



Oregon

Kate Brown, Governor



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January 28, 2016

Representative Caddy McKeown, Chair
House Committee on Transportation and Economic Development
900 Court Street NE
Salem, OR 97301-4048

Dear Chair McKeown and members of the Committee:

Thank you for the opportunity to provide testimony during the January Interim session on LC 0166 (now HB 4039). My testimony raised some questions that I have done some research to add additional clarification to the testimony provided during the informational hearing. The primary issue that raised questions is the requested change to ORS 836.640. (Text included below)

THROUGH THE FENCE OPERATIONS

836.640 Definitions for ORS 836.640 and 836.642. As used in this section and ORS 836.642:

- (1) "Airport boundary" includes the combined public and private properties that are permitted to have direct access to the airport runway by aircraft.
- (2) "Customary and usual aviation-related activity" includes activities described in ORS 836.616 (2) and includes activities that a local government may authorize pursuant to ORS 836.616 (3).
- (3) "Pilot site" means a rural airport identified to participate in the pilot program pursuant to ORS 836.642.
- (4) "Rural airport" means an airport described in ORS 836.610 (1) that:
 - (a) Does not have a permanent air traffic control tower; and
 - (b) Principally serves a city or metropolitan statistical area with a population of 500,000 or fewer.
- (5) "Through the fence operation" means a customary and usual aviation-related activity that:
 - (a) Is conducted by a commercial or industrial user of property within an airport boundary; and
 - (b) Relies, for business purposes, on the ability to taxi aircraft directly from the property employed for the commercial or industrial use to an airport runway. [2005 c.820 §2; 2009 c.11 §100; 2009 c.398 §1]

The original Through The Fence (TTF) clause was introduced in 2005 as SB 680 (attachment 1). The purpose was to allow up to 3 airports to develop a public private venture that allowed aviation related businesses to access federally funded airports from private property where business owners owned both the property and the capital improvements to the property vice being tenants on the airports with the property leased to the business through a long term agreement (25 years) and the capital improvements are on airport land not owned by the business. Aurora State Airport and two others are identified in SB 680 bill. The intent was to encourage economic development at the TTF airports.

SB 680 did not have any clause about restricting air traffic control towers at TTF airports and the population threshold in the enrolled bill was airports in communities with populations greater than 75,000 were not eligible.

In 2009, SB170 (attachment 2) unanimously passed both legislative chambers of the legislature (Senate 30-0, House 52-0) expanding the TTF eligibility to 6 airports, increased the population threshold to 500,000 and included a clause to restrict TTF to those airports that do not have an air traffic control tower. The intent of the changes was to expand the eligibility for additional community airports for TTF opportunity.

- Expansion of the population threshold from 75,000 to 500,000 makes all communities in Oregon with the exception of the Portland Metro area eligible.
- Excluding airports with air traffic control towers affected only those airports outside the Portland Metro area that have commercial air service. At the time, only Hillsboro and Troutdale and Portland International airport, all inside the Portland Metro Area had air traffic control towers and were covered by the 500,000 population threshold. Only Hillsboro and Troutdale did not have commercial air service. All other air traffic control towers in the state (listed below) had commercial air service. The Federal Aviation Administration prohibits commercial air service airports from allowing TTF in the Transportation Security Administration (TSA) sterilized areas.
 - Eugene (Mahlen Sweet air field)
 - Klamath Falls (Crater Lake-Klamath Falls Regional Airport)
 - Medford (Rogue Valley International Airport)
 - North Bend (SW Regional Airport)
 - Pendleton (Eastern Oregon Regional Airport)
 - Redmond (Roberts Field Airport)
 - Salem ((McNary Field)

The commissioning of Aurora State Airport's air traffic control tower, made it the only an air traffic control tower outside the Portland Metro Area without commercial air service potentially placing Aurora State Airport at odds with ORS 836.640. Removal of the air traffic control tower restriction from ORS 836.640 will not affect other towered airports around the state due to the federal prohibition of TTF at commercial air service airports. This is due to the requirement to have a secure sterile environment as required by the Transportation Security Administration (TSA).

