

AMENDED IN SENATE MAY 17, 2010
AMENDED IN SENATE APRIL 26, 2010
AMENDED IN SENATE APRIL 12, 2010

SENATE BILL

No. 1333

Introduced by Senator Yee

February 19, 2010

An act to add Section 21669.5 to the Public Utilities Code, relating to aviation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1333, as amended, Yee. Airports: aviation easements.

The State Aeronautics Act governs the creation and operation of airports in this state. The act provides for the establishment of county airport land use commissions to carry out various requirements, including the formulation of a comprehensive land use compatibility plan to provide for the orderly growth of the airport and the area surrounding the airport within the jurisdiction of the commission, and to safeguard the general welfare of the inhabitants within the vicinity of the airport and the public in general. The act authorizes any person authorized to exercise the power of eminent domain for airport purposes to acquire by purchase, gift, devise, lease, condemnation, or otherwise airspace or an easement in airspace above the surface of property where necessary to permit imposition upon the property of excessive noise, vibration, discomfort, inconvenience, interference with use and enjoyment, and any consequent reduction in market value, due to the operation of aircraft to and from the airport.

This bill would provide that if a political subdivision, as defined, conditions approval of a noise-sensitive project, as defined, upon the

grant of an avigation easement, as defined, to the owner or operator of an airport, the avigation easement shall be required to be granted to the owner or operator of the airport prior to the issuance of the building permit that allows construction or reconstruction of the noise-sensitive project. The bill would require that the avigation easement include a termination clause that operates to terminate the avigation easement if the noise-sensitive project is not built and the permit or any permit extension authorizing construction or reconstruction has expired or has been revoked. The bill would require the political subdivision that issued the permit to notify the owner or operator of the airport of the expiration or revocation of the permit within 30 days of its expiration or revocation. The bill would require the owner or operator of the airport to record a notice of termination with the county recorder of the county where the property is located within 90 days after receipt of the notice from the political subdivision, and to provide the political subdivision with proof of filing of the notice of termination within 30 days of it being recorded. By requiring a political subdivision to provide notice of the expiration or revocation of the permit to the owner or operator of an airport and by requiring the recording of a notice of termination, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 21669.5 is added to the Public Utilities
- 2 Code, to read:
- 3 21669.5. (a) For purposes of this section, the following terms
- 4 have the following meanings:
- 5 (1) (A) “Avigation easement” means ~~a real property right that~~
- 6 ~~is granted by a property owner to an airport owner or operator to~~

1 ~~provide a right-of-way in and through the airspace above, over,~~
2 ~~and across the subject real property for the free, safe, and~~
3 ~~unobstructed passage of aircraft in flight, including imposition of~~
4 ~~the noise, vibration, or other effects that are incident to, or caused~~
5 ~~by, the operation of aircraft over or in the vicinity of the subject~~
6 ~~property, and includes less-than-fee-title transfer of real property~~
7 ~~rights from the property owner that may convey to an owner or~~
8 ~~operator of an airport any or all of the following rights:~~

9 (i) *A right-of-way for the free and unobstructed passage of*
10 *aircraft through the airspace over the property at any altitude*
11 *above a specified surface.*

12 (ii) *A right to subject the property to noise, vibration, fumes,*
13 *dust, and fuel particle emissions associated with normal airport*
14 *activity.*

15 (iii) *A right to prohibit the erection or growth of any structure,*
16 *tree, or other object that would enter the acquired airspace.*

17 (iv) *A right-of-entry onto the property, with proper advance*
18 *notice, for the purpose of removing, marking, or lighting any*
19 *structure or other object that enters the acquired airspace.*

20 (v) *A right to prohibit electrical interference, glare, misleading*
21 *lights, visual impairments, and other hazards to aircraft flight*
22 *from being created on the property.*

23 (B) *“Avigation easement” includes an easement obtained*
24 *pursuant to paragraph (2) of subdivision (a) of Section 21652.*

25 (2) *“CNEL” means community noise equivalent level*
26 *established pursuant to Chapter 6 (commencing with Section 5000)*
27 *of Division 2.5 of Title 21 of the California Code of Regulations.*

28 (3) *“Noise-sensitive land use” means residential uses, including*
29 *detached single-family dwellings, multifamily dwellings, highrise*
30 *apartments or condominiums, mobilehomes, public and private*
31 *educational facilities, hospitals, convalescent homes, churches,*
32 *synagogues, temples, and other places of worship.*

33 (4) *“Noise-sensitive project” means a project involving new*
34 *construction or reconstruction for a planned noise-sensitive land*
35 *use within an airport’s 65 decibels CNEL or higher noise contour.*

36 (b) *If a political subdivision conditions approval of a*
37 *noise-sensitive project upon the grant of an avigation easement to*
38 *the owner or operator of an airport, the avigation easement shall*
39 *be required to be granted to the owner or operator of the airport*
40 *prior to the issuance of the building permit that allows construction*

1 or reconstruction of the noise-sensitive project. The owner or
2 operator of an airport that is granted an avigation easement as a
3 condition for approval of a noise-sensitive project pursuant to this
4 subdivision shall be entitled to immediately record it upon receipt.

5 (c) An avigation easement granted to the owner or operator of
6 an airport as a condition for approval of a noise-sensitive project
7 shall include a termination clause that operates to terminate the
8 avigation easement if the noise-sensitive project is not built and
9 the permit or any permit extension authorizing construction or
10 reconstruction of the noise-sensitive project has expired or has
11 been revoked.

12 (d) Within 30 days after expiration or revocation of a permit or
13 permit extension that authorized construction or reconstruction of
14 a noise-sensitive project and was conditioned upon the property
15 owner granting an avigation easement to the owner or operator of
16 an airport, the political subdivision that had issued the permit shall
17 notify the owner or operator of the airport of the expiration or
18 revocation of the permit. Within 90 days after receipt of the notice
19 from the political subdivision, the owner or operator of the airport
20 shall record a notice of termination with the county recorder in
21 which the property is located. Proof of filing of the notice of
22 termination shall be provided to the political subdivision by the
23 owner or operator of the airport within 30 days of recordation.

24 (e) *Notwithstanding Sections 6103 and 27383 of the Government*
25 *Code, in filing any instrument, paper, or notice pursuant to this*
26 *section, the owner or operator of an airport shall pay all applicable*
27 *recording fees prescribed by law.*

28 SEC. 2. No reimbursement is required by this act pursuant to
29 Section 6 of Article XIII B of the California Constitution because
30 a local agency or school district has the authority to levy service
31 charges, fees, or assessments sufficient to pay for the program or
32 level of service mandated by this act, within the meaning of Section
33 17556 of the Government Code.

34 However, if the Commission on State Mandates determines that
35 this act contains other costs mandated by the state, reimbursement
36 to local agencies and school districts for those costs shall be made
37 pursuant to Part 7 (commencing with Section 17500) of Division
38 4 of Title 2 of the Government Code.

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