

AMENDED IN SENATE APRIL 9, 2007

SENATE BILL

No. 974

Introduced by Senator Lowenthal

(Principal coauthor: Assembly Member De La Torre)

(Coauthors: Assembly Members Carter and Karnette)

February 23, 2007

An to add Article 10 (commencing with Section 63049.70) to Chapter 2 of Division 1 of Title 6.7 of the Government Code, to amend and renumber Section 1760 of, to add a heading to Chapter 1 (commencing with Section 1720) of, and to add Chapter 2 (commencing with Section 1740) to, Part 2 of Division 6 of, the Harbors and Navigation Code, relating to ports, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 974, as amended, Lowenthal. Ports: congestion relief: environmental mitigation: regulatory fee.

(1) Existing law regulates the operation of ports and harbors.

This bill 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).

The bill would require the Ports of Los Angeles and Long Beach to transmit $\frac{1}{2}$ 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 $\frac{1}{2}$ to the Southern California Port Mitigation Relief Trust Fund, which the bill would establish in the State Treasury. The bill would require the Port of Oakland to transmit $\frac{1}{2}$ 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 $\frac{1}{2}$ to the Northern California Port Mitigation Relief Trust Fund, which the bill would establish in the State Treasury.

The bill would 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. The bill would prohibit moneys deposited in those funds from being loaned or transferred to, or allocated or appropriated in any other way to, the General Fund. The bill would prohibit the commission from using the funds to construct, maintain, or improve highways, with certain exceptions.

The bill would 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. The bill would prohibit moneys deposited in those funds from being loaned or transferred to, or allocated or appropriated in any other way to, the General Fund.

The bill would establish a state-mandated local program by imposing these additional duties upon the ports.

(2) Existing law sets forth the duties of the Infrastructure and Economic Development Bank and its board of directors generally in performing various financing transactions, including the issuance of bonds.

This bill would authorize the 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.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: yes. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Article 10 (commencing with Section 63049.70)
2 is added to Chapter 2 of Division 1 of Title 6.7 of the Government
3 Code, to read:

4
5 Article 10. Financing of Port Congestion Relief and Port
6 Mitigation Relief
7

8 63049.70. The definitions contained in this section are in
9 addition to the definitions contained in Section 63010 and together
10 with the definitions contained in that section shall govern the
11 construction of this article, unless the context requires otherwise:

12 (a) "Credit facility" means all obligations, including principal,
13 interest, fees, costs, indemnities, and all other amounts incurred
14 by the bank under or in connection with any credit enhancement
15 or liquidity agreement, including a letter of credit, standby purchase
16 agreement, reimbursement agreement, liquidity facility, or other
17 similar arrangement entered into by the bank.

18 (b) "Northern California port congestion relief container fee
19 revenue" means all of the following:

20 (1) Income and receipts derived by the bank from Northern
21 California port congestion relief container fees.

22 (2) Interest and other income from investment of money in any
23 fund or account established pursuant to an indenture for Northern
24 California Port Congestion Relief Container Fee Revenue Bonds,
25 other than any fund established to rebate investment earnings to
26 the federal government.

27 (A) Amounts on deposit in these funds and accounts, other than
28 any fund or account established to rebate investment earnings to
29 the federal government and any fund or account established to

1 hold the proceeds of a drawing on any liquidity or credit support
2 facility for these bonds.

3 (B) Net income and net receipts derived by the bank on account
4 of interest rate swaps with respect to these bonds.

5 (c) “Northern California Port Congestion Relief Container Fee
6 Revenue Bonds” means revenue bonds issued pursuant to this
7 article that are payable from Northern California port congestion
8 relief container fee revenue.

9 (d) “Northern California port congestion relief container fees”
10 means all user fees that are imposed pursuant to Section 1747 of
11 the Harbors and Navigation Code and remitted to the Northern
12 California Port Congestion Relief Trust Fund in the State Treasury.

13 (e) “Northern California port congestion relief project” means
14 each project for public development facilities and economic
15 development facilities for which the expenditure of funds has been
16 approved by the California Transportation Commission pursuant
17 to Section 1751 of the Harbors and Navigation Code.

18 (f) “Northern California port mitigation relief container fee
19 revenue” means all of the following:

20 (1) Income and receipts derived by the bank from Northern
21 California port mitigation relief container fees.

22 (2) Interest and other income from investment of money in any
23 fund or account established pursuant to an indenture for Northern
24 California Port Mitigation Relief Container Fee Revenue Bonds,
25 other than any fund established to rebate investment earnings to
26 the federal government.

27 (A) Amounts on deposit in these funds and accounts, other than
28 any fund or account established to rebate investment earnings to
29 the federal government and any fund or account established to
30 hold the proceeds of a drawing on any liquidity or credit support
31 facility for these bonds.

32 (B) Net income and net receipts derived by the bank on account
33 of interest rate swaps with respect to these bonds.

34 (g) “Northern California Port Mitigation Relief Container Fee
35 Revenue Bonds” means revenue bonds issued pursuant to this
36 article that are payable from Northern California port mitigation
37 relief container fee revenue.

38 (h) “Northern California port mitigation relief container fees”
39 means all user fees that are imposed pursuant to Section 1747 of

1 the Harbors and Navigation Code and remitted to the Northern
2 California Port Mitigation Relief Trust Fund in the State Treasury.

