

Date of Hearing: June 27, 2016

ASSEMBLY COMMITTEE ON TRANSPORTATION

Jim Frazier, Chair

SB 1279 (Hancock) – As Amended June 20, 2016

**SENATE VOTE:** 26-12

**SUBJECT:** California Transportation Commission: funding prohibition: coal shipment

**SUMMARY:** Prohibits the California Transportation Commission (CTC) from programming or allocating state funds for bulk coal terminal projects, and requires terminal project grantees under specific conditions, to annually report to CTC that the project is not being used to handle, store, or transport bulk coal. Specifically, **this bill:**

- 1) Makes findings and declarations with regard to impacts associated with the transportation and use of coal.
- 2) Declares the intent of the Legislature to cease all investments in transportation infrastructure projects that store, transfer, or transport significant quantities of bulk coal.
- 3) Prohibits CTC, to the extent consistent with federal law, from programming or allocating state funds, including bond proceeds, for new bulk coal terminal projects proposed on or after January 1, 2017.
- 4) Requires CTC to evaluate each new terminal project to determine whether or not the purpose or intent of the project is to increase the state's overall capacity to facilitate the transport of bulk coal based on a review of the completed California Environmental Quality Act (CEQA) documents and written confirmation from the lead agency of the project.
- 5) Requires a terminal project grantee identified by CTC as subject to this section to annually notify the CTC that the project is not being used to handle, store, or transport bulk coal.
- 6) Provides that the prohibition for funding bulk coal terminals does not apply to infrastructure already permitted as of January 1, 2016.
- 7) Defines a "new bulk coal terminal" as a terminal that stores, handles, or transports coal in bulk to a degree or significance that is categorized as having the potential for significant impacts in an environmental document prepared pursuant to CEQA as a result of the storage, handling, or transport of coal in bulk.
- 8) Provides that a "new bulk coal terminal" does not include a project that is designed for safety, rehabilitation, congestion reduction, modernization, maintenance, or repair of an existing operation or facility, including rail terminals, railyards, rail facilities, rail infrastructure, and rail right-of-way.
- 9) Provides that a terminal project does not include a project that is designed for safety, rehabilitation, congestion reduction, modernization, maintenance, or repair of an existing operation or facility, including rail terminals, railyards, rail facilities, rail infrastructure, and rail right-of-way.

**EXISTING LAW:**

- 1) Establishes CTC consisting of 11 voting members and two non-voting ex-officio members.
- 2) Vests the CTC with the responsibility for programming and allocating funds for the construction of highway, passenger rail, and transit improvements throughout California.
- 3) Vests CTC with responsibility to advise and assist the Secretary of the California State Transportation Agency and the Legislature in formulating and evaluating state policies and plans for California's transportation programs.
- 4) Requires CTC to submit to the Legislature an annual report that, among other things, identifies timely and relevant transportation issues facing California and that may include a discussion of any significant upcoming transportation issues anticipated to be of concern to the public and the Legislature.
- 5) Assigns to the CTCs the responsibility of advising and assisting the Administration and the Legislature in formulating and evaluating state policies and plans for California's transportation programs. A large part of this responsibility currently includes approving various transportation programs funded by state and federal funds and proposed by both the state and regional transportation planning entities.
- 6) Enacts, pursuant to the passage of Proposition 1B (Prop. 1B), the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 that authorized \$19.9 billion in general obligation bonds to fund a variety of transportation projects.
- 7) Established the Trade Corridor Improvement Fund (TCIF) following the passage of Prop. 1B to distribute \$2 billion of Prop. 1B bond funds by the CTC in accordance with established criteria for infrastructure improvements along federally designated "Trade Corridors of National Significance" or along other corridors with high volumes of freight movement.

**FISCAL EFFECT:** Unknown

**COMMENTS:** Coal is a material composed primarily of carbon that has been burned throughout history to produce heat and, in more modern times, to generate electricity. Burning coal also produces a significant amount of pollution which adversely affects human health and the environment. Health effects include lung cancer, stroke, and heart disease while the environmental effects include the release of carbon into the atmosphere which contributes to climate change. Breathing coal dust is also known to cause "black-lung," and it is estimated that in the United States approximately 1,500 former employees of the coal industry die every year from the effects of breathing coal mine dust.

