport hazard areas and the categories of uses permitted and airport zoning regulations
 12.10 adopted under sections 360.011 to 360.076, shall be reasonable, and none shall impose a
 12.11 requirement or restriction which is not reasonably necessary to effectuate the purposes of
 12.12 sections 360.011 to 360.076. ~~In determining what minimum airport zoning regulations may~~
 12.13 ~~be adopted, the commissioner and a local airport zoning authority shall consider, among~~
 12.14 ~~other things, the character of the flying operations expected to be conducted at the airport,~~
 12.15 ~~the location of the airport, the nature of the terrain within the airport hazard area, the existing~~
 12.16 ~~land uses and character of the neighborhood around the airport, the uses to which the property~~
 12.17 ~~to be zoned are planned and adaptable, and the social and economic costs of restricting land~~
 12.18 ~~uses versus the benefits derived from a strict application of the standards of the commissioner.~~

12.19 Sec. 12. Minnesota Statutes 2018, section 360.067, is amended by adding a subdivision
 12.20 to read:

12.21 Subd. 5. **Federal no hazard determination.** (a) Notwithstanding subdivisions 1 and 2,
 12.22 a municipality, county, or joint airport zoning board may include in its custom airport zoning
 12.23 regulations adopted under section 360.0656 an option to permit construction of a structure,
 12.24 an increase or alteration of the height of a structure, or the growth of an existing tree without
 12.25 a variance from height restrictions if the Federal Aviation Administration has analyzed the
 12.26 proposed construction, alteration, or growth under Code of Federal Regulations, title 14,
 12.27 part 77, and has determined the proposed construction, alteration, or growth does not:

12.28 (1) pose a hazard to air navigation;

12.29 (2) require changes to airport or aircraft operations; or

12.30 (3) require any mitigation conditions by the Federal Aviation Administration that cannot
 12.31 be satisfied by the landowner.

13.1 (b) A municipality, county, or joint airport zoning board that permits an exception to
 13.2 height restrictions under this subdivision must require the applicant to file the Federal
 13.3 Aviation Administration's no hazard determination with the applicable zoning administrator.
 13.4 The applicant must obtain written approval of the zoning administrator before construction,
 13.5 alteration, or growth may occur. Failure of the administrator to respond within 60 days to
 13.6 a filing under this subdivision is deemed a denial. The Federal Aviation Administration's
 13.7 no hazard determination does not apply to requests for variation from land use, density, or
 13.8 any other requirement unrelated to the height of structures or the growth of trees.

13.9 Sec. 13. Minnesota Statutes 2018, section 360.071, subdivision 2, is amended to read:

13.10 Subd. 2. **Membership.** (a) Where a zoning board of appeals or adjustment already exists,
 13.11 it may be appointed as the board of adjustment. Otherwise, the board of adjustment shall
 13.12 consist of five members, each to be appointed for a term of three years by the authority
 13.13 adopting the regulations and to be removable by the appointing authority for cause, upon
 13.14 written charges and after public hearing. The length of initial appointments may be staggered.

13.15 (b) In the case of a Metropolitan Airports Commission, five members shall be appointed
 13.16 by the commission chair from the area in and for which the commission was created, any
 13.17 of whom may be members of the commission. In the case of an airport owned or operated
 13.18 by the state of Minnesota, the board of commissioners of the county, or counties, in which
 13.19 the airport hazard area is located shall constitute the airport board of adjustment and shall
 13.20 exercise the powers and duties of such board as provided herein.

13.21 Sec. 14. Minnesota Statutes 2018, section 360.305, subdivision 6, is amended to read:

13.22 Subd. 6. **Zoning required.** The commissioner shall must not expend money for planning
 13.23 or land acquisition, or for the construction, improvement, or maintenance of airports, or for
 13.24 air navigation facilities for an airport, unless the governmental unit municipality, county,
 13.25 or joint airport zoning board involved has or is establishing a zoning authority for that
 13.26 airport, and the authority has made a good-faith showing that it is in the process of and will
 13.27 complete with due diligence, an airport zoning ordinance in accordance with sections 360.061
 13.28 to 360.074. The commissioner may provide funds to support airport safety projects that
 13.29 maintain existing infrastructure, regardless of a zoning authority's efforts to complete a
 13.30 zoning regulation. The commissioner shall must make maximum use of zoning and easements
 13.31 to eliminate runway and other potential airport hazards rather than land acquisition in fee.

