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Metropolitan Transportation Authority

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EXECUTIVE MANAGEMENT AND AUDIT COMMITTEE
JUNE 21, 2007

SUBJECT: STATE LEGISLATION

ACTION: ADOPT STAFF RECOMMENDED POSITIONS

RECOMMENDATION

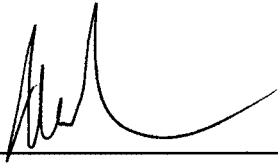
- A. **SB 9 (LOWENTHAL)** - Would establish conditions for allocating goods movement project funds from the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act (November 2006). **SUPPORT IF AMENDED**
- B. **SB 375 (STEINBERG)** – Would require Regional Transportation Plans (RTP) to address the reduction of greenhouse gases and require transportation funding to be allocated according to those plans. Would authorize modified environmental review procedures for projects conforming to the new plans. **OPPOSE UNLESS AMENDED**
- C. **SB 716 (PERATA)** - Would establish an allocation process for public transit funding made available from the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act (November 2006) (November 2006). **OPPOSE**
- D. **SB 803 (LOWENTHAL)** – Would require that projects utilizing a community conservation corps be given priority in the allocation of transportation enhancement funds. **SUPPORT**
- E. **SB 964 (ROMERO)** – Would prohibit a majority of the members of a legislative body from using a series of communications, directly or through intermediaries, to conduct deliberations, including, but not limited to any communications that advance or clarify a member's understanding of an issue. **WORK WITH AUTHOR**
- F. **SB 974 (LOWENTHAL)** - Requires the Ports of Los Angeles, Long Beach and Oakland to impose container fees. **SUPPORT ~~IF AMENDED~~**

ATTACHMENTS

Attachments A - F

Prepared by:
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BILL: SB 9

AUTHOR: SENATOR ALAN LOWENTHAL
(D- LONG BEACH)

SUBJECT: PROPOSITION 1B – TRADE CORRIDORS IMPROVEMENT FUND

STATUS: IN ASSEMBLY

ACTION: SUPPORT IF AMENDED

RECOMMENDATION

Adopt a “Support if Amended” position on SB 9 (Lowenthal), which would establish a process for the selection of transportation projects for funding through the Trade Corridors Improvement Fund (TCIF).

ISSUE

Proposition 1B, the Highway Safety, Traffic Reduction, Air Quality and Port Security Fund of 2006 authorized \$19.9 billion for various categories of transportation improvements. Many of the categories in the bond are subject to further legislation which will define how bond funds are to be administered. Senator Lowenthal introduced SB 9 to establish a process for the selection of transportation projects for funding through the TCIF. Metro Board of Directors previously adopted a Work-with-Author Position on SB 9. The measure has been amended and a number of discussions have taken place which warrant the Board’s reconsideration of SB 9.

PROVISIONS

Existing law requires that \$2 billion be transferred to the newly created TCIF. The funds shall be allocated by the California Transportation Commission (CTC) for infrastructure projects along "Trade Corridors of National Significance" or along other corridors within California that have a high volume of freight movement.

Specifically, SB 9 would:

- Require that projects be included in an approved Regional Transportation Plan (RTP);
- Require the CTC to consider specified emissions associated with the construction and operation project funding selection process and to place an emphasis on projects that demonstrate local cooperation among more than one local government or agency;
- Require applicants to include a plan to mitigate emissions associated with the project, and in lieu of a plan, allow the project sponsor to pay a mitigation fee to the local air

district in an amount equal to the actual costs of mitigation plus three percent for administration;

- Require that projects be monitored periodically to ensure that performance standards are being met;
- Provide that funds may only be allocated to those projects that with TCIF funding would be fully funded and ready for construction;
- Specify that TCIF funds shall only be used to pay for the costs of construction;
- Set aside \$50 million to fund demonstration projects that have the potential to support the movement of freight in a manner that produces zero emissions.

IMPACT ANALYSIS

SB 9 was introduced by Senator Alan Lowenthal to better define the allocation of the \$2 billion in Proposition 1B bond proceeds for capital projects that improve goods movement as well as reduce emissions. In light of the major air quality and congestion impacts caused by goods movement related activities, Senator Lowenthal is proposing the process proposed by SB 9 to assist Los Angeles County in improving its air quality.

SB 9 proposes to structure the TCIF program so that bond proceeds are used to invest in capital projects that will reduce emissions. The bill would require project sponsors to include a plan to mitigate emissions associated with the project, or in lieu of a plan, allow the project sponsor to pay a mitigation fee to the local air district in an amount equal to the actual costs of mitigation. The amount of the fee would be determined by the air district in the region of the project.

SB 9 also specifies that the emissions of a project are the responsibility of the agency proposing a project. The implications of this requirement are not readily apparent from the language in the bill. Recent discussions about SB 9 have included a proposal that projects would be tracked to ensure that the exact emission reductions predicted from environmental documents be tracked and verified after a certain period of time. If those emission reductions were not met then the agency proposing the project would be responsible for taking remedial action.

In addition, the bill requires that the bond proceeds only fund projects in which the TCIF funds would fully fund a project. This requirement is always difficult for Metro because we have to ensure that a project is fully funded in order to receive funding. Metro funds projects through various funding sources. These funding sources do not always come at the same time. This requirement could potentially impact the number of projects that could be eligible for TCIF bond proceeds if full funding has not been identified.

