

AMENDED IN SENATE APRIL 13, 2009

SENATE BILL

No. 737

Introduced by Senator Negrete McLeod

February 27, 2009

An act to amend Sections 21670, 21670.1, 21670.4, 21671.5, 21674.7, 21675.1, 21678, 21679, and 21679.5 of, and to repeal Section 21677 of, the Public Utilities Code, relating to airports.

LEGISLATIVE COUNSEL'S DIGEST

SB 737, as amended, Negrete McLeod. Airports: airport land use commissions.

The

(1) *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 airports and the area surrounding airports within the jurisdiction of the commission, and to safeguard the general welfare of the inhabitants within the vicinity of an airport and the public in general. The act requires each county in which there is an airport served by a scheduled airline, with certain exceptions, to establish an airport land use commission.*

Existing law requires each county in which there is an airport operated for the benefit of the public to establish an airport land use commission, but authorizes the board of supervisors of a county in which an airport is located that is operated for the benefit of the general public that is not served by a scheduled airline, after consultation with the appropriate airport operators and affected local entities and after public hearing, to adopt a resolution finding that there are no noise, public safety, or land

use issues affecting any airport in the county that require the creation of a commission and declaring that the county is exempt from establishing an airport land use commission. ~~The act~~

This bill would eliminate the authority of the board of supervisors of a county in which an airport is located that is operated for the benefit of the general public that is not served by a scheduled airline, to adopt a resolution declaring that the county is exempt from establishing an airport land use commission. By eliminating this authority, the bill would impose a state-mandated local program by requiring a higher level of service.

(2) Existing law provides that, notwithstanding the above-described requirements, if the board of supervisors and the city selection committee of mayors in the county responsible for appointing a commission each makes a determination by a majority vote that proper land use planning can be accomplished through the actions of an appropriately designated body, then the body so designated shall assume the planning responsibilities of an airport land use commission pursuant to the act, and a commission need not be formed in that county.

~~This bill would eliminate the authority of the board of supervisors of a county in which an airport is located that is operated for the benefit of the general public that is not served by a scheduled airline, to adopt a resolution declaring that the county is exempt from establishing an airport land use commission. The bill would limit the authority of a board of supervisors and a city to designate a body to assume the planning responsibilities of an airport land use commission require that if the board of supervisors and city selection committee determine that proper land use can be accomplished through the actions of an appropriately designated body, that the body be a countywide body. The bill would make other conforming changes and would delete certain obsolete provisions. By eliminating the authority of the board of supervisors to adopt a resolution declaring that the county is exempt from establishing an airport land use commission and limiting the authority of a board of supervisors and city selection committee of mayors to designate a body to assume the planning responsibilities of a commission, the bill would impose a state-mandated local program by requiring a higher level of service.~~

(3) Under existing law, the board of supervisors of a county and each affected city in that county may make a determination that proper land use planning can be accomplished by the county and the affected cities, in which case an airport land use commission need not be formed. If a

commission is not formed pursuant to these provisions, existing law requires the supervisors of the county and each affected city, subject to the review and approval of the Division of Aeronautics, to provide for the preparation of the airport land use compatibility plan, among other things.

The bill would eliminate the authority of a county board of supervisors and each affected city to assume the land use planning requirements themselves upon a determination that a commission need not be formed. The bill instead would allow a city in which an airport is located to assume the planning responsibilities of an airport land use commission if, prior to January 1, 2010, the board of supervisors of a county and city council of any city in which an airport was located made a determination that the proper land use planning could be accomplished by the city and other requirements are met.

The bill would require that if a determination is made by the division that the city has not complied with the requirements of preparing an airport land use compatibility plan by January 1, 2010, then, within 90 days of that determination, the affected airport shall be subject to the airport land use commission.

By eliminating the authority of a board of supervisors of a county and each affected city in that county to determine that a commission is not required, the bill would impose a state-mandated local program by requiring a higher level of service.

~~Under~~

(4) Under existing law, 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, unless exempted, or to the designated body performing planning as an alternative 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 or designated body is required to notify the local agency, and the local agency is required to have a hearing to reconsider its plan or action.

Under existing law, 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, 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.

This bill would repeal the authority of the County of Marin to overrule an airport land use commission's action or recommendation affecting an airport within the county by a majority vote.

