

Date of Hearing: March 21, 2023

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Jesse Gabriel, Chair

AB 534 (McCarty) – As Amended March 16, 2023

SUBJECT: Local agencies: airports: customer facility charges

SYNOPSIS

Over the past 25 years, many California airports have chosen to locate rental car services in consolidated facilities that house all on-airport car rental companies in one location. Common-use transportation systems, such as shuttle bus systems and automated trains, can then be used to transport rental car customers between terminals and the consolidated rental car facility. These facilities and their associated transport systems are financed largely via customer facility charges (CFCs) collected from airport rental car patrons. Beginning in 1998, more than one dozen bills have been enacted to regulate the collection and use of CFCs. This bill is the latest in this series.

This bill would do two things. First, it would remove a January 1, 2024 sunset date on an existing provision of law that ensures airports can continue to require CFCs without first issuing a bond or obtaining other financing for consolidated facilities. Not having to first issue a bond provides airports with flexibility to use CFC funds both for facility construction, and on an as-needed basis for tasks like maintenance and repair. Removal of the sunset also ensures that airports can wait till interest rates are more favorable before issuing bonds.

Second, this bill would remove a requirement that airports obtain authorization no later than January 1, 2025, if they wish to impose a particular form of CFC known as an “alternative CFC.” Again, this removal would give airports needed flexibility in planning their capital expenditures.

Safeguards against consumer harm exist primarily in the form of detailed independent audits of CFC collection and expenditures that airports must obtain and make publicly available on their websites. Airports are also required to hold public hearings if they wish to increase the amount of the alternative CFC.

This bill is sponsored by the California Airports Council, comprised of the 31 commercial airports in California. It is supported by public entities overseeing airports in Oakland, Sacramento, and San Diego, and a car rental company.

SUMMARY: Removes a January 1, 2024 sunset date on provisions of California law authorizing and regulating airports’ imposition of a customer facility charge (CFC) or alternative customer facility charge (alternative CFC), collected by airport vehicle rental companies from renters, in order to finance consolidated airport vehicle rental facilities and/or common-use transportation systems that move passengers between airport terminals and rental facilities. Also removes a requirement that airports must initiate the process to impose the alternative CFC by January 1, 2025. Specifically, **this bill:**

- 1) Removes a January 1, 2024 sunset date on certain provisions of the Government Code that authorize airports to impose a CFC, including an alternative CFC, subject to extensive regulation. Removing the sunset does the following:
 - a) Prevents repeal of airports' authority to impose a CFC or alternative CFC when there is no outstanding bond or other indebtedness to repay to finance consolidated facilities.
 - b) Clarifies that the requirement to audit an airport's use of the alternative CFC does not terminate when bonds used for financing are repaid.
 - c) Prevents a now-unnecessary provision from taking effect that would authorize the Oakland International Airport to require collection of a CFC for a period of up to 10 years even if it did not use, or else has repaid, a bond or other indebtedness for financing consolidated facilities.
- 2) Removes a requirement that airports must initiate the process to impose the alternative CFC by January 1, 2025.

EXISTING LAW:

- 1) Defines "customer facility charge" to mean any fee—including an alternative fee—required by an airport to be collected by an airport vehicle rental company from a renter for any of the following purposes:
 - a) To finance, design, and construct consolidated airport vehicle rental facilities.
 - b) To finance, design, construct, and operate common-use transportation systems that move passengers between airport terminals and those consolidated vehicle rental facilities, and acquire vehicles for use in that transportation system.
 - c) To finance, design, and construct terminal modifications solely to accommodate and provide customer access to common-use transportation systems. (Gov. Code § 50474.21(a).)
- 2) Prohibits CFCs from being used to pay for terminal expansion, gate expansion, runway expansion, changes in hours of operation, or changes in the number of flights arriving or departing from the airport, except as permitted in 1) c). (Gov. Code § 50474.21(a)(3).)
- 3) Prohibits the aggregate amount of CFCs collected from renters from exceeding the reasonable costs to finance, design, and construct the facilities identified in 1) (consolidated facilities). (Gov. Code § 50474.21(b).)
- 4) Provides that the reasonable costs to finance, design, and construct consolidated facilities are to be determined by an audit conducted by an independent auditor and paid for by the airport. Permits this audit to be included in an audit of the airport's finances. (Gov. Code § 50474.21(b).)
- 5) Requires the independent auditor to independently examine and substantiate the necessity for, and the amount of, the CFC, including the following:

- a) Whether the airport's actual or projected costs are supported and justified;
 - b) Any steps the airport may take to limit costs;
 - c) Potential alternatives for meeting the airport's revenue needs other than the collection of the CFC;
 - d) Whether, and to what extent, rental companies or other businesses or individuals using the facility or common-use transportation system may pay for the costs associated with the facility and system apart from the CFC;
 - e) The reasonable costs of providing a transit system or busing network; and
 - f) Whether the airport failed to comply with any provision of the Government Code section authorizing collection of CFCs. (Gov. Code § 50474.21(b).)
- 6) Requires copies of the independent audit to be posted on the airport's internet website. (Gov. Code § 50474.21(b).)
- 7) Provides that, as of January 1, 2024, authorization for CFCs becomes inoperative when bonds used for financing are paid. (Gov. Code § 50474.21(c), as effective on January 1, 2024.)
- 8) Further provides that, as of January 1, 2024, notwithstanding 7), the Oakland International Airport may require collection of a CFC for a period of up to 10 years even if it did not use, or else repaid, a bond or other indebtedness for financing consolidated facilities. (Gov. Code § 50474.21(d), as effective on January 1, 2024.)
- 9) Permits a CFC to be collected by a rental company if all of the following requirements are satisfied:
- a) Collection of the CFC by the rental company is required by an airport operated by a city, a county, a city and county, a joint powers authority, a special district, or the San Diego County Regional Airport Authority.
 - b) The CFC is calculated on a per-contract basis, unless it is an alternative CFC, as described in 10) below.
 - c) The CFC is a user fee, not a tax on real property or property ownership under Article XIID of the California Constitution.
 - d) The CFC can be no more than \$10 per contract or the amount permitted to be charged for an alternative CFC, as described in 10) below.
 - e) The fee for a consolidated facility is collected only from customers of on-airport rental vehicle companies. If a common-use transportation system is used to transport customers to off-airport rental companies, then those customers may only be charged an amount proportionate to the costs of the transportation system.

- f) Revenues collected from the CFC do not exceed the reasonable costs of financing, designing, and constructing the facility and financing, designing, constructing, and operating any common-use transportation system, or acquiring vehicles for use in that system, and are not used for any other purpose.
 - g) The CFC is separately identified on the rental agreement.
 - h) An airport shall not require a rental company to collect a fee from a consumer pursuant to this article if that requirement would result in the rental company collecting more than one customer facility charge from that consumer in connection with a single rental. (Gov. Code § 50474.3(a).)
- 10) Permits an airport to impose an alternative CFC of no more than \$9 per day for five days, as an alternative to the CFC of \$10 per contract permitted under 9) d) above, in order to finance the design and construction of a consolidated rental vehicle facility and/or the design, construction, and operation of any common-use transportation system. (Gov. Code § 50474.3(b)(3).)
- 11) Requires an airport to conduct a publicly-noticed hearing, subject to enumerated requirements, before it can impose or increase an alternative CFC. (Gov. Code § 50474.3(b).)
- 12) Further requires an airport to initiate the process for obtaining authority to impose or increase an alternative CFC no later than January 1, 2025. (Gov. Code § 50474.3(b)(3)(E).)
- 13) Requires the proceeds of any bonds backed by alternative CFCs to be limited to construction and design of the consolidated rental vehicle facility, terminal modifications, and operating costs of the common-use transportation system. (Gov. Code § 50474.3(b)(4)(C).)
- 14) Declares that the authorization for the alternative CFC becomes inoperative when the bonds used for financing are paid. (Gov. Code § 50474.3(b)(3)(E).)
- 15) Requires an airport imposing an alternative CFC to do all of the following:
- a) Post reports on its website detailing the total amount of the alternative CFC collected, how the funds are being spent, and the amount of and reason for any changes in the airport's budget or financial needs for the consolidated facility or common-use transportation system. (Gov. Code § 50474.3(b)(4)(A).)
 - b) Complete an independent audit prior to initial collection of the alternative CFC that conforms to the requirements under 4) and 5), and post the audit on its website. Update this audit before any increase in the alternative CFC. (Gov. Code § 50474.3(b)(4)(B).)
 - c) Complete an audit every three years after initial collection of the alternative CFC, but only if it is being collected for the purpose of operating a common-use transportation system or to acquire vehicles for use in the system. This information must be compiled in one document and posted on the airport's internet website. (Gov. Code § 50474.3(b)(4)(B).)
- 16) Sunsets 9) – 15) on January 1, 2024.

