

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: February 14, 2012

To: The Commission
(Meeting of February 16, 2012)

From: Office of Governmental Affairs (OGA) – Sacramento

Subject: **AB 1524 (Allen) – Commercial air carriers: hot air balloons**
As introduced: January 19, 2012

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: SUPPORT

SUMMARY OF BILL:

This bill would permanently relieve hot air balloonists from the requirement to file evidence of liability insurance with the California Public Utilities Commission (CPUC) as “commercial air operators.” A 2004 bill removed the balloonists from the Commission’s jurisdiction and authorized cities and counties to require evidence of insurance as part of the process to obtain a local business license. Under existing law, jurisdiction reverts to the CPUC on January 1, 2013, unless this provision is deleted or extended prior to that date. AB 1524 extends this provision indefinitely and makes permanent the current regulatory scheme giving cities and counties jurisdiction.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

The Legislature removed hot air balloonists from the CPUC’s oversight in 2004 after the industry made a convincing argument that the CPUC’s insurance requirements for “aircraft” prescribed by General Order 120 were not appropriate to hot air balloons. Since that time, cities and counties have had the authority to require balloonists operating in their jurisdiction to obtain a business license and to provide evidence of not less than one million dollars (\$1,000,000) in liability insurance coverage. The CPUC’s Consumer Protection and Safety Division (CPSD) is not aware of any negative consequences to the public caused by the shift from state to local regulation. Moreover, CPSD believes that local authorities are in a better position to enforce the insurance requirements.

SUMMARY OF SUGGESTED AMENDMENTS:

None.

DIVISION ANALYSIS (Consumer Protection and Safety Division):

Commercial air operators are required to maintain evidence of liability insurance coverage on file with the CPUC pursuant to Public Utilities Code Section 5500 et seq. and General Order 120. Generally, these are operators of small aircraft engaged in cargo, charter, and sightseeing services that are not required to obtain an operating certificate from the federal government.

In early 2002, liability insurance that met the requirements of General Order 120 became unavailable to California hot air balloonists because insurers withdrew from this market or offered coverage that was not acceptable under California law. In 2003, the hot air balloon industry petitioned the CPUC for relief from General Order 120 requirements. The CPUC granted partial relief but maintained some of the insurance standards which the balloonists said made securing acceptable coverage very difficult. As a consequence, the industry sought state legislation to remove hot air balloonists from the CPUC's jurisdiction. A 2004 bill, AB 2430 (Wiggins) – effective September 29, 2004 – set liability insurance standards for hot air balloon operators and gave authority to cities and counties to administer these requirements, but only until January 1, 2009. In 2008, the Legislature extended this date to January 1, 2013, as a result of SB 911 (Wiggins). AB 1524 permanently eliminates the CPUC's jurisdiction over hot air balloon insurance.

PROGRAM BACKGROUND:

Commercial air operators file evidence of insurance with the CPUC and pay an annual registration fee of \$25. Prior to the 2002 insurance crisis, hot air balloonists represented about 55 of the several hundred registered commercial air operators. The approximately \$1,400 in yearly registration fees paid by balloonists covered no more than CPUC's actual cost of maintaining the balloonists' insurance and processing their registrations. However, CPUC frequently received complaints from registered balloonists about noncompliant operators that required costly field investigations in various locations around the state, including the Napa Valley, Temecula, Palm Desert, and Del Mar. As a consequence, other fee payers to the Public Utilities Commission Transportation Reimbursement Account (PUCTRA), such as charter-party carriers and vessel common carriers, were subsidizing the Commission's oversight of hot air balloonists. This problem was eliminated when the balloonists were removed from the CPUC's jurisdiction. The loss of \$1,400 in registration fees was not significant.

LEGISLATIVE HISTORY:

AB 2430 (Wiggins) (Statutes of 2004, Chapter 881) – Until January 1, 2009, removed hot air balloon insurance from the CPUC's jurisdiction and authorized cities and counties to administer the insurance standards set by this bill.

SB 911 (Wiggins) (Statutes of 2008, Chapter 706) – Extended local government responsibility for administering hot air balloon insurance requirements to January 1, 2013.

FISCAL IMPACT:

None. CPSD has never had a dedicated staff person for hot air balloon oversight and several years have elapsed since any oversight activities have been necessary.

STATUS:

AB 1524 is pending hearing in the Assembly Transportation Committee.

SUPPORT/OPPOSITION:

None on file.

STAFF CONTACTS:

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BILL LANGUAGE:

BILL NUMBER: AB 1524 INTRODUCED
BILL TEXT

INTRODUCED BY Assembly Member Allen
 (Coauthor: Assembly Member Yamada)
 (Coauthors: Senators Evans and Wolk)

JANUARY 19, 2012

An act to amend Section 5513 of, and to amend and repeal Sections 5500 and 5501 of, the Public Utilities Code, relating to commercial air carriers.

LEGISLATIVE COUNSEL'S DIGEST

AB 1524, as introduced, Allen. Commercial air carriers: hot air balloons.

(1) Existing law requires the Public Utilities Commission to require every commercial air operator, as defined, to procure, and continue in effect, adequate protection against liability for personal bodily injuries and property damage as a result of an accident, that may be imposed by law upon the operator and upon any person using, operating, or renting an aircraft, as defined, with the permission of the operator.

