

State Laws Allowing Container Fees: Synthesis
Prepared for
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Transportation Synthesis Reports (TSR's) are brief summaries of currently available information on topics of interest to WSDOT staff. Online and print sources may include newspaper and periodical articles, NCHRP and other TRB programs, AASHTO, the research and practices of other state DOT's and related academic and industry research. Internet hyperlinks in the TSR's are active at the time of publication, but host server changes can make them obsolete.

Request for Report

Summary of the Issue:

Barbara Ivanov, Director, WSDOT Office of Freight Strategy & Policy asked how many states allow ports to collect container fees. Container fees provide a mechanism to apply a direct user charge to international freight that does not involve a general tax increase. In Washington State, the dollars could be used to fund intermodal improvements that aid freight flows in the region, such as the FAST Corridor, extension of SR 167 to the Port of Tacoma, and key improvements to rail bottlenecks. From review of the sources, California appears to be the only state to attempt to allow container fees.

The legislation was vetoed by Governor Arnold Schwarzenegger in August of 2006. Acknowledging that the policy objectives of Senate Bill 927 were laudable, the Governor called the measure "flawed in its construction, application, lack of accountability and failure to coordinate with other public and private financing sources, ignoring opportunities to leverage additional funding." He said that the bill provides no mechanism to use collected fees to leverage "billions of dollars in available funding to develop public-private partnerships."

Governor Schwarzenegger also mentioned that the measure was drafted to include only two ports and applied only to goods shipped in containers, ignoring all other forms of shipping and other ports of entry.

Key Terms searched:

Container fees

Shipping fees

Port fees and charges

Container taxes

Features in periodicals:

Legislative Action on Bills Affecting Goods Movement California Container Fee Bill Goes to Governor

Senate Bill 927, which would place a \$30-per-TEU fee on containers coming through the Ports of Long Beach and Los Angeles, passed the Assembly and Senate, and, at press time, awaited review by Governor Arnold Schwarzenegger.

The original "container fee bill" – SB 760 by State Senator Alan Lowenthal – didn't make it out of committee in the Assembly. Senator Lowenthal, however, executed a "gut and amend" on another bill that was voted out of committee, rewriting it with provisions for the container fee instead.

In the new version, ports would collect the fee from cargo owners instead of from terminal operators.

Funds would be split three ways – one-third each going to port security, environmental mitigation and infrastructure.

The bill has been supported by environmental groups but strongly opposed by shippers, terminal operators and carriers, who contend that it is unconstitutional, and that it is a tax, not a user fee.

<http://www.polb.com/civica/filebank/blobdload.asp?BlobID=3255>

Goods Movement in Southern California: Challenge, Opportunity, Solution

Essay summarized by John Husing, Ph.D.

Dr. John Husing is the Vice President of Economics and Politics, Inc. This essay is a condensed version of a longer paper prepared by Dr. Husing for SCAG at:

<http://scag.ca.gov/goodsmove/pdf/GoodsmovePaper0905.pdf>.

This article describes the economic opportunity and the frustrating policy dilemma Southern California faces as a major shipping area. The rise of Asian trade through Los Angeles and Long Beach harbors to the nation has given the area its first true competitive advantage for creating good-paying blue collar jobs since the rise of aerospace after World War II. A 1,000,000-job economic strategy aimed at providing entry into the middle class for some of the 44% of local adults with no college experience is now possible.

The region's communities find themselves drowning in a sea of trucks and trains and choking on their exhaust. The question is if the region can identify and implement the infrastructure projects, environmental policies and funding mechanisms to harness this opportunity or must California lose a chance to raise the prosperity of thousands of its families and improve public health? That is the dilemma facing today's generation of analysts, activists and leaders.

The Opportunity

Southern California's new competitive advantage starts with the fact that countless manufacturers now find that Asia's labor costs are a fraction of those in the U.S. Price competition among retailers like Wal-Mart, Costco and Home Depot has forced them to increasingly rely on Asian producers to stock their shelves. In Southern California, this has caused soaring container volume at Los Angeles and Long Beach harbors. In 2000, 9.5 million total TEU's (20-foot equivalent container units) were processed (imports, exports, empties). In 2004, it was 13.1 million, up 37.9% (Exhibit 1). By 2030, the ports forecast that volume could reach 44.7 million, triple today's figure.

Meanwhile, the 2004 total volume figure included 6.8 million TEU's of the 15.8 million imported containers entering the U.S., a 43.0% share. It also included 1.8 million exported containers or 22.9% of the nation's total. On the import side, several relatively obvious factors have created competitive advantages for retailers to move goods through Southern California (Imperial, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, Ventura counties):

- Its ports are on the West Coast nearer to Asia.
- Its January 2005 population of 21.9 million constitutes a huge internal market.

http://www.scag.ca.gov/publications/pdf/2006/SOTR05/SOTR05_JHusing_Essay.pdf

Container Fees Suggested for Local Ports to Combat Pollution

California Apparel News, September 13, 2006

This article describes the bill that would have charged a \$30 fee per 20-foot container entering the ports of Los Angeles and Long Beach and awaited Gov. Arnold Schwarzenegger's signature. Senate Bill 927, passed by the Assembly on Aug. 30 and the Senate on Aug. 31, 2007 would

have used the annual \$500 million the fee is expected to generate to clean up the air and improve the transportation infrastructure around the ports, as well as to beef up port security.

