

This bill creates section 379.2293, Florida Statutes.

II. Present Situation:

Between 1988 and 2005, wildlife strikes (collisions between aircraft and wildlife) have killed more than 219 people and destroyed over 200 aircraft worldwide.¹ Although the landing of USAirways Flight 1549 into the Hudson River in New York on January 15, 2009, has recently publicized the phenomenon, wildlife strikes have been problematic to aircraft since Orville Wright struck a bird with his airplane in September 1905.² Data collected in the FAA National Wildlife Strike Database indicates the problem is getting worse with the number of strikes annually reported tripling from 1990 (1,739) to 2000 (5,979).³ Three factors may contribute to this increasing threat:

- Many populations of wildlife species commonly involved in strikes have increased markedly in the last few decades and adapted to living in urban environments, including airports. Thirteen of the 14 bird species in North America with mean body masses greater than 8 pounds have shown significant population increases over the past three decades. The white-tailed deer population increased from a low of about 350,000 in 1900 to over 17 million in the past decade.⁴
- Concurrent with population increases of many large bird species, air traffic has increased substantially since 1980. Passenger enplanements in the United States (U.S.) increased from about 310 million in 1980 to a record 749 million in 2007 (3.3 percent per year), and commercial air traffic increased from about 18 million aircraft movements in 1980 to over 28 million in 2007 (1.8 percent per year). Commercial air traffic in the U.S. is predicted to continue growing at a rate of about 2 percent per year to over 36 million movements by 2020.⁵
- Commercial air carriers are replacing their older three- or four-engine aircraft fleets with more efficient and quieter, two-engine aircraft. In 1969, 75 percent of U.S. commercial passenger aircraft had three or four engines. In 2005, only about 10 percent have three or four engines. The reduction in engine redundancy increases the probability of life-threatening situations resulting from aircraft collisions with wildlife, especially with flocks of birds. Further, research indicates birds are less able to detect and avoid modern jet aircraft with quieter engines than older aircraft with noisier engines.⁶

¹ Federal Aviation Administration and U.S. Department of Agriculture, *Wildlife Hazard Management at Airports: A Manual for Airport Personnel* (July 2005), available at http://wildlife.pr.erau.edu/EnglishManual/2005_FAA_Manual_complete.pdf (last visited Apr. 16, 2009)

² *Id.* at 2.

³ *Id.* at 9.

⁴ Federal Aviation Administration and U.S. Department of Agriculture, *Wildlife Strikes To Civil Aircraft In The United States 1990–2007* (June 2008), at viii.

⁵ *Id.*

⁶ *Id.*

As a result of these factors, experts within the Federal Aviation Administration (FAA), U.S. Department of Agriculture (USDA), and U.S. Air Force expect the risk, frequency, and potential severity of wildlife-aircraft collisions to grow over the next decade.

The majority of wildlife strikes occur within the immediate airport environment: 74 percent of all strikes occur at or below 500 feet above ground level (AGL).⁷ Wildlife is attracted to an airport environment because desirable food, water, or habitat is present. The nature and magnitude of wildlife strikes at an individual airport depend on many factors, including air traffic type and volume, local and migratory wildlife populations, and local wildlife habitat conditions. Accordingly, airport sponsors and managers have a legal responsibility under federal regulations to ensure airports maintain a safe operating environment.⁸ Airports are required to “undertake immediate action to alleviate wildlife hazards when they are detected.”⁹

Airports use various methods to mitigate wildlife hazards including minimizing on-airport wildlife attractants and preventing wildlife access to the airport through fencing, mowing at certain heights to minimize attractants, planting certain types of grasses or plants that do not attract wildlife, or other means.¹⁰ Depredation (lethal means) is used as a measure of last resort.¹¹ However, wildlife protection and management is guided by myriad overlapping and potentially conflicting federal, state, and local laws, regulations, and ordinances.

Attempts to minimize, mitigate, or otherwise control wildlife strikes at or near airports regularly contend with the missions of any number of regulatory governmental bodies including the FAA, the USDA, U.S. Fish and Wildlife Service (USFWS), the U.S. Environmental Protection Agency (EPA), and the U.S. Army Corps of Engineers (USACE). In Florida, airport managers must comply with rules and regulations of the Florida Fish and Wildlife Conservation Commission (FFWCC), water management districts (WMD), the Florida Department of Environmental Protection (FDEP), and various local ordinances.