3 (i) “Northern California port mitigation relief project” means
4 each project for public development facilities and economic
5 development facilities for which the expenditure of funds has been
6 approved by the State Air Resources Board pursuant to Section
7 1753 Harbors and Navigation Code.

8 (j) “Southern California port congestion relief container fee
9 revenue” means all of the following:

10 (1) Income and receipts derived by the bank from Southern
11 California port congestion relief container fees.

12 (2) Interest and other income from investment of money in any
13 fund or account established pursuant to an indenture for Southern
14 California Port Congestion Relief Container Fee Revenue Bonds,
15 other than any fund established to rebate investment earnings to
16 the federal government.

17 (A) Amounts on deposit in these funds and accounts, other than
18 any fund or account established to rebate investment earnings to
19 the federal government and any fund or account established to
20 hold the proceeds of a drawing on any liquidity or credit support
21 facility for these bonds.

22 (B) Net income and net receipts derived by the bank on account
23 of interest rate swaps with respect to these bonds.

24 (k) “Southern California Port Congestion Relief Container Fee
25 Revenue Bonds” means revenue bonds issued pursuant to this
26 article that are payable from Southern California port congestion
27 relief container fee revenue.

28 (l) “Southern California port congestion relief container fees”
29 means all user fees that are imposed pursuant to Sections 1745
30 and 1746 of the Harbors and Navigation Code and remitted to the
31 Southern California Port Congestion Relief Trust Fund in the State
32 Treasury.

33 (m) “Southern California port congestion relief project” means
34 each project for public development facilities and economic
35 development facilities for which the expenditure of funds has been
36 approved by the California Transportation Commission pursuant
37 to Section 1750 of the Harbors and Navigation Code.

38 (n) “Southern California port mitigation relief container fee
39 revenue” means all of the following:

1 (1) Income and receipts derived by the bank from Southern
2 California port mitigation relief container fees.

3 (2) Interest and other income from investment of money in any
4 fund or account established pursuant to an indenture for Southern
5 California Port Mitigation Relief Container Fee Revenue Bonds,
6 other than any fund established to rebate investment earnings to
7 the federal government.

8 (3) Amounts on deposit in these funds and accounts, other than
9 any fund or account established to rebate investment earnings to
10 the federal government and any fund or account established to
11 hold the proceeds of a drawing on any liquidity or credit support
12 facility for these bonds.

13 (4) Net income and net receipts derived by the bank on account
14 of interest rate swaps with respect to these bonds.

15 (o) “Southern California Port Mitigation Relief Container Fee
16 Revenue Bonds” means revenue bonds issued pursuant to this
17 article that are payable from Southern California port mitigation
18 relief container fee revenue.

19 (p) “Southern California port mitigation relief container fees”
20 means all user fees that are imposed pursuant to Sections 1745
21 and 1746 of the Harbors and Navigation Code and remitted to the
22 Southern California Port Mitigation Relief Trust Fund in the State
23 Treasury.

24 (q) “Southern California port mitigation project” means each
25 project for public development facilities and economic
26 development facilities for which the expenditure of funds has been
27 approved by the State Air Resources Board pursuant to Section
28 1752 of the Harbors and Navigation Code.

29 63049.71. (a) The bank may enter into financing agreements
30 with participating parties for the purpose of financing or
31 refinancing Southern California port congestion relief projects and
32 Southern California port mitigation relief projects.

33 (b) The bank may issue bonds pursuant to this chapter as
34 Southern California Port Congestion Relief Container Fee Revenue
35 Bonds to finance or refinance Southern California port congestion
36 relief projects and as Southern California Port Mitigation Relief
37 Container Fee Revenue Bonds to finance or refinance Southern
38 California port mitigation relief projects. The aggregate principal
39 amount of the bonds that may be issued is unlimited, but the
40 aggregate principal amount of the bonds that may be outstanding

1 at any one time is five billion dollars (\$5,000,000,000). The
2 revenue bonds may also be issued to finance necessary reserves,
3 capitalized interest, credit enhancement costs, and costs of issuance
4 of the revenue bonds. The last date for payment of principal of
5 any revenue bond may not be more than 30 years after the date of
6 issuance of the revenue bond.

7 (c) Principal of and interest and redemption premiums on
8 Southern California Port Congestion Relief Container Fee Revenue
9 Bonds and Southern California ~~port mitigation relief container fee~~
10 ~~revenue bonds~~ *Port Mitigation Relief Container Fee Revenue*
11 *Bonds* shall be payable from, and secured by, Southern California
12 port congestion relief container fee revenue and Southern California
13 port mitigation relief container fee revenue, respectively, as and
14 to the extent provided in the constituent instruments defining the
15 rights of the holders of the bonds.

16 63049.72. (a) The bank may enter into financing agreements
17 with participating parties for the purpose of financing or
18 refinancing Northern California port congestion relief projects and
19 Northern California port mitigation relief projects.

20 (b) The bank may issue bonds pursuant to this chapter as
21 Northern California Port Congestion Relief Container Fee Revenue
22 Bonds to finance or refinance Northern California port congestion
23 relief projects and as Northern California Port Mitigation Relief
24 Container Fee Revenue Bonds to finance or refinance Northern
25 California ~~Port Mitigation~~ *port mitigation* relief projects. The
26 aggregate principal amount of the bonds that may be issued is
27 unlimited, but the aggregate principal amount of the bonds that
28 may be outstanding at any one time is five billion dollars
29 (\$5,000,000,000). The revenue bonds may also be issued to finance
30 necessary reserves, capitalized interest, credit enhancement costs,
31 and costs of issuance of the revenue bonds. The last date for
32 payment of principal of any revenue bond may not be more than
33 30 years after the date of issuance of the revenue bond.

