MINUTE ITEM

This Calendar Item No. C50 was approved as Minute Item No. 50 by the California State Lands Commission by a vote of 3 to 0 at its 04-05-04 meeting.

CALENDAR ITEM
C50

A)
) Statewide
S)

04/05/04
W 9777.234
M. Falkner
G. Gregory
M. Meier

CONSIDERATION OF PERMANENT REGULATIONS MODIFYING THE FEE USED TO FUND THE STATE OF CALIFORNIA'S PROGRAM FOR MARINE INVASIVE SPECIES CONTROL

PROPOSAL

The Commission's Staff is proposing the adoption of permanent regulations that increase the fee required to fund California's Marine Invasive Species Control Programs to $500 for each voyage.

BACKGROUND

Under Section 71215(b) of the Public Resources Code (P.R.C.), the Commission is authorized and directed to establish a fee to be used to fund the State's marine invasive species control programs. The fee is not to exceed $1000 per voyage. A voyage is defined as a transit by a vessel destined for any California port from a port or place outside the coastal waters of the state.

The fee was established initially at $600 per voyage by emergency regulation that became effective on January 1, 2000. The fee was reduced to $400 per voyage, effective April 30, 2000 by emergency regulation. That emergency regulation was replaced on August 29, 2000 with permanent regulations setting the fee at $400 per voyage. The fee was further reduced to $200 per voyage, effective July 1, 2002 by emergency regulation. That emergency regulation was replaced on November 14, 2002 with permanent regulations setting the fee at $200 per voyage. Following the passage of Assembly Bill 433 in 2003, the Commission filed an emergency regulatory action to increase the fee to $500 per voyage with effect from February 1, 2004. This regulatory action would make that fee permanent.

Representatives from the community subject to the fee have concurred with the imposition of a flat fee for each voyage. Since January of 2000, the Commission Staff has met regularly with a Technical Advisory Group ("the TAG"), consisting of representatives from the maritime industry subject to the regulations; other affected state agencies and environmental organization. In 2000, the TAG took note of the fact that the budgets for the various programs through the end of 2003 have largely been established, so costs are essentially fixed. As a result, any reduction in the fee for some would result in an increase in the fee for others. The TAG therefore recommended a flat fee for everyone.

In 2003, Assembly Bill 433 was enacted, thereby extending California's ballast water management program through December 31, 2009. The program was also expanded to include certain types of voyages that were not previously covered, such as those along the west coast that do not leave the United States Exclusive Economic Zone. In consideration of these changes, the Commission Staff, along with the other agencies having responsibilities under the newly extended program, have prepared draft budgets through to the end of the new program period.

In October 2003, the Commission Staff, after reviewing costs, program responsibilities, budget proposals and other factors, has recommended that the fee be increased to $500 per qualifying voyage beginning January 1, 2004. Staff's analysis is based upon a number of assumptions, the primary one being that the financial needs for the program will be in accordance with the Budget Change Proposals that have been submitted to date. These call for expenditures of $868,000 in Fiscal Year (FY) 2003/2004, $3,479,000 in FY 2004/2005 through FY 2008/2009 and, $1,991,000 in FY 2009/2010, at the end of which the program will expire. The other two assumptions were that the State would see about 7000 voyages each year against which the fee could be levied and that the State would likely see a compliance rate of approximately 95%. These figures were based upon the experience of the shipping community and the Board of Equalization. Calculations were therefore based upon qualifying voyages per year.

With these assumptions, the Board of Equalization, the Commission and other affected State agencies concluded that the fee could be set at $500 per voyage. The TAG was asked to respond to this proposed fee reduction in November 2003 and has agreed with staff recommendations. A regulatory action has been filed with the Office of Administrative Law to make the fee permanent.

The Commission Staff considered alternatives to the proposed amendments, but found none that would be more effective in carrying out the purpose for which the action is proposed and less burdensome to those who would be affected.

STATUTORY AND OTHER REGULATIONS

A. P.R.C. Sections 71200 through 71271

PERMIT STREAMLINING ACT DEADLINE

N/A.

OTHER PERTINENT INFORMATION

1. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (14 Cal. Code Regs. 10561), the Commission Staff has determined that this activity is exempt from the requirements of the CEQA because the activity is not a "project" as defined by the CEQA and the State CEQA Guidelines.

   Authority: P.R.C. 21084 and 14 Cal. Code Regs. 15300.

2. The proposed regulatory amendments do not affect small businesses as defined in Gov. C. 11342, sub. (h), because all affected businesses transportation and warehousing businesses having annual gross receipts of more than $1,500,000, as specified under Gov. C. 11342, sub. (h)(2)(I)(vii).

