

**INFORMATIONAL
CALENDAR ITEM**

67

A 54

10/29/10

G05-03

S 27

J. Lucchesi

**STAFF REPORT ON THE CITY OF LONG BEACH PUBLIC TRUST REVENUES,
INCLUDING PROPOSITION D – A CITY OF LONG BEACH CHARTER AMENDMENT
RELATING TO THE ALLOCATION OF PUBLIC TRUST REVENUES DERIVED FROM
THE PORT OF LONG BEACH OPERATIONS, CITY OF LONG BEACH, LOS
ANGELES COUNTY**

INTRODUCTION

The State Lands Commission (CSLC or Commission) has the statutory responsibility to oversee the management of sovereign public trust lands and assets by legislative grantees who manage these lands, in trust, on behalf of the State. (Public Resources Code section 6301, *et. seq.*; *State of California ex rel. State Lands Commission v. County of Orange* (1982) 134 Cal App. 3d 20, 23). The Commission and its staff exercise this responsibility and authority through various mechanisms, including informational staff reports discussing the status of a particular trust grant.

BACKGROUND

The State's sovereign tide and submerged lands within the City of Long Beach (City) were legislatively granted, in trust, to the City pursuant to Chapter 676, Statutes of 1911, and are held subject to the trust as subsequently amended by the Legislature. Through the City's Charter, portions of these public trust lands are within the Port of Long Beach (Port) and are managed by the Long Beach Board of Harbor Commissioners. The Harbor Commissioners are appointed by the Mayor and confirmed by the City Council. Port trust funds are held in the Harbor Revenue Fund. The City's remaining public trust lands and assets are managed by various other City departments, including the Gas and Oil Department, which oversees oil operations within the City. City trust funds are held in the Tidelands Operating Fund.

The Legislature has been significantly involved in the Long Beach trust grant since 1911. There are approximately twenty-three legislative acts which govern the use of the State's tide and submerged lands granted, in trust, to the City. All these statutes remain in effect and cumulatively provide the authority and parameters for use and management by the City of these public trust lands and assets. While the Legislature has provided no specific provision for Commission review of the City's management of its public trust lands, other than for oil operations plans and budgets and for projects involving the expenditure of oil revenues (Chapter 138, Statutes of 1964, First Extraordinary Session, as amended by Chapter 941, Statutes of 1991), the Commission

CALENDAR ITEM NO. 67 (CONT'D)

has the general authority under Public Resources Code Section 6301, *et. seq.* to review the City's management of its trust grant..

The City and its trust grant have also been at the forefront of many of the California courts' analyses of public trust land and asset management and operations. For example, the seminal case guiding what constitutes a proper use of public trust revenues is *Mallon v. City of Long Beach*, (1955) 44 Cal. 2d 199. In 1951 the California Legislature passed a statute (Chapter 915) freeing tens of millions of dollars of tidelands revenue from the statutory and public trust restrictions. In 1953 the Legislature by concurrent resolution approved a city charter amendment authorizing the City of Long Beach to spend certain past and future tideland revenues for municipal purposes. The California Supreme Court had earlier ruled in *City of Long Beach v. Morse* (1947) 31 Cal 2d 254 that a city charter amendment approved by the Legislature authorizing the use of tidelands trust revenues for municipal purposes was a violation of the trust. The California Supreme Court in the *Mallon* decision not only affirmed this decision that use of trust funds for municipal purposes unconnected with the purposes and uses of the trust was a violation of the trust, but also violated California Constitution Article IV, §Section 31 (now Article XVI, § 6).

Specifically the Court determined that expenditures of tideland trust revenues outside trust lands by the City of Long Beach for uses such as a fire alarm system, a public library, public hospitals, public parks, off-street parking facilities, city streets and highways, storm drains and a city incinerator were not expenditures of state-wide interest for which state funds could properly be appropriated. The Supreme Court, in holding that "there being no benefit to all people of the state... it would be a gift of public monies and thus prohibited by the Constitution," rejected the argument that expenditures of trust revenues for municipal purposes should be permitted since they would be for "public" purposes. As a result of the *Mallon* decision, funds that were intended for the local government were returned to the State General Fund. As with any grant throughout the State, if the Legislature or courts determine that the City or Port used its trust revenues for non-authorized purposes the Legislature or courts could decide to revert the revenues to the State for uses that have a greater statewide benefit.

