

**Enrolled**  
**Senate Bill 171**

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Theodore R. Kulongoski for Oregon Department of Aviation)

CHAPTER .....

AN ACT

Relating to physical hazards to air navigation; creating new provisions; and amending ORS 469.350 and 836.530.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1. Section 2 of this 2009 Act is added to and made a part of ORS chapter 836.**

**SECTION 2. (1) A person may not construct an object or structure that constitutes a physical hazard to air navigation, as determined by the Oregon Department of Aviation in coordination with the governing body with land use jurisdiction over the property.**

**(2) Subsection (1) of this section does not apply:**

**(a) To construction of an object or structure that is utilized by a commercial mobile radio service provider; or**

**(b) If a person received approval or submitted an application for approval from the Federal Aviation Administration or the Energy Facility Siting Council established under ORS 469.450 to construct an object or structure that constitutes a physical hazard to air navigation.**

**SECTION 3. ORS 836.530 is amended to read:**

**836.530. (1) In addition to any other rulemaking authority, the Director of the Oregon Department of Aviation may adopt rules:**

**(a) To define physical hazards to air navigation and determine whether specific types or classes of objects or structures constitute hazards. Rules defining physical hazards and determining whether specific types or classes of objects or structures constitute hazards may be adopted only after a fact-finding process and must be supported by substantial evidence.**

**(b) Establishing standards for lighting or marking objects and structures that constitute hazards to air navigation.**

**(c) Establishing standards for mitigating physical hazards to air navigation by altering the height or location of objects and structures.**

**(d) Establishing standards for mitigating hazards to air navigation by altering approach surface standards or installing navigational aids.**

**(2) In accordance with the rules adopted under this section, the director shall do the following:**

**(a) Determine whether specific objects or structures constitute a hazard to air navigation.**

(b) Determine responsibility for installation and maintenance of lighting or marking **and for alteration of the height or location of** specific objects or structures that constitute hazards to air navigation.

(c) Issue orders to require that specific objects or structures determined to be hazards to air navigation be marked or lighted in accordance with rules adopted under this section.

**(d) Make recommendations to the Federal Aviation Administration to require that airports alter approach surface standards or install navigational aids for the purpose of mitigating hazards to air navigation.**

(3) Rules and standards adopted under this section are limited to and [*shall*] **may** not be more restrictive than current federal norms, including but not limited to, regulations and circulars, pertaining to objects affecting navigable airspace.

(4) Any person or entity required to comply with an order issued under this section may contest the order as provided under ORS chapter 183.

**SECTION 4.** ORS 469.350 is amended to read:

469.350. (1) Applications for site certificates shall be made to the Energy Facility Siting Council in a form prescribed by the council and accompanied by the fee required by ORS 469.421.

(2) Copies of the notice of intent and of the application shall be sent for comment and recommendation within specified deadlines established by the council to the Department of Environmental Quality, the Water Resources Commission, the State Fish and Wildlife Commission, the Water Resources Director, the State Geologist, the State Forestry Department, the Public Utility Commission of Oregon, the State Department of Agriculture, the Department of Land Conservation and Development, **the Oregon Department of Aviation**, any other state agency that has regulatory or advisory responsibility with respect to the facility and any city or county affected by the application.

(3) Any state agency, city or county that is requested by the council to comment and make recommendations under this section shall respond to the council by the specified deadline. If a state agency, city or county determines that it cannot respond to the council by the specified deadline because the state agency, city or county lacks sufficient resources to review and comment on the application, the state agency, city or county shall contract with another entity to assist in preparing a response. A state agency, city or county that enters into a contract to assist in preparing a response may request funding to pay for that contract from the council pursuant to ORS 469.360.

(4) The State Department of Energy shall notify the applicant whether the application is complete. When the department determines an application is complete, the department shall notify the applicant and provide notice to the public.

**Passed by Senate April 28, 2009**

**Repassed by Senate June 5, 2009**

.....  
Secretary of Senate

.....  
President of Senate

**Passed by House June 2, 2009**

.....  
Speaker of House

**Received by Governor:**

.....M,....., 2009

**Approved:**

.....M,....., 2009

.....  
Governor

**Filed in Office of Secretary of State:**

.....M,....., 2009

.....  
Secretary of State