*Background:* After the Oakland Army Base closed in 1999, part of the property reverted to the City of Oakland, while another portion was transferred to the Port of Oakland (Port). The following year, the Oakland City Council designated the base and surrounding properties as a redevelopment project area and in 2009, the Port of Oakland secured TCIF funding for a project to develop warehouse space, logistics facilities, and a rail terminal on the site. By diverting freight from trucks to trains, the new rail terminal complex was expected to reduce diesel emissions while simultaneously increasing the efficiency of goods movement through the Port.

Following the dissolution of the redevelopment agency in 2012, the area owned by the redevelopment agency was transferred to the City of Oakland. The Port and the City began

working together to significantly expand the scope of the redevelopment, including the addition of a bulk terminal (the Oakland Bulk and Oversized Terminal, or OBOT). The Port obtained federal transportation grant funding, as well as additional TCIF funds. Meanwhile, the City of Oakland forged an agreement with two private entities, California Capital and Investment Group (CCIG) and Prologis, to develop the site and find additional investors and tenants for the project. Details of what commodities would be transported through the bulk terminal were largely contingent upon the contracts that would be executed, and therefore were not reviewed in the environmental documents for the project.

In spring of 2015, stories surfaced in the media revealing that the State of Utah was in discussions with Port developers about shipping coal from Utah to China through the proposed bulk terminal in Oakland. Utah currently exports about 1 million tons of coal each year, mainly through the ports of Richmond, Stockton, and Long Beach. As coal-fired power plants in the U.S. close or switch to natural gas, access to overseas markets is becoming increasingly important for coal-producing states.

In early 2016, Utah's Governor signed legislation that would contribute \$53 million in transportation funds towards the construction of the new Oakland cargo terminal. To fund the Oakland project, Utah proposed to use state tax revenue and then reimburse the state with federal royalties from federal mineral leases. Under the agreement, Utah would have access to overseas markets for shipped products and commodities, such as coal, in exchange for a \$53 million investment in OBOT.

In total, the CTC has allocated \$242 million in TCIF funds for the bulk terminal portion of the project, specifically, for the construction of a proposed intermodal rail terminal complex that will provide a high-density, green intermodal terminal, trade and logistics facilities, marine terminal improvements, and a grade separation connection between intermodal and marine terminals. The Port of Oakland's TCIF application, in reference to the bulk terminal portion of the project, stated that it would be "converted to a modern bulk cargo marine terminal for movement of commodities such as iron ore, corn, and other products brought in to the terminal by rail ... the terminal would also accommodate project cargo such as windmills, steel coils, and oversized goods." The TCIF application did not require, nor did the applicant disclose or commit to, exactly what commodity or commodities would be transported through the OBOT. To date, all of the TCIF funding has been allocated and the projects utilizing TCIF funds are nearly completed.

*Author's statement:* According to the author, the project proposal submitted to CTC along with the application for TCIF funds did not disclose that the OBOT would involve the transport and export of coal. In fact, the author points out that the TCIF application, when referencing the bulk terminal portion of the project, stated that it would be "converted to a modern bulk cargo marine terminal for movement of commodities such as iron ore, corn, and other products brought in to the terminal by rail ... the terminal would also accommodate project cargo such as windmills, steel coils, and oversized goods."

The author contends that while the TCIF application did not specifically require that the applicant to disclose, or commit to, exactly what commodity or commodities would be transported through the terminal, it is her belief that had the information been provided to CTC with regard to plans for coal transport, the project would likely not have qualified for TCIF funds given that Prop 1B, as its name implies "The Highway Safety, Traffic Reduction, Air Quality,

and Port Security Bond Act of 2006", was explicitly intended to result in air quality improvements.

