Senate Bill No. 1141

Passed the Senate August 30, 2010

_____

Secretary of the Senate

Passed the Assembly August 30, 2010

_____

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day of _____, 2010, at _____ o'clock ____M.

_____

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 21670, 21670.1, 21670.4, 21675.1, 21678, 21679, and 21682 of, to add Section 21682.1 to, and to repeal Section 21677 of, the Public Utilities Code, relating to airports.

LEGISLATIVE COUNSEL'S DIGEST

SB 1141, Negrete McLeod. Airports: airport land use commissions.

(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. The act additionally 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, upon making certain findings, to declare that the county is exempt from establishing an airport land use commission. The act requires that an airport land use commission include in its membership, 2 persons having expertise in aviation, as defined.

This bill would revise the definition of a person having expertise in aviation.

(2) The act 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 require that a planning body designated in accordance with these provisions be a countywide body.

(3) Under the act, 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, the act requires the supervisors of the county and each affected city, subject to the review and approval of the Division of Aeronautics of the Department of Transportation, to provide for the preparation of the airport land use compatibility plan, among other things.

This bill would additionally 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, 2011, 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.

(4) Under the 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, 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 the act, 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 ⅔ 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.

(5) The act authorizes the Department of Transportation to establish individual revolving fund subaccounts for eligible airports, as specified, in the Aeronautics Account in the State Transportation Fund and to annually credit $10,000 to individual airport subaccounts. These moneys may be accumulated up to 5 years and are required to be paid to public entities on request for expenditures on preapproved eligible projects for airport and aviation purposes and operation and maintenance purposes.

This bill would require the division, when it determines that funding is sufficient, to inform counties that do not have an operating airport land use commission of the availability of funds for commission startup costs, and would authorize the division to grant fund moneys to counties that apply for funding. The bill would, upon the second anniversary of the division providing notice of the availability of funds, prohibit a county owned or operated airport in a county that does not have an operating airport land use commission or authorized alternative planning body, as defined, to be eligible for funding from the individual airport subaccounts, until that county establishes an operating airport land use commission or authorized alternative planning body.

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

SECTION 1. Section 21670 of the Public Utilities Code is amended to read:

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

(1) It is in the public interest to provide for the orderly development of each public use airport in this state and the area surrounding these airports so as to promote the overall goals and objectives of the California airport noise standards adopted

pursuant to Section 21669 and to prevent the creation of new noise and safety problems.

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

(b) In order to achieve the purposes of this article, every county in which there is located an airport which is served by a scheduled airline shall establish an airport land use commission. Every county, in which there is located an airport which is not served by a scheduled airline, but is operated for the benefit of the general public, shall establish an airport land use commission, except that the board of supervisors of the county, after consultation with the appropriate airport operators and affected local entities and after a public hearing, may 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 the county exempt from that requirement. The board, in this event, shall transmit a copy of the resolution to the Director of Transportation. For purposes of this section, "commission" means an airport land use commission. Each commission shall consist of seven members to be selected as follows:

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

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

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

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

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

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

(e) A person having an "expertise in aviation" means a person who, by way of education, training, business, experience, vocation, or avocation has acquired and possesses particular knowledge of, and familiarity with, the function, operation, and role of airports.

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

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

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

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

(c) (1) Notwithstanding subdivisions (a) and (b), and subdivision (b) of Section 21670, if the board of supervisors of a county and each affected city in that county each makes a determination that proper land use planning pursuant to this article

can be accomplished pursuant to this subdivision, then a commission need not be formed in that county.

(2) If the board of supervisors of a county and each affected city makes a determination that proper land use planning may be accomplished and a commission is not formed pursuant to paragraph (1), that county and the appropriate affected cities having jurisdiction over an airport, subject to the review and approval by the Division of Aeronautics of the department, shall do all of the following:

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

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

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

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

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

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

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

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

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

(4) If the county does not comply with the requirements of paragraph (2) within 120 days, then the airport land use compatibility plan and amendments shall not be considered adopted pursuant to this article and a commission shall be established within 90 days of the determination of noncompliance by the division and an airport land use compatibility plan shall be adopted pursuant to this article within 90 days of the establishment of the commission.

