

AMENDED IN ASSEMBLY MARCH 13, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 332**

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**Introduced by Assembly Member Mullin**

February 7, 2003

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An act to amend Sections 21670, 21676, 21676.5, 21677, and 21678 of the Public Utilities Code, relating to airports.

LEGISLATIVE COUNSEL'S DIGEST

AB 332, as amended, Mullin. Airports: land use commissions.

The State Aeronautics Act governs the creation and operation of airports in this state. Under the State Aeronautics Act, each county in which there is an airport served by a scheduled airline and each county with an airport operated for the benefit of the general public, with certain exceptions, is required to establish an airport land use commission, to designate a body to carry out the responsibilities of a commission, or to contract with the Department of Transportation to carry out the responsibilities of a commission. The commission is required to formulate 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 safeguard the general welfare of the inhabitants within the vicinity of the airport and the public in general. The commission is required to submit a copy of the comprehensive land use compatibility plan to the Division of Aeronautics of the department and the division is required to notify the airport land use commission of any omission in the plan of required matter.

Under the State Aeronautics Act, the general plan or special plans of a local agency, including a city, county, or special district, are required to be consistent with the airport land use compatibility plan and each local agency whose general plan or plans includes areas covered by an airport land use compatibility plan is required to submit a copy of its plan, any amendment, any zoning ordinance, and any building regulation, to the airport land use commission. If the plan, amendment, zoning ordinance, or building regulation is inconsistent with the airport land use compatibility plan, the airport land use commission is required to notify the local agency and the local agency is required to have a hearing to reconsider its plan or action. A public agency owning any airport within the boundaries of a airport land use compatibility plan may overrule an airport land use commission's action or recommendation affecting an airport within the jurisdiction of that public agency, after a hearing, by a ~~two-thirds~~  $\frac{2}{3}$  vote of its governing body, except the County of Marin, which may overrule by a majority vote of its governing body, and the making of specific findings that the proposed action is consistent with the purposes of protecting public health, safety, and welfare, minimizing the public's exposure to excessive noise, and minimizing safety hazards within areas around the public airport.

This bill would declare the intent of the Legislature to *discourage incompatible land uses near airports and to clarify that school districts and community college districts are also subject to a comprehensive land use compatibility plan.* The bill would provide that a local or public agency may propose to overrule an airport land use commission's action or recommendation affecting an airport within the jurisdiction of that public agency after a hearing, by a ~~two-thirds~~  $\frac{2}{3}$  vote of its governing body, except the County of Marin, which may overrule by a majority vote of its governing body, if it makes specific findings that the proposed action is consistent with the purposes of protecting public health, safety, and welfare, minimizing the public's exposure to excessive noise, and minimizing safety hazards within areas around the public airport. The local or public agency governing body would be required to notify the division and the commission of the proposed overruling, providing the specific findings for their review and comment, 30 days prior to a final hearing and decision on whether to overrule the commission. The local agency or public would be required to include comments from the department and commission in the public record of any final decision to overrule the commission.



By requiring local agency governing boards to provide notice to the division and commission and incorporate department and commission comments in the public record, 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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 21670 of the Public Utilities Code is  
2 amended to read:

3 21670. (a) The Legislature hereby finds and declares that:

4 (1) It is in the public interest to provide for the orderly  
5 development of each public use airport in this state and the area  
6 surrounding these airports so as to promote the overall goals and  
7 objectives of the California airport noise standards adopted  
8 pursuant to Section 21669 and to prevent the creation of new noise  
9 and safety problems.

10 (2) It is the purpose of this article to protect public health,  
11 safety, and welfare by ensuring the orderly expansion of airports  
12 and the adoption of land use measures that minimize the public's  
13 exposure to excessive noise and safety hazards within areas around  
14 public airports to the extent that these areas are not already devoted  
15 to incompatible uses.

16 (b) In order to achieve the purposes of this article, every county  
17 in which there is located an airport which is served by a scheduled  
18 airline shall establish an airport land use commission. Every  
19 county, in which there is located an airport which is not served by  
20 a scheduled airline, but is operated for the benefit of the general



1 public, shall establish an airport land use commission, except that  
2 the board of supervisors of the county may, after consultation with  
3 the appropriate airport operators and affected local entities and  
4 after a public hearing, adopt a resolution finding that there are no  
5 noise, public safety, or land use issues affecting any airport in the  
6 county which require the creation of a commission and declaring  
7 the county exempt from that requirement. The board shall, in this  
8 event, transmit a copy of the resolution to the Director of  
9 Transportation. For purposes of this section, “commission”  
10 means an airport land use commission. Each commission shall  
11 consist of seven members to be selected as follows:

12 (1) Two representing the cities in the county, appointed by a  
13 city selection committee comprised of the mayors of all the cities  
14 within that county, except that if there are any cities contiguous or  
15 adjacent to the qualifying airport, at least one representative shall  
16 be appointed therefrom. If there are no cities within a county, the  
17 number of representatives provided for by paragraphs (2) and (3)  
18 shall each be increased by one.

