START\_STATUTE28-8481.  Planning and zoning; military airport and ancillary military facility's operation compatibility; compliance review; penalty; definitions

A.  A political subdivision that has territory in the vicinity of a military airport or ancillary military facility that includes property in a high noise or accident potential zone shall adopt comprehensive and general plans and school district development plans, if applicable, for property in the high noise or accident potential zone to assure development compatible with the high noise and accident potential generated by military airport and ancillary military facility operations that have or may have an adverse effect on public health and safety. Each political subdivision, excluding school districts, shall adopt and enforce zoning regulations for property in the high noise or accident potential zone to assure development compatible with the high noise and accident potential generated by military airport and ancillary military facility operations that have or may have an adverse effect on public health and safety.

B.  A political subdivision that has territory in the vicinity of a military airport or ancillary military facility shall incorporate sound attenuation standards pursuant to section 28‑8482 into any building code in existence on or adopted after July 1, 2001 or after July 1 of the year in which the land becomes territory in the vicinity of a military airport or ancillary military facility. This section does not affect or require the modification of any building permit issued before July 1, 2001 or before July 1 of the year in which the land becomes territory in the vicinity of a military airport or ancillary military facility.

C.  A political subdivision that has territory in the vicinity of a military airport or ancillary military facility that includes property in a high noise or accident potential zone shall adopt, administer and enforce the zoning regulations or school district development plans authorized by subsection A of this section in the same manner as the comprehensive zoning ordinance or school district development plans of the political subdivision as provided by law, except that a variance shall not be granted without a specific finding that the purpose of military airport or ancillary military facility compatibility is preserved.

D.  This section does not affect the existing authority of a political subdivision to plan and zone on the basis of noise or accident potential in the vicinity of an airport owned or controlled by the political subdivision or to adopt restrictions or limitations in addition to those required by this section applicable to territory in the vicinity of a military airport or ancillary military facility.

E.  This section does not restrict, limit or modify, or authorize or require any political subdivision to restrict, limit or modify, the right of a landowner to undertake and complete development and use of any property under the terms and conditions of a development plan or school district development plan approved on or before December 31, 2000, or on or before December 31 of the year in which the development's property becomes territory in the vicinity of a military airport or ancillary military facility or pursuant to a written determination of compatibility issued by the military airport or ancillary military facility on or before December 31, 2004, by the political subdivision in whose territory or area of jurisdiction the property is located, except that the development must comply with the sound attenuation standards and specifications incorporated into any building code adopted pursuant to section 28‑8482 by the political subdivision in whose territory or area of jurisdiction the development is located.

F.  This section does not restrict, limit or modify, or authorize or require any political subdivision to restrict, limit or modify, the right of a landowner to undertake and complete development and use of any property located in a high noise or accident potential zone that is appurtenant to an ancillary military facility under the terms and conditions of a development plan or school district development plan approved on or before December 31, 2004 by the political subdivision in whose territory or area of jurisdiction the property is located or pursuant to a written determination of compatibility issued by the military airport or ancillary military facility on or before December 31, 2004, except that the development shall comply with the sound attenuation standards and specifications incorporated into any building code adopted pursuant to section 28‑8482 by the political subdivision in whose territory or area of jurisdiction the development is located.

G.  On or after July 1, 2001 or on or after December 31 of the year in which the property becomes territory in a high noise or accident potential zone, a political subdivision that has property in a high noise or accident potential zone shall notify the owner or owners of property in the high noise and accident potential zone of any additions or changes under this section to the general plan, comprehensive plan, zoning regulations or school district development plan of the political subdivision applicable to property in the high noise or accident potential zone. The political subdivision shall provide a notice of such additions or changes by publication as provided in section 9‑462.04, subsection A or section 11‑814, subsection D, including a statement that the property is located in a high noise or accident potential zone, at least thirty days before final approval of the addition to or change in the general plan, permitted land uses, zoning regulation or school district development plan and within thirty days following the final approval of such an addition to or change in the general plan, permitted land uses, zoning regulation or school district development plan.