To address concerns that this could lead to additional Air Traffic Control Towers being built at other airports with TTF. Air Traffic Control Towers are very difficult to get approved by the FAA and require safety justifications and cost benefit analysis making future air traffic control towers in Oregon challenging to get built and staffed. This change will not generate a proliferation of new air traffic control towers. TTF is voluntary and must be requested by the airport sponsor and requires the approval of the county where a rural airport is located.

The intent of this clause of this bill is intended to clean up the language in the statute to reflect current development at Aurora that put an air traffic control tower at Aurora State Airport, one of the state's best beneficial examples of commercial Through The Fence public-private cooperation. I respectfully recommend a do pass recommendation for HB 4039.

Respectfully Submitted,



Mitch Swecker
 Director
 Oregon Department of Aviation

Enrolled
Senate Bill 680

Sponsored by Senator JOHNSON

CHAPTER

AN ACT

Relating to through the fence operations at rural airports.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 2 and 3 of this 2005 Act are added to and made a part of ORS chapter 836.

SECTION 2. As used in this section and section 3 of this 2005 Act:

(1) "Customary and usual aviation-related activity" includes activities described in ORS 836.616 (2) and includes activities that a local government may authorize pursuant to ORS 836.616 (3).

(2) "Pilot site" means a rural airport identified to participate in the pilot program pursuant to section 3 of this 2005 Act.

(3) "Rural airport" means an airport described in ORS 836.610 (1) that principally serves a city or standard metropolitan statistical area with a population of 75,000 or fewer.

(4) "Through the fence operation" means a customary and usual aviation-related activity that:

(a) Is conducted by a commercial or industrial user of property within an airport boundary; and

(b) Relies, for business purposes, on the ability to taxi aircraft directly from the property employed for the commercial or industrial use to an airport runway.

SECTION 3. (1) The Oregon Department of Aviation shall establish a pilot program at up to three rural airports to encourage development of through the fence operations designed to promote economic development by creating family wage jobs, by increasing local tax bases and by increasing financial support for rural airports. To the extent practicable, the airport sponsor of a pilot site shall use public-private partnerships that incorporate:

(a) Innovative and creative technologies for increasing airport usability and safety;

(b) Innovative and creative performance of aviation services to make the services more competitive and useful for the public;

(c) Development of the pilot site as a setting for customary and usual aviation-related activities to develop and thrive, in concert with the goals of the Economic and Community Development Department; and

(d) Shared responsibility for:

(A) Establishing and meeting the fiscal needs of the pilot site;

(B) Maintaining safety of operations; and

(C) Maintaining positive community relations and compatibility with existing uses.

(2) The pilot program shall operate at:

