REPORT

DATE: July 12, 2007

TO: Regional Council and Transportation and Communications Committee

FROM: Annie Nam, Program Manager, 213-236-1827, nam@scag.ca.gov

SUBJECT: SB 974 (Lowenthal): Ports and Container Fees

EXECUTIVE DIRECTOR'S APPROVAL: Hasan Ikhrata for mp

RECOMMENDED ACTION:

SUPPORT IF AMENDED. Although the objectives of SB 974 (Lowenthal) are generally consistent with SCAG's user-fee based financial policies, the bill as currently written includes a number of provisions that warrant clarification and amendment consideration.

Staff recommends the following amendments:

- Authorize a locally administered process whereby local stakeholder government agencies would allocate, in consultation with state entities as appropriate, container fee revenues for congestion relief and environmental mitigation projects;
- Broaden project eligibility criteria to include highway facilities serving the ports as long as air quality, health, and community impacts are fully mitigated and integrated into system improvements;
- Consider revising the fee structure/rate to better reflect the proper allocation of costs based on proportional benefits and/or impacts generated from cargo movement—establish a stronger nexus;
- Clarify provisions to encourage compliance rather than penalize non-compliance with port emission reduction plans.

For further discussion of these recommendations, please refer to the Analysis section of this report.

BACKGROUND

SB 974 (Lowenthal) would impose user-fees on the owner of container cargo to finance projects that reduce congestion and mitigate the air quality impacts associated with goods movement. This bill is similar to Senator Lowenthal's SB 927 of the 2006 legislative session, which passed the Legislature but was vetoed by the Governor. The Governor's veto message cited a number of concerns including the lack of coordination with other public and private financing sources to leverage additional funding. A general overview of the current provisions included in SB 974 is highlighted below:

- Requires the Ports of Los Angeles, Long Beach, and Oakland to collect user-fees from container cargo owners at a rate of $30 per twenty-foot equivalent unit (TEU)—commencing on January 1, 2009.
- Requires the Ports of Los Angeles and Long Beach to deposit ½ of their funds, derived from the container fee, to the Southern California Port Congestion Relief Trust Fund. The remaining ½ of

funds would be deposited into the Southern California Port Mitigation Relief Trust Fund. These funds are to be established in the State Treasury.

- Requires corresponding trust funds for Northern California from fees collected by the Port of Oakland.
- Authorizes the California Transportation Commission (CTC) to expend monies from the Congestion Relief Funds for projects that improve the flow and efficiency of cargo movement (includes administrative costs). The CTC is prohibited from using these funds to construct, maintain, or improve highways, with certain exceptions.
- Authorizes the State Air Resources Board (ARB) to expend monies from the Mitigation Funds for projects that reduce air pollution caused by the movement of container cargo (includes administrative costs).
- Prohibits funds deposited in all of these accounts from being loaned or transferred to the General Fund.
- Authorizes the Infrastructure and Economic Development Bank to enter into financing agreements and to issue revenue bonds secured by user-fees on container cargo moving through the ports.
- Requires the Ports of Los Angeles and Long Beach to report to the CTC on the implementation of the Final 2006 San Pedro Bay Ports Clean Air Action Plan. If specific emission reduction goals are not met, funds would be withheld.

ANALYSIS:

Staff recognizes the critical importance of establishing a sustainable funding mechanism to support projects that facilitate the movement of goods while reducing negative impacts on local communities. Although the overall objectives of SB 974 is consistent with SCAG's user-fee based financial policies, the bill as currently written includes a number of provisions that warrant clarification and amendment consideration.

SB 974 proposes a state administered program to fund congestion relief and environmental mitigation projects. State agencies—namely, the CTC and the ARB—would be required to develop a list of congestion relief and mitigation projects in consultation with numerous local stakeholders. Final allocation of funding for projects would remain with the CTC and the ARB for their respective funds. SCAG staff recommends a locally administered process whereby local stakeholder government agencies would allocate, in consultation with state entities as appropriate, container fee revenues for congestion relief and mitigation projects. Additionally, project eligibility criteria should be broadened to include highway facilities serving the ports as long as air quality, health, and community impacts are fully mitigated and integrated into system improvements.

Staff recommends a more defined fee structure as well. As currently written, SB 974 indicates that fees are, "not to exceed $30 per twenty-foot equivalent unit (TEU)," without any additional fee related provisions. SB 974 does not specify how the fee would be applied to full versus empty containers, nor does it explain how the fee amount would translate when accounting for both inbound and outbound container movement. A more defined fee methodology would better establish a nexus between those who benefit from the investment and those who pay.

A concern often raised is that a fee (any rate of container fees) would dampen the economic competitiveness of the ports, causing the diversion of cargo to other port facilities outside of California. SCAG's Port and Modal Elasticity Study (2005) concluded that cargo volumes are more sensitive to congestion than to fees. Without congestion relief, even a modest container fee would result in the diversion of some cargo. With congestion relief, however, cargo volumes would remain constant with a fee of up to $200 per container (approximately $100/TEU). Accordingly, the productivity gains from investment in Southern California's goods movement system generates sufficient value and efficiencies to justify a fee structure that is more robust than the fee proposed by SB 974. Staff recommends revising the proposed $30/TEU fee to better reflect the proper allocation of costs based on proportional benefits and/or impacts generated from cargo movement—establish a stronger nexus.

The bill also requires the Ports of Los Angeles and Long Beach to report to the CTC on the status of emission reduction goals included in the Final 2006 San Pedro Bay Ports Clean Air Action Plan. If any of the reduction goals have not been met, the CTC would withhold any further funding until the source specific emission reduction goals are achieved. This provision places restrictions on revenues collected locally and serves to potentially penalize Southern California for developing a non-mandated plan. To date, the Ports of Los Angeles and Long Beach are the only ports in the state to have developed an emission reduction plan. SB 974 should be clarified to include provisions that would encourage compliance rather than penalize non-compliance.

FISCAL IMPACT:
Work associated with this item is included in the current year Overall Work Program.

Reviewed by:

Division Manager

Reviewed by:

Department Director

Reviewed by:

Chief Financial Officer