

1 H.318

2 Introduced by Representatives Peaslee of Guildhall, Bohi of Hartford,  
3 Browning of Arlington, Burditt of West Rutland, Courcelle of  
4 Rutland City, Crawford of Burke, Donaghy of Poultney,  
5 Eckhardt of Chittenden, French of Shrewsbury, Greshin of  
6 Warren, Howrigan of Fairfield, Kilmartin of Newport City,  
7 Larocque of Barnet, Lawrence of Lyndon, Lewis of Derby,  
8 Malcolm of Pawlet, Marcotte of Coventry, McNeil of Rutland  
9 Town, Potter of Clarendon, Reis of St. Johnsbury and Young of  
10 Albany

11 Referred to Committee on

12 Date:

13 Subject: Aeronautics; airports; structures; construction or alteration;  
14 restrictions

15 Statement of purpose: This bill proposes to prohibit the construction or  
16 alteration of structures determined by the Federal Aviation Administration to  
17 be an obstruction to air navigation; that are more than 200 feet above ground  
18 level and within a 40:1 slope of airport runways and not shielded by existing  
19 structures or terrain; or that the secretary of transportation or a court  
20 determines would interfere with air navigation.

1 An act relating to construction or alteration of structures and air navigation

2 It is hereby enacted by the General Assembly of the State of Vermont:

3 Sec. 1. FINDINGS

4 The general assembly finds and declares that it is in the public interest to  
5 provide for the orderly development of public airports in this state and the  
6 areas surrounding these airports, and to prevent and minimize safety hazards  
7 within and surrounding airports to the extent that these areas are not already  
8 devoted to existing nonconforming uses. Chapter 17 of Title 5 effectuates  
9 these purposes by authorizing the adoption of reasonable and necessary airport  
10 zoning regulations by municipalities, and by prescribing reasonable and  
11 necessary limitations on the construction and alteration of certain structures.

12 Sec. 2. 5 V.S.A. § 202(11) is amended to read:

13 (11) “Airport” or “public airport” means any area of land or water, set  
14 aside by the agency, any political subdivision or person, except a restricted  
15 landing area, which is designed for the landing and take-off of aircraft, and  
16 used or to be used in the interest of the general public whether or not facilities  
17 are provided for the shelter, servicing, or repair of aircraft, or for receiving or  
18 discharging passengers or cargo, and all appurtenant areas used or suitable for  
19 airport buildings or other airport facilities, including all appurtenant  
20 rights-of-way.



1 or is shielded by natural terrain or topographic features of equal or greater  
2 height; or

3 (3) the secretary initiates an investigation prior to commencement of the  
4 construction or alteration, and a final decision is made that the structure would  
5 interfere with long-range radar, terminal radar, navigational aides, published  
6 flight procedures, cellular communications, or Visual Flight Rule (VFR) traffic  
7 patterns, or would require adjustment to arrival or departure altitude minimums  
8 for landing or takeoff, circling minimums, or other operational requirement for  
9 the safety or efficiency of airports or aviation such that the structure constitutes  
10 a hazard to air navigation.

11 (b) The secretary shall immediately commence an investigation pursuant to  
12 subdivision (a)(3) of this section if, prior to commencement of the construction  
13 or alteration of any structure, the secretary receives a petition for a hearing  
14 from an airman, or from a person with an ownership interest in the airport or  
15 airport facilities, in the proposed construction or alteration or its site, or in  
16 lands adjacent to the airport or the site of the proposed construction or  
17 alteration. The secretary shall advise all known interested parties within five  
18 business days of the commencement of an investigation, shall conduct hearings  
19 upon reasonable notice in accordance with 19 V.S.A. § 7a, and shall issue a  
20 written decision and order within 90 days of receipt of the petition. The  
21 secretary may issue an order prescribing conditional provisions of his or her

1 decision, such as a requirement that a proposed structure be marked or lighted  
2 as appropriate. A person aggrieved by a decision or order under this  
3 subsection may have the decision or order reviewed on the record by  
4 petitioning a superior court pursuant to Rule 74 of the Vermont Rules of Civil  
5 Procedure.

6 (c) No construction or alteration subject to FAA review under subdivision  
7 (a)(1) of this section or subject to an investigation under subdivision (a)(3) of  
8 this section, may be commenced prior to issuance of a final determination by  
9 the FAA, a decision of the secretary, or a decision of a court, with or without  
10 imposing conditional provisions, that a structure will not constitute a hazard to  
11 air navigation.

12 (d) Structures located on water shall comply with all relevant limitations  
13 that apply as if the structure were on land. Measured height of the structure  
14 will be based on the structure's elevation above the average water level of the  
15 body of water.

16 (e) This section shall not be construed to preempt or prevent application of  
17 regulations adopted under section 1003 or 1004 of this chapter.

18 \* \* \*

19 § 1012. VARIANCE FROM REGULATIONS

20 A person desiring to use his or her property in violation of airport zoning  
21 regulations adopted under section 1003 or 1004 of this chapter may apply to

1 the board of adjustment for a variance from the zoning regulations in question.  
2 The variances shall be allowed where a literal application or enforcement of  
3 the regulations would result in practical difficulty or unnecessary hardship and  
4 the relief granted would not be contrary to the public interest but do substantial  
5 justice and be in accordance with the spirit of the regulations and this chapter.  
6 However, any variance may be allowed subject to any reasonable conditions  
7 that the board of adjustment may deem necessary to accomplish the purposes  
8 of this chapter.

9 \* \* \*

10 § 1018. VIOLATIONS; ENFORCEMENT

11 The political subdivision or agency adopting zoning regulations under this  
12 chapter, or the secretary, may institute, in any court of competent jurisdiction,  
13 an action to prevent, restrain, correct or abate any violation of this chapter or of  
14 airport zoning regulations adopted under this chapter, or of any order or ruling  
15 made in connection with ~~their~~ the administration or enforcement of this  
16 chapter. The court shall grant to the plaintiff such relief, by way of injunction  
17 or otherwise, as may be proper under all the facts and circumstances of the  
18 case, in order fully to accomplish the purposes of this chapter and of the rules  
19 adopted and orders and rulings made pursuant to this chapter.

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1       Sec. 4. EFFECTIVE DATE

2       This act shall take effect on January 1, 2012.