14.1 Sec. 15. Minnesota Statutes 2018, section 394.22, is amended by adding a subdivision to
14.2 read:

14.3 Subd. 1a. **Airport safety zone.** "Airport safety zone" means an area subject to land use
14.4 zoning controls adopted under sections 360.061 to 360.074 if the zoning controls regulate
14.5 (1) the size or location of buildings, or (2) the density of population.

14.6 Sec. 16. Minnesota Statutes 2018, section 394.23, is amended to read:

14.7 **394.23 COMPREHENSIVE PLAN.**

14.8 The board has the power and authority to prepare and adopt by ordinance, a
14.9 comprehensive plan. A comprehensive plan or plans when adopted by ordinance must be
14.10 the basis for official controls adopted under the provisions of sections 394.21 to 394.37.
14.11 The commissioner of natural resources must provide the natural heritage data from the
14.12 county biological survey, if available, to each county for use in the comprehensive plan.
14.13 When adopting or updating the comprehensive plan, the board must, if the data is available
14.14 to the county, consider natural heritage data resulting from the county biological survey. In
14.15 a county that is not a greater than 80 percent area, as defined in section 103G.005, subdivision
14.16 10b, the board must consider adopting goals and objectives that will protect open space and
14.17 the environment. The board must consider the location and dimensions of airport safety
14.18 zones in any portion of the county, and of any airport improvements, identified in the airport's
14.19 most recent approved airport layout plan.

14.20 Sec. 17. Minnesota Statutes 2018, section 394.231, is amended to read:

14.21 **394.231 COMPREHENSIVE PLANS IN GREATER MINNESOTA; OPEN SPACE.**

14.22 A county adopting or updating a comprehensive plan in a county outside the metropolitan
14.23 area as defined by section 473.121, subdivision 2, and that is not a greater than 80 percent
14.24 area, as defined in section 103G.005, subdivision 10b, shall consider adopting goals and
14.25 objectives for the preservation of agricultural, forest, wildlife, and open space land, and
14.26 minimizing development in sensitive shoreland areas. Within three years of updating the
14.27 comprehensive plan, the county shall consider adopting ordinances as part of the county's
14.28 official controls that encourage the implementation of the goals and objectives. The county
14.29 shall consider the following goals and objectives:

14.30 (1) minimizing the fragmentation and development of agricultural, forest, wildlife, and
14.31 open space lands, including consideration of appropriate minimum lot sizes;

14.32 (2) minimizing further development in sensitive shoreland areas;

15.1 (3) minimizing development near wildlife management areas, scientific and natural
15.2 areas, and nature centers;

15.3 (4) encouraging land uses in airport safety zones that are compatible with the safe
15.4 operation of the airport and the safety of people in the vicinity of the airport;

15.5 ~~(4)~~ (5) identification of areas of preference for higher density, including consideration
15.6 of existing and necessary water and wastewater services, infrastructure, other services, and
15.7 to the extent feasible, encouraging full development of areas previously zoned for
15.8 nonagricultural uses;

15.9 ~~(5)~~ (6) encouraging development close to places of employment, shopping centers,
15.10 schools, mass transit, and other public and private service centers;

15.11 ~~(6)~~ (7) identification of areas where other developments are appropriate; and

15.12 ~~(7)~~ (8) other goals and objectives a county may identify.

15.13 Sec. 18. Minnesota Statutes 2018, section 394.25, subdivision 3, is amended to read:

15.14 Subd. 3. **In district zoning, maps.** Within each such district zoning ordinances or maps
15.15 may also be adopted designating or limiting the location, height, width, bulk, type of
15.16 foundation, number of stories, size of, and the specific uses for which dwellings, buildings,
15.17 and structures may be erected or altered; the minimum and maximum size of yards, courts,
15.18 or other open spaces; setback from existing roads and highways and roads and highways
15.19 designated on an official map; protective measures necessary to protect the public interest
15.20 including but not limited to controls relating to appearance, signs, lighting, hours of operation
15.21 and other aesthetic performance characteristics including but not limited to noise, heat,
15.22 glare, vibrations and smoke; the area required to provide for off street loading and parking
15.23 facilities; heights of trees and structures near airports; and to avoid too great concentration
15.24 or scattering of the population. All such provisions shall be uniform for each class of land
15.25 or building throughout each district, but the provisions in one district may differ from those
15.26 in other districts. No provision may prohibit earth sheltered construction as defined in section
15.27 216C.06, subdivision 14, or manufactured homes built in conformance with sections 327.31
15.28 to 327.35 that comply with all other zoning ordinances promulgated pursuant to this section.
15.29 Airport safety zones must be included on maps that illustrate boundaries of zoning districts
15.30 and that are adopted as official controls.