19 (2) Two representing the county, appointed by the board of  
20 supervisors.

21 (3) Two having expertise in aviation, appointed by a selection  
22 committee comprised of the managers of all of the public airports  
23 within that county.

24 (4) One representing the general public, appointed by the other  
25 six members of the commission.

26 (c) Public officers, whether elected or appointed, may be  
27 appointed and serve as members of the commission during their  
28 terms of public office.

29 (d) Each member shall promptly appoint a single proxy to  
30 represent him or her in commission affairs and to vote on all  
31 matters when the member is not in attendance. The proxy shall be  
32 designated in a signed written instrument which shall be kept on  
33 file at the commission offices, and the proxy shall serve at the  
34 pleasure of the appointing member. A vacancy in the office of  
35 proxy shall be filled promptly by appointment of a new proxy.

36 (e) A person having an “expertise in aviation” means a person  
37 who, by way of education, training, business, experience,  
38 vocation, or avocation has acquired and possesses particular  
39 knowledge of, and familiarity with, the function, operation, and



1 role of airports, or is an elected official of a local agency which  
2 owns or operates an airport.

3 (f) It is the intent of the Legislature to clarify that, for the  
4 purposes of this article, that special districts, school districts, and  
5 community college districts are included among the local agencies  
6 that are subject to airport land use laws and other requirements of  
7 this article.

8 (g) *It is the intent of the Legislature to discourage incompatible*  
9 *land uses near airports. Therefore, prior to granting permits for*  
10 *the renovation or remodeling of an existing public building,*  
11 *structure, or facility, and before the construction of a new public*  
12 *building, it is the intent of the Legislature that local agencies*  
13 *utilize the height, use, noise, safety, and density criteria that are*  
14 *compatible with airport operations, as established by this article,*  
15 *and referred to as the Airport Land Use Planning Handbook,*  
16 *published by the division, and any applicable federal aviation*  
17 *regulations, including, but not limited to, Part 77 (commencing*  
18 *with Section 77.1) of Title 14 of the Code of Federal Regulations.*

19 SEC. 2. Section 21676 of the Public Utilities Code is amended  
20 to read:

21 21676. (a) Each local agency whose general plan includes  
22 areas covered by an airport land use compatibility plan shall, by  
23 July 1, 1983, submit a copy of its plan or specific plans to the  
24 airport land use commission. The commission shall determine by  
25 August 31, 1983, whether the plan or plans are consistent or  
26 inconsistent with the airport land use compatibility plan. If the plan  
27 or plans are inconsistent with the airport land use compatibility  
28 plan, the local agency shall be notified and that local agency shall  
29 have another hearing to reconsider its airport land use  
30 compatibility plans. The local agency may propose to overrule the  
31 commission after the hearing by a two-thirds vote of its governing  
32 body if it makes specific findings that the proposed action is  
33 consistent with the purposes of this article stated in Section 21670.  
34 The local agency governing body shall notify the Division of  
35 Aeronautics of the Department of Transportation and the  
36 commission of the proposed overruling, providing the specific  
37 findings for their review and comment, 30 days prior to a final  
38 hearing and decision on whether to overrule the commission. The  
39 local agency shall include comments from the department and  
40 commission in the public record of any final decision to overrule



1 the commission, which may only be adopted by a two-thirds vote  
2 of the governing body.

3 (b) Prior to the amendment of a general plan or specific plan,  
4 or the adoption or approval of a zoning ordinance or building  
5 regulation within the planning boundary established by the airport  
6 land use commission pursuant to Section 21675, the local agency  
7 shall first refer the proposed action to the commission. If the  
8 commission determines that the proposed action is inconsistent  
9 with the commission's plan, the referring agency shall be notified.  
10 The local agency may, after a public hearing, propose to overrule  
11 the commission by a two-thirds vote of its governing body if it  
12 makes specific findings that the proposed action is consistent with  
13 the purposes of this article stated in Section 21670. The local  
14 agency governing body shall notify the Division of Aeronautics of  
15 the Department of Transportation and the commission of the  
16 proposed overruling, providing the specific findings for their  
17 review and comment, 30 days prior to a final hearing and decision  
18 on whether to overrule the commission. The local agency shall  
19 include comments from the department and commission in the  
20 public record of any final decision to overrule the commission,  
21 which may only be adopted by a two-thirds vote of the governing  
22 body.