<http://www.coalitionforcleanair.org/news-current-news.html>

http://www.coalitionforcleanair.org/pdf/news/CA_News_9-13-06.pdf

Letter from Kevin M. Burke, President and CEO AAFA

American Apparel and Footwear Association (AAFA) opposing California SB 927 container fee legislation.

Two points Mr. Burke makes:

- Port Infrastructure Has Traditionally Been Privately Financed. SB 927 is designed, in part, to provide funding for port security infrastructure within California's ports. However, California's international gateway ports operate as landlords for terminal operations that pay rent and fees commensurate with port facility infrastructure. Ports raise their tariffs to pay for normal business operating expenses such as infrastructure, pollution mitigation and security programs. Terminal operators themselves make investments to meet these mandates as well, and pass the costs on to the carriers that call at the ports. In the end, shippers, including AAFA member companies, pay these added expenses through higher terminal use fees and other line items included in our freight contract with ocean carriers.
- Container Taxes Are Unconstitutional and Violate International Trade Law. The State of California cannot legally mandate the collection of fees on international commerce to fund programs such as highway infrastructure, port security or pollution abatement without facing an almost certain challenge in federal court. Other fees related to international cargo and transportation, such as the Harbor Maintenance Fee imposed by the federal government, have been struck down as unconstitutional because they impede interstate commerce. Because many of the containers moving through California ports are moving on to other states, California would have a very difficult time making a container fee stand up in court.

<http://www.apparelandfootwear.org/letters/californiaportfeeltr060828.pdf>

Governor Arnold Schwarzenegger last month vetoed Senate Bill 927citing its flaws

Port of Long Beach Newsletter, October 2006

Citing its flaws and his concerns about negative impacts on exports, Governor Arnold Schwarzenegger last month vetoed Senate Bill 927, legislation that would have imposed a \$30-per-TEU fee on cargo containers moving through the Ports of Long Beach and Los Angeles.

The fee, estimated to generate \$500 million annually, would have been split three ways – one-third each going statewide for port-related security, environmental mitigation and infrastructure.

In a message to the California State Senate, the Governor stated that improving the quality of life for Californians through congestion relief and environmental improvement is one of his top priorities, citing as evidence the introduction of a Strategic Growth Plan that resulted in the enactment of the Senate Bill.

Acknowledging that the policy objectives of Senate Bill 927 were laudable, the Governor called the measure “flawed in its construction, application, lack of accountability and failure to coordinate with other public and private financing sources, ignoring opportunities to leverage additional funding.” He said that the bill provides no mechanism to use collected fees to leverage “billions of dollars in available funding to develop public-private partnerships.”

He also mentioned that the measure was drafted to include only two ports and applied only to goods shipped in containers, ignoring all other forms of shipping and other ports of entry.

Senate Bill 927, authored by State Senator Alan Lowenthal, D-Long Beach, was supported by environmentalists, but it was opposed by retailers and shippers based on its potential violation of the U.S. Constitution and potential harm to the health of California's economy.

<http://www.polb.com/civica/filebank/blobdload.asp?BlobID=3413>

A \$60 per container tax on all containers processed at the Ports of Los Angeles and Long Beach

Author: Lowenthal (D - SD 27)

LegInfo: Bill text

Location: Vetoed by Gov.

In late Aug., SB 760 (Lowenthal) stalled in Assembly Appropriations. It was amended into SB 927 to reach the Assembly floor. SB 927 now levies a \$60 per container tax on all containers processed at the Ports of Los Angeles and Long Beach. Not only does this bill violate the U.S. Constitution and basic international law, it would put the state's largest ports at a competitive disadvantage. The fees required by SB 760 would likely force shippers to look for more cost-effective alternatives to California ports, damaging our state's economy and pollution as goods will likely enter California through other, more polluting means. Given the nearly \$20 billion in bonds that will be presented for a vote in November, we must continue to encourage additional investment by the private sector, not discourage it.

<http://www.cmta.net/billsample.php?bill=680>

CONTAINER FEE IMPACT ON STATE TRADE TO BE MINIMAL

New Study Reveals Ships Would Still Continue to Prefer California Ports

Natural Resources Defense Counsel Press Release

A newly completed study by two maritime transport and energy experts (Cargo on the Move Through California: Evaluating Container Fee Impacts on Port Choice; by professors James Corbett, University of Delaware, and James Winebrake, Rochester Institute of Technology) found that a container fee at California's three largest ports would have minimal to no impact on business. Most significantly, the study finds that a \$30 container fee at the Long Beach and Los Angeles ports would not adversely affect business.

For almost two years, state and regional leaders have discussed a container fee as a viable funding source to invest in infrastructure enhancements, security improvements, and strategies to reduce air pollution at California ports and truck and train corridors. While opponents say the \$30 fee, collected on each container that enters the ports, will cause businesses to divert their ships to ports outside the state, this new study finds these diversion fears to be unfounded.

