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OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
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Legislative Budget
Office

H.B. 185
135th General Assembly

Fiscal Note & Local Impact Statement

[Click here for H.B. 185's Bill Analysis](#)

Version: As Introduced

Primary Sponsors: Reps. Callender and Fowler Arthur

Local Impact Statement Procedure Required: No

Terry Steele, Senior Budget Analyst

Highlights

- The bill modifies the authority of the Ohio Department of Transportation's (ODOT) Office of Aviation and the authority of airport zoning boards to regulate obstructions to navigable airspace. These changes could result in some additional cost increases for ODOT and local airport zoning boards.
- The bill expands the types of projects for which ODOT may provide assistance or funding to local airports under the Airport Grant Program. Funding for the program consists of (1) \$10.0 million from the GRF, (2) \$620,000 in aviation-related fees deposited into Fund 5W90, and (3) \$400,000 in federal funding in each fiscal year of the current biennium.
- The bill modifies existing prohibitions to reflect federal law, and grants local airport sponsors the power to initiate actions at the applicable court of jurisdiction. It is unclear as to how many potential new legal actions would occur under this authority.
- The bill modifies the definition of "airport" for purposes of zoning, thereby broadening the number and type of facilities that would qualify as an airport for zoning purposes.

Detailed Analysis

Overview

The bill aligns state law with federal law and Federal Aviation Administration (FAA) standards by modifying the authority of the Ohio Department of Transportation's (ODOT) Office of Aviation, and related authority of airport zoning commissions, to regulate obstructions to navigable airspace. While federal authority primarily governs this, any individual seeking to construct or alter any applicable structures must also apply to do so with the applicable state

authorities and airport zoning commissions to obtain permits to complete any new construction or alterations. Overall, the changes to the regulating authority contained in the bill would appear to result in some minimal cost increases for the Office of Aviation. ODOT's Office of Aviation, specifically the Airport Protection Program, is funded through nonhighway-related revenues deposited into the Highway Operating Fund (Fund 7002) and paid from appropriation item 777475, Aviation Administration. Airport zoning boards may also see some minimal cost increases resulting from some provisions of the bill.

Permitting and applications

The bill modifies the permitting and application process for construction or alterations of structures in navigable airspace. Specifically, the bill requires ODOT to perform its own study and determination of a permit application concurrent with FAA review. Currently, the Office of Aviation, upon receiving a permit application from the FAA, makes a determination as to whether or not the permit is in compliance. Therefore, it does not appear that there would be any additional costs related to this provision. However, by specifying that ODOT must perform this determination within 90 days of the FAA submitting its report, the bill may result in faster processing of permit applications in some cases. Overall, by most recent available data from the Office of Aviation, there are 148 noncommercial public use airports operating in Ohio.

The bill also specifies that ODOT's determination must be made in part by certain factors contained in the FAA review study (see the LSC bill analysis for specific factors). If a permit application is denied, the bill requires ODOT to list the alterations to the construction that would allow the application to be approved. Finally, in certain cases, the bill requires ODOT to contact the impacted airport zoning commission to have the board determine if an object is a hazard to navigable airspace, and then grant or deny a permit based on that determination. Overall, the changes in the bill do not appear to significantly alter the number of permit applications submitted to the Office of Aviation.

Prohibitions and enforcement

The bill clarifies current enforcement provisions related to construction without first obtaining a permit to make those penalties match those in federal law. The bill also permits an airport sponsor to initiate a court action to prevent, correct, or abate violations of the Navigable Airspace Law. While it is possible that this provision would result in some increased costs to applicable courts, the number of new or additional cases resulting from this provision would probably be quite low. The bill further modifies provisions related to liability. The bill specifies that ODOT, and the Office of Aviation, are not liable for any damages caused by a structure or object of natural growth that is an obstruction to navigable airspace under certain conditions. It is unclear how many such cases of damages would fall under the conditions specified in the bill, but presumably such instances would be rare.

Airport activities and zoning

Currently, ODOT provides funding and assistance to certain airports with respect to funding, contracts, grants, and compliance with federal requirements. The bill adds navigable airspace and the operation of heliports, vertiports, and spaceports to the list of funded activities which ODOT may assist local airports. The bill also allows ODOT to provide counsel and services regarding FAA processes. This expands the type of projects for which ODOT may provide assistance, in particular under the Airport Grant Program.

The Airport Grant Program provides slightly more than \$11.0 million each fiscal year for local airport assistance in the FY 2024-FY 2025 biennium. The grant money can be used for removing obstructions that are a safety hazard, maintaining and improving airport pavement, and providing lighting and navigational aids. The program also includes matching grants for 5% of total project costs for projects at general aviation airports funded by the FAA. As of this writing, there are 104¹ publicly owned airports in Ohio eligible for grants under the program. The Airport Grant Program is funded through a combined allocation of approximately \$10.0 million from GRF appropriation item 777471, Airport Improvements – State, an estimated \$620,000 in airport registration receipts deposited into the Airport Assistance Fund (Fund 5W90), and just over \$400,000 in federal funding through Highway Operating Fund (Fund 7002) appropriation item 777472, Airport Improvements – Federal. The Infrastructure Investment and Jobs Act (IIJA) provided additional airport grant funding opportunities through the FAA. As a result, H.B. 33 of the 135th General Assembly, the main operating budget, provided an increase of \$4.3 million in GRF funding in each fiscal year from FY 2023 spending on grant matching funds. For FY 2024, ODOT made grant awards for 22 projects totaling nearly \$7.1 million.

The bill makes several changes to airport zoning. The bill shifts the responsibility of developing airport approach plans from the Office of Aviation to the local airport zoning boards. ODOT must still examine and approve these plans. The applicable local zoning boards may experience additional costs resulting from this. The bill also specifies that for the purposes of zoning, an airport constitutes an area with a hard landing surface of not less than 1,800 feet, rather than 3,500 feet as exists in current law. Presumably, this change broadens the number and type of facilities that qualify as an airport for zoning purposes. Finally, the bill specifies that local government regulations regarding navigable airspace are permitted to be stricter than those rules adopted by ODOT. It is unclear as to how many local governments would adopt regulations more stringent than rules adopted by ODOT.

¹ transportation.ohio.gov/programs/aviation/Resources/airport-grant-program.