15.31 **EFFECTIVE DATE.** This section is effective August 1, 2019, and applies to maps
15.32 created or updated under this section on or after that date.

16.1 Sec. 19. Minnesota Statutes 2018, section 462.352, is amended by adding a subdivision
16.2 to read:

16.3 Subd. 1a. **Airport safety zone.** "Airport safety zone" has the meaning given in section
16.4 394.22, subdivision 1a.

16.5 Sec. 20. Minnesota Statutes 2018, section 462.355, subdivision 1, is amended to read:

16.6 Subdivision 1. **Preparation and review.** The planning agency shall prepare the
16.7 comprehensive municipal plan. In discharging this duty the planning agency shall consult
16.8 with and coordinate the planning activities of other departments and agencies of the
16.9 municipality to insure conformity with and to assist in the development of the comprehensive
16.10 municipal plan. In its planning activities the planning agency shall take due cognizance of
16.11 the planning activities of adjacent units of government and other affected public agencies.
16.12 The planning agency shall periodically review the plan and recommend amendments
16.13 whenever necessary. When preparing or recommending amendments to the comprehensive
16.14 plan, the planning agency of a municipality located within a county that is not a greater than
16.15 80 percent area, as defined in section 103G.005, subdivision 10b, must consider adopting
16.16 goals and objectives that will protect open space and the environment. When preparing or
16.17 recommending amendments to the comprehensive plan, the planning agency must consider
16.18 (1) the location and dimensions of airport safety zones in any portion of the municipality,
16.19 and (2) any airport improvements identified in the airport's most recent approved airport
16.20 layout plan.

16.21 Sec. 21. Minnesota Statutes 2018, section 462.357, is amended by adding a subdivision
16.22 to read:

16.23 Subd. 1i. **Airport safety zones on zoning maps.** Airport safety zones must be included
16.24 on maps that illustrate boundaries of zoning districts and that are adopted as official controls.

16.25 **EFFECTIVE DATE.** This section is effective August 1, 2019, and applies to maps
16.26 created or updated under this section on or after that date.

16.27 Sec. 22. Minnesota Statutes 2018, section 462.357, subdivision 9, is amended to read:

16.28 Subd. 9. **Development goals and objectives.** In adopting official controls after July 1,
16.29 2008, in a municipality outside the metropolitan area, as defined by section 473.121,
16.30 subdivision 2, the municipality shall consider restricting new residential, commercial, and
16.31 industrial development so that the new development takes place in areas subject to the
16.32 following goals and objectives:

17.1 (1) minimizing the fragmentation and development of agricultural, forest, wildlife, and
 17.2 open space lands, including consideration of appropriate minimum lot sizes;

17.3 (2) minimizing further development in sensitive shoreland areas;

17.4 (3) minimizing development near wildlife management areas, scientific and natural
 17.5 areas, and nature centers;

17.6 (4) encouraging land uses in airport safety zones that are compatible with the safe
 17.7 operation of the airport and the safety of people in the vicinity of the airport;

17.8 ~~(4)~~ (5) identification of areas of preference for higher density, including consideration
 17.9 of existing and necessary water and wastewater services, infrastructure, other services, and
 17.10 to the extent feasible, encouraging full development of areas previously zoned for
 17.11 nonagricultural uses;

17.12 ~~(5)~~ (6) encouraging development close to places of employment, shopping centers,
 17.13 schools, mass transit, and other public and private service centers;

17.14 ~~(6)~~ (7) identification of areas where other developments are appropriate; and

17.15 ~~(7)~~ (8) other goals and objectives a municipality may identify.

17.16 Sec. 23. **REPEALER.**

17.17 Minnesota Statutes 2018, sections 360.063, subdivision 4; 360.065, subdivision 2; and
 17.18 360.066, subdivisions 1a and 1b, are repealed.

