



April 16, 2007

The Honorable Alan Lowenthal
Chairman
Transportation and Housing Committee
California State Senate
State Capitol; Room 2032
Sacramento, CA 95814

Dear Senator Lowenthal:

I am writing on behalf of the Waterfront Coalition to express our concerns about SB. 974, a bill that would impose fees on cargo owners to pay for pollution mitigation, and highway infrastructure programs in the state of California. We believe this bill is seriously flawed, and we would hope that you recognize, in particular, the potential violations of the U.S. constitution posed by this legislation. We understand that this bill may be scheduled for debate before the Transportation Committee the week of April 17th and we urge you to consider our concerns with this proposal.

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 transportation infrastructure 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. Since roughly half of all shipping containers moving through California ports are moving on to other states, California would have a very difficult time defending a container fee in court.

Government imposed container fees could prove detrimental to the health of the California economy. The many businesses involved in moving and processing international freight through California represent a growing portion of the state's economy offering stable employment and high wages. However, these industries depend on cargo moving through California ports. Roughly half of all containerized cargo imported into California is ultimately destined to stores and warehouses in other states. This discretionary cargo can find alternative gateways in order to reach their final destination. While the fee may appear minimal, the fact is that these fees are not imposed at other North American ports and shippers have an incentive to move this significant amount of freight through other ports. Government mandated container fees will only place California's seaports at a competitive disadvantage with other West Coast container ports and planned facilities in Mexico and Canada. A container fee that diverts cargo could impose costs on a growing segment of the California economy.

In closing, we hope that you consider these concerns with SB 974. This bill represents an attempt to raise revenue without identifying important transportation projects and their costs. As an alternative, we stand ready to work with you in addressing transportation infrastructure and emissions reductions in California through a collaborative process that identifies important projects as well as appropriate sources of funding. Container fees called for in this bill simply puts the cart before the horse and may very likely embroil the state in costly court battles that will ultimately prove expensive over the long run.

Sincerely,

Robin Lanier
Executive Director

CC: Senator Tom McClintock (Vice Chair)

Senator Roy Ashburn

Senator Gilbert Cedillo

Senator Ellen Corbett

Senator Robert Dutton

Senator Tom Harman

Senator Christine Kehoe

Senator Jenny Oropeza

Senator Joe Simitian

Senator Tom Torlakson