(d) (1) Notwithstanding subdivisions (a) and (b), and subdivision (b) of Section 21670, if, prior to January 1, 2011, the board of supervisors of a county and the city council of any city in which an airport was located each made a determination that proper land use planning pursuant to this article could be accomplished pursuant to this subdivision, that city may assume the planning responsibilities of an airport land use commission as provided for in this article for an affected airport, if all of the following conditions are met:

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

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

(C) The affected airport was owned and operated, prior to January 1, 2010, by an agency that was headquartered in a county other than the county in which the airport was located.

(2) If the board of supervisors of a county and a city council made a determination pursuant to paragraph (1), the city council, subject to the review and approval by the Division of Aeronautics of the department, shall do all of the following:

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

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

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

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

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

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

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

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

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

(4) If the city has not complied with the requirements of paragraph (2) by January 1, 2011, the affected airport is subject to the airport land use commission within 90 days of the determination of noncompliance by the division.

(e) A commission need not be formed in a county that has contracted for the preparation of airport land use compatibility plans with the Division of Aeronautics under the California Aid to Airports Program (Chapter 4 (commencing with Section 4050) of Title 21 of the California Code of Regulations), Project Ker-VAR 90-1, and that submits all of the following information to the Division of Aeronautics for review and comment that the

county and the cities affected by the airports within the county, as defined by the airport land use compatibility plans:

(1) Agree to adopt and implement the airport land use compatibility plans that have been developed under contract.

(2) Incorporated the height, use, noise, safety, and density criteria that are compatible with airport operations as established by this article, and referred to as the Airport Land Use Planning Handbook, published by the division, and any applicable federal aviation regulations, including, but not limited to, Part 77 (commencing with Section 77.1) of Title 14 of the Code of Federal Regulations, as part of the general and specific plans for the county and for each affected city.

(3) If the county does not comply with this subdivision on or before May 1, 1995, then a commission shall be established in accordance with this article.

(f) (1) A commission need not be formed in a county if all of the following conditions are met:

(A) The county has only one public use airport that is owned by a city.

(B) (i) The county and the affected city adopt the elements in paragraph (2) of subdivision (e), as part of their general and specific plans for the county and the affected city.

(ii) The general and specific plans shall be submitted, upon adoption, to the Division of Aeronautics. If the county and the affected city do not submit the elements specified in paragraph (2) of subdivision (e), on or before May 1, 1996, then a commission shall be established in accordance with this article.

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

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

(b) It is the purpose of this section to provide the opportunity to establish a separate airport land use commission so that an intercounty airport may be served by a single airport land use

planning agency, rather than having to look separately to the airport land use commissions of the affected counties.

(c) In addition to the airport land use commissions created under Section 21670, or the alternative planning undertaken pursuant to subdivision (c) or (d) of Section 21670.1, for their respective counties, the boards of supervisors and city selection committees for the affected counties, by independent majority vote of each county's two delegations, for any intercounty airport, may do either of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) More than two single-family dwellings by the same applicant within a subdivision prior to June 30, 1991.

(2) Single-family dwellings in a subdivision where 25 percent or more of the parcels are undeveloped.

SEC. 5. Section 21677 of the Public Utilities Code is repealed.

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

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

SEC. 7. Section 21679 of the Public Utilities Code is amended to read:

21679. (a) In any county in which there is no airport land use commission or other body designated to assume the responsibilities of an airport land use commission, or in which the commission or other designated body has not adopted an airport land use compatibility plan, an interested party may initiate proceedings in a court of competent jurisdiction to postpone the effective date of a zoning change, a zoning variance, a general or specific plan amendment, the issuance of a permit, or the adoption of a regulation by a local agency, that directly affects the use of land within one mile of the boundary of a public airport within the county.

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

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

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

(3) Rescinds the action.

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

(c) The court shall not issue an injunction pursuant to subdivision (b) if the local agency that took the action demonstrates that the general plan and any applicable specific plan of the agency

accomplishes the purposes of an airport land use compatibility plan as provided in Section 21675.

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

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

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

SEC. 8. Section 21682 of the Public Utilities Code is amended to read:

21682. (a) The department shall establish individual revolving fund subaccounts for eligible airports in the Aeronautics Account in the State Transportation Fund. Money payable under this section shall be credited to individual airport subaccounts annually, and except as provided in Section 21682.1, may be accumulated for a maximum period of five years.