EXHIBIT

A. Proposed Amendment.

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF CEQA PURSUANT TO TITLE14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY PUBLIC RESOURCES CODE SECTION 21065 AND TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15378

2. FIND THAT THE AMENDMENT WILL NOT AFFECT SMALL BUSINESSES AS DEFINED IN GOVERNMENT CODE SECTION 11342(h), BECAUSE ALL AFFECTED BUSINESSES ARE TRANSPORTATION AND WAREHOUSING BUSINESSES HAVING ANNUAL GROSS RECEIPTS OF MORE THAN $1,500,000, AS SPECIFIED UNDER GOVERNMENT CODE SECTION 11342(h)(2)(I)(VII).

3. FIND THAT THE AMENDMENT WILL NOT HAVE A SIGNIFICANT IMPACT ON THE CREATION OR ELIMINATION OF JOBS OR NEW OR EXISTING BUSINESSES WITH CALIFORNIA, NOR WILL THEY HAVE AN ADVERSE ECONOMIC IMPACT ON BUSINESS, INCLUDING THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE WITH BUSINESSES IN OTHER STATES.

4. FIND THAT NO ALTERNATIVE WOULD BE MORE EFFECTIVE IN CARRYING OUT THE PURPOSE FOR WHICH THE AMENDMENT IS PROPOSED OR WOULD BE AS EFFECTIVE AND LESS BURDENSOME TO AFFECTED PRIVATE PERSONS THAN THE PROPOSED REGULATIONS.

5. ADOPT THE PROPOSED AMENDMENT, WHICH WOULD AMEND ARTICLE 4.5, SECTIONS 2271, TO TITLE 2, DIVISION 3, CHAPTER 1, OF THE CALIFORNIA CODE OF REGULATIONS, SUBSTANTIALLY IN THE FORM OF THOSE SET FORTH IN EXHIBIT "A".

6. AUTHORIZE THE COMMISSION STAFF TO MAKE MODIFICATIONS IN THE AMENDMENT IN RESPONSE TO RECOMMENDATIONS BY THE OFFICE OF ADMINISTRATIVE LAW.

7. DIRECT THE COMMISSION STAFF TO TAKE WHATEVER ACTION IS NECESSARY AND APPROPRIATE TO COMPLY WITH PROVISIONS OF THE GOVERNMENT CODE REGARDING ADOPTION OF REGULATIONS AND AMENDMENTS AND TO ENSURE THAT THE AMENDMENT BECOMES EFFECTIVE.

8. DIRECT COMMISSION STAFF TO TAKE WHATEVER ACTION IS NECESSARY AND APPROPRIATE TO IMPLEMENT THE AMENDMENT AT SUCH TIME AS IT BECOMES EFFECTIVE.

EXHIBIT A

Title 2, Division 3, Chapter 1
Article 4.5. Marine Invasive Species Control Fund Fee

Section 2270. Marine Invasive Species Control Act; Definitions

For purposes of this Article, the following definitions apply.

(a) "Voyage" means any transit by a vessel destined for any California port from a port or place outside of the coastal waters of the state.

(b) "Waters of the state" means any surface waters, including saline waters that are within the boundaries of the state.

Authority cited: Public Resources Code Section 71215(b)

Reference cited: Public Resources Code Sections 71200(m) and (o) and 71215

Section 2271. Fee Schedule for Marine Invasive Species Control Fund

(a) The fee required under Public Resources Code Section 71215 is five hundred dollars ($500) per vessel voyage.

(b) The Commission may establish lower levels of fees and the maximum amount of fees for individual shipping companies or vessels. Any fee schedule established, including the level of the fees and the maximum amount of fees, shall take into account the impact of the fees on vessels operating from California in the Hawaii or Alaska trades, the frequency of calls by particular vessels to California ports within a year, the ballast water practices of the vessels, and other relevant considerations.

(c) The fee shall be collected from the owner or operator of each vessel that arrives at a California port or place from a port or place outside of California. That fee may not be assessed on any vessel arriving at a California port or place if that vessel comes directly from another California port or place and during that transit has not first arrived at a port or place outside California or moved outside the EEZ prior to arrival at the subsequent California port or place.

(d) (1) The Executive Officer of the California State Lands Commission shall invite representatives of persons and entities who must pay the fee required under Public Resources Code Section 71215 to participate in a technical advisory group to make recommendations regarding the amount of the fee, taking into account the provisions of Public Resources Code Sections 71200 through 71216.

(2) The technical advisory group shall meet on a regular basis after July 1, 2000, as determined by the group.

Authority cited: Public Resources Code Section 71215(b)

Reference cited: Public Resources Code Sections 71200 and 71215