17.19 Sec. 24. **EFFECTIVE DATE; APPLICATION.**

17.20 (a) This act is effective August 1, 2019, and applies to airport sponsors that make or
 17.21 plan to make changes to runway lengths or configurations on or after that date.

17.22 (b) This act does not apply to airports that: (1) have airport safety zoning ordinances
 17.23 approved by the commissioner in effect on August 1, 2019; (2) have not made and are not
 17.24 planning to make changes to runway lengths or configurations; and (3) are not required to
 17.25 update airport safety zoning ordinances.

360.063 AIRPORT ZONING; AUTHORITY, PROCEDURE.

Subd. 4. **Airport approach.** The commissioner may recommend an airport approach plan for each publicly owned airport in the state and for each privately owned airport of the publicly owned class and from time to time recommend revisions of the plan. A plan shall indicate the circumstances in which structures or trees are or would be airport hazards, the airport hazard area, and what measures should be taken to eliminate airport hazards. The commissioner shall prescribe airport approach and turning standards for airports of various classes, and airport zoning regulations adopted by a municipality, county, or joint airport zoning board shall conform to the standards, except as provided in sections 360.065 and 360.066.

360.065 AIRPORT ZONING; ADOPTION AND APPROVAL OF PROPOSED REGULATIONS.

Subd. 2. **Regulations submitted to commissioner.** Prior to adopting zoning regulations for an airport hazard area under sections 360.011 to 360.076, the municipality, county, or joint airport zoning board which is to adopt the regulations shall submit its proposed regulations to the commissioner in order that the commissioner may determine whether it conforms to the standards prescribed by the commissioner. The commissioner shall immediately examine the proposed regulations and report to the municipality, county, or joint airport zoning board the commissioner's approval, or objections, if any. If objections are made by the commissioner on the ground that the regulations do not conform to the standards prescribed by the commissioner for the class of airport involved, the municipality, county, or joint zoning board shall make amendments as are necessary to meet the objections unless it demonstrates that the social and economic costs of restricting land uses in accordance with the standards outweigh the benefits of a strict application of the standards. The governing body of the municipality or county or the joint airport zoning board shall not adopt the regulations or take other action until the proposed regulations are approved by the commissioner. The commissioner may approve local zoning ordinances that are more stringent than the standards. A copy of the regulations as adopted shall be filed with the county recorder in each county in which the zoned area is located.

Substantive rights existing prior to the passage of this subdivision and previously exercised are not affected by the filing of the regulations.

360.066 AIRPORT ZONING; MINIMUM STANDARDS, LAND USES.

Subd. 1a. **Protection of existing neighborhood.** (a) In order to ensure the minimum disruption of existing land uses, particularly established residential neighborhoods in built-up urban areas, the airport zoning standards of the commissioner and the local airport zoning ordinances or regulations adopted under sections 360.061 to 360.074 shall distinguish between the creation or establishment of a use and the elimination of an existing use, and shall avoid the elimination, removal, or reclassification of existing uses to the extent consistent with reasonable standards of safety. The standards of the commissioner shall include criteria for determining when an existing land use may constitute an airport hazard so severe that considerations of public safety outweigh the public interest in preventing disruption to that land use.

(b) No airport zoning standards or local airport zoning ordinances or regulations shall be adopted pursuant to sections 360.061 to 360.074 that classify as a nonconforming use or require such classification with respect to any low-density residential structure or isolated low-density residential building lots existing on January 1, 1978, in an established residential neighborhood.

(c) A local airport zoning authority may classify a land use described in paragraph (b) as an airport hazard if that authority finds that this classification is justified by considerations of public safety and is consistent with the airport zoning standards of the commissioner. Any land use described in paragraph (b) which is classified as an airport hazard shall be acquired, altered, or removed at public expense.

(d) The provisions of this subdivision shall not be construed to affect the classification of any land use under any zoning ordinances or regulations not adopted pursuant to sections 360.061 to 360.074.

Subd. 1b. **Amendment of standards.** Within nine months after March 29, 1978, the commissioner shall amend the standards defining airport hazard areas and categories of uses permitted therein to conform with the requirements of Laws 1978, chapter 654. Until the commissioner adopts amended standards as required by this subdivision the unamended standards, insofar as they require classification of any residential property as a nonconforming use contrary to the provisions of subdivision 1a, paragraph (b), shall be without force or effect.