34 (c) Principal of and interest and redemption premiums on
35 Northern California Port Congestion Relief Container Fee Revenue
36 Bonds and Northern California ~~port mitigation relief container fee~~
37 ~~revenue bonds~~ *Port Mitigation Relief Container Fee Revenue*
38 *Bonds* shall be payable from, and secured by, Northern California
39 port congestion relief container fee revenue and Northern California
40 port mitigation relief container fee revenue, respectively, all as

1 and to the extent provided in the constituent instruments defining
2 the rights of the holders of the bonds.

3 63049.73. (a) The bank may pledge all or any portion of the
4 Southern California port congestion relief container fees to secure
5 Southern California Port Congestion Relief Container Fee Revenue
6 Bonds, and credit facilities for these bonds, and all or any portion
7 of the Southern California port mitigation relief container fees to
8 secure Southern California ~~port mitigation relief container fee~~
9 ~~revenue bonds~~ *Port Mitigation Relief Container Fee Revenue*
10 *Bonds*, and credit facilities for these bonds. All Southern California
11 port congestion relief container fees and Southern California port
12 mitigation relief container fees so pledged are hereby continuously
13 appropriated, notwithstanding Section 13340, without regard to
14 fiscal years, to the bank, and, if the bank so directs, shall be paid
15 to the indenture trustee for these bonds each month, from the
16 Southern California Port Congestion Relief Trust Fund and the
17 Southern California Port Mitigation Relief Trust Fund for so long
18 as any of the bonds are outstanding. Any Southern California port
19 congestion relief container fees and Southern California port
20 mitigation relief container fees that are not required to be retained
21 by the indenture trustee pursuant to the constituent instruments
22 defining the rights of the holders of the bonds shall be remitted by
23 the indenture trustee to the Southern California Port Congestion
24 Relief Trust Fund and the Southern California Port Mitigation
25 Relief Trust Fund and shall be disbursed at the request and
26 direction of the California Transportation Commission and the
27 State Air Resources Board, respectively, for Southern California
28 *port* congestion relief projects and Southern California port
29 mitigation projects that are not being financed with revenue bonds
30 issued by the bank, and these funds are hereby continuously
31 appropriated, notwithstanding Section 13340, without regard to
32 fiscal years, for that purpose.

33 (b) The state hereby pledges to and agrees with the holders of
34 revenue bonds issued pursuant to this article, and each provider
35 of a letter of credit, standby purchase agreement, reimbursement
36 agreement, liquidity facility, or other similar arrangement for the
37 benefit of the revenue bonds, that the state will not limit, alter, or
38 restrict each pledge of Southern California port congestion relief
39 container fees and Southern California port mitigation relief
40 container fees permitted hereby and any other terms of any

1 agreement made with or for the benefit of the holders of the
2 revenue bonds or the providers or in any way impair the rights or
3 remedies of the holders of the bonds or the providers or reduce or
4 terminate the fees while any the bonds remain outstanding.

5 63049.74 (a) The bank may pledge all or any portion of the
6 Northern California port congestion relief container fees to secure
7 Northern California Port Congestion Relief Container Fee Revenue
8 Bonds, and credit facilities for these bonds, and all or any portion
9 of the Northern California port mitigation relief container fees to
10 secure Northern California Port Mitigation Relief Container Fee
11 Revenue Bonds, and credit facilities for these bonds. All Northern
12 California port Congestion relief container fees and Northern
13 California port mitigation relief container fees so pledged are
14 hereby continuously appropriated, notwithstanding Section 13340,
15 without regard to fiscal years, to the bank, and, if the bank so
16 directs, shall be paid to the indenture trustee for the bonds each
17 month, from the Northern California Port Congestion Relief Trust
18 Fund and the Northern California Port Mitigation Relief Trust
19 Fund for so long as any of the bonds are outstanding. Any Northern
20 California port congestion relief container fees and Northern
21 California port mitigation relief container fees that are not required
22 to be retained by the indenture trustee pursuant to the constituent
23 instruments defining the rights of the holders of the bonds shall
24 be remitted by the indenture trustee to the Northern California Port
25 Congestion Relief Trust Fund and the Northern California Port
26 Mitigation Relief Trust Fund and shall be disbursed at the request
27 and direction of the California Transportation Commission and
28 the State Air Resources Board, respectively, for Northern California
29 port congestion relief projects and Northern California port
30 mitigation relief projects that are not being financed with revenue
31 bonds issued by the bank, and these funds are hereby continuously
32 appropriated, notwithstanding Section 13340, without regard to
33 fiscal years, for that purpose.

34 (b) The state hereby pledges to and agrees with the holders of
35 revenue bonds issued pursuant to this article, and each provider
36 of a letter of credit, standby purchase agreement, reimbursement
37 agreement, liquidity facility, or other similar arrangement for the
38 benefit of the revenue bonds, that the state will not limit, alter, or
39 restrict each pledge of Northern California port congestion relief
40 container fees and Northern California port mitigation relief

1 container fees permitted hereby and any other terms of any
2 agreement made with or for the benefit of the holders of the
3 revenue bonds or the providers or in any way impair the rights or
4 remedies of the holders of the bonds or the providers or reduce or
5 terminate the fees while any the bonds remain outstanding.