Existing

(5) *Existing* law authorizes an airport land use commission to establish a schedule of fees necessary to comply with existing law relative to airport land use commissions and requires that the fees charged to proponents of actions, regulations, or permits not exceed the estimated reasonable cost of providing the service and be imposed pursuant to certain provisions of the Government Code. Existing law prohibits a commission that has not adopted an airport land use compatibility plan by June 30, 1991, from charging fees, with certain exceptions.

This bill would repeal the prohibition upon a commission charging fees if the commission has not adopted an airport land use compatibility plan by June 30, 1991, and would repeal the exceptions to that prohibition.

The

(6) *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.

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

1 surrounding these airports so as to promote the overall goals and
2 objectives of the California airport noise standards adopted
3 pursuant to Section 21669 and to prevent the creation of new noise
4 and safety problems.

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

11 (b) In order to achieve the purposes of this article, every county
12 in which there is located an airport which is served by a scheduled
13 airline shall establish an airport land use commission. Every
14 county, in which there is located an airport which is not served by
15 a scheduled airline, but is operated for the benefit of the general
16 public, shall establish an airport land use commission. For purposes
17 of this section, "commission" means an airport land use
18 commission. Each commission shall consist of seven members to
19 be selected as follows:

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

27 (2) Two representing the county, appointed by the board of
28 supervisors.

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

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

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

37 (d) Each member shall promptly appoint a single proxy to
38 represent him or her in commission affairs and to vote on all
39 matters when the member is not in attendance. The proxy shall be
40 designated in a signed written instrument which shall be kept on

1 file at the commission offices, and the proxy shall serve at the
2 pleasure of the appointing member. A vacancy in the office of
3 proxy shall be filled promptly by appointment of a new proxy.

4 (e) A person having an “expertise in aviation” means a person
5 who, by way of education, training, business, experience, vocation,
6 or avocation has acquired and possesses particular knowledge of,
7 and familiarity with, the function, operation, and role of airports;
8 ~~or is an elected official of a local agency which owns or operates~~
9 ~~an airport..~~

10 (f) It is the intent of the Legislature to clarify, for the purposes
11 of this article, that special districts, school districts, and community
12 college districts are included among the local agencies that are
13 subject to airport land use laws and other requirements of this
14 article.

15 SEC. 2. Section 21670.1 of the Public Utilities Code is
16 amended to read:

17 21670.1. (a) Notwithstanding any other provision of this
18 article, if the board of supervisors and the city selection committee
19 of mayors in the county each makes a determination by a majority
20 vote that proper land use planning can be accomplished through
21 the actions of an appropriately designated countywide body, then
22 the body so designated shall assume the planning responsibilities
23 of an airport land use commission as provided for in this article,
24 and a commission need not be formed in that county.

25 (b) A body designated pursuant to subdivision (a) that does not
26 include among its membership at least two members having
27 expertise in aviation, as defined in subdivision (e) of Section 21670,
28 shall, when acting in the capacity of an airport land use
29 commission, be augmented so that body, as augmented, will have
30 at least two members having that expertise.

31 (c) (1) Notwithstanding subdivisions (a) and (b), and
32 subdivision (b) of Section 21670, if, prior to January 1, 2010, the
33 board of supervisors of a county and the city council of any city
34 in which an airport was located each made a determination that
35 proper land use planning pursuant to this article could be
36 accomplished pursuant to this subdivision, then ~~a~~ *that* city may
37 assume the planning responsibilities of an airport land use
38 commission as provided for in this article for an affected airport,
39 if all of the following conditions are met:

1 (A) The affected airport is certified by the Federal Aviation
2 Administration of the United States Department of Transportation
3 pursuant to Part 139 (commencing with Section 139.1) of Title 14
4 of the Code of Federal Regulations.

5 (B) The affected airport has a noise compatibility program in
6 effect approved by the Federal Aviation Administration pursuant
7 to Part 150 (commencing with Section 150.1) of Title 14 of the
8 Code of Federal Regulations.

9 (C) The affected airport is owned and operated by an agency
10 that is headquartered in a county other than the county in which
11 the airport is located.