(b) The department shall, except as provided in Section 21682.1, and subject to Section 21684, credit from the Aeronautics Account to each public entity owning and operating an airport or airports under a valid permit issued by the department for every airport that has not been designated by the Federal Aviation Administration as (1) a reliever airport, as defined in Section 503 (a) (19) of the federal Airport and Airway Improvement Act of 1982, as amended, or (2) a commercial service airport, as defined in Section 503 (a) (5) of the federal Airport and Airway Improvement Act of 1982, as amended, the sum of ten thousand dollars ($10,000) annually for each qualifying airport. These funds shall be paid to public entities upon request for expenditure on preapproved eligible projects. Eligible public entities may submit applications for the withdrawal of credited funds for expenditure on proposed projects in letter form to the department for review and approval. Projects identified shall be for airport and aviation

purposes and operation and maintenance purposes. No payment made under this section is transferable, but shall be expended only upon the airport for which the payment is made, unless the department authorizes a payment to be transferred for expenditure on another airport owned or operated by the public entity. The department may establish any accounting systems it deems necessary to provide for the cumulation and expenditure of funds under this subdivision.

(c) If, in any year, there is insufficient money in the Aeronautics Account to make the credits specified in subdivision (b), the department shall, except as provided in Section 21682.1, and subject to Section 21684, credit to each public entity subaccount an amount that is equal to the total amount of money in the Aeronautics Account multiplied by a percentage equivalent to the proportion that the airport or airports of the public entity for which credit is required to be made pursuant to subdivision (b) bear to the total number of airports for which credit is required to be made pursuant to subdivision (b).

(d) No payment shall be made under this section to any public entity for any airport on which general or commercial aviation activities are substantially restricted if the airport is licensed to conduct these activities by the department. The department shall determine whether or not general or commercial aviation activities are restricted.

(e) The department shall adopt rules and regulations and establish procedures to effect prompt payment to public entities for eligible airport projects from money credited pursuant to this section.

SEC. 9. Section 21682.1 is added to the Public Utilities Code, to read:

21682.1. (a) (1) For purposes of this section, "authorized alternative planning body" means an entity that is authorized to adopt an airport land use compatibility plan pursuant to Article 3.5 (commencing with Section 21670), that is not an airport land use commission, and includes each of the following:

(A) An appropriately designated body, so designated countywide by the board of supervisors and the city selection committee of mayors in the county pursuant to subdivision (a) or (b) of Section 21670.1.

(B) A city when undertaking planning pursuant to subdivision (d) of Section 21670.1.

(C) A county, when the county has contracted with the Division of Aeronautics for the preparation of an airport land use compatibility plan pursuant to subdivision (e) of Section 21670.1.

(D) The county regional planning commission of the County of Los Angeles when acting pursuant to Section 21670.2.

(E) The San Diego Regional Airport Authority when acting pursuant to Section 21670.3.

(2) An "authorized alternative planning body" does not include a county or city that makes a determination, pursuant to subdivision (c) of Section 21670.1, that proper airport land use compatibility planning can be accomplished without the formation of an airport land use commission.

(b) When the division determines that funding is sufficient, the division shall inform counties that do not have an operating airport land use commission or authorized alternative planning body of the availability of funds for airport land use commission startup costs, and may grant fund moneys pursuant to Section 21682 for that purpose to counties that apply for funding.

(c) Upon the second anniversary of the division providing notice of the availability of funds pursuant to subdivision (b), a county owned or operated airport in a county that does not have an operating airport land use commission or authorized alternative planning body shall not be eligible for funding pursuant to Section 21682 until that county establishes an operating airport land use commission or authorized alternative planning body. If an operating airport land use commission or authorized alternative planning body is thereafter established in that county, each county owned or operated airport in that county shall be eligible for prospective funding pursuant to Section 21682 and for not more than twenty thousand dollars ($20,000) of credited funds.

(d) Upon the second anniversary of the division providing notice of the availability of funds pursuant to subdivision (b), the division shall not credit more than twenty thousand dollars ($20,000) to the individual revolving fund subaccount of a county owned or operated airport in a county that does not have an operating airport land use commission or authorized alternative planning body. If an operating airport land use commission or authorized alternative planning body is thereafter established in that county, the

commission shall prospectively resume crediting of funds to the individual revolving fund subaccount of each county owned or operated airport in that county.

Approved _____, 2010

_____

Governor