6 63049.75 Notwithstanding any other provision of law, Article
7 3 (commencing with Section 63040), Article 4 (commencing with
8 Section 63042), and Article 5 (commencing with Section 63043)
9 of this chapter do not apply to any financing provided by the bank
10 pursuant to this article, and the principal amount of revenue bonds
11 issued pursuant to this article and Chapter 5 (commencing with
12 Section 63070) shall not count against the limit stated in the first
13 sentence of subdivision (b) of Section 63071.

14 SEC. 2. The heading of Chapter 1 (commencing with Section
15 1720) is added to Part 2 of Division 6 of the Harbors and
16 Navigation Code, immediately preceding Section 1720, to read:

17
18 CHAPTER 1. PORT FACILITY CONSTRUCTION

19
20 SEC. 3. Chapter 2 (commencing with Section 1740) is added
21 to Part 2 of Division 6 of the Harbors and Navigation Code, to
22 read:

23
24 CHAPTER 2. PORT CONGESTION RELIEF AND PORT MITIGATION
25 RELIEF

26
27 Article 1. General Provisions

28
29 1740. The Legislature hereby finds and declares all of the
30 following:

31 (a) There is a need to mitigate the enormous burden imposed
32 on the highway transportation system serving the Ports of Los
33 Angeles, Long Beach, and Oakland by the overland movement of
34 cargo shipped from and to those ports.

35 (b) The operation of the ports causes environmental pollution
36 that requires mitigation.

37 (c) The improvement of goods movement infrastructure would
38 benefit the owners of container cargo moving through the ports
39 by allowing the owners of the cargo to move container cargo more
40 efficiently and to move more cargo through those ports.

1 (d) The reduction of goods movement pollution would benefit
2 the owners of container cargo moving through the ports by meeting
3 federal air quality standards, which will allow for continued federal
4 funding of goods movement infrastructure projects.

5 (e) Accordingly, it is the intent of the Legislature to alleviate
6 these burdens by imposing a fee on shipping containers processed
7 through those ports and using the funds derived from that fee to
8 do both of the following:

9 (1) Improve the rail system that serves as an alternative to
10 shipping on the highway by commercial vehicle, including, but
11 not limited to, the ondock rail facilities at those ports.

12 (2) Mitigate the environmental pollution caused by port
13 operations.

14 1741. (a) There is hereby established in the State Treasury the
15 Southern California Port Congestion Relief Trust Fund.

16 ~~(b) There is hereby established in the State Treasury the~~
17 ~~Northern California Port Congestion Relief Trust Fund.~~

18 ~~(c) There is hereby established in the State Treasury the Southern~~
19 ~~California Port Mitigation Relief Trust Fund.~~

20 *(b) There is hereby established in the State Treasury the*
21 *Southern California Port Mitigation Relief Trust Fund.*

22 *(c) There is hereby established in the State Treasury the*
23 *Northern California Port Congestion Relief Trust Fund.*

24 (d) There is hereby established in the State Treasury the
25 Northern California Port Mitigation Relief Trust Fund.

26 1743. For purposes of this chapter, the following definitions
27 apply:

28 (a) “Board” means the State Air Resources Board.

29 (b) “Commission” means the California Transportation
30 Commission.

31 (c) “Northern California Congestion Fund” means the Northern
32 California Port Congestion Relief Trust Fund.

33 (d) “Northern California Mitigation Fund” means the Northern
34 California Port Mitigation Relief Trust Fund.

35 (e) “Port” means the Port of Los Angeles, Port of Long Beach,
36 or Port of Oakland, as appropriate.

37 (f) “Southern California Congestion Fund” means the Southern
38 California Port Congestion Relief Trust Fund.

39 (g) “Southern California Mitigation Fund” means the Southern
40 California Port Mitigation Relief Trust Fund.

Article 2. User Fee

1
2
3 1745. (a) Beginning January 1, 2008, the Port of Los Angeles
4 shall develop a process for notifying the owner of, and collecting
5 a user fee from the owner of, container cargo moving through the
6 port.
7 (b) No later than June 1, 2008, the port shall notify the owner
8 of cargo moving through the port that it will be assessed a user fee
9 not to exceed thirty dollars (\$30) per twenty-foot equivalent unit
10 (TEU). The notice shall include, but not be limited to, the process
11 for payment of the user fee, the frequency for payment of the user
12 fee, and that the user fee is being assessed to improve the goods
13 movement infrastructure serving the port, to reduce pollution from
14 all forms of equipment, vehicles, locomotives, and ships that
15 operate at the port and bring containers to and from the port.
16 (c) Beginning January 1, 2009, the port shall assess a user fee
17 on the owner of container cargo moving through the port not to
18 exceed thirty dollars (\$30) per TEU. The port shall collect the fee
19 at least twice a year.
20 (1) The port shall remit one-half of the user fee to the Southern
21 California Congestion Fund. Upon appropriation, moneys deposited
22 in that fund shall be available for expenditure by the commission
23 exclusively for the purposes of funding projects that improve the
24 flow and efficiency of container cargo to and from the Port of Los
25 Angeles, and to fund the administrative costs of this program.
26 Moneys deposited in that fund shall not be loaned or transferred
27 to, or allocated or appropriated in any other way to, the General
28 Fund.
29 (2) The port shall remit one-half of the user fee to the Southern
30 California Mitigation Fund. Upon appropriation, moneys deposited
31 in that fund shall be available for expenditure by the board to
32 mitigate environmental pollution caused by the movement of cargo
33 to and from the Port of Los Angeles by commercial motor vehicles,
34 oceangoing vessels, and rail, and to fund the administrative costs
35 of this program. Moneys deposited in that fund shall not be loaned
36 or transferred to, or allocated or appropriated in any other way to,
37 the General Fund.
38 (d) The port may contract with PierPass for the collection of
39 the user fee authorized pursuant to this section.