Finally, the Ports of Los Angeles and Long Beach have developed recommended amendments to SB 9 which would require funds to be allocated to trade corridor regions in proportions based on cargo volume. Projects within regions would then compete for funds made available to each region. Similarly, both the Ports and Metro are concerned about the provisions requiring full project funding and the link between a project and emission reductions.

Metro staff is working with the Ports to advance these issues. Specifically, staff recommends that SB 9 be amended to ease the full funding restrictions, modification of the mitigation plan requirements and incorporation of the cargo volume strategy advocated by the Ports. Metro staff therefore recommends a Support if Amended position on SB 9. According to the Senate floor analysis, there was no support or opposition received.

BILL: SB 375

AUTHOR: SENATOR DARRELL STEINBERG
(D-SACRAMENTO)

SUBJECT: TRANSPORTATION PLANNING

STATUS: IN ASSEMBLY PENDING COMMITTEE ASSIGNMENT

ACTION: OPPOSE UNLESS AMENDED

RECOMMENDATION

Adopt an “Oppose unless Amended” position on SB 375 (Steinberg), which would require Regional Transportation Plans (RTP) to address the reduction of greenhouse gases and require transportation funding to be allocated according to those plans.

ISSUE

Senator Steinberg has introduced SB 375 which proposes a significant restructuring of the RTP process. Specifically SB 375 requires RTP’s to include a Preferred Growth Scenario (PGS) which addresses the emission of greenhouse gasses. The measure would prohibit the allocation of funds if the project included in the Regional Transportation Improvement Program (RTIP) is not consistent with the adopted (RTP). Would require the California Transportation Commission to develop guidelines for the use of travel demand models consistent with the revised RTP’s and would authorize modified environmental review procedures for projects conforming to the new plans.

PROVISIONS

Existing law requires certain transportation planning activities by the Department of Transportation and by designated regional transportation planning agencies, including development of a RTP and authorizes the CTC, in cooperation with the regional agencies, to prescribe study areas for analysis and evaluation.

Specifically, SB 375 would change the planning process in three ways:

1. Regional Transportation Plans

- Require the regional transportation plan to include a preferred growth scenario designed to achieve certain goals for the reduction of greenhouse gases and vehicle miles traveled in a region;
- Require certain transportation planning and programming activities by regional agencies to be consistent with the preferred growth scenario, including the

programming of transportation projects in the regional transportation improvement program and the implementation of infill opportunity zones, among other things;

- Require the California Air Resources Board to provide emission reduction targets to each region which are then to be incorporated into the preferred growth scenario.

2. Travel Demand Models

- Require the California Transportation Commission, by April 1, 2008, to adopt guidelines for the use of travel demand models that account for the relationship of land uses and number of factors such as vehicle miles traveled and vehicle ownership;
- Require a regional transportation planning agency for a region with a population of 800,000 or more to use those guidelines.

3. California Environmental Quality Act

- Require the environmental document prepared pursuant to CEQA to only examine the significant or potentially significant project specific impacts of a project located in a local jurisdiction that has amended its general plan so that the land use, circulation, housing, and open-space elements of the general plan are consistent with the preferred growth scenario, if the project is a residential project or a residential or mixed use project, a project on an infill site, and located within an urbanized area;
- Provide that no additional review is required pursuant to CEQA for a project if the legislative body of a local jurisdiction that has amended its general plan, as provided above, finds, after conducting a public hearing, that the project meets certain criteria and is declared to be a sustainable communities project;
- Authorize the legislative body of such a local jurisdiction within an urbanized area to adopt traffic mitigation policies for future residential projects. The bill would exempt a residential project seeking a land use approval from compliance with additional mitigation measures for traffic impacts, if the local jurisdiction has adopted the traffic mitigation policies.

IMPACT ANALYSIS

SB 375 is an attempt to revamp the transportation and land use planning process in order to address environmental concerns, chiefly the emission of greenhouse gases. The goals of SB 375 are strongly supported by Metro in that a coordinated land use and transportation planning process would lead to such reductions. Metro is in the process of updating its Long Range Transportation Plan (LRTP) and this plan is an important component of the region's efforts to improve air quality. The LRTP is currently developed in close coordination with the Southern California Association of Governments (SCAG) which has the responsibility of ensuring that the RTP meets federally mandated air quality requirements. However, SB 375 would create a very restrictive planning process and would introduce both the State Air Resources Board and the Southern California Association of Governments into the local planning and project selection process.

SB 375 would require the development of a PGS with very specific emission reduction requirements in all RTP (i.e the RTP developed by SCAG). The emission reduction

requirements would be set forth by the State Air Resources Board and all transportation projects, approved by local agencies, would have to meet the criteria established by the PGS.

Under the current planning process, SCAG develops the region's Regional Transportation Plan and determines if the plan conforms to the region's ability to meet federal air quality requirements. Introducing a layer of state requirements on top of the federal requirements will significantly complicate an existing process. The introduction of a state and regional entity into the local project selection process is also troubling.

The bill also creates a number of CEQA streamlining incentives for projects consistent with the PGS including infill projects but those benefits would only be available to a region that has implemented the PGS. While these incentives are important to facilitate the development of these projects, their link to the new planning process is of concern.

