

AMENDED IN SENATE JUNE 23, 2003
AMENDED IN ASSEMBLY MAY 7, 2003
AMENDED IN ASSEMBLY MARCH 13, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 332

Introduced by Assembly Member Mullin

February 7, 2003

An act to amend Sections 21670, 21674.7, 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 an 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 $\frac{2}{3}$ 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 $\frac{2}{3}$ 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



1 county, in which there is located an airport which is not served by
2 a scheduled airline, but is operated for the benefit of the general
3 public, shall establish an airport land use commission, except that
4 the board of supervisors of the county may, after consultation with
5 the appropriate airport operators and affected local entities and
6 after a public hearing, adopt a resolution finding that there are no
7 noise, public safety, or land use issues affecting any airport in the
8 county which require the creation of a commission and declaring
9 the county exempt from that requirement. The board shall, in this
10 event, transmit a copy of the resolution to the Director of
11 Transportation. For purposes of this section, “commission”
12 means an airport land use commission. Each commission shall
13 consist of seven members to be selected as follows:

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

21 (2) Two representing the county, appointed by the board of
22 supervisors.

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

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

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

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

38 (e) A person having an “expertise in aviation” means a person
39 who, by way of education, training, business, experience,
40 vocation, or avocation has acquired and possesses particular



1 knowledge of, and familiarity with, the function, operation, and
2 role of airports, or is an elected official of a local agency which
3 owns or operates an airport.

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

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

20 SEC. 2. *Section 21674.7 of the Public Utilities Code is*
21 *amended to read:*

22 21674.7. (a) An airport land use commission that formulates,
23 adopts, or amends an airport land use compatibility plan shall be
24 guided by information prepared and updated pursuant to Section
25 21674.5 and referred to as the Airport Land Use Planning
26 Handbook published by the Division of Aeronautics of the
27 Department of Transportation.

28 (b) *It is the intent of the Legislature to discourage incompatible*
29 *land uses near existing airports. Therefore, prior to granting*
30 *permits for the renovation or remodeling of an existing public*
31 *building, structure, or facility, and before the construction of a new*
32 *public building, it is the intent of the Legislature that local*
33 *agencies shall be guided by the height, use, noise, safety, and*
34 *density criteria that are compatible with airport operations, as*
35 *established by this article, and referred to as the Airport Land Use*
36 *Planning Handbook, published by the division, and any applicable*
37 *federal aviation regulations, including, but not limited to, Part 77*
38 *(commencing with Section 77.1) of Title 14 of the Code of Federal*
39 *Regulations, to the extent that the criteria has been incorporated*
40 *into the plan prepared by a commission pursuant to Section 21675.*

1 *This subdivision does not limit the jurisdiction of a commission as*
2 *established by this article. This subdivision does not limit the*
3 *authority of local agencies to overrule commission actions or*
4 *recommendations pursuant to Sections 21676, 21676.5, or 21677.*

5 SEC. 3. Section 21676 of the Public Utilities Code is amended
6 to read:

7 21676. (a) Each local agency whose general plan includes
8 areas covered by an airport land use compatibility plan shall, by
9 July 1, 1983, submit a copy of its plan or specific plans to the
10 airport land use commission. The commission shall determine by
11 August 31, 1983, whether the plan or plans are consistent or
12 inconsistent with the airport land use compatibility plan. If the plan
13 or plans are inconsistent with the airport land use compatibility
14 plan, the local agency shall be notified and that local agency shall
15 have another hearing to reconsider its airport land use
16 compatibility plans. The local agency may propose to overrule the
17 commission after the hearing by a two-thirds vote of its governing
18 body if it makes specific findings that the proposed action is
19 consistent with the purposes of this article stated in Section 21670.
20 The local agency governing body shall notify the Division of
21 Aeronautics of the Department of Transportation and the
22 commission of the proposed overruling, providing the specific
23 findings for their review and comment, 30 days prior to a final
24 hearing and decision on whether to overrule the commission. The
25 local agency shall include comments from the department and
26 commission in the public record of any final decision to overrule
27 the commission, which may only be adopted by a two-thirds vote
28 of the governing body.