1 1746. (a) Beginning January 1, 2008, the Port of Long Beach
2 shall develop a process for notifying the owner of, and collecting
3 a user fee from the owner of, container cargo moving through the
4 port.

5 (b) No later than June 1, 2008, the port shall notify the owner
6 of cargo moving through the port that it will be assessed a user fee
7 not to exceed thirty dollars (\$30) per twenty-foot equivalent unit
8 (TEU). The notice shall include, but not be limited to, the process
9 for payment of the user fee, the frequency for payment of the user
10 fee, and that the user fee is being assessed to improve the goods
11 movement infrastructure serving the port, to reduce pollution from
12 all forms of equipment, vehicles, locomotives, and ships that
13 operate at the port and bring containers to and from the port.

14 (c) Beginning January 1, 2009, the port shall assess a user fee
15 on the owner of container cargo moving through the port not to
16 exceed thirty dollars (\$30) per TEU. The port shall collect the fee
17 at least twice a year.

18 (1) The port shall remit one-half of the user fee to the Southern
19 California Congestion Fund. Upon appropriation, moneys deposited
20 in that fund shall be available for expenditure by the commission
21 exclusively for the purposes of funding projects that improve the
22 flow and efficiency of container cargo to and from the Port of and
23 Long Beach, and to fund the administrative costs of this program.
24 Moneys deposited in that fund shall not be loaned or transferred
25 to, or allocated or appropriated in any other way to, the General
26 Fund.

27 (2) The port shall remit one-half of the user fee to the Southern
28 California Mitigation Fund. Upon appropriation, moneys deposited
29 in that fund shall be available for expenditure by the board to
30 mitigate environmental pollution caused by the movement of cargo
31 to and from the Port of Long Beach by commercial motor vehicles,
32 oceangoing vessels, and rail, and to fund the administrative costs
33 of this program. Moneys deposited in that fund shall not be loaned
34 or transferred to, or allocated or appropriated in any other way to,
35 the General Fund.

36 (d) The port may contract with PierPass for the collection of
37 the user fee authorized pursuant to this section.

38 1747. (a) Beginning January 1, 2008, the Port of Oakland shall
39 develop a process for notifying the owner of, and collecting a user
40 fee from the owner of, container cargo moving through the port.

1 (b) No later than June 1, 2008, the port shall notify the owner
2 of cargo moving through the port that it will be assessed a user fee
3 not to exceed thirty dollars (\$30) per twenty-foot equivalent unit
4 (TEU). The notice shall include, but not be limited to, the process
5 for payment of the user fee, the frequency for payment of the user
6 fee, and that the user fee is being assessed to improve the goods
7 movement infrastructure serving the port, to reduce pollution from
8 all forms of equipment, vehicles, locomotives, and ships that
9 operate at the port and bring containers to and from the port.

10 (c) Beginning January 1, 2009, the port shall assess a user fee
11 on the owner of container cargo moving through the port not to
12 exceed thirty dollars (\$30) per TEU. The port shall collect the fee
13 at least twice a year.

14 (1) The port shall remit one-half of the user fee to the Northern
15 California Congestion Fund. Upon appropriation, moneys deposited
16 in that fund shall be available for expenditure by the commission
17 exclusively for the purposes of funding projects that improve the
18 flow and efficiency of container cargo to and from the Port of
19 Oakland and to fund the administrative costs of this program.
20 Moneys deposited in that fund shall not be loaned or transferred
21 to, or allocated or appropriated in any other way to, the General
22 Fund.

23 (2) The port shall remit one-half of the user fee to the Northern
24 California Mitigation Fund. Upon appropriation, moneys deposited
25 in that fund shall be available for expenditure by the board to
26 mitigate environmental pollution caused by the movement of cargo
27 to and from the port by commercial motor vehicles, oceangoing
28 vessels, and rail, and to fund the administrative costs of this
29 program. Moneys deposited in that fund shall not be loaned or
30 transferred to, or allocated or appropriated in any other way to,
31 the General Fund.

32 (d) The port may contract with PierPass for the collection of
33 the user fee authorized pursuant to this section.