Overall, staff supports the concept of addressing the linkages between land uses and greenhouse gases. Metro staff would like to explore the ability to address these issues in transportation planning and the modeling of future projects. We would prefer to see the measure incorporate these objectives into the current planning process as opposed to introducing regional and state entities into what should be a local project selection process.

Recent discussions have centered around exempting projects such as those funded from Proposition 1B and in specific future programming cycles from the requirements of the bill.

The bill is co-sponsored by the California League of Conservation Voters and the National Resources Defense Council and is supported by the Southern California Association of Governments.

SUPPORT

California League of Conservation Voters (co-sponsor)
Natural Resources Defense Council (co-sponsor)
American Farmland Trust
American Lung Association
California Coalition for Rural Housing
Coalition for Clean Air
Defenders of Wildlife
Environment California
New Voice of Business
Planning and Conservation League
Southern California Association of Governments
Trust for Public Land

OPPOSE

Associated General Contractors of California
California Building Industry Association
California Business Properties Association
California Chamber of Commerce
California Hotel and Lodging Association

California Major Builders Council
California Manufacturers and Technology Association
California Retailers Association
Consulting Engineers and Land Surveyors of California
County of San Diego
Department of Finance
Inland Empire Transportation Council
Orange County Business Council
Resource Landowners Coalition
Transportation California

BILL: SB 716

AUTHOR: PRESIDENT PRO TEMPORE DON PERATA
(D-OAKLAND)

SUBJECT: PROPOSITION 1B - PUBLIC TRANSIT FUNDS

STATUS: IN ASSEMBLY PENDING COMMITTEE ASSIGNMENT

ACTION: OPPOSE

RECOMMENDATION

Adopt an “Oppose” position on SB 716 (Perata) that establishes allocation criteria for the Proposition 1B bond proceeds deposited in the Public Transportation Modernization, Improvement, and Service Enhancement Account (PMISEA).

ISSUE

The Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006, approved by the voters makes available \$3.6 billion to be deposited in the Public Transportation Modernization, Improvement, and Service Enhancement Account for transit capital projects. Senator Perata has introduced SB 716 to develop criteria to define eligible projects and creates a new role for the California Transportation Commission (CTC) in the allocation process.

PROVISIONS

Existing law makes available \$3.6 billion in bond proceeds to fund the PTMISEA, for transportation agencies for transit capital projects pursuant to the State Transit Assistance Fund (STA).

This bill would specify the requirements for an eligible project sponsor to receive an allocation of funds appropriated from the account. The bill would require the CTC and the Controller to administer these provisions.

Specifically, SB 716 would:

- Authorizes the Controller to identify and develop a list of eligible project sponsors;
- Prior to seeking a disbursement of funds for an eligible transit capital project, a project sponsor shall submit to the CTC a description of the proposed capital project it intends to fund with bond proceeds. The description shall include all of the following:
 - (1) A summary of the proposed project, which shall describe the

benefits the project intends to achieve.

(2) The estimated schedule for the completion of the project.

(3) The total cost of the proposed project, including the identification of all funding sources necessary for the project to be completed.

- The CTC shall review the information solely to determine all of the following:
 - (1) The project is consistent with the requirements for funding.
 - (2) The project is a capital improvement that meets the requirements of the state's general obligation bond law and has a useful life of no less than 10 years.
 - (3) The project is, or will become, fully funded with an allocation of funds from the PTMISEA.

- Requires the CTC to provide the Controller a list of projects and their sponsoring agencies eligible to receive bond proceeds on a quarterly basis, upon conducting their review and determining a proposed project to be in compliance;
- Require funds to be encumbered within three years of being allocated by the CTC.
- Authorizes the Controller's office to commence any necessary actions to allocate funds to the project sponsors on the recommended list of projects, including, but not limited to, seeking the issuance of bonds for that purpose. The total allocations to any one project sponsor shall not exceed that project sponsor's share of STA funds;
- Provides the Controller's office with the authority to audit the use of state bond funds on projects receiving funds under this section. Each project sponsor shall provide any and all data requested by the Controller's office in order to complete an audit initiated. The Controller's office shall transmit copies of completed audits to the CTC and to the policy committees of the Legislature with jurisdiction over transportation and budget issues;
- Requires the CTC to include in its annual report to the Legislature a summary of the state agencies' activities related to the administration of funds from the account.

IMPACT ANALYSIS

Proposition 1B establishes the allocation of \$3.6 billion of bond proceeds for public transit. The bond language states that the funds should be allocated using the STA formula. The bond language does not provide for guidelines in the administration of the bond proceeds. SB 716 was introduced by Senator Perata to develop allocation criteria and develop a new role for the CTC in the process.

Metro staff believes that the transit bond proceeds should be allocated according to the existing STA program and process which entitles agencies to specified amount of funds with no discretion at the State level. Staff feels that decisions on specific transit projects to be funded in Los Angeles County are best made at the local level rather than by a State entity. In addition, Proposition 1B does not allow for any discretionary decisions by the State. SB 716 would introduce a discretionary process at the CTC. The existing STA formula does not require any discretionary role by the state.

Metro recognizes that there must be some accountability in how the bond proceeds are invested and that a programming process must be established in order for the Legislature to

allocate Proposition 1B transit funds. However, SB 716 goes beyond providing accountability to a state agency. SB 716 provides the CTC with discretion on the ability of projects to meet what could be broadly interpreted criteria. Metro believes this brings an element of uncertainty into a process which should otherwise be very straight forward.