Existing law, until January 1, 2013, excludes from the definition of commercial air operator a person furnishing or providing transportation by hot air balloon for hire and excludes from the definition of aircraft a hot air balloon, as provided. Existing law, until January 1, 2013, imposes specific liability insurance and passenger notice requirements on a person providing hot air balloon transportation, as provided. Existing law, until January 1, 2013, requires that any person providing such transportation for hire comply with any requirement of a city, county, or city and county (local government) that the person obtain a business license as a condition for operating in the jurisdiction of the local government and to prominently display the license as required, and provide to the local government certain evidence of insurance coverage.

Existing law imposes a state-mandated local program by requiring local governments, until January 1, 2013, to give reasonable notice of the evidence of insurance coverage requirement with any business license renewal notification and to maintain as a public record every business license issued by the local government to a person providing transportation by hot air balloon for hire. A local government, until January 1, 2013, is authorized to charge a reasonable fee for purposes of carrying out these provisions. Existing law also imposes a state-mandated local program by making it a misdemeanor to fail to obtain and maintain a current valid local business license as required or to fail to maintain insurance as required.

This bill would extend these provisions set to expire on January

1, 2013, indefinitely. The bill, in extending those dates indefinitely, would thereby impose state-mandated local programs for the purposes described above.

(2) 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:

SECTION 1. Section 5500 of the Public Utilities Code, as amended by Section 1 of Chapter 706 of the Statutes of 2008, is amended to read:

5500. ~~—(a) —~~ As used in this article, "commercial air operator" means any person owning, controlling, operating, renting, or managing aircraft for any commercial purpose for compensation. "Commercial air operator" does not include any person owning, controlling, operating, renting, managing, furnishing, or otherwise providing transportation by hot air balloon for entertainment, sporting, or recreational purposes.

~~—(b) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.~~

SEC. 2. Section 5500 of the Public Utilities Code, as amended by Section 2 of Chapter 706 of the Statutes of 2008, is repealed.

~~—5500. (a) As used in this article, "commercial air operator" means any person owning, controlling, operating, renting, or managing aircraft for any commercial purpose for compensation.~~

~~—(b) This section shall become operative on January 1, 2013.~~

SEC. 3. Section 5501 of the Public Utilities Code, as amended by Section 3 of Chapter 706 of the Statutes of 2008, is amended to read:

5501. ~~—(a) —~~ As used in this article, "aircraft" means any contrivance used for navigation of, or flight in, the air. "Aircraft" does not include a hot air balloon furnished or providing transportation for entertainment, sporting, or recreational purposes.

~~—(b) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.~~

SEC. 4. Section 5501 of the Public Utilities Code, as amended by Section 4 of Chapter 706 of the Statutes of 2008, is repealed.

~~—5501. (a) As used in this article, "aircraft" means any contrivance used for navigation of, or flight in, the air.~~

~~—(b) This section shall become operative on January 1, 2013.~~

SEC. 5. Section 5513 of the Public Utilities Code is amended to read:

5513. (a) Notwithstanding any other provision of this article, any person owning, controlling, operating, renting, managing, furnishing, or otherwise providing transportation by hot air balloon for hire shall maintain in force at least one million dollars (\$1,000,000) of liability insurance for personal injury, wrongful death, and property damage resulting from the operation of a balloon carrying up to 10 passengers, with additional liability coverage of one hundred thousand dollars (\$100,000) for each passenger for any balloon carrying more than 10 passengers. A notice shall be provided to every passenger that identifies both the insurer providing a policy of liability insurance to the person providing that transportation and the amount of insurance coverage provided by that policy.

(b) Any person owning, controlling, operating, renting, managing, furnishing, or otherwise providing transportation by hot air balloon for hire shall comply with any requirement of a city, county, or city and county that the person obtain a business license as a condition for operating in that city, county, or city and county. Whenever a city, county, or city and county requires a business license, any person owning, controlling, operating, renting, managing, furnishing, or otherwise providing transportation by hot air balloon for hire shall prominently display the license only within the city or county of the person's primary place of business frequented by customers and potential customers. Whenever a city, county, or city and county requires a business license, the person shall provide to the city, county, or city and county, a currently effective certificate of insurance evidencing insurance coverage as required in subdivision (a). A new certificate of insurance shall be provided to the city, county, or city and county, at least annually or whenever there is a material change in insurance coverage. A city, county, or city and county shall give reasonable notice of this requirement with any business license renewal notification. Every business license issued by a city, county, or city and county to any person owning, controlling, operating, renting, managing, furnishing, or otherwise providing transportation by hot air balloon for hire and every currently effective certificate of insurance evidencing insurance coverage, shall be maintained as a public record. The city, county, or city and county may charge a reasonable fee for purposes of carrying out the provisions of this subdivision.

(c) Any person who violates subdivision (a) by failing to maintain insurance in force as required by subdivision (a) is guilty of a misdemeanor. Any person who violates subdivision (b) by failing to obtain and maintain a current valid city, county, or city and county business license issued by the local government jurisdiction where the person's primary place of business is located, in accordance with subdivision (b), is guilty of a misdemeanor.

~~(d) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.~~

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act or because costs that may be

incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.