29 (b) Prior to the amendment of a general plan or specific plan,
30 or the adoption or approval of a zoning ordinance or building
31 regulation within the planning boundary established by the airport
32 land use commission pursuant to Section 21675, the local agency
33 shall first refer the proposed action to the commission. If the
34 commission determines that the proposed action is inconsistent
35 with the commission's plan, the referring agency shall be notified.
36 The local agency may, after a public hearing, propose to overrule
37 the commission by a two-thirds vote of its governing body if it
38 makes specific findings that the proposed action is consistent with
39 the purposes of this article stated in Section 21670. The local
40 agency governing body shall notify the Division of Aeronautics of



the Department of Transportation 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 shall include comments from the department and commission in the public record of any final decision to overrule the commission, which may only be adopted by a two-thirds vote of the governing body.

(c) Each public agency owning any airport within the boundaries of an airport land use compatibility plan shall, prior to modification of its airport master plan, refer any proposed change to the airport land use commission. If the commission determines that the proposed action is inconsistent with the commission's plan, the referring agency shall be notified. The public agency may, after a public hearing, propose to overrule the commission by a two-thirds vote of its governing body if it makes specific findings that the proposed action is consistent with the purposes of this article stated in Section 21670. The public agency governing body shall notify the Division of Aeronautics of the Department of Transportation 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 public agency shall include comments from the department and commission in the public record of any final decision to overrule the commission, which may only be adopted by a two-thirds vote of the governing body.

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

~~SEC. 3.—~~

SEC. 4. Section 21676.5 of the Public Utilities Code is amended to read:

21676.5. (a) If the commission finds that a local agency has not revised its general plan or specific plan or overruled the commission by a two-thirds vote of its governing body after making specific findings that the proposed action is consistent with the purposes of this article as stated in Section 21670, the commission may require that the local agency submit all

1 subsequent actions, regulations, and permits to the commission for
2 review until its general plan or specific plan is revised or the
3 specific findings are made. If, in the determination of the
4 commission, an action, regulation, or permit of the local agency
5 is inconsistent with the airport land use compatibility plan, the
6 local agency shall be notified and that local agency shall hold a
7 hearing to reconsider its plan. The local agency may propose to
8 overrule the commission after the hearing by a two-thirds vote of
9 its governing body if it makes specific findings that the proposed
10 action is consistent with the purposes of this article as stated in
11 Section 21670. The local agency governing body shall notify the
12 Division of Aeronautics of the Department of Transportation and
13 the commission of the proposed overruling, providing the specific
14 findings for their review and comment, 30 days prior to a final
15 hearing and decision on whether to overrule the commission. The
16 local agency shall include comments from the department and
17 commission in the public record of any final decision to overrule
18 the commission, which may only be adopted by a two-thirds vote
19 of the governing body.

20 (b) Whenever the local agency has revised its general plan or
21 specific plan or has overruled the commission pursuant to
22 subdivision (a), the proposed action of the local agency shall not
23 be subject to further commission review, unless the commission
24 and the local agency agree that individual projects shall be
25 reviewed by the commission.

26 ~~SEC. 4.—~~

27 *SEC. 5.* Section 21677 of the Public Utilities Code is amended
28 to read:

29 21677. Notwithstanding Section 21676, any public agency in
30 the County of Marin may overrule the Marin County Airport Land
31 Use Commission by a majority vote of its governing body. The
32 County of Marin governing body shall notify the Division of
33 Aeronautics of the Department of Transportation and the
34 commission of the proposed overruling, providing the specific
35 findings for their review and comment, 30 days prior to a final
36 hearing and decision on whether to overrule the commission. The
37 County of Marin shall include comments from the department and
38 commission in the public record of any final decision to overrule
39 the commission.

40 ~~SEC. 5.—~~



1 *SEC. 6.* Section 21678 of the Public Utilities Code is amended
2 to read:

3 21678. With respect to a publicly owned airport that a public
4 agency does not operate, if the public agency pursuant to Section
5 21676 ~~or 21676.5~~, 21676.5, or 21677 overrules a commission's
6 action or recommendation, the operator of the airport shall be
7 immune from liability for damages to property or personal injury
8 caused by or resulting directly or indirectly from the public
9 agency's decision to overrule the commission's action or
10 recommendation.

11 ~~*SEC. 6.*~~

12 *SEC. 7.* Notwithstanding Section 17610 of the Government
13 Code, if the Commission on State Mandates determines that this
14 act contains costs mandated by the state, reimbursement to local
15 agencies and school districts for those costs shall be made pursuant
16 to Part 7 (commencing with Section 17500) of Division 4 of Title
17 2 of the Government Code. If the statewide cost of the claim for
18 reimbursement does not exceed one million dollars (\$1,000,000),
19 reimbursement shall be made from the State Mandates Claims
20 Fund.