In addition, SB 716 would require that eligible projects are fully funded. This requirement causes concern for Metro because the agency may not have all funding identified for a project at one point in time.

Metro staff has been working with Speaker Núñez's office on his version of the transit bond bill AB 901. AB 901 is different than SB 716 in that it does not establish a discretionary role for the CTC. AB 901 establishes a ministerial process administered by the Controller and Caltrans. This measure is actually sponsored by the California Transit Association and they believe this program should allocate the funds to transit agencies based on the STA formula and avoid the creation of any discretionary roles. The Board adopted a Support unless amended position on AB 901 and this bill has been amended consistent with this position.

Metro staff therefore recommends an "Oppose" position on SB 716. According to the Senate floor analysis there was no support or opposition received on the measure.

BILL: SB 803

AUTHOR: SENATOR ALAN LOWENTHAL
(D-LONG BEACH)

SUBJECT: TRANSPORTATION ENHANCEMENT PROJECTS

STATUS: ASSEMBLY TRANSPORTATION COMMITTEE

ACTION: SUPPORT

RECOMMENDATION

Adopt a “Support” position on SB 803 (Lowenthal), that would require transportation planning agencies and congestion management agencies to give priority in the selection of transportation enhancement projects to the sponsors of eligible projects that partner with a community conservation corps or the State Conservation Corps in areas not served by a community or conservation corps, to construct or undertake the project.

ISSUE

SB 803 would require specific agencies to give priority in the selection of transportation enhancement projects to the sponsors of eligible projects that partner with a community conservation corps.

PROVISIONS

Existing federal transportation law encourages states to permit community conservation corps to use Transportation Enhancement (TE) funds for the construction of eligible projects, including pedestrian and bicycle paths, preservation of historic buildings and other similar projects.

This bill establishes a process which permits community conservation corps to compete at the regional level for federally provided (TE) funds for environmental mitigation projects at the regional level and authorizes corps to apply to the Department of Transportation for TE funds.

Specifically, SB 803 would:

- Requires Regional Transportation Planning Agencies (RTPAs) county transportation commissions or authorities and Congestion Management Agencies (CMAs) to adopt criteria giving priority to the selection of TE projects whose sponsors partner with or commit to employ the services of, a community conservation corps as defined in areas not served by a community or conservation corps;

- Establishes that a community conservation corps, or the California Conservation Corp in areas not served by a community conservation corps, is eligible to apply for project funds;
- Authorizes qualified community conservation corps to apply directly to the Department of Transportation (Caltrans), RTPAs, and CMAs for funds to construct eligible projects;
- Authorizes Caltrans, RTPAs, and CMAs to enter into contracts with community conservation corps under the terms of the simplified contract requirements;
- Authorizes the California Conservation Corps to apply for TE funds under the same terms and conditions the community conservation corps in those areas of the state not served by community conservation corps;
- Requires the California Transportation Commission (CTC) to include in the guideline for the State Transportation Improvement Program (STIP) and for the State Highway Operations and Protection Program (SHOPP) direction to RTPAs and Caltrans encouraging the allocation of state TE revenues to community conservation corps and the California Conservation Corps;
- Requires the community conservation corps in order to be eligible to compete for TE funding to receive certification by the California Conservation Corps according to provision in the Resources Code.

IMPACT ANALYSIS

SB 803 was introduced by Senator Alan Lowenthal to allow community conservation corps to compete at the regional level for federally provided TE funds for environmental mitigation projects. Metro would be required to adopt criteria giving priority to the selection of TE projects whose sponsor partner with or commit to employ the services of community conservation corps.

The measure is an effort to promote the types of programs the community conservation corps offers to young people that provide educational and professional opportunities that can be productive for their future. The State currently has eleven certified community conservation corps. In the last 20 years, the program has assisted over 40,000 young people between the ages of 18-25. Corps members participate in programs offering full-time employment, education and career development. A majority of corps members have dropped out of high school and come from low-income communities. Corps members are guided by supervisors, and, work in conservation projects, recycling, community service, simple construction and other projects.

The Federal High Way Agency (FHWA) has a guidance document on transportation enhancement funds. It mentions that the TE program includes a provision that requires DOT to "encourage" the use of youth conservation or service corps. (TEA-21 section 1108(g)). SB 803 goes beyond the federal provision in that it requires that criteria be adopted to give a "priority" in the selection of projects to sponsors of projects that partner with community conservation corps. Since TEA 21 encourages the use of community conservation corps, it would not be inconsistent for the state to mandate that agencies must give community conservation corps a priority. If the SB 803 is enacted, Metro would be

required to include a factor in its evaluation of projects for TE funds that recognizes community conservation corps participation and that give points for community conservation corps in the evaluation process. Clearly, the MTA could not limit participation in the project selection process to community conservation corps -- since that would be anticompetitive.

In the past, Metro had allowed non-profit agencies to apply for Call for Project funding. This practice was discontinued due to a number of problems relating to completing projects and verifying expenditures. If the State is going to mandate the inclusion of conservation corps in these programs then Metro would like to ensure that the measure does not preclude the ability to provide appropriate oversight and accountability measures.