<http://www.nrdc.org/media/pressreleases/060814.asp>

California Adds \$60 Container Tax

Logistics Today, July 2006

California State Bill 927 was passed late on August 31st and is being sent to Governor Schwarzenegger for signature. The bill would add a tax of \$30 per twenty-foot-equivalent unit (TEU) or \$60 for a conventional 40-foot container for containers moving through the ports of Los Angeles or Long Beach.

The major difference between this and other such proposed bills is that it assesses the fees against the owner of the cargo.

<http://forums.logisticstoday.com/showthread.php?t=54>

\$60 per container tax on all containers processed at the Ports of Los Angeles and Long Beach

Letter dated September 8, 2006, from Jack M. Stewart, President

California Manufacturers and Technology Association Newsletter

This is a letter from Jack M. Stewart, President, of the California Manufacturer's and Technology Association, about SB 927. The bill proposed to levy a \$60 per container tax on all containers processed at the Ports of Los Angeles and Long Beach. The author states that not only does this bill violate the U.S. Constitution and basic international law, but that it would put the state's largest ports at a competitive disadvantage. See position letter.

<http://www.cmta.net/billsample.php?bill=680>

<http://www.cmta.net/pdfs/SB%20927.pdf>

Major Issues for Maritime Industry 2005

PMSA has identified legislation important to the maritime industry.

SB 760 (Lowenthal, D-Long Beach)

SB 760 would impose a \$30 per TEU fee on all containers moving through the ports of Los Angeles and Long Beach, payable by marine terminals. The funds would be allocated for rail improvement projects, air quality mitigation and port security. PMSA and a large coalition of business interest oppose the measure, in part because the fee violates the Commerce Clause of the U.S. Constitution. Senator Lowenthal has indicated he will not move the legislation forward this year but plans to take it up in the 2006 session.

<http://www.pmsaship.com/issues.html>

Published reports:

Washington State Comprehensive Tolling Study Implications of Illustrative Examples Analysis for Briefing Package Washington State Tolling Policy – Round 2

Washington State Comprehensive Tolling Study Briefing Package, May 2006

This study states that Washington's extensive port facilities generate a large volume of rail and truck traffic that must be accommodated by the State's transportation facilities. Puget Sound area ports handled over 2.8 million TEU (twenty-foot equivalent) containers in 2002, with that number forecast to rise to over 6.9 million by 2025. Although Washington is the beneficiary of the employment opportunities generated by the existence of these ports, it still has trouble keeping up with the associated transportation infrastructure needs.

Container fees provide a mechanism to apply a direct user charge to international freight that does not involve a general tax increase. The dollars could be used to fund intermodal improvements that aid freight flows in the region, such as the FAST Corridor, extension of SR 167 to the Port of Tacoma, and key improvements to rail bottlenecks.

http://www.wstc.wa.gov/AgendasMinutes/agendas/2006/May16/May16_BP7_TollStudyIllustExamples.pdf

Cargo on the Move Through California: Evaluating Container Fee Impacts on Port Choice

California Progress Report, August 2006

This study, *Cargo on the Move Through California: Evaluating Container Fee Impacts on Port Choice* by professors James Corbett of the University of Delaware, and James Winebrake of the Rochester Institute of Technology found that a container fee at California's three largest ports would have minimal to no impact on business. Most significantly, the study found that a \$30 container fee at the Long Beach and Los Angeles ports would not adversely affect business.

Cargo on the Move Through California was jointly funded by the Natural Resources Defense Council (NRDC) and the Coalition for Clean Air (CCA).

http://www.californiaprogressreport.com/2006/08/cargo_on_the_mo.html

Goods movement center stage in Golden State

AN: 01027446

Authors: JOHNSON, ERIC

Journal: *American Shipper*, Vol. 48 No. 4

Corp. Authors/Publisher: Howard Publications, Incorporated

Year: 2006

Database: TRIS Online

Availability from Northwestern University Transportation Library through interlibrary loan or document delivery

[Order Document: http://www.library.northwestern.edu/transportation/services.html](http://www.library.northwestern.edu/transportation/services.html)

Green light for security spending

AN: 01035573

Authors: KEANE, ANGELA GREILING

Journal: *Traffic World*, Vol. 270 No. 39

Corp. Authors/Publisher: Commonwealth Business Media

Year: 2006

Database: TRIS Online

Availability from Northwestern University Transportation Library through interlibrary loan or document delivery

[Order Document: http://www.library.northwestern.edu/transportation/services.html](http://www.library.northwestern.edu/transportation/services.html)

PANAMA FLOATS CONTAINER FEES.

AN: 00959328

Journal: *Traffic World*

Corp. Authors/Publisher: Commonwealth Business Media

Year: 2004

Database: TRIS Online

Available from Northwestern University Transportation Library through interlibrary loan or document delivery

[Order Document: http://www.library.northwestern.edu/transportation/services.html](http://www.library.northwestern.edu/transportation/services.html)