PROPOSITION D

Proposition D is a City of Long Beach charter amendment that proposes two changes to the existing City Charter. First, Proposition D proposes to allow a transfer of up to 5% of the Port's **gross revenue** to the City's Tidelands Operating Fund. Currently, the City Charter allows for the Port to transfer up to 10% of its **net revenue** to the City's tidelands operating fund. The Board of Harbor Commissioners has the discretion to refuse a transfer request by the City Council, however since the City Council began requesting such a transfer in 1995, the Board has never refused such a request. This discretionary authority remains unchanged under Proposition D. As stated previously, the Harbor Commission is appointed to six-year terms by the Mayor and confirmed by

CALENDAR ITEM NO. 67 (CONT'D)

the City Council. Further, the Mayor may remove any member of the Harbor Commission at any time with concurrence of two-thirds of the City Council.

While news sources estimate that the change in the transfer formula will increase the amount the Port transfers to the City's Tideland Operating Fund by approximately \$1 million to \$3 million a year, the Port has recently released an analysis¹ which shows that the change in the transfer formula will increase Port transfers by approximately \$6.6 million per year (see Scenario #1 vs. Scenario #3, slide #3, Exhibit C). This increase amounts to between 4% and 6% of the Port's net income. Unlike the section of Proposition D dealing with oil operations (discussed in more detail below) which allows the City Council to direct where the revenues will be deposited, the Port retains the discretion to refuse a transfer request by the City Council if the money is needed for Port operations. However, this portion of Proposition D is indicative of the City's ongoing endeavor to supplement the Tidelands Operating Fund with Port revenues without any fiscal analysis and consideration of the potential impacts to future port operations.

Second, Proposition D proposes to transfer the control, operation and management of oil extraction operations in the Harbor District out of the Port's jurisdiction and under the City's Gas and Oil Department jurisdiction. According to the City Attorney's Office, the City Charter already gives the City's Gas and Oil Department sole control over all the City's oil operations, even in the Harbor District. The City Attorney maintains that this part of Proposition D is solely intended to clarify the City's Gas and Oil Department authority over oil production within the City.

The oil production operations within the Port at issue involve wells located at the former Union Pacific site (within the West Wilmington Oil Field). In the early 1990's the Port purchased the 725-acre Union Pacific Railroad site for \$405 million, a price which reflected the value of the land, including mineral rights. Since that time, the Port has been operating and managing oil production from that site and has received the associated income generated from such oil production.

On August 3, 2010, the City Council considered whether to place Proposition D on the November ballot. During this meeting two harbor commissioners and maritime industry representatives requested that action be delayed until there was time to discuss the ramifications of the proposal on Port operations. Despite the request, the City Council voted to place Proposition D on the November ballot. As stated above, revenues from oil operations within the Union Pacific site are being deposited by the Port into the Harbor Revenue Fund. If Proposition D passes, the City Council, not the Port, will direct

¹ Port staff presented a Power Point presentation to the Board of Harbor Commissioners at its October 18, 2010 meeting titled "Cash Flow and Net Income Forecast and Impact of Bond Rating Downgrade." This presentation is attached as Exhibit C. While the presentation does not identify Proposition D directly, the scenarios outlined in the presentation are identical to the potential impacts of Proposition D if passed.

CALENDAR ITEM NO. 67 (CONT'D)

whether the revenues derived from oil operations at the Union Pacific site will be deposited into the Harbor Revenue Fund or the Tidelands Operating Fund. Although the City Attorney was reported as saying that, "in all likelihood, for the foreseeable future, oil money will in fact go into the Tidelands Fund." To the knowledge of Commission staff, neither the City nor the Port analyzed the potential financial impacts of the measure and the consequences Proposition D may have on the Port's operations, including its various security and environmental programs and capital improvement projects, prior to the Council placing Proposition D on the November ballot. Most of the information received by Commission staff as it relates to Proposition D has been from various news sources (See Exhibit A, Exhibit B and Exhibit D).

If the transfer of the oil operations to the City's Gas and Oil Department occurs and the City Council directs these oil revenues be deposited into the Tidelands Operating Fund, the Port estimates it would lose approximately \$100 million in net cash flow over Fiscal Years 2011-2015 cumulatively (See Exhibit C, slide #2). Over the five years, this accounts for approximately 15% of the Port's annual net income. When combined with the increase in transfer formula, the impact of Proposition D could account for approximately 20% of the Port's annual net income. Further, according to the Port, oil revenue is counter cyclical to the revenue from imports. For example, in FY 2008 revenue from oil operations made up for the drop in imports. Oil production from the oil properties within the Harbor District is predicted to continue until 2030. It is unknown which City entity, the Port or the Gas and Oil Department, would be responsible for any required remediation and the abandonment of the oil wells.

