
December 4, 2020
Sent via Email

Phil Rutherford
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email@philrutherford.com

Public Inquiry Unit
Attn: Casey Hallinan
California Department of Justice
Attorney General's Office
P.O. Box 944255
Sacramento, CA 94244-2550

Subject: Senate Bill 990 (2007) and Health and Safety Code § 25359.20

Dear Mr./Ms. Hallinan:

Thank you for your November 19th letter responding to my November 16th letter requesting revocation of Senate Bill 990 (2007) and Health and Safety Code § 25359.20. Both letters are included as enclosures to this letter.

On May 5, 2011, in *Boeing vs. Department of Toxic Substances Control*, US District Court Judge John F. Walter, ruled that, "*California Senate Bill 990 ("SB 990"), codified at Cal. Health & Safety Code § 25359.20, is declared invalid and unconstitutional in its entirety under the Supremacy Clause of the United States Constitution.*"¹

In your letter, you say that the Attorney General's Office cannot change or revoke existing law. You also suggest I contact my representatives in the State legislature or visit the Legislative Counsel's website at <http://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>.

My original letter requesting that SB 990 (2007) and Health and Safety Code (HSC) § 25359.20 be revoked was sent to my State Senator Henry Stern. As of December 4, I have not received a response from Senator Stern other than an automated boiler-plate acknowledgement of receipt.

I also included on distribution, the original proxy-author of SB 990, then State Senator Sheila Kuehl (now a member of the Los Angeles County Board of Supervisors). Again, as of December

¹ United States District Court (Central District of California) Case No. CV 10-04839-JFW (MANx).
https://www.dtsc-ssfl.com/files/lib_boeinglawsuit/legaldocs/64933_DTSCvTheBoeingCoJudgement05-05-2011.pdf

4, I have not received a reply from Ms. Kuehl. Supervisor Kuehl, no doubt has a vested interest in keeping SB 990 “on the books.”

My question to you is this. Who do I contact who has the authority to revoke a Senate Bill and language in the HSC that has been struck down by the United States District Court? Is there no one in the AG’s office who can assist me? My State Senator Henry Stern has chosen to ignore my request. The Legislative Counsel’s website you provided simply confirms that [SB 990](#) is chaptered and approved and was cited by me in my original letter as evidence that [HSC § 25359.20](#) is still law. It does not enable any ability to submit comments or request revocation as I am doing now.

The Defendants in the original Complaint were represented by the California Attorney General’s Office. Counter to your claims, it would seem very appropriate that the AG’s Office in this specific case absolutely has an obligation to ensure that the ruling of the US District Court should be complied with.

When the Complaint was filed in 2009, the California AG was Jerry Brown (two-time Governor of California). When the Complaint was ruled in favor of the Plaintiff in 2011, and upheld on appeal in 2014, the California AG was now US Senator, and Vice President Elect Kamala Harris. In an effort to elicit some meaningful response, I am addressing this letter to current public servants.

Thank you for your assistance.

Sincerely,



Phil Rutherford

Enclosures:

1. Letter from Phil Rutherford to Senator Henry Stern, “SB 990 (2007) and Health and Safety Code 25359.20”, November 16, 2020
2. Letter from Casey Hallinan (California Attorney General’s Office) to Phil Rutherford, No Title, November 19, 2020

cc via Email

California Attorney General Xavier Becerra
California State Senator Henry Stern
Los Angeles County Supervisor Sheila Kuehl
US District Court Judge John F Walter
California State Assembly Member Jesse Gabriel
US Senator and Vice President Elect Kamala Harris

ENCLOSURE 1

November 16, 2020
Sent via Email

Phil Rutherford
8655 Delmonico Ave
West Hills, CA 91304
+1 (818) 912-1501
email@philrutherford.com

Senator Henry Stern
State Capital Room 5080
Sacramento, CA 95814

Subject: SB 990 (2007) and Health and Safety Code 25359.20

On February 23, 2007, then State Senator Sheila Kuehl introduced a bill, SB 990, titled Santa Susana Field Laboratory. Although opposed by Boeing, SB 990 subsequently passed the Senate and Assembly and was ultimately signed into law by Governor Schwarzenegger.¹ SB 990 required the addition of Article 5.5 (commencing with Section 25359.20) to Chapter 6.8 of Division 20 of the Health and Safety Code. This law became effective January 1, 2008

On November 13, 2009, The Boeing Company sued the Acting Director of the California Department of Toxic Substances Control, and by proxy, the State of California, over SB 990 in United States District Court (Eastern District of California).²