H.  Any property owner described in subsection G of this section shall notify potential purchasers of the property and any potential lessees or renters that the property is located in a high noise and accident potential zone and is subject to the requirements of this section.

I.  If a political subdivision includes property in the high noise or accident potential zone of a military airport or ancillary military facility, the political subdivision shall send notice to the attorney general of any approval, adoption or readoption of, or major amendment to, the general or comprehensive plan that impacts property in the high noise or accident potential zone of a military airport or ancillary military facility within three business days after the approval, adoption or readoption. If the attorney general determines the approval, adoption or readoption of the general or comprehensive plan or the major amendment to the general or comprehensive plan is not in compliance with subsection J of this section, the attorney general shall notify the political subdivision by certified mail, return receipt requested, of the determination of noncompliance. Within thirty days after the receipt of a determination of noncompliance by the attorney general as prescribed by this section, the governing body of the political subdivision shall reconsider any approval, adoption or readoption of, or major amendment to, the general or comprehensive plan that impacts property in the high noise or accident potential zone of a military airport or ancillary military facility. If the governing body reaffirms a prior action subject to an attorney general's determination of noncompliance pursuant to this section, the attorney general may institute a civil action pursuant to subsection L of this section. If a political subdivision timely sends notice pursuant to this subsection and the attorney general fails to timely notify the political subdivision of a determination of noncompliance, the general or comprehensive plan or major amendment to the general or comprehensive plan shall be deemed to comply with subsection J of this section.

J.  The attorney general shall determine compliance with this section in accordance with the following requirements applicable to zoning and development in a high noise or accident potential zone and to zoning and development in accident potential zone one and accident potential zone two.  Compliance with respect to territory located in the arrival and departure corridor but outside the accident potential zone one, two and noise contour lines as described in section 28‑8461, paragraph 9, subdivision (c) shall be determined in accordance with the requirements applicable to territory located in the 65‑69 day‑night sound level as listed below. Compliance with respect to the property described in section 28‑8461, paragraph 9, subdivision (b) shall be determined in accordance with the compatible land use plan in the joint land use study completed in February 2004. If the political subdivision and the military airport mutually agree that an individual use is compatible and consistent with the high noise or accident potential of the military airport or ancillary military facility, as applicable, the use shall be deemed to comply with this subsection. Alternatively, for an individual use or a plan for development submitted to a military airport or ancillary military facility before December 31, 2004, this subsection does not preclude the military airport from determining that the individual use or plan for development is compatible and consistent with the high noise or accident potential zone of the military airport or ancillary military facility.

 Day‑night sound level in decibels

    high noise or accident

    potential zone (18)

Zoning and development in high

noise or accident potential

zone 65-69 70-74 75-79 80-84 85 or APZ APZ

 over one two

Residential

Residential uses other than No(13) No(13) No(13) No(13) No No No

   the residential uses

   listed below

Single family residential Yes(9) Yes(10) Yes(11) No(13) No(13) No No(13)

 that is the subject of

 zoning approved on or

 before December 31, 2000,

 or on or before December 31

 of the year in which the

 property becomes territory

 in the vicinity of a

 military airport,

 that permits one dwelling

 unit per acre or less

Single family residential that Yes(9) Yes(10) Yes(11) Yes(12) No(13) No No(13)

 is the primary residence

 for persons engaging in

 agricultural use and

 ancillary residential

 buildings incident to the

 primary agricultural use

Transportation, communications

 and utilities

Railroad and rapid rail transit Yes Yes(5) Yes(6) Yes(7) No No Yes(15)

Highway and street right-of-way Yes Yes Yes Yes Yes Yes Yes

Motor vehicle parking Yes Yes Yes Yes Yes Yes(15) Yes(15)

Communications Yes Yes(2) Yes(3) No No Yes(15) Yes(16)

 (noise sensitive)

Utilities Yes Yes Yes No No Yes(15) Yes(16)