34

35 Article 3. Congestion Relief and Mitigation Relief Projects

36

37 1750. (a) Beginning January 1, 2008, the commission shall
38 develop a list of projects that would improve the overall efficiency
39 of container cargo movement to and from the Ports of Los Angeles
40 and Long Beach by improving the rail system and container

1 transportation systems that transport container cargo from and to
2 those ports and the ondock rail facilities at those ports. In the
3 process for selecting projects, the commission shall consult with
4 the transportation commissions for the Counties of Los Angeles,
5 Orange, Riverside, San Bernardino, and Ventura, the Port of Los
6 Angeles, the City of Los Angeles, the Port of Long Beach, the City
7 of Long Beach, and the Southern California Association of
8 Governments. The commission shall hold public hearings to seek
9 further input on developing these projects, *with at least one hearing*
10 *at or near the Port of Los Angeles and the Port of Long Beach.*

11 (b) No later than September 1, 2008, the commission, at a public
12 hearing, shall finalize a list of projects that would improve the
13 overall efficiency of container cargo movement to and from the
14 Ports of Los Angeles and Long Beach by improving the rail system
15 and container transportation systems that transport container cargo
16 from and to those ports and the ondock rail facilities at those ports.
17 This will be the final list, of infrastructure projects at the Ports of
18 Los Angeles and Long Beach, eligible to be funded by the user
19 fee authorized pursuant to this chapter.

20 (c) Projects eligible to be on the final list shall not be used to
21 construct, maintain, or improve highways, unless the highway or
22 road improvement is part of a rail grade separation, or the highway
23 improvement is done to separate container cargo from motor
24 vehicle traffic by creating on-ramps or off-ramps for port container
25 truck traffic.

26 (d) In awarding funds pursuant to this section, the commission
27 shall give priority to those projects that have been designed to
28 measurably reduce air pollution and environmental impacts to
29 local communities, *and* to assist in attaining state and federal air
30 quality goals and enhance environmental performance, while
31 addressing the overall efficiency of container cargo movement.

32 (e) *On January 1, 2009, and annually thereafter, the Ports of*
33 *Long Beach and Los Angeles shall report to the commission on*
34 *the implementation of the Final 2006 San Pedro Bay Clean Air*
35 *Action Plan. Each port shall report to the commission on whether*
36 *the emission reduction goals for the source specific categories*
37 *have been achieved as follows:*

- 38 (1) *Heavy-duty vehicles by 2011.*
- 39 (2) *Cargo handling equipment, 2010, 2012, and 2014.*
- 40 (3) *Harbor craft, 2008 and 2011.*

1 (4) *Locomotives, 2008, 2011, and 2014.*

2 *If any of the source specific emission reduction goals have not*
3 *been met, the commission shall not award funding to any project,*
4 *and the commission shall not fund any further projects until the*
5 *source specific emission reduction goals are achieved, other than*
6 *projects that have been awarded funding prior to this finding.*

7 ~~(e)~~

8 (f) For all construction projects funded pursuant to this section,
9 a contractor shall ensure that all mobile nonroad equipment used
10 on the project will be equipped with a California Air Resources
11 Board (CARB) verified diesel particulate filter that obtains at least
12 an 85-percent reduction in emissions, unless any of the following
13 circumstances exists, and the contractor is able to provide proof
14 that any of these circumstances exists:

15 (1) A piece of specialized equipment is unavailable in a
16 controlled form within the state, including through a leasing
17 arrangement.

18 (2) A contractor has applied for incentive funds to put controls
19 on a piece of uncontrolled equipment planned for use on the
20 project, but the application is not yet approved, or the application
21 has been approved, but funds are not yet available.

22 (3) A contractor has ordered a control device for a piece of
23 equipment planned for use on the project, or has ordered a new
24 piece of controlled equipment to replace the uncontrolled
25 equipment, but that order has not been completed by the
26 manufacturer or dealer, and the contractor has attempted to lease
27 controlled equipment, but no dealer within 200 miles of the project
28 has the controlled equipment available for lease.

29 ~~(f)~~

30 (g) Projects eligible to be considered by the commission include,
31 but are not limited to, all of the following:

32 (1) A project to separate at-grade crossings to reduce conflicts
33 between trains and motor vehicles in Los Angeles, Orange,
34 Riverside, and San Bernardino Counties, also known as the
35 Alameda Corridor East Project.

36 (2) A project to improve rail capacity by adding additional tracks
37 to existing rail lines in Los Angeles, Orange, Riverside, and San
38 Bernardino Counties.

39 (3) A project to separate at-grade rail crossings in San
40 Bernardino County, also known as the Colton crossing.

1 (4) A project to improve ondock rail infrastructure at the Ports
2 of Los Angeles and Long Beach.

3 ~~(g)~~

4 (h) In determining which projects to select, the commission
5 shall also take into account the entire rail and trade corridor
6 servicing the Ports of Los Angeles and Long Beach.

7 ~~(h)~~

8 (i) The commission shall only use the funds received from the
9 Southern California Congestion Fund to fund projects authorized
10 pursuant to this section.

11 ~~(i)~~

12 (j) Once the projects on the final list are completed and fully
13 funded, the commission shall notify the Ports of Los Angeles and
14 Long Beach that the infrastructure projects are completed and to
15 no longer collect the one-half of the user fee for infrastructure
16 projects. The commission may also make a finding that a project
17 on the final list has either been funded by another source or is no
18 longer worthy of funding.

19 1751. (a) Beginning January 1, 2008, the commission shall
20 develop a list of projects that would improve the overall efficiency
21 of container cargo movement to and from the Port of Oakland by
22 improving the rail and container transportation systems that
23 transport container cargo from and to that port and the ondock rail
24 facilities at that port. In the process for selecting projects, the
25 commission shall consult with the transportation commissions for
26 the Counties of Alameda and Contra Costa, the Port of Oakland,
27 the City of Oakland, and the Bay Area Association of
28 Governments. The commission shall hold public hearings to seek
29 further input on developing these projects, including at least one
30 hearing in the City of Oakland.