12 (2) If the board of supervisors of a county and ~~each a city~~
13 ~~council made a determination prior to January 1, 2010, that proper~~
14 ~~land use planning may be accomplished and a commission is not~~
15 ~~formed pursuant to paragraph (1), that county and the appropriate~~
16 ~~affected cities having jurisdiction over an airport pursuant to~~
17 ~~paragraph (1), then the city council,~~ subject to the review and
18 approval by the Division of Aeronautics of the department, shall
19 do all of the following:

20 (A) Adopt processes for the preparation, adoption, and
21 amendment of the airport land use compatibility plan for each
22 airport that is served by a scheduled airline or operated for the
23 benefit of the general public.

24 (B) Adopt processes for the notification of the general public,
25 landowners, interested groups, and other public agencies regarding
26 the preparation, adoption, and amendment of the airport land use
27 compatibility plans.

28 (C) Adopt processes for the mediation of disputes arising from
29 the preparation, adoption, and amendment of the airport land use
30 compatibility plans.

31 (D) Adopt processes for the amendment of general and specific
32 plans to be consistent with the airport land use compatibility plans.

33 (E) Designate the agency that shall be responsible for the
34 preparation, adoption, and amendment of each airport land use
35 compatibility plan.

36 (3) The Division of Aeronautics of the department shall review
37 the processes adopted pursuant to paragraph (2), and shall approve
38 the processes if the division determines that the processes are
39 consistent with the procedure required by this article and will do
40 all of the following:

1 (A) Result in the preparation, adoption, and implementation of
2 plans within a reasonable amount of time.

3 (B) Rely on the height, use, noise, safety, and density criteria
4 that are compatible with airport operations, as established by this
5 article, and referred to as the Airport Land Use Planning Handbook,
6 published by the division, and any applicable federal aviation
7 regulations, including, but not limited to, Part 77 (commencing
8 with Section 77.1) of Title 14 of the Code of Federal Regulations.

9 (C) Provide adequate opportunities for notice to, review of, and
10 comment by the general public, landowners, interested groups,
11 and other public agencies.

12 (4) ~~If the county city does not comply with the requirements of~~
13 ~~paragraph (2) within 120 days, then the airport land use~~
14 ~~compatibility plan and amendments shall not be considered adopted~~
15 ~~pursuant to this article and a commission shall be established by~~
16 ~~January 1, 2010, then the affected airport shall be subject to the~~
17 ~~airport land use commission within 90 days of the determination~~
18 ~~of noncompliance by the division and an airport land use~~
19 ~~compatibility plan shall be adopted pursuant to this article within~~
20 ~~90 days of the establishment of the commission.~~

21 SEC. 3. Section 21670.4 of the Public Utilities Code is
22 amended to read:

23 21670.4. (a) As used in this section, “intercounty airport”
24 means any airport bisected by a county line through its runways,
25 runway protection zones, inner safety zones, inner turning zones,
26 outer safety zones, or sideline safety zones, as defined by the
27 department’s Airport Land Use Planning Handbook and referenced
28 in the airport land use compatibility plan formulated under Section
29 21675.

30 (b) It is the purpose of this section to provide the opportunity
31 to establish a separate airport land use commission so that an
32 intercounty airport may be served by a single airport land use
33 planning agency, rather than having to look separately to the airport
34 land use commissions of the affected counties.

35 (c) In addition to the airport land use commissions created under
36 Section 21670, or the alternative planning undertaken pursuant to
37 subdivision (c) of Section 21670.1, for their respective counties,
38 the boards of supervisors and city selection committees for the
39 affected counties, by independent majority vote of each county’s

1 two delegations, for any intercounty airport, may do either of the
2 following:

3 (1) Establish a single separate airport land use commission for
4 the airport. The airport land use commission shall consist of seven
5 members to be selected as follows:

6 (A) One representing the cities in each of the counties, appointed
7 by that county's city selection committee.

8 (B) One representing each of the counties, appointed by the
9 board of supervisors of each county.

10 (C) One from each county having expertise in aviation,
11 appointed by a selection committee comprised of the managers of
12 all the public airports within that county.

13 (D) One representing the general public, appointed by the other
14 six members of the commission.

15 (2) Designate an existing appropriate countywide entity as that
16 airport's land use commission pursuant to subdivision (a) or (b)
17 of Section 21670.1.