- (a) The Aurora State Airport; and
 - (b) Not more than two additional rural airports that volunteer to participate and are selected by the Oregon Department of Aviation with the concurrence of the county in which each rural airport is located.
- (3) The Oregon Department of Aviation, by rule, shall provide standards and guidelines for through the fence operations that:
- (a) Ensure that the operations provide financial support to the pilot sites in compliance with Federal Aviation Administration regulations;
 - (b) Require submission, review, approval and, as appropriate, revision of a facility site plan for each through the fence operation so that the real property covered by the site plan can be incorporated into the airport boundary and coordinated with the other aspects of the airport master plan;
 - (c) Ensure that the operations are conducted according to a written contract between the commercial or industrial user of property within the airport boundary and the airport sponsor;
 - (d) Ensure that pilot sites continue to operate in a safe manner and to fulfill their roles in Oregon's emergency response system;
 - (e) Preserve investments in pilot sites and the level of service provided by pilot sites;
 - (f) Facilitate orderly management of pilot sites;
 - (g) Provide equitable and uniform treatment of airport tenants and users at pilot sites;
 - (h) Advance economic development through qualified customary and usual aviation-related activities within the airport boundaries of pilot sites;
 - (i) Encourage well-ordered economic development within the airport boundaries of the pilot sites;
 - (j) Facilitate and foster good relations with the communities surrounding the pilot sites;
 - (k) Enable conformity with approved airport master plans;
 - (L) Make pilot sites available for public use on reasonable terms; and
 - (m) Assist pilot sites in developing financial self-sufficiency through the use of innovative funding and economic development programs.
- (4) The Department of Land Conservation and Development, the county and a city, if any, within whose jurisdiction a pilot site is located shall coordinate with the Oregon Department of Aviation to ensure that the applicable comprehensive plans and land use regulations, including airport zoning classifications pursuant to ORS 836.600 to 836.630, facilitate through the fence operations and support the development or expansion of the pilot site consistent with applicable statewide land use planning requirements.
- (5) The Economic and Community Development Department shall assist the pilot sites to:
- (a) Identify, qualify for and apply for funding from appropriate grant and loan programs; and
 - (b) Develop innovative short-term and long-term funding opportunities.
- (6) To the extent practicable, the airport sponsors shall utilize innovative airport infrastructure and operations funding to support the pilot sites including, but not limited to:
- (a) Airport districts as provided in ORS chapter 838;
 - (b) Economic development programs administered by the Economic and Community Development Department;
 - (c) Tax increment financing to provide funding for airport-related infrastructure;
 - (d) United States Department of Agriculture Rural Development grants or low-interest loans; and
 - (e) Programs, including funding for short line railroads under ORS 367.067, designed to facilitate development of intermodal transportation projects.

SECTION 4. (1) The Oregon Department of Aviation shall adopt rules to establish the pilot program required by section 3 of this 2005 Act within six months after the effective date of this 2005 Act.

(2) The Department of Land Conservation and Development, the county and a city, if any, within whose jurisdiction a pilot site is located shall coordinate with the Oregon Department of Aviation to implement the pilot program and to assist in the development of comprehensive plans and land use regulations in accordance with ORS 836.610 (1) that ensure that land use planning requirements facilitate implementation of the pilot program required by section 3 of this 2005 Act.

(3) Notwithstanding ORS 836.610 (2)(a), a county, in cooperation with a city within whose jurisdiction a pilot site is located, shall, if a pilot site is located within the county, amend its comprehensive plan and land use regulations as required in ORS 836.610 and sections 2 and 3 of this 2005 Act within one year after the Oregon Department of Aviation adopts the rules required by subsection (1) of this section.

Passed by Senate July 30, 2005

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Secretary of Senate

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President of Senate

Passed by House August 2, 2005

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Speaker of House

Received by Governor:

.....M.,....., 2005

Approved:

.....M.,....., 2005

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Governor

Filed in Office of Secretary of State:

.....M.,....., 2005

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Secretary of State

Enrolled
Senate Bill 170

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Theodore R. Kulongoski for Oregon Department of Aviation)

CHAPTER

AN ACT

Relating to rural airports; amending ORS 836.640 and 836.642.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 836.640 is amended to read:

836.640. As used in this section and ORS 836.642:

(1) **“Airport boundary” includes the combined public and private properties that are permitted to have direct access to the airport runway by aircraft.**

[(1)] (2) “Customary and usual aviation-related activity” includes activities described in ORS 836.616 (2) and includes activities that a local government may authorize pursuant to ORS 836.616 (3).

[(2)] (3) “Pilot site” means a rural airport identified to participate in the pilot program pursuant to ORS 836.642.

[(3)] (4) “Rural airport” means an airport described in ORS 836.610 (1) that:

(a) **Does not have a permanent air traffic control tower; and**

(b) Principally serves a city or standard metropolitan statistical area with a population of [75,000] **500,000** or fewer.

[(4)] (5) “Through the fence operation” means a customary and usual aviation-related activity that:

(a) Is conducted by a commercial or industrial user of property within an airport boundary; and

(b) Relies, for business purposes, on the ability to taxi aircraft directly from the property employed for the commercial or industrial use to an airport runway.