31 (b) No later than September 1, 2008, the commission, at a public
32 hearing, shall finalize a list of projects that would improve the
33 overall efficiency of container cargo movement to and from the
34 Port of Oakland by improving the rail and container transportation
35 systems that transport container cargo from and to that port and
36 the ondock rail facilities at that port. This will be the final list, of
37 infrastructure projects at the Port of Oakland, eligible to be funded
38 by the user fee authorized pursuant to this chapter.

39 (c) Projects eligible to be on the final list shall not be used to
40 construct, maintain, or improve highways, unless the highway or

1 road improvement is part of a rail grade separation, or the highway
2 improvement is done to separate container cargo from motor
3 vehicle traffic by creating on-ramps or off-ramps for port container
4 truck traffic.

5 (d) In awarding funds pursuant to this section, the commission
6 shall give priority to those projects that have been designed to
7 measurably reduce air pollution and environmental impacts to
8 local communities, *and* to assist in attaining state and federal air
9 quality goals and enhance environmental performance, while
10 addressing the overall efficiency of container cargo movement.

11 (e) For all construction projects funded pursuant to this section,
12 a contractor shall ensure that all mobile nonroad equipment used
13 on the project will be equipped with a California Air Resources
14 Board (CARB) verified diesel particulate filter that obtains at least
15 an 85 percent reduction in emissions, unless any of the following
16 circumstances exists, and the contractor is able to provide proof
17 that any of these circumstances exists:

18 (1) A piece of specialized equipment is unavailable in a
19 controlled form within the state, including through a leasing
20 arrangement.

21 (2) A contractor has applied for incentive funds to put controls
22 on a piece of uncontrolled equipment planned for use on the
23 project, but the application is not yet approved, or the application
24 has been approved, but funds are not yet available.

25 (3) A contractor has ordered a control device for a piece of
26 equipment planned for use on the project, or has ordered a new
27 piece of controlled equipment to replace the uncontrolled
28 equipment, but that order has not been completed by the
29 manufacturer or dealer, and the contractor has attempted to lease
30 controlled equipment, but no dealer within 200 miles of the project
31 has the controlled equipment available for lease.

32 (f) Projects eligible to be considered by the commission include,
33 but are not limited to, projects to separate at-grade crossings to
34 reduce conflicts between trains and motor vehicles and ondock
35 rail improvements at the Port of Oakland.

36 (g) In determining which projects to select, the commission
37 shall also take into account the entire rail and trade corridor
38 servicing the Port of Oakland.

1 (h) The commission shall only use the funds received from the
2 Northern California Congestion Fund to fund projects authorized
3 pursuant to this section.

4 (i) Once the projects on the final list are completed and fully
5 funded, the commission shall notify the Port of Oakland, that the
6 infrastructure projects are completed and to no longer collect the
7 one-half of the user fee for infrastructure projects. The commission
8 may also make a finding that a project on the final list has either
9 been funded by another source or is no longer worthy of funding.

10 1752. (a) Beginning January 1, 2008, the board shall develop
11 a list of projects that reduce air pollution caused by the movement
12 of container cargo to and from the Ports of Los Angeles and Long
13 Beach. The projects on the list shall be consistent with the Emission
14 Reduction Plan (ERP) adopted April 2006, and shall be designed
15 to reduce air pollution at those ports in order to reach federal air
16 quality attainment standards and to meet the ERP's goals for 2010,
17 2015, and 2020, *as well as the goals for the Air Quality*
18 *Management Plan prepared by the South Coast Air Quality*
19 *Management District, and the San Pedro Bay Clean Air Action*
20 *Plan. In developing the list, the board shall consult with the South*
21 *Coast Air Quality Management District, the Gateway Council of*
22 *Governments, and the Ports of Los Angeles and Long Beach. The*
23 *board shall hold public hearings before developing the list of*
24 *projects, with at least one hearing being held at or near the Ports*
25 *of Los Angeles and Long Beach.*

26 (b) The board shall work with the South Coast Air Quality
27 Management District, the Port of ~~Long Beach~~ *Los Angeles*, and
28 the Port of ~~Los Angeles~~ *Long Beach* in order to ensure that projects
29 within the *Air Quality Management Plan prepared by the South*
30 *Coast Air Quality Management District and within the San Pedro*
31 *Bay Clean Air Action Plan* are completed or implemented. The
32 board ~~may provide funding to the district or the ports in order to~~
33 ~~achieve the goals of the plan.~~ *may provide funding to the district*
34 *in order to implement the Air Quality Management Plan prepared*
35 *by the district, and to the ports in order to implement the San Pedro*
36 *Bay Clean Air Action Plan.*

37 (c) No later than September 1, 2008, the board, at a public
38 hearing, shall finalize a list of projects that meet the ERP's goals
39 for 2010, 2015, and 2020, in order to meet federal air quality
40 attainment standards.

1 (d) The board may determine, at a public hearing, that the
2 emission reduction goals for 2020 have been met or exceeded and
3 that federal air quality standards have been met in the South Coast
4 Air Basin, ~~and once including full implementation of the Air~~
5 *Quality Management Plan prepared by the South Coast Air Quality*
6 *Management District. Once the determination is made, and*
7 ensuring that all approved projects have been funded, the board
8 shall notify the Port of Los Angeles of this determination, and the
9 Port of Los Angeles shall no longer collect the one-half of the user
10 fee for air quality projects meant to reach these goals and federal
11 air quality attainment standards.