FISCAL EFFECT: As currently in print this bill is keyed non-fiscal.

COMMENTS:

1) **Background.** Over the past 25 years, many California airports have chosen to locate rental car services in consolidated facilities that house all on-airport car rental companies in one location. Common-use transportation systems, including shuttle bus systems and automated trains, can then be used to transport rental car customers between terminals and the consolidated rental car facility. These facilities and their associated transport systems are financed largely via customer facility charges collected from airport rental car patrons.

This bill is the latest in a series of over one dozen bills the Legislature has enacted since 1998 to regulate the collection and use of customer facility charges. (*See* comment 6) **History of CFCs and alternative CFCs**, below, for a description of the major bills in this series.)

In order to understand what this bill does, it is necessary to first understand two terms defined in the Government Code: customer facility charge (CFC) and alternative customer facility charge (alternative CFC). The CFC is a fee of up to \$10 that can be charged to a rental car customer once per car rental contract, regardless of how long the car is rented for. The alternative CFC is a subset of a CFC: it is a fee of up to \$9/day that can be charged to a rental car customer for up to five days of car rental, again, regardless of how long the car is rented for. In other words, if an airport has obtained the necessary authorization, a person who rents a car at a consolidated rental car facility at that airport could be charged either (i) a one-time fee of up to \$10 or (ii) a fee of up to \$45, depending on the number of days the car is rented for. An airport that seeks to impose an alternative CFC to fund its consolidated facility and transportation system is subject to heightened statutory requirements beyond those required to impose a CFC.

Revenues from CFCs (including alternative CFCs) may be used only for the following three purposes:

- a) To finance, design, and construct consolidated airport vehicle rental facilities.
- b) To finance, design, construct, and operate common-use transportation systems that move passengers between airport terminals and those consolidated vehicle rental facilities, and acquire vehicles for use in that transportation system.
- c) To finance, design, and construct terminal modifications solely to accommodate and provide customer access to common-use transportation systems. (Gov. Code § 50474.21(a).)

(For convenience, the rest of this analysis will use the term “consolidated facilities” to refer collectively to all three of these permissible uses.)

Critical laws in this area will sunset on January 1, 2024 and January 1, 2025, allowing several restrictions on the use of CFCs, including alternative CFCs, to go into effect. The author and sponsor contend these restrictions would harm California airports’ continued development and operation of consolidated facilities, including electrification of gas-powered buses currently used

in common-use transportation systems. They have introduced this bill to prevent these harms by permanently removing the sunset dates.

2) **Author's Statement.** According to the author:

AB 534 will address the inefficient provisions of current law by eliminating the alternative daily CFC sunset date, which functions as an artificial deadline and does not allow California airports to begin the process to implement the fee at a time that matches the growth and development planning of an airport, nor the aging and deterioration of existing rental car facilities that are in need of modernization or replacement.

All airports have facility masterplans that are dynamic, living documents that are modified over time based on a variety of local factors, including levels of air service, passenger volumes and regional economic considerations. The alternative CFC is a common and useful financing tool for airports in California and should be available to California airports at the time each individual airport's planning cycle compels the need for a new or upgraded rental car facility.