Other transportation, Yes Yes(5) Yes(6) Yes(7) Yes(8) Yes(15) Yes(16)

 communications and utilities

Commercial/retail trade

Wholesale trade Yes Yes(5) Yes(6) Yes(7) No No Yes

Building materials-retail Yes Yes(5) Yes(6) Yes(7) No No Yes

General merchandise-retail Yes Yes(1) Yes(2) No No No No

Food-retail Yes Yes(1) Yes(2) No No No No

Automotive and marine Yes Yes(5) Yes(6) No No No No/Yes(17)

Apparel and accessories-retail Yes Yes(1) Yes(2) No No No No

Eating and drinking places Yes Yes(1) Yes(2) No No No No

Furniture and home Yes Yes(1) Yes(2) No No No No/Yes(17)

 furnishings-retail

Other retail trade Yes Yes(1) Yes(2) No No No No

Personal and business services

Finance, insurance and real estate Yes Yes(1) Yes(2) No No No Yes

Personal services Yes Yes(1) Yes(2) No No No Yes

Business services Yes Yes(1) Yes(2) No No No Yes

Repair services Yes Yes(5) Yes(6) Yes(7) No No Yes

Contract construction services Yes Yes(5) Yes(6) No No No Yes

Indoor recreation services Yes Yes(5) Yes(6) No No No Yes

Other services Yes Yes(5) Yes(6) No No No Yes

Industrial/manufacturing

Food and kindred products Yes Yes(5) Yes(6) Yes(7) No No Yes(16)

Textile mill products Yes Yes(5) Yes(6) Yes(7) No No Yes(16)

Apparel Yes Yes(5) Yes(6) Yes(7) No No Yes(16)

Lumber and wood products Yes Yes(5) Yes(6) Yes(7) No No Yes(16)

Furniture and fixtures Yes Yes(5) Yes(6) Yes(7) No No Yes(16)

Paper and allied products Yes Yes(5) Yes(6) Yes(7) No No Yes(16)

Printing and publishing Yes Yes(5) Yes(6) Yes(7) No No Yes(16)

Chemicals and allied products Yes Yes(5) Yes(6) Yes(7) No No No

Petroleum refining and Yes Yes(5) Yes(6) Yes(7) No No No

 related industries

Rubber and miscellaneous plastic Yes Yes(5) Yes(6) Yes(7) No No Yes(16)

Stone, clay and glass products Yes Yes(5) Yes(6) Yes(7) No No Yes(16)

Primary metal industries Yes Yes(5) Yes(6) Yes(7) No No Yes(16)

Fabricated metal products Yes Yes(5) Yes(6) Yes(7) No No Yes(16)

Professional, scientific and Yes Yes(1) Yes(2) No No No No

   controlling instruments

Miscellaneous manufacturing Yes Yes(5) Yes(6) Yes(7) No No Yes(16)

Public and quasi-public

 services

Government services Yes(1) Yes(2) Yes(2) No No No Yes(16)

Cultural activities, Yes(1) Yes(2) No No No No No

including churches

Medical and other health

   services Yes(1) Yes(2) No No No No No

Cemeteries Yes(5) Yes(6) Yes(7) No No No Yes

Nonprofit organizations Yes(1) Yes(2) No No No No Yes

Correctional facilities Yes(1) Yes(2) Yes(3) Yes(4) No No Yes

Other public and quasi-public Yes(1) Yes(2) No No No No Yes(16)

   services

Outdoor recreation

Playgrounds and neighborhood

 parks Yes Yes No No No Yes(15) Yes

Community and regional Yes Yes No No No Yes(15) Yes

Nature exhibits Yes No No No No No No

Spectator sports, including

 arenas Yes(14) Yes(14) No No No No No

Golf courses and riding stables Yes Yes(5) Yes(6) No No Yes(15) Yes

Water based recreational areas Yes Yes(5) Yes(6) No No No No

Resort and group camps Yes(1) Yes(2) No No No No No

Auditoriums and concert halls Yes(6) Yes(7) No No No No No

Outdoor amphitheaters and Yes(14) Yes(14) Yes(14) No No No No

   music shells

###### Other outdoor recreation Yes Yes(14) Yes(14) No No No No

Resource production,

extraction and open space

Agriculture (except livestock) Yes(9) Yes(10) Yes(11) Yes(12) Yes(13)Yes(13) Yes(13)