III. Effect of Proposed Changes:

The bill creates the “Airline Safety and Wildlife Protection Act of Florida” to address airport activities undertaken within the scope of a permit or other authorization for depredation or harassment of wildlife.

Legislative Findings

The bill provides a legislative finding that the ability to manage wildlife hazards in a manner consistent with federal and state law is necessary for airports to prevent jeopardy to human life or aircraft safety. Further, the bill declares the legislative intent that an airport should not be subject to penalties, restrictions, liabilities, or sanctions when taking authorized actions to manage

⁷ *Id.*

⁸ 14 C.F.R. 139.

⁹ 14 C.F.R. 139.337.

¹⁰ Airport Cooperative Research Program Synthesis No. 3, *General Aviation Safety and Security Practices: A Synthesis of Airport Practice* (2007), available at http://onlinepubs.trb.org/onlinepubs/acrp/acrp_syn_003.pdf (last visited Apr. 17, 2009).

¹¹ Airports Council International, *Wildlife Hazard Management – What Airports Are Doing to Reduce the Risk*, available at http://www.aci-na.org/static/entransit/Wildlife_Management_Brief_January_2009_FINAL.pdf (last visited Apr. 17, 2009).

wildlife and that the authorization should not be superseded by the actions of other state and local agencies.

Immunity From Administrative and Civil Penalties, Restrictions, or Sanctions

The bill provides that an airport authority or any other entity owning or operating an airport is not subject to any administrative or civil penalty, restriction, or other sanction with respect to any authorized action taken for the purpose of protecting human life or aircraft safety from wildlife hazards. The bill applies to an airport as defined in s. 330.27(2), F.S. This statute defines “airport” as “an area of land or water used for, or intended to be used for, landing and takeoff of aircraft, including appurtenant areas, buildings, facilities, or rights-of-way necessary to facilitate such use or intended use.”

It does not appear that an airport authority or an entity associated with the airport would be immune from criminal penalties or criminal liability if it engages in authorized action to protect human life or aircraft safety.¹²

Authorized Actions to Protect Life and Aircraft Safety

The bill defines, for purposes of the bill, “authorized action taken for the purpose of protecting human life or aircraft safety from wildlife hazards” as an action, taken in a non-negligent manner, authorized by or within the scope of any of the following:

- The airport’s wildlife hazard management plan, as approved by the FAA.¹³
- A depredation permit issued by the United States Fish and Wildlife Service.¹⁴
- A standing order of the United States Fish and Wildlife Service.
- Rule 68A-9.010(4)¹⁵ or rule 68A-27.002,¹⁶ F.A.C., or a permit authorizing the harassment of wildlife issue by the Fish and Wildlife Conservation Commission.

Exceptions to Authorized Actions to Protect Life and Aircraft Safety

The term “authorized action taken for the purpose of protecting human life or aircraft safety from wildlife hazards” does not include the dredging or filling of wetlands or other surface waters or alteration of a stormwater management system, unless otherwise authorized by and performed in compliance with a permit issued under part IV of ch. 373, F.S.,¹⁷ or an emergency order under

¹² The bill, in its original form, provided immunity from criminal penalties, restrictions, liabilities, and sanctions for authorized actions related to the protection of human life or aircraft safety.

¹³ 14 C.F.R. 139.337.

¹⁴ 50 C.F.R. 21.41. The United States Fish and Wildlife Service issues depredation permits “to allow the taking of migratory birds which are causing serious damage to public or private property, pose a health or safety hazard, or are damaging agricultural crops or wildlife.” United States Fish and Wildlife Service, *Depredation Permits*, available at http://www.fws.gov/pacific/migratorybirds/depredation_permits.htm (last visited Apr. 16, 2009).

¹⁵ Rule 68A-9.010(4), F.A.C., addresses the taking of nuisance wildlife on airport property.

¹⁶ Rule 68-A-27.002, F.A.C., provides for the harassment of endangered, threatened, and species of special concern on airport property.

¹⁷ Permits or other orders addressing dredging and filling in on or over water of the state may be issued by the governing board of a water management district or the Department of Environmental Protection. Section 373.414(9), F.S. The governing board of a water management district or the Department of Environmental Protection may require operation or

ch. 373, F.S.¹⁸ However, a permit or emergency order is not required prior to the authorized activity when the airport authority:

- Determines that an emergency condition exists which requires immediate action to protect human life; and
- Obtains the appropriate permit under part IV of ch. 373, F.S., within one year after conducting the emergency action.