SECTION 2. ORS 836.642 is amended to read:

836.642. (1) The Oregon Department of Aviation shall establish a pilot program at up to [three] **six** rural airports to encourage development of through the fence operations designed to promote economic development by creating family wage jobs, by increasing local tax bases and by increasing financial support for rural airports. To the extent practicable, the airport sponsor of a pilot site shall use public-private partnerships that incorporate:

(a) Innovative and creative technologies for increasing airport usability and safety;

(b) Innovative and creative performance of aviation services to make the services more competitive and useful for the public;

(c) Development of the pilot site as a setting for customary and usual aviation-related activities to develop and thrive, in concert with the goals of the Economic and Community Development Department; and

(d) Shared responsibility for:

(A) Establishing and meeting the fiscal needs of the pilot site;

(B) Maintaining safety of operations; and

(C) Maintaining positive community relations and compatibility with existing uses.

(2) The pilot program shall operate at:

(a) The Aurora State Airport; and

(b) Not more than *[two]* **five** additional rural airports that volunteer to participate and are selected by the Oregon Department of Aviation with the concurrence of the county in which each rural airport is located.

(3) The Oregon Department of Aviation, by rule, shall provide standards and guidelines for through the fence operations that:

(a) Ensure that the operations provide financial support to the pilot sites in compliance with Federal Aviation Administration regulations;

(b) Require submission, review, approval and, as appropriate, revision of a facility site plan for each through the fence operation so that the real property covered by the site plan can be incorporated into the airport boundary and coordinated with the other aspects of the airport master plan;

(c) Ensure that the operations are conducted according to a written contract between the commercial or industrial user of property within the airport boundary and the airport sponsor;

(d) Ensure that pilot sites continue to operate in a safe manner and to fulfill their roles in Oregon's emergency response system;

(e) Preserve investments in pilot sites and the level of service provided by pilot sites;

(f) Facilitate orderly management of pilot sites;

(g) Provide equitable and uniform treatment of airport tenants and users at pilot sites;

(h) Advance economic development through qualified customary and usual aviation-related activities within the airport boundaries of pilot sites;

(i) Encourage well-ordered economic development within the airport boundaries of the pilot sites;

(j) Facilitate and foster good relations with the communities surrounding the pilot sites;

(k) Enable conformity with approved airport master plans;

(L) Make pilot sites available for public use on reasonable terms; and

(m) Assist pilot sites in developing financial self-sufficiency through the use of innovative funding and economic development programs.

(4) The Department of Land Conservation and Development, the county and a city, if any, within whose jurisdiction a pilot site is located shall coordinate with the Oregon Department of Aviation to ensure that the applicable comprehensive plans and land use regulations, including airport zoning classifications pursuant to ORS 836.600 to 836.630, facilitate through the fence operations and support the development or expansion of the pilot site consistent with applicable statewide land use planning requirements.

(5) The Economic and Community Development Department shall assist the pilot sites to:

(a) Identify, qualify for and apply for funding from appropriate grant and loan programs; and

(b) Develop innovative short-term and long-term funding opportunities.

(6) To the extent practicable, the airport sponsors shall utilize innovative airport infrastructure and operations funding to support the pilot sites including, but not limited to:

(a) Airport districts as provided in ORS chapter 838;

(b) Economic development programs administered by the Economic and Community Development Department;

(c) Tax increment financing to provide funding for airport-related infrastructure;

(d) United States Department of Agriculture Rural Development grants or low-interest loans; and

(e) Programs, including funding for short line railroads under ORS 367.067, designed to facilitate development of intermodal transportation projects.

Passed by Senate March 3, 2009

Repassed by Senate June 5, 2009

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Secretary of Senate

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President of Senate

Passed by House June 3, 2009

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Speaker of House

Received by Governor:

.....M,....., 2009

Approved:

.....M,....., 2009

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Governor

Filed in Office of Secretary of State:

.....M,....., 2009

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Secretary of State