AB 534 does not propose an increase in the fee. It only provides latitude for airports to make local decisions on when the fee may be implemented.

3) **What this bill would do: remove indebtedness requirement.** Under current law, due to sunset on January 1, 2024, airports may collect CFCs, including alternative CFCs, without first having to issue a bond or obtain other financing to then be repaid by CFC revenues. Not having to first issue a bond provides airports with flexibility to use CFC funds both for facility construction, and on an as-needed basis for tasks like routine maintenance and repair.

This bill would delete the January 1, 2024 sunset date, thereby continuing to allow airports to use CFC revenue to fund consolidated facilities, including maintenance and repair, without first issuing bonds. This deletion is in many ways needed because air travel significantly decreased during the first year of the COVID-19 pandemic. Fewer air travelers meant fewer car rentals, which in turn meant decreased CFC revenue for airports. As explained by bill sponsor California Airports Council, comprised of the state's 31 commercial airports:

The COVID-19 pandemic brought an unprecedented and historic drop in air service and passenger volumes to airports worldwide—at some California airports, pre-pandemic air travel patterns have yet to return. During the pandemic, several California airports delayed capital projects, which underscores how the current sunset date, established in 2017 and extended for one year in 2022, has no connection to current realities in airport capital project planning.

To require bond issuance beginning in January 2024 would also ignore the reality that interest rates have increased significantly in the last two years, meaning that municipal bonds issued today will be much more expensive to repay in the future. Removing the bond requirement allows California airports to fund their current consolidated facility needs through CFCs and wait until interest rates drop before issuing bonds for more expensive projects. As summarized by the County of Sacramento: “[T]he removal of these restrictions [is] vital to ensure that airports and their rental car provider partners retain flexibility in the timing and structure of major investments.” This sentiment is echoed by the Oakland International Airport: “The removal of

the bond indebtedness requirement will ensure that California airports can make local decisions to pursue the most efficient expenditure of user fee revenue to support rental customers....”

Permanently removing the bond requirement has another advantage that is in keeping with California’s policy goals. Per the California Airports Council, “[B]y removing the requirement that the facility have outstanding debt in order to implement the alternative CFC, airports will be able to maintain transportation system operations and pursue electrification infrastructure investments for the future conversion of rental car fleets to electric” without first issuing expensive bonds.

Finally, as it would be rendered superfluous, the bill removes a provision specific to the Oakland International Airport allowing it to require collection of a CFC for a period of up to 10 years even if it did not use, or else had repaid, a bond or other indebtedness for financing consolidated facilities.

4) What this bill would do: remove January 1, 2025 deadline to initiate alternative CFC.

Current law requires airports seeking to impose an alternative CFC to initiate the process of obtaining authorization no later than January 1, 2025, which some interpret as requiring airports to obtain bond financing by this date. Again, this would be undesirable given current interest rates.

As explained by San Diego International Airport:

This [January 1, 2025] date functions as an artificial deadline and does not allow California airports to begin the process of imposing the fee at a time that matches the growth and development experience of the airport nor the aging and deterioration of existing facilities that are in need of replacement. [...] With the elimination of the sunset date, AB 534 will also clarify the question about the required timing of the bond issuance.

This provision is particularly important for Oakland International Airport, which writes:

The current per contract CFC imposed by OAK is no longer sufficient to maintain the full cost of the operations of the common use bussing system for rental car users, nor will it be adequate for the procurement of zero emissions shuttle buses in the future, along with the needed electric charging infrastructure systems. For that reason, OAK will be seeking to convert to an alternative (daily) fee if the authority for the alternative CFC mechanism is approved and extended by the Legislature.

The County of Sacramento adds:

Passage of AB 534 will eliminate the sunset date for the alternative airport rental car Customer Facility Charge (CFC) that requires airports to issue CFC-backed debt by January 1, 202[5], or lose the ability to collect the CFC to fund Rental Car facilities. [...]

