

BOARD MEETING DATE: March 3, 2017

AGENDA NO. 28

REPORT: Special Legislative Committee

SYNOPSIS: The Legislative Committee held a Special Meeting on Thursday, February 16, 2017. The next regularly scheduled Legislative Committee meeting is Friday, March 10, 2017 at 9 a.m.

Agenda Item	Recommendation
Proposed Legislation to Enhance an Existing Smog Abatement Fee	Support in Concept
Proposed Legislation to Create a Port Container Cargo Fee	Support in Concept

RECOMMENDED ACTION:

Receive and file this report, and approve agenda items as specified in this letter.

Judith Mitchell
Chair
Legislative Committee

DJA:PFC:mjk

Attendance [Attachment 1]

A special meeting of the Legislative Committee was held on February 16, 2017. Committee Chair Judith Mitchell and Committee Members Dr. Clark E. Parker, Sr. and Janice Rutherford all attended via teleconference. In addition, Board Member Michael Cacciotti attended via teleconference and was appointed to the committee for this meeting. Committee Members Joe Buscaino and Shawn Nelson were absent.

Proposed Legislation for Approval [Attachment 2]

Mr. Philip Crabbe, Community Relations Manager in SCAQMD's Legislative, Public Affairs and Media (LPAM) Office, described a potential legislative proposal which staff seeks approval to pursue in the state Legislature as an SCAQMD-sponsored item. This legislative proposal would delay vehicle inspection and maintenance for new vehicles from the previously required six years to eight years. The Smog Check fee of \$48, which consumers currently pay for a Smog Check of their vehicle after six years, would instead be collected as a smog abatement fee, which would help provide additional

funding for the Carl Moyer Program, with no increased fiscal impact to consumers. Mr. Crabbe explained that in previous years, CARB received about \$65 million per year, through the current smog abatement fee, for the Carl Moyer Program, which is then distributed to air agencies statewide. SCAQMD receives about \$28-\$30 million of those funds per year. Under the proposed legislation, this funding would triple and be used for more targeted diesel PM and NOx emissions reductions from heavy-duty vehicles. Mr. Crabbe also explained that, unlike the Smog Check program, which applies throughout California, this increase in Carl Moyer funds could be better directed and more specifically utilized in areas, such as disadvantaged communities, to reduce direct exposure to heavy-duty diesel vehicle emissions.

In response to an inquiry from Mayor Cacciotti, Mr. Fred Minassian, Assistant Deputy Executive Officer/Science & Technology Advancement Office clarified that the Bureau of Automotive Repair's (BAR's) share of funds from the current smog abatement fee would remain unchanged with this proposal.

In response to an inquiry from Councilmember Mitchell, Mr. Minassian reported that the anticipated revenue with the adoption of this proposal would triple the current amount, bringing in approximately \$180 million, of which SCAQMD would receive \$80 to \$90 million. Mr. Minassian also clarified that the Carl Moyer Program is statewide and that the funding amount each air district receives is determined by a formula based on population size of the respective air district jurisdictions.

Councilmember Mitchell inquired as to whether the 44 percent of the Carl Moyer Program funds that the SCAQMD receives remains at the same percentage every year. Executive Officer Wayne Nastri responded in the affirmative.

Dr. Parker inquired as to whether there was a big difference between the percentages of population between the air districts versus numbers of vehicles between the air districts. Mr. Nastri indicated that staff would gather this information and report back.

Councilmember Mitchell asked for confirmation that this proposal would not hurt disadvantaged communities. Mr. Nastri responded that it would not and said that state legislators and staff who had seen the proposal really liked the concept.

Dr. Parker asked how staff would respond to concerns from environmentalists who would say that the District is allowing more cars to pollute the area. Mr. Nastri responded that through the funds collected, the SCAQMD would have greater ability to reduce pollution from vehicles, specifically heavy-duty vehicles, which will have a greater impact on improving public health.

Staff recommended a position of *SUPPORT IN CONCEPT* for this potential SCAQMD- sponsored legislative proposal.

Moved by Parker; seconded by Cacciotti; unanimously approved.