Livestock farming and animal Yes(9) Yes(10) Yes(11) Yes(12) Yes(13)Yes(13) Yes(13)

 breeding

Forestry activities Yes(9) Yes(10) Yes(13) Yes(13) Yes(13)No Yes

Fishing activities and Yes Yes No No No No No

related services

Mining activities Yes Yes Yes Yes Yes No Yes(16)

Permanent open space Yes Yes Yes Yes Yes Yes Yes

Water areas (not incidental to Yes Yes No No No No No

   farming)

(1)  Measures to achieve an outdoor to indoor noise reduction level of twenty‑five decibels pursuant to an ordinance adopted under section 28‑8482 must be incorporated into the design and construction of all buildings and the political subdivision must make an express finding, as part of approval, that use of noise reduction level criteria will not alleviate outdoor noise.

(2)  Measures to achieve an outdoor to indoor noise reduction level of thirty decibels pursuant to an ordinance adopted under section 28‑8482 must be incorporated into the design and construction of all buildings and the political subdivision must make an express finding, as part of approval, that use of noise reduction level criteria will not alleviate outdoor noise.

(3)  Measures to achieve an outdoor to indoor noise reduction level of thirty‑five decibels pursuant to an ordinance adopted under section 28‑8482 must be incorporated into the design and construction of all buildings and the political subdivision must make an express finding, as part of the approval, that use of noise reduction level criteria will not alleviate outdoor noise.

(4)  Measures to achieve an outdoor to indoor noise reduction level of forty decibels pursuant to an ordinance adopted under section 28‑8482 must be incorporated into the design and construction of all buildings and the political subdivision must make an express finding, as part of the approval, that use of noise reduction level criteria will not alleviate outdoor noise.

(5)  Measures to achieve an outdoor to indoor noise reduction level of twenty‑five decibels must be incorporated into the design and construction of portions of buildings where the public is received, office areas, noise sensitive areas or where normal noise level is low.

(6)  Measures to achieve an outdoor to indoor noise reduction level of thirty decibels must be incorporated into the design and construction of portions of buildings where the public is received, office areas, noise sensitive areas or where normal noise level is low.

(7)  Measures to achieve an outdoor to indoor noise reduction level of thirty‑five decibels must be incorporated into the design and construction of portions of buildings where the public is received, office areas, noise sensitive areas or where normal noise level is low.

(8)  Measures to achieve an outdoor to indoor noise reduction level of forty decibels must be incorporated into the design and construction of portions of buildings where the public is received, office areas, noise sensitive areas or where normal noise level is low.

(9)  Measures to achieve an outdoor to indoor noise reduction level of twenty‑five decibels must be incorporated into the design and construction of new residential buildings or expansions of existing residential buildings.

(10)  Measures to achieve an outdoor to indoor noise reduction level of thirty decibels must be incorporated into the design and construction of new residential buildings or expansions of existing residential buildings.

(11)  Measures to achieve an outdoor to indoor noise reduction level of thirty‑five decibels must be incorporated into the design and construction of new residential buildings or expansions of existing residential buildings.

(12)  Measures to achieve an outdoor to indoor noise reduction level of forty decibels must be incorporated into the design and construction of new residential buildings or expansions of existing residential buildings.

(13)  No new residential buildings or expansions of existing residential buildings are permitted.

(14)  Compatible if special sound reinforcement systems are installed.

(15)  No aboveground buildings or structures.

(16)  No new buildings or improvements or expansion of nonagriculture buildings or improvements for uses that result in the release of any substance into the air that would impair visibility or otherwise interfere with operating aircraft, such as any of the following:

(a)  Steam, dust and smoke.

(b)  Direct or indirect reflective light emissions.

(c)  Electrical emissions that would interfere with aircraft and air force communications or navigational aid systems or aircraft navigational equipment.

(d)  The attraction of birds or waterfowl such as operation of sanitary landfills or maintenance of feeding stations.

(e)  Explosives facilities or similar activities.