On April 26, 2011, the Honorable Judge John Walter of the United States District Court (Central District of California) issued an order granting plaintiff, The Boeing Company's motion for summary judgement, in which he concluded that SB 990 violated the supremacy clause, is pre-empted by the Atomic Energy Act of 1954, violates the doctrine of intergovernmental immunity, and that SB 990 is invalid in its entirety.³

On May 5, 2011, the Honorable Judge John Walter of the United States District Court (Central District of California) issued a judgement in which he stated,

1. Judgment is entered in favor of Plaintiff, The Boeing Company, as to Counts One, Two, and Three of the Amended Complaint.

¹ Senate Bill 990 (2007) Kuehl

http://www.leginfo.ca.gov/pub/07-08/bill/sen/sb_0951-1000/sb_990_bill_20071014_chaptered.pdf

² Case 2:09-cv-03165-GEB-KJM.

https://www.dtsc-ssfl.com/files/lib_boeinglawsuit/legaldocs/64509_BoeingComplaint11-13-2009.pdf

³ Case 2:10-cv-04839-JFW-MAN.

https://www.dtsc-ssfl.com/files/lib_boeinglawsuit/legaldocs/64928_show_tempCA4R335S.pdf

2. California Senate Bill 990 (“SB 990”), codified at Cal. Health & Safety Code § 25359.20, is declared invalid and unconstitutional in its entirety under the Supremacy Clause of the United States Constitution.

3. Defendant in his official capacity as Acting Director of the California Department of Toxic Substances Control (“DTSC”) and any successors, as well as any officers, agents, servants, employees, or attorneys acting for or on behalf of DTSC, or persons in active concert or participation with any such person or DTSC, are hereby enjoined from enforcing or implementing SB 990.⁴

On June 3, 2011, defendants appealed.

On September 19, 2014, the United States Court of Appeals (Ninth Circuit) affirmed the judgement of the United States District Court.⁵

Given that SB 990 and its consequential law, HSC § 25359.20, have been declared invalid and unconstitutional in their entirety, it is unconscionable that after more than six years the law still appears “on the books.”

http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=25359.20.&lawCode=HSC

Please expedite removal of HSC § 25359.20 and explain how the California Legislature can ignore a ruling by the United States District Court.

Thank you for your assistance.

Sincerely,



Phil Rutherford

cc via Email Los Angeles County Supervisor Sheila Kuehl
US District Court Judge John H Walter
California Attorney General Xavier Becerra

⁴ Case 2:10-cv-04839-JFW-MAN.

https://www.dtsc-ssfl.com/files/lib_boeinglawsuit/legaldocs/64933_DTSCvTheBoeingCoJudgement05-05-2011.pdf

⁵ Case 2:10-cv-04839-JFW-MAN.

https://www.dtsc-ssfl.com/files/lib_boeinglawsuit/legaldocs/66462_11-55903.pdf

ENCLOSURE 2

XAVIER BECERRA
Attorney General

State of California
DEPARTMENT OF JUSTICE



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November 19, 2020

PIU: 920790

Mr. Phil Rutherford
8655 Delmonico Avenue
West Hills, CA 91304-1303

Dear Mr. Phil Rutherford:

Thank you for your correspondence to the Office of the Attorney General regarding a legislative proposal. Often it is only through letters such as yours that this office has the opportunity to hear from citizens on matters of public concerns.

The Attorney General's role in legislative matters is limited to making recommendations to the California Legislature regarding needed changes in law and to enforcing the laws the Legislature enacts. While we appreciate receiving your comments, we are not in a position to enact, change, or revoke a law.

You may wish to share your concerns with your representatives in the California Legislature. You may contact them as follows:

California State Assembly
State Capitol
P.O. Box 942849
Sacramento, CA 94249-0000
Internet: <http://www.assembly.ca.gov>

California State Senate
State Capitol
Sacramento, CA 95814
Internet: <http://www.senate.ca.gov>

If you are interested in researching or tracking legislative proposals, we suggest that you contact your representatives in the Legislature and/or visit the Legislative Counsel's website at:
<http://leginfo.legislature.ca.gov/faces/billSearchClient.xhtml>.

We hope this information will be helpful to you. Thank you again for contacting our office.

Sincerely,

A handwritten signature in blue ink that reads "Casey Hallinan".

Casey Hallinan
Public Inquiry Unit

For **XAVIER BECERRA**
Attorney General