To address this issue and to memorialize that state transportation infrastructure funding should not be expended for projects that move significant quantities of bulk coal, the author introduced SB 1279 which would prohibit the CTC from programming or allocating state funds, to the extent that it is consistent with federal law, for new bulk coal terminals proposed after January 1, 2017. This bill would also require that CTC evaluate each new bulk terminal project that comes before it for transportation funding to determine whether or not the project would increase the state's ability to transport bulk coal and if not, that any bulk terminal grantees be required to continually submit information to the CTC to ensure that future movement of coal is not undertaken. This bill also declares the Legislature's intent to cease all investments in transportation infrastructure projects that store, transfer, or transport significant quantities of bulk coal.

Provisions that prohibit the programming or allocation of funds for new bulk terminal projects that transfer coal does not apply to infrastructure that is permitted as of January 1, 2016, appear to exempt the OBO; however, if for some reason the project were to be subject to this legislation, it is unlikely that it would have a substantial impact on the construction of projects currently funded using TCIF monies given that these projects are largely completed. (The portions of the OBOT that received TCIF funding include construction of a proposed intermodal rail terminal complex, marine terminal improvements, and a grade separation connection between the intermodal and marine terminal.)

Writing in support of SB 1279, the California Nurses Association notes that coal presents a clear health risk to workers and communities at every state of its lifecycle, and they note that coal pollutants affects all major body organ systems and contributes to four of the five leading causes of mortality in the United States. They also point out that burning coal is responsible for one third of the carbon emissions in the United States and is the primary contributor to climate change. For these reasons, CNA believes it is vital that local and state governments do everything possible to reduce and prevent the transport and use of heavily polluting fossil fuels such as coal.

While organizations such as the Pacific Merchant Shipping Association and the California Railroads have removed their opposition, the League of California Cities (League) remains opposed to SB 1279 noting that California's ports are some of the busiest in the world and make a critical contribution to the global economy. The League appropriately contends that a blanket prohibition on allocating state funds because it facilitates the transport of a specific commodity would set a concerning precedent and potentially result in the unintended consequence of making critical infrastructure projects of statewide significance ineligible for public funds.

While this bill's effect is largely symbolic (in that it is unlikely to impact an existing project), the bill does serve to emphasize California's commitment to policies on climate change and health by ensuring that the state's funding practices are in alignment with its important state policy objectives. In fact, the Legislature has a history of taking this stand on investments relative to climate change policies with the recent passage of SB 185 [(de León), Chapter 605, Statutes of 2015) which prohibited the California Public Employees' Retirement System (CalPERS) and California State Teachers' Retirement System (CalSTRS) from investing in thermal coal companies along with the call of California's Insurance Commissioner earlier this year asking that the insurance industry divest its interests in coal.

*Related legislation:* SB 1277 (Hancock), requires a public agency with discretionary authority over the OBOT project to prepare or cause to be prepared a supplemental Environmental Impact Report to consider and mitigate the shipment of coal through the terminal. SB 1277 is scheduled to be heard by the Assembly Natural Resources Committee on June 27, 2016.

*Previous legislation:* SB 185 (de León), Chapter 605, Statutes of 2015, prohibits CalPERS and CalSTRS from investing in thermal coal companies, as specified.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Alameda County Board of Supervisors  
Alameda County Democratic Central Committee  
Asian Pacific Environmental Network  
Berkeley Climate Action Coalition  
California Interfaith Power and Light  
California Nurses Association  
City of Berkeley  
City of Emeryville  
City of Richmond  
East Bay Young Democrats  
Ecology Center  
El Cerrito Democratic Club  
Environment California  
Fossil Free California  
Friends Committee on Legislation in California  
InNative  
No Coal in Oakland  
Northern California District Council of the International Longshore and Warehouse Union  
Oakland Unified School District  
Physicians for Social Responsibility, San Francisco Bay Chapter  
Public Advocates  
Redlands Area Democratic Club  
San Francisco Baykeeper  
Save the Bay  
Service Employees International Union, Local 1021  
Sierra Club California  
The Peace, Earthcare and Social Witness Committee  
West Oakland Environmental Indicators Project  
350 Bay Area  
1 Individual

### **Opposition**

League of California Cities  
California Teamsters Public Affairs Council  
California Trade Coalition

**Analysis Prepared by:** Victoria Alvarez / TRANS. / (916) 319-2093