(17)  If located in the extended portion of accident potential zone two in territory of a political subdivision described in section 28‑8461, paragraph 9, subdivision (a).

(18)  Uses not listed are presumed to not be compatible. If the political subdivision and the military airport mutually agree that an individual use is compatible and consistent with the high noise or accident potential of the military airport or ancillary military facility, the use shall be presumed to be compatible.

K.  Pursuant to subsection I of this section, the attorney general shall notify a political subdivision by certified mail, return receipt requested, if the attorney general has probable cause to believe that the political subdivision has not complied with the requirements set forth in subsection J of this section.  Nothing in this section shall authorize or permit a finding of probable cause of noncompliance with respect to property that is the subject of a development plan.

L.  The following apply to enforcement actions brought under this section:

1.  The attorney general may institute a civil action in the name of this state in the superior court in the county of the alleged violation against a political subdivision that is required to notify the attorney general pursuant to subsection I of this section to restrain, enjoin, correct or abate a violation of this section, to collect a civil penalty ordered pursuant to this section and to collect attorney fees and costs ordered pursuant to this section if the attorney general has probable cause to believe that an action to reaffirm an approval, adoption or readoption of, or major amendment to, the general or comprehensive plan made by a political subdivision is not in compliance with subsection J of this section.

2.  If the attorney general institutes a civil action pursuant to subsection I of this section, the civil action shall be filed within thirty days after the action to reaffirm an approval, adoption or readoption of, or major amendment to, the general plan or comprehensive plan.

3.  The court shall award reasonable attorney fees and other costs in favor of the prevailing party for any civil enforcement action brought under this section. If the attorney general prevails, monies awarded pursuant to this paragraph shall be retained by the attorney general and are continuously appropriated.

4.  The court may assess civil penalties in favor of this state to be deposited in the state general fund. The political subdivision may be liable for a civil penalty of up to five hundred dollars for each day for the first ten days and up to five thousand dollars for each subsequent day up to a maximum of fifty thousand dollars.

M.  A political subdivision that has territory in the vicinity of a military airport or ancillary military facility that includes property in a high noise or accident potential zone shall submit any proposed comprehensive or general plan amendments that are applicable to property within the high noise or accident potential zone to the attorney general at least fifteen days before the first public hearing required pursuant to section 9‑461.06 or 11‑805.

N.  A political subdivision shall not permit or approve a division of land zoned for residential use that is in a high noise or accident potential zone of an ancillary military facility if the division would result in a lot, parcel or fractional interest being four acres or less unless the land division is part of a development plan or a development agreement approved before July 30, 2004 or is determined by the military airport or ancillary military facility to be compatible with its operations before December 31, 2004. A political subdivision may grant a waiver from this subsection.

O.  For purposes of determining the fair market value of property located in a high noise or accident potential zone, or the development rights appurtenant to the property, for acquisition by an agency or instrumentality of the United States, this state or a political subdivision of this state, property located in a high noise or accident potential zone that is not the subject of a development plan under subsection E or F of this section shall be deemed to have zoning allowing at least one residential dwelling per acre.

P.  For the purposes of this section:

1.  "Development plan":

(a)  Means a plan that is submitted to and approved by the governing body of the political subdivision pursuant to a zoning ordinance or regulation adopted pursuant to title 9, chapter 4, article 6.1 or title 11, chapter 6 and that describes with reasonable certainty the density and intensity of use for a specific parcel or parcels of property.

(b)  Includes a planned community development plan, a planned area development plan, a planned unit development plan, a development plan that is the subject of a development agreement adopted pursuant to section 9‑500.05 or 11-1101, a site plan, a subdivision plat or any other land use approval designation that is the subject of a zoning ordinance adopted pursuant to title 9, chapter 4, article 6.1 or title 11, chapter 6.

(c)  Means a conceptual plan for development that generally depicts densities on a particular property that a military airport, as described in section 28-8461, paragraph 9, subdivision (a), deems is compatible with the operation of the ancillary military facility.

2.  "Major amendment" means a substantial alteration of a political subdivision's land use mixture or balance as established in the political subdivision's existing general or comprehensive plan land use element. END\_STATUTE