18 SEC. 4. Section 21671.5 of the Public Utilities Code is
19 amended to read:

20 21671.5. (a) Except for the terms of office of the members of
21 the first commission, the term of office of each member shall be
22 four years and until the appointment and qualification of his or her
23 successor. The members of the first commission shall classify
24 themselves by lot so that the term of office of one member is one
25 year, of two members is two years, of two members is three years,
26 and of two members is four years. The body that originally
27 appointed a member whose term has expired shall appoint his or
28 her successor for a full term of four years. Any member may be
29 removed at any time and without cause by the body appointing
30 that member. The expiration date of the term of office of each
31 member shall be the first Monday in May in the year in which that
32 member's term is to expire. Any vacancy in the membership of
33 the commission shall be filled for the unexpired term by
34 appointment by the body which originally appointed the member
35 whose office has become vacant. The chairperson of the
36 commission shall be selected by the members thereof.

37 (b) Compensation, if any, shall be determined by the board of
38 supervisors.

39 (c) Staff assistance, including the mailing of notices and the
40 keeping of minutes and necessary quarters, equipment, and supplies

1 shall be provided by the county. The usual and necessary operating
2 expenses of the commission shall be a county charge.

3 (d) Notwithstanding any other provisions of this article, the
4 commission shall not employ any personnel either as employees
5 or independent contractors without the prior approval of the board
6 of supervisors.

7 (e) The commission shall meet at the call of the commission
8 chairperson or at the request of the majority of the commission
9 members. A majority of the commission members shall constitute
10 a quorum for the transaction of business. No action shall be taken
11 by the commission except by the recorded vote of a majority of
12 the full membership.

13 (f) The commission may establish a schedule of fees necessary
14 to comply with this article. Those fees shall be charged to the
15 proponents of actions, regulations, or permits, shall not exceed the
16 estimated reasonable cost of providing the service, and shall be
17 imposed pursuant to Section 66016 of the Government Code.

18 SEC. 5. Section 21674.7 of the Public Utilities Code is
19 amended to read:

20 21674.7. (a) An airport land use commission that formulates,
21 adopts, or amends an airport land use compatibility plan shall be
22 guided by information prepared and updated pursuant to Section
23 21674.5 and referred to as the Airport Land Use Planning
24 Handbook published by the Division of Aeronautics of the
25 Department of Transportation.

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

1 commission actions or recommendations pursuant to Section 21676
2 or 21676.5.

3 SEC. 6. Section 21675.1 of the Public Utilities Code is
4 amended to read:

5 21675.1. (a) Until a commission adopts an airport land use
6 compatibility plan, a city or county shall first submit all actions,
7 regulations, and permits within the vicinity of a public airport to
8 the commission for review and approval. Before the commission
9 approves or disapproves any actions, regulations, or permits, the
10 commission shall provide public notice in the same manner as the
11 city or county is required to provide for those actions, regulations,
12 or permits. As used in this section, “vicinity” means land that will
13 be included or reasonably could be included within the airport land
14 use compatibility plan. If the commission has not designated an
15 airport influence area for the airport land use compatibility plan,
16 “vicinity” means land within two miles of the boundary of a public
17 airport.

18 (b) The commission may approve an action, regulation, or permit
19 if it finds, based on substantial evidence in the record, all of the
20 following:

21 (1) The commission is making substantial progress toward the
22 completion of the airport land use compatibility plan.

23 (2) There is a reasonable probability that the action, regulation,
24 or permit will be consistent with the airport land use compatibility
25 plan being prepared by the commission.

26 (3) There is little or no probability of substantial detriment to
27 or interference with the future adopted airport land use
28 compatibility plan if the action, regulation, or permit is ultimately
29 inconsistent with the airport land use compatibility plan.

30 (c) If the commission disapproves an action, regulation, or
31 permit, the commission shall notify the city or county. The city or
32 county may overrule the commission, by a two-thirds vote of its
33 governing body, if it makes specific findings that the proposed
34 action, regulation, or permit is consistent with the purposes of this
35 article, as stated in Section 21670.

36 (d) If a city or county overrules the commission pursuant to
37 subdivision (c), that action shall not relieve the city or county from
38 further compliance with this article after the commission adopts
39 the airport land use compatibility plan.