The Sacramento County Department of Airports recently announced plans for a series of significant investments at Sacramento International Airport totaling more than \$1.3 billion known as “SMForward”, with a completion target of 2027. Sacramento International Airport is one of the fastest growing airports in the nation in terms of passenger volume, and has already exceeded pre-pandemic passenger counts.]

The largest project of the SMForward program consists of a new, nearly \$400 million Consolidated Rental Car Facility. This facility will eliminate the need for shuttling of rental car customers to a location remote from the terminals, and will allow the Department to offer a higher level of service. Due to the project's complexity as well as the scale of enabling projects that precede it, passage of AB 534 will provide critical flexibility in timing to ensure that the Department is able to secure financing for the project at a time that ensures resources are put to their highest and best use.

To sum, removing the January 1, 2025 deadline would prevent disruption of airports' plans to develop consolidated facilities, while providing them with flexibility in financial planning.

5) **Analysis of potential consumer harm.** The main question before this Committee is whether consumers would be harmed by lifting the sunset dates in current law, thereby permanently removing the requirement that airports obtain bond or other financing as a condition of requiring CFCs. The risk is that CFC revenues become a sort of slush fund for anything an airport wishes to do related to consolidated facilities.

The strongest safeguard against such an outcome are the current audit requirements in state law. Under Government Code § 50474.21(b), an independent auditor paid for by the airport must determine whether “[t]he aggregate amount [of CFCs] to be collected...exceed[s] the reasonable costs...to finance, design, and construct those facilities.” Paragraph 5 under **EXISTING LAW**, above, sets forth in detail the factors that auditor must examine and substantiate. Further, under Government Code § 50474.3(b)(4)(B)(iii), an additional audit must be completed every three years “if the customer facility charge is collected for the purpose of operating a common-use transportation system or to acquire vehicles for use in the system[.]” An example of such an audit for Burbank International Airport can be found at <http://www.hollywoodburbankairport.com/wp-content/uploads/2022/02/BGPAA-Customer-Facility-Charge-6.30.2021-FINAL-12.16.2021.pdf>. It also bears mention that airports are audited annually by the Federal Aviation Administration, though there are no audit requirements specific to CFCs under federal law.

As a further safeguard, an airport must conduct a publicly-noticed hearing both before initially authorizing collection of an alternative CFC, and before any increase in the amount of the fee. (*See* Gov. Code § 50474.3(b).)

As a final note, despite the many sunsets placed and extended on the statutes authorizing collection of CFCs and alternative CFCs over the past 25 years, Committee staff was unable to find any record of a complaint regarding an airport's overcollection of funds being filed with a pertinent policy or fiscal Committee of this Legislature.

In light of the foregoing, and given the lengthy history of CFC collection and regulation (described in the next section), it is difficult to anticipate this bill introducing consumer harm.

6) **History of CFCs and alternative CFCs.** The authority to collect CFCs began in California in the late 1990s when the Legislature enacted two bills, SB 1907 (Burton, Chap. 889, Stats. 1998) and SB 1228 (Vasconcellos, Chap. 760, Stats. 1999), which for the first time allowed San Diego, San Francisco, and San Jose International Airports to collect CFCs as a separate surcharge, not included in the base rate for renting a car, in order to finance consolidated facilities. SB 1228

imposed various restrictions on the fee, including: i) capping the amount at \$10.15 per rental contract; ii) preventing its collection until the facility was constructed, occupied, and open for service; iii) limiting authority to collect the fee to 20 years; and iv) capping the total amount of fees that could be collected.

In 2001, AB 491 (Frommer, Chap. 661, Stats. 2001) granted general authorization to public airports in California to impose a \$10 CFC to finance consolidated facilities. AB 491 also deemed the authority to collect the CFC to have expired when the bonds or other indebtedness used for financing were repaid, rather than utilizing the previous rules that ended authorization after 20 years and capped the aggregate amount of CFCs that could be collected.

In 2008, AB 2142 (Swanson, Chap. 228, Stats. 2008) authorized Oakland International Airport to assess and collect a CFC to finance consolidated facilities, even if the CFC was not used to repay a bond or other form of indebtedness.

