
November 16, 2020
Sent via Email

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Senator Henry Stern
State Capital Room 5080
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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