SUPPORT

Attorney General Jerry Brown
City of Oakland Mayor Ron Dellums
City of San Francisco Mayor Gavin Newsom
Long Beach Community Conservation Corp
Professor Michael Wold
Stanford Law School
San Jose Conservation Corps
Charter School

Metro staff therefore recommends a "Support" position on SB 803.

BILL: SB 964

AUTHOR: SENATOR GLORIA ROMERO
(D-LOS ANGELES)

SUBJECT: RALPH M. BROWN ACT

STATUS: ASSEMBLY LOCAL GOVERNMENT COMMITTEE

POSITION: NEUTRAL

RECOMMENDATION

Adopt a “Neutral” position on SB 964 (Romero) that would prohibit a majority of the members of a legislative body from using a series of communications, directly or through intermediaries, to conduct deliberations, including, but not limited to any communications that advance or clarify a member's understanding of an issue.

ISSUE

SB 964 was introduced by Senator Gloria Romero to prohibit a majority of the members of a legislative body from using a series of communications, directly or through intermediaries, to conduct deliberations, including, but not limited to any communications that advance or clarify a member's understanding of an issue. This measure raises concerns about establishing a law that would create inefficiencies and a bureaucratic process for communication. SB 964 has been the subject of much debate in Sacramento and has recently been amended to address Metro’s concerns. The measure is being brought forward to the board for informational purposes.

PROVISIONS

Existing law, the Ralph M. Brown Act, requires that all meetings of a legislative body of a local agency be open and public and all persons be permitted to attend unless a closed session is authorized. Existing law prohibits any use of direct communication, personal intermediaries, or technological devices that is employed by a majority of the members of the legislative body to develop a collective concurrence as to action to be taken on an item, but exempts authorized teleconferences from this prohibition. An appellate court in *Wolfe v. City of Fremont* (2006) 144 Cal.App.4th 533 held that a violation of this prohibition occurs only if a series of meetings by members of a body results in a collective concurrence.

The California Public Records Act also requires state and local agencies to make their records available for public inspection and to make copies available upon request and payment of a fee unless they are exempt from disclosure.

Specifically, SB 964 would:

- Prohibit a majority of members of a legislative body of a local agency from using a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body;
- It also would state the Legislature's declaration that it disapproves the holding of the court in the case named above to the extent it construes the prohibition on serial meetings and would state its intention that the changes made by this bill supersede that holding.
- Requires a local agency that when the members of a legislative body of a local agency are authorized to access a writing of the body or of the agency as permitted by law in the administration of their duties, the local agency shall not discriminate between or among any of those members as to which writing or portion thereof is made available or when it is made available, and shall not charge any of those members a fee to inspect or obtain a copy of that writing.

IMPACT ANALYSIS

Senator Gloria Romero introduced SB 964 to amend provisions of the Brown Act. The Brown Act requires that the public's business be conducted in the open. Among other things, the Brown Act prohibits the use of direct communications, personal intermediaries, or technological devices by a majority of the legislative body to develop a collective concurrence as to an item to be considered by the legislative body.

In 2006, an appellate court found that meetings between a city manager and individual city council members for the purpose of discussing a policy issue that would be discussed at a future public meeting did not inherently violate the Brown Act's prohibition against serial meetings. [Wolfe v. City of Fremont (2006) 144 Cal.App.4th 533] The court found that the Brown Act does not expressly prohibit serial meetings and, to constitute a violation of the Act, the serial meetings must amount to "more than mere policy related informational exchanges." SB 964 revises the Brown Act's prohibition against serial meetings.

SB 964 was introduced in response to that appellate decision and is intended to prohibit a majority of the members of a legislative body from using a series of communications, directly or through intermediaries, to conduct deliberations, including, but not limited to any communications that advance or clarify a member's understanding of an issue, facilitate an agreement or compromise among members on an issue, or advance the ultimate resolution of an issue. Thus, serial communications would be prohibited even if the communications were not intended to reach a collective concurrence, but instead intended merely clarify a member's understanding of an issue.

The California News Publishers Association is the sponsor of the bill. The association asked the Senator to introduce the bill to close the loophole that was created by the Wolfe decision. The League of California Cities originally had an oppose position on the bill but has recently taken a neutral position given recent amendments to the bill. According to the League, their amendments to SB 964 ensure that all city staff can continue to properly communicate with their governing body to clarify, understand or define an item that will come before the city council, as long as they do not come to a collective concurrence on an issue or do not take any action on an item that is to be discussed during a public, agendized meeting.

As of the most recent amendments, the bill as amended does not limit prohibited communications to those intended to reach a collective concurrence of a majority of the Board members. Thus, the language of section 54952.2(c)(1) does not, at least on its face, allow "informational" communications. At the time this report was written, Metro staff wanted to work with the Senator Romero to ensure that League's amendments do allow communication with Board Members as long as there is not an effort to reach collective concurrence. Metro staff therefore recommends a neutral on SB 964.