Ayes: Cacciotti, Parker, Mitchell, Rutherford

Noes: None

Absent: Buscaino, Nelson

Create a Port Container Cargo Fee [*Attachment 3*]

Mr. Crabbe presented on a second potential legislative proposal, which staff seeks approval to pursue in the state Legislature as an SCAQMD-sponsored item. This proposed legislation would impose a fee on container cargo imported and exported through the ports of Long Beach, Los Angeles, and Oakland in an amount of \$100 per twenty-foot equivalent unit (TEU). The bill would require the fee revenues to be used to mitigate adverse air quality impacts associated with goods movement in and out of the three ports. Mr. Crabbe stated that based on estimates in 2008-09, this fee could potentially generate revenue in the range of \$1.1 billion annually, by the Ports of Los Angeles and Long Beach. Mr. Crabbe explained further that the Los Angeles/Long Beach port complex is the largest in the United States and is projected to see cargo approximately double by 2035. The ports are also the single largest source of air pollution in the South Coast Basin.

Mr. Nastri discussed details from Senator Lowenthal's 2008 bill on SB 974, a port container cargo fee which was vetoed by Governor Schwarzenegger. A discussion ensued on the detrimental environmental and public health impacts of goods movement on the South Coast region and the need for air quality mitigation. Supervisor Rutherford voiced concern that this proposed legislation may make ports in California less competitive than ports elsewhere, suggested that there should be a nationwide fee to avoid this, and asked whether staff had done a study on how the local ports would be impacted financially. A further discussion followed regarding the low pass-through costs on shippers from the proposed fee, and the competitiveness of ports and their current fees.

Dr. Parker inquired whether there were any fees of this nature currently. Ms. Barbara Baird, Chief Deputy Counsel, responded that the ports had issued a fee of \$30 themselves several years ago to change their fleet in response to environmental concerns. Ms. Baird reported that the ports are able to issue fees on their own without going through the Legislature.

In response to an inquiry from Dr. Parker, Mr. Nastri stated that the funds collected would go to the respective air districts containing the specified ports.

Mayor Cacciotti asked that staff put together a diagram which would compare fees between the local ports versus other ports around the nation. Mr. Nastri stated that staff would gather the information and report back.

Staff recommended a *SUPPORT IN CONCEPT* for this potential SCAQMD-sponsored legislative proposal.

Moved by Cacciotti; seconded by Parker.

Ayes: Cacciotti, Parker, Mitchell

Noes: Rutherford

Absent: Buscaino, Nelson

The committee adjourned until Friday, March 10, 2017.

Attachments

1. Attendance Record
- 2a. Legislative Proposal – Smog Abatement Fee
- 2b. Smog Abatement Fee Chart
- 2c. Smog Abatement Fee Language
3. Legislative Proposal – Port Container Cargo Fee

ATTACHMENT 1

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT SPECIAL LEGISLATIVE COMMITTEE MEETING

Attendance – February 16, 2017

Councilmember Judith Mitchell (Teleconference)	SCAQMD Board Member
Dr. Clark E. Parker, Sr. (Teleconference).....	SCAQMD Board Member
Supervisor Janice Rutherford (Teleconference).....	SCAQMD Board Member
Mayor Michael Cacciotti (Teleconference)	SCAQMD Board Member
Paul Gonsalves (Teleconference).....	Joe A. Gonsalves & Son
Will Gonzalez (Teleconference)	Gonzalez, Quintana, Hunter & Cruz
Derrick Alatorre	SCAQMD Staff
Leeor Alpern	SCAQMD Staff
Barbara Baird	SCQAMD Staff
Marc Carrel	SCAQMD Staff
Tina Cox	SCAQMD Staff
Philip Crabbe	SCAQMD Staff
Julie Franco	SCAQMD Staff
Laura Garrett	SCAQMD Staff
Monika Kim	SCAQMD Staff
Wayne Nastri	SCAQMD Staff
Robert Paud.....	SCAQMD Staff
Fabian Wesson	SCAQMD Staff
Jill Whynot.....	SCAQMD Staff

ATTACHMENT 2a

Legislative Proposal to Enhance Smog Abatement Fee

Background: Starting in FY 1998-99, the Carl Moyer Program (CMP) was funded on an annual basis for 6 years as part of the state Budget. Due to the success of the CMP the Legislature approved SB 1107 & AB 923 in 2004, which provided continuous funding for the implementation of the CMP. The main provision of SB1107 allowed for funding for the CMP through the creation of a smog abatement fee, which had no net fiscal impact on consumers. Specifically, SB 1107:

- Delayed vehicle inspection and maintenance (smog check) for new vehicles from the previously required 4 years to 6 years.
- The smog check fee of \$48 (at the time), which the consumers were to pay for a smog check of their vehicle after 4 years would instead be collected as a smog abatement fee at a rate of \$12/year over 4 years (thus, no increased fiscal impact to consumers).
- Under SB 1107, half of the annual smog abatement fee (\$6/year), goes to the Air Pollution Control Fund (APCF) for CARB for the CMP. This results in about \$65 million/yr from new car sales statewide, which CARB distributes among air districts based on an agreed formula between CARB and CAPCOA. (As part of this formula, the South Coast region receives about 44% of the funding, so about \$28-\$30 million per year.)

The principal argument behind SB 1107's approach was that all or most of the new cars with new technologies pass the smog check test after 4 years anyway. Generating funds this way allowed real and surplus emissions reductions with no additional cost to consumers.

SCAQMD Bill Proposal

- To increase annual incentive funding for the replacement and repower of on- and off-road heavy-duty vehicles and equipment under the CMP, which would support the 2017 AQMP efforts, SCAQMD proposes a legislative amendment to the law created by SB 1107.
- Pending confirmation from CARB, early indications are that a great majority of new vehicles pass their first smog check after 6 years as well, thus SCAQMD proposes a postponement of smog checks for new vehicles from 6 years to 8 years.
- Under the proposal, an additional \$48 in smog abatement fees would be collected and deposited in the APCF for the CMP, in lieu of the same fee that would have otherwise been paid by consumers for a smog check of their vehicles after 6 years.
- CARB would then distribute the funds collected among air districts based on its agreed upon methodology with CAPCOA.

Benefits:

- The proposed bill would direct all (not half) of the new fee to the APCF, thus increasing funding for the CMP by three-fold.
- The enhanced smog abatement fee would have no fiscal impact on consumers, since it only diverts funds from smog check to the APCF.
- Generating funds this way allows real and surplus emissions reductions, through CMP, and creates SIP credits through early emission reductions.
- This increases funding for more effective diesel PM and NOx emissions reductions from heavy duty vehicles, instead of attempting to just reduce emissions from gasoline vehicles that generally pass a smog check after 6 years anyway.
- Unlike the smog check program, which applies generally throughout California, this increase in CMP funds could be better directed and more specifically utilized in areas, such as disadvantaged communities, to reduce direct exposure to heavy duty diesel vehicle emissions.
- Increased job creation and manufacturing in the clean transportation technology sector.

ATTACHMENT 2b

Smog Abatement Fee Chart

The chart below shows how the additional \$48 from the sixth year Smog Check will be redirected and collected as Smog Abatement Fee. The additional \$48 is distributed in six years with additional \$4 in years 1 through 4, and additional \$16 in years 5 and 6. As shown at the bottom of the table BAR's portion remains unchanged, but ARB's portion for the Carl Moyer Program triples from the current \$24 to \$72.

Year	Current Smog Check Fee	Current Smog Abatement Fee		Proposed Smog Check Fee	Proposed Smog Abatement Fee	
		Total Annual	Breakdown		Total Annual	Breakdown
1	0	\$12	\$6 to ARB \$6 to BAR	0	\$16	\$10 to ARB \$6 to BAR
2	0	\$12	\$6 to ARB \$6 to BAR	0	\$16	\$10 to ARB \$6 to BAR
3	0	\$12	\$6 to ARB \$6 to BAR	0	\$16	\$10 to ARB \$6 to BAR
4	0	\$12	\$6 to ARB \$6 to BAR	0	\$16	\$10 to ARB \$6 to BAR
5	0	0	0	0	\$16	\$16 to ARB 0 to BAR
6	\$48	0	0	0	\$16	\$16 to ARB 0 to BAR
Total	\$48	\$48	\$24 to ARB \$24 to BAR	0	\$96	\$72 to ARB \$24 to BAR

Total Consumer Cost	\$96
----------------------------	------

\$96

ATTACHMENT 2c

Smog Abatement Fee

Health and Safety Code Section 44011(a)(4) is amended to read as follows:

(4) Beginning January 1, 2005, any motor vehicle up to six model -years old, and beginning January 1, 2018, any motor vehicle up to eight model-years old.