The loss of 20% of net income due to the loss of oil revenues and a change in the transfer formula would likely have a significant effect on Port operations. The impacts to Port operations may include a reduction in the Port's credit rating due to anticipated reductions in its annual cash flow. Currently, the Port has a "AA" credit rating (as rated by Standard & Poor's). Even if Proposition D does not pass, the Port anticipates that its cash reserves will be significantly reduced by 2011 as a result of reduced revenues and substantial investment in environmental programs and infrastructure projects. In the event Proposition D passes and the City Council directs oil revenues be deposited in the Tidelands Operating Fund, there will be a significant decrease in cash flow and with existing debt obligations it is likely the Port will either have to borrow more for or spend less on its \$3.1 billion five-year capital plan. These expenditures include security measures, environmental programs and capital improvement projects, such as the replacement of the Gerald Desmond Bridge (a \$1 billion replacement project), the Middle Harbor Project, maintenance dredging projects, the Port's Clean Truck Program and the Clean Air Action Plan. Additionally, if the Port's credit rating is downgraded, the Port will pay more in interest (see Exhibit C, slide #4).

Trustee Responsibilities

The City holds these sovereign tide and submerged lands, in trust, for the benefit of all the citizens of California. As with a private trust, the City, as trustee, must manage and

CALENDAR ITEM NO. 67 (CONT'D)

utilize the State's lands and their revenues solely for trust purposes and needs, pursuant to both the common law Public Trust Doctrine and the statutorily created trust grants. As such, any funds diverted from the Harbor Revenue Fund are still required to be used for public trust purposes benefitting public trust lands within the City.

As the Legislature's delegated trustee of these public trust lands and trust assets, the City has the primary responsibility and authority to administer the trust on a day-to-day basis and to manage its granted public trust lands and assets for the benefit of all the people of California, including the duty to prudently balance competing public trust uses of trust assets to accommodate public trust needs.

On September 22, 2009, Commission staff sent a letter to the City Council reminding them of their duties and responsibilities as a trustee for the State. In the letter, Commission staff stated:

"The Port is a significant public trust asset and vital component of the national, state and local economies. Pursuant to its fiduciary duty as the State's trustee, the City should carefully consider the potential impact to Port operations that any change to the current formula allowing transferring funds between the two public trust funds may have; including balancing the potential adverse impact to the Port's environmental, transportation and security programs from the additional loss of funds against the benefits to the City's other public trust lands."

Commission staff is unaware of any evidence that the City Council analyzed and considered any potential impacts to Port operations when it voted to place Proposition D on the November ballot. Over the past couple of months, Commission staff has requested information from the Port or City documenting potential impacts on Port operations, but received none, until the week of October 18th.

At its October 18, 2010 meeting, the Board of Harbor Commissioners heard an informational presentation by Port staff giving a preliminary analysis of the Port's five-year cash flow and net income forecast given four scenarios, including a scenario that mirrors what Proposition D is seeking to accomplish (see Exhibit C). Cumulatively, for Fiscal Year 2011-2015, under Scenario #4, which includes a 5% transfer of gross operating revenue and a transfer of oil revenues from the Harbor Revenue Fund to the Tidelands Operating Fund, the Port's contribution to the Tidelands Operating Fund would more than triple, the Port would need to borrow an additional \$151 million to fund its current five-year capital plan and its net income would decrease by \$148 million, as compared to Scenario #1, which equates to the status quo (i.e. if Proposition D does not pass). The presentation did not include a staff report or any additional details beyond what is shown in Exhibit C. During the discussion following the presentation, many of the Harbor Commissioners requested additional details and analysis to supplement the presentation.

CALENDAR ITEM NO. 67 (CONT'D)

Consistency with the Public Trust Doctrine

As a general precept, the effect of a legislative grant is to create a trust in which the local government is trustee, and the State is the trustor, and the people of the State are the beneficiaries of the trust. The legal consequence of this relationship is that the proper use of public trust lands and public trust revenues remains a statewide concern and the proper subject of Commission review. *Mallon v. City of Long Beach*, supra at 209. Public trust revenues are subject to the same trusts as the trust lands themselves. And, the use of trust lands and revenues derived therefrom for non-trust purposes is a violation of the trustee's fiduciary duty to the trust and its beneficiaries.

Traditional public trust uses are considered to include water-related commerce, navigation, and fisheries. Harbor development is an example of a classic public trust use, potentially encompassing all three. And, although courts have recognized that the Public Trust Doctrine is flexible and that it includes water-related public serving and recreational uses, as well as environmental protection, open space, and preservation of scenic areas, the overarching principle of the Public Trust Doctrine is that trust lands and trust assets belong to the statewide public and are to be used to benefit the statewide public rather than for local community or municipal purposes.