1 (e) If a city or county overrules the commission pursuant to
2 subdivision (c) with respect to a publicly owned airport that the
3 city or county does not operate, the operator of the airport is not
4 liable for damages to property or personal injury resulting from
5 the city's or county's decision to proceed with the action,
6 regulation, or permit.

7 (f) A commission may adopt rules and regulations that exempt
8 any ministerial permit for single-family dwellings from the
9 requirements of subdivision (a) if it makes the findings required
10 pursuant to subdivision (b) for the proposed rules and regulations,
11 except that the rules and regulations may not exempt

12 single-family dwellings in a subdivision where 25 percent or
13 more of the parcels are undeveloped.

14 SEC. 7. Section 21677 of the Public Utilities Code is repealed.

15 SEC. 8. Section 21678 of the Public Utilities Code is amended
16 to read:

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

24 SEC. 9. Section 21679 of the Public Utilities Code is amended
25 to read:

26 21679. (a) In any county in which the airport land use
27 commission or other designated body has not adopted an airport
28 land use compatibility plan, an interested party may initiate
29 proceedings in a court of competent jurisdiction to postpone the
30 effective date of a zoning change, a zoning variance, the issuance
31 of a permit, or the adoption of a regulation by a local agency, that
32 directly affects the use of land within one mile of the boundary of
33 a public airport within the county.

34 (b) The court may issue an injunction that postpones the
35 effective date of the zoning change, zoning variance, permit, or
36 regulation until the governing body of the local agency that took
37 the action does one of the following:

38 (1) In the case of an action that is a legislative act, adopts a
39 resolution declaring that the proposed action is consistent with the
40 purposes of this article stated in Section 21670.

1 (2) In the case of an action that is not a legislative act, adopts a
2 resolution making findings based on substantial evidence in the
3 record that the proposed action is consistent with the purposes of
4 this article stated in Section 21670.

5 (3) Rescinds the action.

6 (4) Amends its action to make it consistent with the purposes
7 of this article stated in Section 21670, and complies with either
8 paragraph (1) or (2), whichever is applicable.

9 (c) The court shall not issue an injunction pursuant to
10 subdivision (b) if the local agency that took the action demonstrates
11 that the general plan and any applicable specific plan of the agency
12 accomplishes the purposes of an airport land use compatibility
13 plan as provided in Section 21675.

14 (d) An action brought pursuant to subdivision (a) shall be
15 commenced within 30 days of the decision or within the appropriate
16 time periods set by Section 21167 of the Public Resources Code,
17 whichever is longer.

18 (e) If the governing body of the local agency adopts a resolution
19 pursuant to subdivision (b) with respect to a publicly owned airport
20 that the local agency does not operate, the operator of the airport
21 shall be immune from liability for damages to property or personal
22 injury from the local agency's decision to proceed with the zoning
23 change, zoning variance, permit, or regulation.

24 (f) As used in this section, "interested party" means any owner
25 of land within two miles of the boundary of the airport or any
26 organization with a demonstrated interest in airport safety and
27 efficiency.

28 SEC. 10. Section 21679.5 of the Public Utilities Code is
29 amended to read:

30 21679.5. (a) No action pursuant to Section 21679 to postpone
31 the effective date of a zoning change, a zoning variance, the
32 issuance of a permit, or the adoption of a regulation by a local
33 agency, directly affecting the use of land within one mile of the
34 boundary of a public airport, shall be commenced in any county
35 in which the commission or other designated body has not adopted
36 an airport land use compatibility plan, but is making substantial
37 progress toward the completion of the airport land use compatibility
38 plan.

39 (b) An action to postpone the effective date of a zoning change,
40 a zoning variance, the issuance of a permit, or the adoption of a

1 regulation by a local agency, directly affecting the use of land
2 within one mile of the boundary of a public airport for which an
3 airport land use compatibility plan has not been adopted shall be
4 commenced within 30 days of the decision by the local agency,
5 or within the appropriate time periods set by Section 21167 of the
6 Public Resources Code, whichever date is later.

7 SEC. 11. No reimbursement is required by this act pursuant to
8 Section 6 of Article XIII B of the California Constitution because
9 a local agency or school district has the authority to levy service
10 charges, fees, or assessments sufficient to pay for the program or
11 level of service mandated by this act, within the meaning of Section
12 17556 of the Government Code.