House Bill 494 (AS PASSED HOUSE AND SENATE)

By: Representatives Welch of the 110th, Cheokas of the 138th, and Pruett of the 149th

A BILL TO BE ENTITLED

AN ACT

To amend Chapter 9 of Title 32 of the Official Code of Georgia Annotated, relating to mass transportation, so as to provide for the installation of safety markers on utility lines to provide for adequate visual warning in the use of private airstrips; to provide for definitions; to provide for the powers, authority, and duties of the Department of Transportation; to provide for a schedule of installation fees; to impose a penalty; to provide an appeal process; to provide for the promulgation of rules and regulations by the department; to amend Code Section 51-3-21 of the Official Code of Georgia Annotated, relating to definitions used in limiting liability of certain property owners, so as to revise the definition of recreational purposes to include aviation activities; to provide for immunity; to provide for related matters; to provide effective dates; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 9 of Title 32 of the Official Code of Georgia Annotated, relating to mass transportation, is amended by adding a new Code section to read as follows:

"32-9-8.1.

(a) As used in this Code section, the term:

(1) 'Appurtenant utility line' means an above ground electrical power line or nonelectrical cable or wire that penetrates a 20:1 approach slope as measured from the runway threshold at either end of the private airstrip.

(2) 'Installation fee schedule' means a listing of fees necessary to purchase and install safety markers as determined by the department.

(3) 'Private airstrip' means a privately owned landing strip for airplanes, gliders, or helicopters for personal or private use that is not open to the general public and not subject to the provisions of Code Section 32-9-8.

(4) 'Safety marker' means a highly visible object or device affixed to an appurtenant utility line which alerts operators of aircraft to the existence of the appurtenant utility line.

(b) Any owner of a private airstrip may make a written notice, either by certified mail or statutory overnight delivery, return receipt requested, to an owner of an appurtenant utility line requesting the installation of safety markers. Such notice shall be accompanied by a check or money order in the amount of $100.00 made payable to the owner of the appurtenant utility line for the work to be performed by the owner of the appurtenant utility line under paragraphs (1) and (2) of this subsection. Within 90 days of the owner of an appurtenant utility line's receipt of such written notice, the owner of the appurtenant utility line shall:

(1) Determine the appropriate type, number, and location of safety markers to be installed on the appurtenant utility line which will provide adequate visual warning to the flying public of the close proximity of the appurtenant utility lines to the private airstrip;

(2) Determine the installation fee costs for the installation of such safety markers based on the installation fee schedule developed by the department; and

(3) Provide notice to the owner of the private airstrip as to the type, number, location, and installation fee of the requisite safety markers.

The owner of the appurtenant utility line shall file a request for review pursuant to subsection (e) of this Code section if such owner is unable to comply or anticipates being unable to comply with this subsection for any reason, including but not limited to the time provided for responding to the owner of the private airstrip, the time provided for installation, or the fees set in the installation fee schedule.

(c) The owner of the private airstrip shall have 90 days from the receipt of notice under paragraph (3) of subsection (b) of this Code section to:

(1) Remit to the owner of the appurtenant utility line the full amount of the installation fee;

(2) File a request for review pursuant to subsection (e) of this Code section; or

(3) Provide written notice to the owner of the appurtenant utility line of his or her decision not to pursue the installation of the safety markers. If the owner of the private airstrip provides such written notice or does not take any action under paragraph (1) or (2) of this subsection, the owner of the appurtenant utility line shall have no further obligation under this Code section; provided, however, that this paragraph shall not be construed to prohibit the owner of the private airstrip from sending written notice pursuant to subsection (b) of this Code section to the same owner of an appurtenant utility line in any subsequent calendar year so long as the owner of the private airstrip does not

exceed one written notice to the same owner of an appurtenant utility line in any calendar year.

(d) If the owner of the private airstrip pays the full amount of the installation fee under paragraph (1) of subsection (c) of this Code section, the owner of the appurtenant utility line shall have 90 days from receipt of payment to purchase the safety markers and complete the installation. The owner of the appurtenant utility line shall file a request for review pursuant to subsection (e) of this Code section and may be granted up to two extensions of time not to exceed 90 days total upon a showing that the need for an extension is the result of force majeure, grid reliability, work scheduling conflicts, or the lack of market supply of the requisite safety markers and other necessary equipment.

(e) If any owner of an appurtenant utility line fails to comply with any provision of this Code section or any owner of an appurtenant utility line anticipates an inability to comply with any provision of this Code section, then an order enforcing this Code section or granting an exception may be sought from the department. Either party may file with the department a written request for review of the matter. Any such request for review shall be accompanied by a filing fee of $50.00 and shall include any documents or forms required by the department. A copy of such request for review shall be served upon the other party by certified mail or statutory overnight delivery, return receipt requested. The department shall within 30 days after the filing of such request investigate the matter and issue an order either requiring the owner of the appurtenant utility line to take such action as is necessary for purposes of compliance with this Code section or grant an exception to the owner of the appurtenant utility line as to time for compliance or a deviation from the installation fee schedule of the department. Copies of any such order of the department shall be served upon all parties by certified mail or statutory overnight delivery, return receipt requested. The department shall keep detailed records of its costs of investigation and review for purposes of this subsection, and such records shall be subject to public inspection as provided by Article 4 of Chapter 18 of Title 50.

(f) If any owner of an appurtenant utility line fails to comply with any order of the department under subsection (e) of this Code section within 15 days after receipt of such order, then after notice and opportunity for a hearing, such owner of an appurtenant utility line shall be subject to a civil penalty in the amount of $1,000.00 per day beginning 15 days after the date of receipt of the order of the department until the owner of the appurtenant utility line has complied with the order of the department; provided, however, that the department may grant an extension of time for compliance without penalty upon a showing that the owner of the appurtenant utility line's failure to timely comply was due to force majeure. Any fine under this subsection shall be tolled for the period from the filing of a petition for a judicial review and shall be subject to judicial review in such manner as is

provided by law for judicial review of contested cases under Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' until the rendering of a final decision.

(g) The department shall promulgate such rules and regulations as are necessary to implement the provisions of this Code section, including, but not limited to, the promulgation of rules and regulations to establish installation fee schedules based on utility best practices.

(h) An owner of a private airstrip shall have immunity from any civil liability that would otherwise be incurred or imposed as a result of taking or failing to take any action pursuant to this Code section. This Code section shall not be construed as imposing any additional duty on an owner of a private airstrip which is not already otherwise imposed by law.″

SECTION 2.

Code Section 51-3-21 of the Official Code of Georgia Annotated, relating to definitions used in limiting liability of certain property owners, is amended by revising paragraph (4) as follows:

″(4) 'Recreational purpose' includes, but is not limited to, any of the following or any combination thereof: hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, aviation activities, nature study, water skiing, winter sports, and viewing or enjoying historical, archeological, scenic, or scientific sites.″

SECTION 3.

For purposes of proposing rules and regulations, this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval. For all other purposes, this Act shall become effective on October 1, 2014.

SECTION 4.

All laws and parts of laws in conflict with this Act are repealed.