SUPPORT

California News Publishers Association (source)
California Broadcasters Association
Californians AWARE
City of La Mesa
Dolores Holguin, Board Member, Valley County Water District
Monica Garcia, Board Member, Los Angeles Unified School District
Roger Hernandez, Councilmember, City of West Covina

OPPOSE

Andrew Pasmant, City Manager, City of West Covina
Association of California School Administrators
California Contract Cities Association
City Clerks Association of California
City of Alameda
City of Alhambra
City of Arcadia
City of Arroyo Grande
City of Azusa
City of Baldwin Park
City of Bellflower
City of Bishop
City of Brea
City of Buena Park
City of Burbank
City of Calistoga
City of Chino
City of Claremont
City of Clayton

City of Cloverdale
City of Colusa
City of Corning
City of Costa Mesa
City of Del Mar
City of Diamond Bar
City of El Monte
City of Encinitas
City of Eureka
City of Fairfield
City of Fontana
City of Fort Bragg
City of Fowler
City of Fullerton
City of Grover Beach
City of Guadalupe
City of Hesperia
City of Holtville
City of Humboldt
City of Jackson
City of Kingsburg
City of La Mirada
City of Lemoore
City of Lompoc
City of Menlo Park
City of Mill Valley
City of Monrovia
City of Monterey Park
City of Moreno Valley
City of Morro Bay
City of Murrieta
City of Novato
City of Palmdale
City of Pismo Beach
City of Placentia
City of Poway
City of Rancho Cordova
City of Rialto
City of Rohnert Park
City of Roseville
City of San Bernardino
City of San Luis Obispo
City of San Pablo
City of Santa Barbara
City of Santa Maria
City of Santa Rosa
City of Sebastopol

City of Signal Hill
City of Solana Beach
City of Solvang
City of South El Monte
City of South Gate
City of Taft
City of Temple City
City of Tulare
City of Vacaville
City of Vista
City of Walnut
City of Wasco
City of Winters
Humboldt Bay Municipal Water District
Michael Touhey, Mayor, City of West Covina
Torrance Police Officer's Association
Town of San Anselmo

BILL: SB 974

AUTHOR: SENATOR ALAN LOWENTHAL
(D-LONG BEACH)

SUBJECT: CONTAINER FEE

STATUS: IN ASSEMBLY PENDING COMMITTEE ASSIGNMENT

ACTION: SUPPORT IF AMENDED

RECOMMENDATION

Adopt a “Support If Amended” position on SB 974 (Lowenthal), which would impose a container fee on the owner of container cargo moving through the Port of Los Angeles and the Port of Long Beach.

ISSUE

Senator Alan Lowenthal introduced SB 974 to establish container fees on the owner of container cargo to pay for the impacts of goods movement related activities.

PROVISIONS

Existing law regulates the operation of ports and harbors.

Specifically, SB 974 would:

- Require the Ports of Los Angeles, Long Beach, and Oakland to collect a user fee on the owner of container cargo moving through the Port of Los Angeles, the Port of Long Beach, or the Port of Oakland at a rate of \$30 per twenty-foot equivalent unit (TEU);
- Require the Ports of Los Angeles and Long Beach to transmit 1/2 of the funds derived from imposition of the fee to the Southern California Port Congestion Relief Trust Fund, which the bill would establish in the State Treasury, and 1/2 to the Southern California Port Mitigation Relief Trust Fund, which the bill would establish in the State Treasury;
- Require the Port of Oakland to transmit 1/2 of the funds derived from imposition of the fee to the Northern California Port Congestion Relief Trust Fund, which the bill would establish in the State Treasury, and 1/2 to the Northern California Port Mitigation Relief Trust Fund, which the bill would establish in the State Treasury;

- Require the moneys transmitted to the Southern California Port Congestion Relief Trust Fund and the Northern California Port Congestion Relief Trust Fund to be available, upon appropriation, for expenditure by the California Transportation Commission exclusively for the purposes of funding projects that improve the flow and efficiency of container cargo to and from those ports, and funding the administrative costs of this program;
- Prohibit moneys deposited in those funds from being loaned or transferred to, or allocated or appropriated in any other way to, the General Fund;
- Prohibit the commission from using the funds to construct, maintain, or improve highways, with certain exceptions;
- Require the moneys transmitted to the Southern California Port Mitigation Relief Trust Fund and the Northern California Port Mitigation Relief Trust Fund to be available, upon appropriation, for expenditure by the State Air Resources Board to develop a list of projects to mitigate environmental pollution caused by the movement of cargo to and from those ports, and for the administration of this program;
- Prohibit moneys deposited in those funds from being loaned or transferred to, or allocated or appropriated in any other way to, the General Fund;
- This bill would authorize the Infrastructure and Economic Development Bank to enter into financing agreements with participating parties to finance or refinance Southern California and Northern California port congestion relief projects and Southern California and Northern California port mitigation relief projects. The bank would be authorized to issue revenue bonds. User fees on container ships from the Southern and Northern California Port Congestion Relief Trust Funds and the Southern and Northern California Mitigation Relief Trust Funds would be continuously appropriated to the bank to secure any revenue bonds.

IMPACT ANALYSIS

Senator Alan Lowenthal introduced his container fee bill again this legislative session. His measure from the last legislative session (SB 927) faced opposition from various interest groups and was ultimately vetoed by Governor Schwarzenegger. In his veto message, the Governor expressed his concern that the measure lacked accountability and failed to coordinate with other public and private financing sources ignoring opportunities to leverage additional funding.

Senator Alan Lowenthal introduced the measure in an effort to raise fees from the private sector to pay for infrastructure that improves efficiency and reduces emission at the ports given the impact of goods movement related activities.