Health and Safety Code Section 44091.1(a) is amended to read as follows:

- (a) The revenue generated by ~~ten six~~ dollars (\$~~10 6~~) of the fee for the first four years and all of the fee for the next two years shall be deposited in the Air Pollution Control Fund, and shall be available for expenditure, upon appropriation by the Legislature to fund the Carl Moyer Memorial Air Quality Standards Attainment Program (Chapter 9, commencing with section 44275) to the extent that the state board or a participating district determines the moneys are expended to mitigate or remediate the harm caused by the type of motor vehicle on which the fee is imposed.

Health and Safety Code Section 44060(d)(1) is amended to read as follows:

(d)(1) Motor vehicles that exempted under paragraph (4) of subdivision (a) of Section 44011 shall be subject to an annual smog abatement fee of sixteen ~~twelve~~ dollars (\$~~16 12~~) for the first six years. *[Note: Remainder of paragraph is unchanged].*

ATTACHMENT 3

Legislative Proposal to Create Port Container Cargo Fee

Summary: This bill imposes a fee on container cargo imported and exported through the ports of Long Beach, Los Angeles, and Oakland in an amount of \$100 per twenty-foot equivalent unit (TEU). This bill requires the fee revenues to be used to mitigate the air quality impacts associated with the movement of freight in and out of the three ports. Also, this bill specifies the processes for determining which mitigation projects shall be funded with fee revenue.

Specifically this bill:

1. Requires the Ports of Long Beach, Los Angeles and Oakland, beginning July 1, 2018, to assess a user fee on the owner of container cargo moving through the port in the amount of one hundred dollars (\$100) per TEU.
2. Requires the three ports to collect the fee twice a year, with all fees directed to mitigate air pollution caused by cargo movement.
3. Specifies that SCAQMD, in consultation with the Port of Los Angeles and the Port of Long Beach, shall develop the list of air quality projects in the South Coast region.
4. Directs the air districts and ports, when developing the air quality project list to give the highest priority to the replacement, repowering, or retrofitting of heavy-duty diesel vehicles that move cargo containers to and from the ports, not otherwise required by any federal or state law or regulation.
5. Authorizes ports to issue revenue bonds to finance mitigation projects.

Based on estimates in 2008-09, this fee could potentially generate revenue in the range of \$1.1 billion annually, generated by the maximum \$100 per TEU fee on containerized cargo imposed by the Ports of Los Angeles and Long Beach.

The ports of Los Angeles, Long Beach, and Oakland are the nation's first, second, and fourth largest ports, respectively, and are projected to experience growth in the future. Further:

1. According to a 2006 report by the ARB, pollution from our state's ports causes 2,400 premature deaths annually.

2. A disproportionate number of communities impacted by port pollution are low-income communities of color, the state currently shoulders much of these port-caused health costs.
4. The ports and freight transport operations are a large source of particulate matter (PM) and nitrogen oxide (NOx) emissions in the state, producing more diesel PM than all passenger vehicles, off-road equipment and stationary sources combined.
5. Southern California risks losing billions in federal highway funds if federal Clean Air Act standards are not met. The basin continues to face significant challenges in attaining federal ozone and particulate matter standards.
6. The Los Angeles and Long Beach ports move approximately 40 percent of the nation's cargo. The Los Angeles/Long Beach port complex is the largest port complex in the United States and is projected to see cargo approximately double by 2035. The ports are the single largest source of air pollution in the South Coast Basin.

Opponents of this bill, generally wholesalers or retailers who own the cargo being imported and exported through the ports, may oppose on two grounds: they claim that imposing the fee as proposed in this bill 1) may violate the commerce clause of the United States Constitution and 2) increases the costs of importing and exporting through these ports which may increase costs to consumers and cause retailers to ship their cargo through other ports.

Regarding the commerce clause issue, Legislative Counsel concluded, regarding an earlier bill that would have imposed a container cargo fee, that "there is not federal legislation relating to the subjects addressed under [this bill]. Thus, it is our view that, generally, the state may legislate in this area" and that "we conclude that the charge proposed under [this bill] would survive scrutiny under the commerce clause of the United States Constitution as a legitimate regulatory fee imposed under the police power of the state."