In addition, trespass on lands or unauthorized interference with an easement not owned or leased by the airport authority is expressly excluded from the definition of “authorized action taken for the purpose of protecting human life or aircraft safety from wildlife hazards.”

Conflict with Permits, Regulations, Plans, or Rules

Under the bill, if any action authorized above conflicts or appears to conflict with a development permit, land-development regulation, local comprehensive plan, or other environmental or land-use law, rule, restriction, or requirement, the authorization described above shall take precedence.

Application to Persons Associated with the Airport Authority

In addition to an airport authority or the owner or operator of an airport, the bill’s immunities also apply to officers, employees, contractors, or employees of a contractor, or a member of the airport’s governing body. However, this immunity only applies to the extent the actions of the officer, employee, contractor, contractor’s employee, or member are authorized by or within the scope of one or more of the legal authorities described above.

Tort Liability and Sovereign Immunity

The bill specifies that it is not intended to provide immunity from liability with respect to intentional or negligent torts, and that nothing in the bill should be read to affect the waiver of sovereign immunity under s. 768.28, F.S. As a result, injured adjoining landowners or other third parties may seek legal remedies in court for damages caused by an airport’s negligent or intentional acts, even if the airport was engaging in authorized action under the bill. However, for those airports owned or operated by a sovereign, the \$100,000 or \$200,000 limited waiver of sovereign immunity would apply, and an injured party could only recover a judgment that did

maintenance permits and impose reasonable conditions as are necessary to assure that the operation or maintenance of any stormwater management system, dam, impoundment, reservoir, appurtenant work, or works will comply with the management and storage of surface water provisions and rules, will not be inconsistent with the overall objectives of the district, and will not be harmful to the water resources of the district. Section 373.416(1), F.S.

¹⁸ For example, whenever the executive director with the concurrence and advice of the governing board of a water management district finds that an emergency exists requiring immediate action to protect the public health, safety, or welfare, the health of animals, fish or aquatic life, a public water supply, or recreational, commercial, industrial, agricultural or other reasonable uses, the executive director, without prior notice, may issue an order reciting the existence of such an emergency and requiring that action be taken as the executive director deems necessary to meet the emergency. Section 373.119(2), Fla. Stat.

not exceed these amounts unless additional relief was awarded via the claim bill process for any judgment in excess of those limits.¹⁹

Effective Date

This act will take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Airport authorities may have additional rights to ignore provisions of a development permit, land-development regulation, local comprehensive plan, or other environmental or land-use law, rule, restriction, or requirement as long as the action is authorized by (1) the airport's wildlife hazard management plan, (2) a depredation permit, (3) a standing order of the U.S. Fish and Wildlife Service, or (4) regulations or permits from the Fish and Wildlife Conservation Commission. Often these rules and restrictions are in place to protect the rights of adjacent landowners.

Adjacent landowners will have legal recourse for pursuing compensation for damages caused by negligent or intentional conduct by airport authorities while undertaking authorized actions to protect human life or aircraft safety.

C. Government Sector Impact:

Airport authorities could potentially see a reduction in litigation expenses associated with certain administrative actions and enforcement proceedings.

¹⁹ Section 768.28(5), F.S.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on April 21, 2009:

The committee substitute:

- Clarifies the meaning of the term “airport” by cross-referencing a definition of the term included in s. 330.27(2), F.S.;
- Removes the provisions of the bill affording immunity from criminal penalties and liability, as well as “civil liability”;
- Excludes from the definition of “authorized action taken for the purpose of protecting human life or aircraft safety from wildlife hazards” the dredging or filling of wetlands or alteration of a stormwater management system, unless certain criteria are satisfied;
- Excludes trespass on lands or unauthorized interference with an easement not owned or leased by the airport authority from the definition of “authorized action taken for the purpose of protecting human life or aircraft safety from wildlife hazards”;
- Provides that the bill is not intended to provide immunity from liability for intentional or negligent torts; and
- Provides that the bill is not intended to affect the waiver of sovereign immunity under s. 768.28, F.S.

B. Amendments:

None.