SB 974 authorizes the California Transportation Commission (CTC) to allocate container fee revenues and to develop a list of congestion relief projects. This list of projects must be developed in coordination with the transportation commissions of Los Angeles, Ventura, Riverside, San Bernardino and Orange Counties, the Ports of Los Angeles and Long Beach, the Cities of Los Angeles and Long Beach, as well as the Southern California Association of Governments (SCAG). This list would outline the allocation of funds from the fees.

SB 974 could also be a source of matching funds required by the Proposition 1B Trade Corridors Infrastructure Fund (TCIF). Proposition 1B requires goods movement projects to have at least a 1:1 match. Metro staff believes that a container fee is necessary to fully fund the infrastructure requirements of goods movement activity, mitigate the congestion and air quality impacts of the same, and, to leverage funds from state and federal grant programs. Absent the reallocation of significant and currently committed transportation funds, local transportation revenues are not available to meet this match. Therefore a mechanism as provided by SB 974 is needed to generate matching funds.

The Metro Board adopted a “Support - Work with Author” position in March 2007. Metro staff has brought the measure back to the Board to in order to consider additional concerns that we would like to address with Senator Lowenthal.

The measure would prohibit container fee proceeds to be allocated by the CTC to the Ports of Los Angeles and Long Beach if they have not met their emission reduction goals established in the San Pedro Bay Clean Air Action Plan. In addition, the CTC could not fund any additional projects until the emission reduction goals were achieved, other than projects that have been awarded funding prior to this finding.

Metro staff believes that this provision in the bill essentially penalizes the Ports for having established a Clean Air Action Plan. The Port of Oakland at this point does not have a Clean Air Action plan. The measure does not include a provision that would require the Port of Oakland to establish a Clean Air Action Plan and does not prohibit funding projects for the Port of Oakland for not meeting their emission reduction goals. The measure should instead provide incentives for compliance, rather than penalize non-compliance to encourage development of similarly rigorous plans throughout the State.

Metro staff further believes that SB 974 should authorize local governmental entities, instead of the California Transportation Commission, to allocate container fee revenues that are designated for congestion mitigation projects, with the bulk of those funds going to the agencies representing the communities closest to the ports.

As of May 31st, the Senate floor analysis had received the following support and opposition on the measure:

SUPPORT

Alameda Corridor-East Construction Authority
American Academy of Pediatrics, California Division
American Cancer Society
American Heart Association
American Lung Association of California
Asthma Coalition of Los Angeles County
Bay Area Air Quality Management District
Breast Cancer Fund
Breathe California
California Air Pollution Control Officers Association

California League of Conservation Voters
California Natural Gas Vehicle Coalition
California Nurses Association
California Teamsters
California Thoracic Society
Cerritos Chamber of Commerce
City of Downey
City of Lakewood
City of Long Beach
City of South Gate
Coalition for A Safe Environment
Coalition for Clean Air
Coalition on the Environment and Jewish Life of Southern
California
Communities for Clean Ports
Community Action to Fight Asthma
Consumer Attorneys of California
Downey Chamber of Commerce
East Yard Communities for Environmental Justice
Elizabeth Hudson Elementary School - Environmental
Committee
Environment California
Environmental Defense
Friends of the Earth
Gateway Chamber Alliance
Gateway Council of Governments (27 cities)
Interfaith Environmental Council
Lakewood Chamber of Commerce
Long Beach Alliance for Children with Asthma
Long Beach Unified School District
Los Angeles Alliance for a New Economy
Los Angeles County Metropolitan Transportation Authority
Mayor, Curt Pringle, City of Anaheim
Mayor, Todd Campbell, City of Burbank
Medical Advocates for Healthy Air
Natural Resources Defense Council
Parents for a Safer Environment
Parents for Safer Schools
Physicians for Social Responsibility
Planning and Conservation League
Plug In America
Progressive Christians Uniting
Regional Asthma Management & Prevention Initiative
San Francisco Medical Society
San Gabriel Valley Council of Governments
San Gabriel Valley Economic Partnership
Santa Barbara County Air Pollution Control District

SEIU Local 721 (85,000 members)
Sierra Club California
South Coast Air Quality Management District
South Gate Chamber of Commerce
Strategic Concepts in Organizing & Policy Education
Union of Concerned Scientists
West Long Beach Association
West Oakland Environmental Indicators

OPPOSE

Abercrombie and Fitch
ACG Cotton Marketing LLC
Ag Processing, Inc.
Agricultural Council of California
Agriculture Transportation Coalition
Allen Group
Allenberg Cotton Co.
Aloha Airlines
American Apparel and Footwear Association
American Chemistry Council
American Cotton Shippers Association
American Council for Food Safety and Quality
American Eagle Outfitters Inc.
American Electronics Association
American Foods Group
American Forest and Paper Association
American Import Shippers Association
Anheuser-Busch Companies, Inc.
Anzco Foods North American, Inc.
APL
Association of International Automobile Manufacturers
Badger Forest Products
Bank of Hawaii
Beall's, Inc.
Belk, Inc.
Best Buy
Blue Diamond Growers
Bonanza Foods and Provisions, Inc.
Bon-Ton Stores, Inc.
Border Valley Trading LTD
Borders Group, Inc.
Borges of California
Boscov's Department Stores, LLC.
Braun Export
Burger King, Inc.
CA Commodity Export Corporation
Calcot LTC