23 (c) Each public agency owning any airport within the  
24 boundaries of an airport land use compatibility plan shall, prior to  
25 modification of its airport master plan, refer any proposed change  
26 to the airport land use commission. If the commission determines  
27 that the proposed action is inconsistent with the commission's  
28 plan, the referring agency shall be notified. The public agency  
29 may, after a public hearing, propose to overrule the commission by  
30 a two-thirds vote of its governing body if it makes specific findings  
31 that the proposed action is consistent with the purposes of this  
32 article stated in Section 21670. The public agency governing body  
33 shall notify the Division of Aeronautics of the Department of  
34 Transportation and the commission of the proposed overruling,  
35 providing the specific findings for their review and comment, 30  
36 days prior to a final hearing and decision on whether to overrule  
37 the commission. The public agency shall include comments from  
38 the department and commission in the public record of any final  
39 decision to overrule the commission, which may only be adopted  
40 by a two-thirds vote of the governing body.



1 (d) Each commission determination pursuant to subdivision  
2 (b) or (c) shall be made within 60 days from the date of referral of  
3 the proposed action. If a commission fails to make the  
4 determination within that period, the proposed action shall be  
5 deemed consistent with the airport land use compatibility plan.

6 SEC. 3. Section 21676.5 of the Public Utilities Code is  
7 amended to read:

8 21676.5. (a) If the commission finds that a local agency has  
9 not revised its general plan or specific plan or overruled the  
10 commission by a two-thirds vote of its governing body after  
11 making specific findings that the proposed action is consistent  
12 with the purposes of this article as stated in Section 21670, the  
13 commission may require that the local agency submit all  
14 subsequent actions, regulations, and permits to the commission for  
15 review until its general plan or specific plan is revised or the  
16 specific findings are made. If, in the determination of the  
17 commission, an action, regulation, or permit of the local agency  
18 is inconsistent with the airport land use compatibility plan, the  
19 local agency shall be notified and that local agency shall hold a  
20 hearing to reconsider its plan. The local agency may propose to  
21 overrule the commission after the hearing by a two-thirds vote of  
22 its governing body if it makes specific findings that the proposed  
23 action is consistent with the purposes of this article as stated in  
24 Section 21670. The local agency governing body shall notify the  
25 Division of Aeronautics of the Department of Transportation and  
26 the commission of the proposed overruling, providing the specific  
27 findings for their review and comment, 30 days prior to a final  
28 hearing and decision on whether to overrule the commission. The  
29 local agency shall include comments from the department and  
30 commission in the public record of any final decision to overrule  
31 the commission, which may only be adopted by a two-thirds vote  
32 of the governing body.

33 (b) Whenever the local agency has revised its general plan or  
34 specific plan or has overruled the commission pursuant to  
35 subdivision (a), the proposed action of the local agency shall not  
36 be subject to further commission review, unless the commission  
37 and the local agency agree that individual projects shall be  
38 reviewed by the commission.

39 SEC. 4. Section 21677 of the Public Utilities Code is amended  
40 to read:



1 21677. Notwithstanding Section 21676, any public agency in  
2 the County of Marin may overrule the Marin County Airport Land  
3 Use Commission by a majority vote of its governing body. The  
4 County of Marin governing body shall notify the Division of  
5 Aeronautics of the Department of Transportation and the  
6 commission of the proposed overruling, providing the specific  
7 findings for their review and comment, 30 days prior to a final  
8 hearing and decision on whether to overrule the commission. The  
9 County of Marin shall include comments from the department and  
10 commission in the public record of any final decision to overrule  
11 the commission.

12 SEC. 5. Section 21678 of the Public Utilities Code is amended  
13 to read:

14 21678. With respect to a publicly owned airport that a public  
15 agency does not operate, if the public agency pursuant to Section  
16 21676 or 21676.5 overrules a commission’s action or  
17 recommendation, the operator of the airport shall be immune from  
18 liability for damages to property or personal injury caused by or  
19 resulting directly or indirectly from the public agency’s decision  
20 to overrule the commission’s action or recommendation.

21 SEC. 6. Notwithstanding Section 17610 of the Government  
22 Code, if the Commission on State Mandates determines that this  
23 act contains costs mandated by the state, reimbursement to local  
24 agencies and school districts for those costs shall be made pursuant  
25 to Part 7 (commencing with Section 17500) of Division 4 of Title  
26 2 of the Government Code. If the statewide cost of the claim for  
27 reimbursement does not exceed one million dollars (\$1,000,000),  
28 reimbursement shall be made from the State Mandates Claims  
29 Fund.