For approximately ten years, the allowable CFC fee was set at \$10 per rental contract, regardless of the duration of the car rental. In 2010, the Legislature revised the CFC fee structure in response to feedback from the airports that the existing \$10 per contract fee was inadequate to fund some proposed consolidated facilities. SB 1192 (Oropeza, Chap. 642, Stats. 2010) permitted airports to impose the alternative CFC for the first time. The alternative CFC fee structure allowed an airport to charge a daily fee for up to five days for each individual rental car contract. The maximum daily fee started at \$6 per day and increased to \$9 per day according to a statutory schedule. SB 1192 also expanded the range of uses for which CFC revenue could be spent, including purchasing vehicles for a common-use transport system that would shuttle passengers between a consolidated rental facility and the airport terminals, and for terminal modifications undertaken to provide access to a common-use transport system. SB 1192 also imposed a limitation on the timing of when an airport could seek authority to impose the alternative CFC. Specifically, SB 1192 required an airport to initiate the process for obtaining the authority to require or increase the alternative CFC by no later than January 1, 2018, thus providing a seven-year window of opportunity to take such action, beginning on January 1, 2011, the first day that SB 1192 became effective. Finally, SB 1192 imposed an audit requirement, directing airports to complete independent audits of CFC-funded projects prior to the initial charge of a CFC, prior to any increase in the CFC, and every three years after its initial collection or any increase.

SB 1192 initially required the State Controller's Office to review these audits, but SB 1006 (Budget, Chap. 32, Stats. 2012) eliminated this requirement. AB 359 (Holden, Chap. 549, Stats. 2013) modified the guidelines governing independent audits of CFCs, and for the first time, required these audits to be posted on airports' internet websites.

AB 2280 (Ridley-Thomas, Chap. 414, Stats. 2016) expanded, for the Los Angeles International Airport, the types of debts that may be repaid with CFC revenue and increased the range of allowable uses to which CFC revenue could be directed. These changes were requested and granted in anticipation of Los Angeles' bid to host the Olympics. AB 2051 (O'Donnell, Chap. 183, Stats. 2016) recast and reorganized the laws pertaining to contracts between rental car companies and their customers in connection with the rental of a passenger vehicle; as part of

these amendments, the bill made technical and clarifying changes to the provisions governing CFCs.

AB 218 (Bonta, Chap. 311, Stats. 2017) imposed a January 1, 2023 sunset date on repeal of provisions i) authorizing airports to impose a CFC or alternative CFC when there is no outstanding bond or other indebtedness to repay to finance consolidated facilities, and ii) authorizing Oakland International Airport to require collection of a CFC for a period of up to 10 years even if it did not use, or else has repaid, a bond or other indebtedness for financing consolidated facilities. AB 157 (Budget, Chap. 570, Stats. 2022) extended this sunset date to January 1, 2024. (As described above, the present bill would remove the January 1, 2024 sunset date entirely.)

AB 1286 (Friedman, Chap. 325, Stats. 2017) extended the deadline by which airports must initiate the process to impose the alternative CFC from January 1, 2018, to January 1, 2025. (As described above, the present bill would remove the January 1, 2025 deadline entirely.)

ARGUMENTS IN SUPPORT: Enterprise Holdings, a vehicle rental company, supports the bill for offering airports financial flexibility:

Enterprise Holdings, the largest transportation solutions provider offering car and truck rentals... supports the goal of AB 534 which is to clarify airports' ability to deliver capital infrastructure improvements and common-use transportation services for the benefit of rental car customers through rental car Customer Facility Charges (CFCs). [...This bill will] ensure that California airports can make local decisions to pursue the most efficient expenditure of user fee revenue to support rental car customers

REGISTERED SUPPORT / OPPOSITION:

Support

California Airports Council (sponsor)
County of Sacramento
Enterprise Holdings
Oakland International Airport
Port of Oakland
San Diego County Regional Airport Authority

Opposition

None on file

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