12 (e) The board may determine, at a public hearing, that the
13 emission reduction goals for 2020 have been met or exceeded and
14 that federal air quality standards have been met in the South Coast
15 Air Basin, ~~and once including full implementation of the Air~~
16 *Quality Management Plan prepared by the South Coast Air Quality*
17 *Management District. Once the determination is made, and*
18 ensuring that all approved projects have been funded, the board
19 shall notify the Port of Long Beach of this determination, and the
20 Port of Long Beach shall no longer collect the one-half of the user
21 fee for air quality projects meant to reach these goals and federal
22 air quality attainment standards.

23 (f) The board shall only use the funds received from the
24 Southern California Mitigation Fund to fund projects authorized
25 pursuant to this section.

26 1753. (a) Beginning January 1, 2008, the board shall develop
27 a list of projects that reduce air pollution caused by the movement
28 of container cargo to and from the Port of Oakland. The projects
29 on the list shall be consistent with the Emission Reduction Plan
30 (ERP) adopted April 2006, and shall be designed to reduce air
31 pollution at the port in order to reach federal air quality attainment
32 standards and to meet the ERP's goals for 2010, 2015, and 2020.
33 In developing the list, the board shall consult with the Bay Area
34 Air Quality Management District and the Port of Oakland.

35 (b) If the Bay Area Air Quality Management District and the
36 Port of Oakland develop a plan to reduce emissions from the Port
37 of Oakland, then the board shall work with the district and the ~~Port~~
38 ~~of Oakland~~ port in order to ensure that projects within the plan are
39 completed or implemented. The board may provide funding to the
40 district or the port in order to achieve the goals of the plan.

1 (c) No later than September 1, 2008, the board, at a public
2 hearing, shall finalize a list of projects that meet the ERP's goals
3 for 2010, 2015, and 2020, in order to meet federal air quality
4 attainment standards.

5 (d) The board may determine, at a public hearing, that the
6 emission reduction goals for 2020 have been met or exceeded and
7 that federal air quality standards have been met within the Bay
8 Area Air Quality Management District, and once the determination
9 is made, and ensuring that all approved projects have been funded,
10 the board shall notify the Port of Oakland of this determination,
11 and the Port of Oakland shall no longer collect the one-half of the
12 user fee for air quality projects meant to reach these goals and
13 federal air quality attainment standards.

14 (e) The board shall only use the funds received from the
15 Northern California Mitigation Fund to fund projects authorized
16 pursuant to this section.

17 SEC. 4. Section 1760 of the Harbors and Navigation Code is
18 amended and renumbered to read:

19 1730. (a) For purposes of this section, "council" means the
20 California Marine and Intermodal Transportation System Advisory
21 Council, a regional subunit of the Marine Transportation System
22 National Advisory Council chartered by the federal Secretary of
23 Transportation under the Federal Advisory Council Act (P.L.
24 92-463).

25 (b) The council is requested to do all of the following:

26 (1) Meet, hold public hearings, and compile data on issues that
27 include, but need not be limited to, all of the following:

28 (A) The projected growth of each maritime port in the state.

29 (B) The costs and benefits of developing a coordinated state
30 program to obtain federal funding for maritime port growth,
31 security, and congestion relief.

32 (C) Impacts of maritime port growth on the state's transportation
33 system.

34 (D) Air pollution caused by movement of goods through the
35 state's maritime ports, and proposed methods of mitigating or
36 alleviating that pollution.

37 (E) Maritime port security, including, but not limited to, training,
38 readiness, certification of port personnel, exercise planning and
39 conduct, and critical marine transportation system infrastructure
40 protection.

1 (F) A statewide plan for continuing operation of maritime ports
 2 in cooperation with the United States Coast Guard, the federal
 3 Department of Homeland Security, the Office of Emergency
 4 Services, the state Office of Homeland Security, and the California
 5 National Guard, consistent with the state’s emergency management
 6 system and the national emergency management system, in the
 7 event of a major incident or disruption of port operations in one
 8 or more of the state’s maritime ports.

9 (G) State marine transportation policy, legislation, and planning;
 10 regional infrastructure project funding; competitiveness;
 11 environmental impacts; port safety and security; and any other
 12 matters affecting the marine transportation system of the United
 13 States within, or affecting, the state.

14 (2) Identify all state agencies that are involved with the
 15 development, planning, or coordination of maritime ports in the
 16 state.

17 (3) Identify other states that have a statewide port master plan
 18 and determine whether that plan has assisted those states in
 19 improving their maritime ports.

20 (4) Compile all information obtained pursuant to paragraphs
 21 (1) to (3), inclusive, and submit its findings in a report to the
 22 Legislature not later than January 1, 2006. The report should
 23 include, but need not be limited to, recommendations on methods
 24 to better manage the growth of maritime ports and address the
 25 environmental impacts of moving goods through those ports.

26 (c) The activities of the council pursuant to this section shall
 27 not be funded with appropriations from the General Fund.

28 SEC. 5. No reimbursement is required by this act pursuant to
 29 Section 6 of Article XIII B of the California Constitution because
 30 a local agency or school district has the authority to levy service
 31 charges, fees, or assessments sufficient to pay for the program or
 32 level of service mandated by this act, within the meaning of Section
 33 17556 of the Government Code.