California Bean Shippers Association
California Business Properties Association
California Cattlemen's Association
California Chamber of Commerce
California Citrus Mutual
California Cotton Ginners and Growers Association
California Farm Bureau Federation
California Fisheries and Seafood Institute
California Grain and Feed Association
California Grape and Tree Fruit League
California Grocers Association
California Independent Grocers Association
California League of Food Processors
California Manufacturers & Technology Association
California Metals Coalition
California Nevada Soft Drink Association
California Railroad Industry
California Restaurant Association
California Retailers Association
California Seed Association
California Taxpayers Association
California Trade Coalition
California Trucking Association
California Warehouse Association
Carriere Family Farms
Castle & Cooke Homes Hawaii, Inc.
Casual Male Retail Group, Inc.
Central Pacific Bank
Chamber of Commerce of Hawaii
Charming Shoppes, Inc.
Circuit City
Coca-Cola Bottling Co. of Southern CA
Coca-Cola Bottling Company of California
Colorado Food Products
Columbine Vineyards of Delano, CA
Corona Chamber of Commerce
Crain Walnut Shelling, Inc.
Crate & Barrel
CTP Transport, Inc.
Dairy America, Inc.
Del Monte Foods
Derco Associates, Inc.
Diamond Foods, Inc.
Distilled Spirits Council
Dole Food Company, Inc.
Dressbarn, Inc.
Duncan and Sons Lines, Inc.

DVN Louis Dreyfus Corporation
E.I. DuPont de Nemours & Co.
ECOM USA, Inc.
Edwards Luggage
EFI Logistics, Inc.
Ethan Allan Global, Inc.
Food Marketing Institute
Gap Inc.
Grain Millers, Inc.
Grocery Manufacturers/Food Products Association
Harland M. Braun and Company
Hawaii Island Chamber of Commerce
Hawaii Korean Chamber of Commerce
Hawaii Tourism Authority
Hedley Construction and Development
Heineken USA, Inc.
Hewlett-Packard Company
Home Depot
Intel Corporation
JC Penny
Jo-Ann Fabric and Craft Stores
Jockey International
Kailua Chamber of Commerce
Kohl's Corporation
Lake Elsinore Valley Chamber of Commerce
Leading Lady
Levi Strauss & Co.
Limited Brands, Inc.
Limtiaco Company
Liz Claiborne Inc.
Long Beach Area Chamber of Commerce
Lowe's
Macy's/Macy's West
Mallory Alexander International Logistics
Mathiesen Maritime Services, Inc.
Matson Navigation
Maurice's, Inc.
Mazda North American Operations
Meat Importers Council of America
Meridian Nut Growers LLC
Michaels Arts and Crafts
Midwest Shippers Association
Miller Brewing Company
Milpitas Chamber of Commerce
Mohawk Industries
Murphy Imports, LLC
Murrieta Chamber of Commerce

NAIOP Inland Empire
NAIOP SoCal
National Association of Industrial and Office Properties -
CA State Council
National Association of Manufacturers
National Chicken Council
National Federation of Independent Business
National Industrial Transportation League
National Retail Federation
National Turkey Federation
Natural & Organic Imports
Neiman Marcus
New Balance Athletic Shoe, Inc.
Newell Rubbermaid Inc.
Nike, Inc.
Nisei Farmers League
North Dakota Department of Agriculture
Office Depot
OZ Logistics Inc.
Pacific Coast Council of Customs Brokers & Freight
Forwarders
Pacific Egg and Poultry Association
Pacific Merchant Shipping Association
Panasonic Corporation of North America
Payless Shoe source
Perry Ellis International
Pier 1 Imports
Polo Ralph Lauren Corporation
Preferred Freezer Services
Ralphs Grocery Company
Red Wing Shoe Company
Redondo Beach Chamber of Commerce
Regional Legislative Alliance - Venture/Santa Barbara
Counties
Rekerdres and Sons Insurance
Retail Industry Leaders Association
Retail Merchants of Hawaii
Rite-Aid
Rocky Brands, Inc.
Safeway, Inc.
SAMPCO, Inc.
San Rafael Luggage Center
Seaboard Foods LP
Securakey
Smurfit-Stone Container Company
Sonnet Technologies
Southlands Organic Ltd

Southwest California Legislative Council
Southwest Hide Company
Specialty Crop Trade Council
Spencer Gifts LLC
Spirit Halloween Superstores
Sporting Goods Manufacturers Association
SSA Marine
Starboard Alliance Company
Stop Hidden Taxes Coalition
Sunview Marketing International
Target
Temecula Valley Chamber of Commerce
The Refrigerated Shipping Association
Toy Association of Southern California
Toy Industry Association, Inc.
Transgroup Worldwide Logistics
Travel Goods Association
U.S. Association of Importers of Textiles & Apparel
U.S. Chamber of Commerce
U.S. Dairy Export Council
United Laundry Services, Inc.
United States Council for International Business
USA Poultry & Egg Export Council
Valley Industry and Commerce Association
Vergel N. Adonis Realty Inc.
VF Outdoor, Inc.
Voit Development Company
Walgreens
Wal-Mart Stores, Inc.
Washington State Potato Commission
Waterfront Coalition
Weil Brothers Cotton, Inc.
Western Cotton Shippers Association
Western Growers
Western United Dairymen
Wilson Homecare
Wine Institute
World Sake Imports
WS Badcock Corp, DBA Badcock Home Furnishings and More