Proposition D does not, on its face, raise a Public Trust Doctrine revenue or land use consistency issue because any transfer of revenues from the Port's Harbor Revenue Fund to the City's Tidelands Operating Fund would remain subject to the public trust and still be required to be expended for public trust purposes. However, the City has a fiduciary duty, as the State's trustee, to balance competing public trust needs and to carefully consider any potential impacts to Port operations that any change to the City Charter may have. The issue in diverting revenues from the Port is whether the City would be impairing Port operations of statewide and even national importance to fund less critical operations. In addition, should public trust funds be spent for non-trust purposes, the City would be in clear violation of the Public Trust Doctrine, its statutory trust grant, and the State Constitution.

In the past, the Port has gone to great lengths to assist the City, beyond the annual transfer authorized by the current City Charter. According to the Port, it has contributed over \$790 million to the City since 1990. This equates to approximately \$41.5 million per year on average. Commission staff has not initiated either an investigation or audit, but has recently become aware, through news sources, of some questionable expenditures and budgeted expenditures of public trust revenues both by the City and the Port. Commission staff has received an explanation of some of these expenditures sufficient to determine that such expenditures are not inconsistent with the common law Public Trust Doctrine and the City's trust grant. However, staff believes that further information is needed to determine trust consistency, given the Supreme Court decision in *Mallon*, for other questionable expenditures and budgeted expenditures such as: the Port providing over \$200,000 in scholarships since 2007; \$50,000 by the Port to fund the Long Beach Municipal Band and \$75,000 by the Port to fund the City's Fourth of

CALENDAR ITEM NO. **67** (CONT'D)

July fireworks (Port FY 2011 Budget); and \$65,000 by the City's Tidelands Operating Fund to fund the Long Beach Municipal Band (City FY 2011 Budget).

Conclusion

The current economic crisis facing most cities and counties in our state, including the City of Long Beach, is significant, complex and severe. In fact, the City was forced to cut more than \$18.5 million to achieve a balanced city budget for fiscal year 2011. The current fiscal crisis also clearly has ramifications on the State's budget and General Fund operations. Based on staff's past experience with other trust grants in the state, it is precisely this kind of economic environment where the Commission and its staff must vigilantly conduct their oversight responsibilities on behalf of all citizens of the state. As stated above, Proposition D does not, on its face, violate the City's trust grant or the Common Law Public Trust Doctrine. However, staff is unaware of any detailed and comprehensive analysis conducted by the City, as trustee for the State, analyzing any potential fiscal implications and impacts to Port operations that may result from Proposition D. Further, staff is unaware of any analysis that provides a public trust rationale for authorizing significant diversions of public trust revenues from the Port or for the more minor expenditures listed above which raise public trust consistency concerns.

Long Beach

BUSINESS JOURNAL

September 14-27, 2010

Understanding Long Beach Measure D On The November 2 Ballot

For Voters, Measure D May Come
Down To A Simple Question:
Who Do You Trust?

■ By **GEORGE ECONOMIDES**
Publisher's Perspective

Rading the argument in favor of Long Beach Measure D on the November 2 ballot leaves one with the impression that the item seems clear cut. How can a voter not support it when the opening paragraph of the argument reads: "A yes vote on Measure D creates a more transparent, fair and reliable funding method for the Harbor Department (Port of Long Beach) to help keep our coastal areas clean and safe."

Further justification to support it is that the argument is signed by the mayor, city auditor and a councilperson – individuals whom voters would expect they could trust to give them the truth and the whole story.

Why then are so many people avoiding talking publicly, on the record, about Measure D? Current and former harbor commissioners, port staff, elected officials and others are ignoring phone calls from the Business Journal, or, if they do call back, explain they are unwilling or unable to comment. Some people have shared that they do business with the city and don't want to risk losing a contract, or that they "don't want to be on the wrong side of . . ."

Also relevant is that, despite numerous groups and individuals voicing their opposition – off the record – to the Business Journal, no argument against Measure D was filed. Long Beach voters, therefore, will only have one side's version when they receive their ballot in the mail next month.

A spokesperson for one group, who, of course, did not want to be identified, said, "The way the city presented everything, so last-second, so rushed – the city attorney was making changes to the measure during the council meeting – they didn't allow opponents any time to get together and discuss the issue, let alone time to write a ballot argument. It was really heavy-handed."

It's a troublesome situation when voters are not presented both sides of an issue, thus allowing them to make an informed decision. It is especially disturbing when there appears to be an effort to squash discussion.

Measure D is an important issue that deserves airing. It's a trend-setting issue that could draw the ire of Sacramento and is certain to draw the attention of port clients. In the end for voters, Measure D may come down to a simple question: Who do you trust?

What's Measure D?

One thing certain about Measure D is that it's all about money. Port money, especially port oil money, and how much of it a city that is strapped for cash can get its hands on. By state law, port money transfers can only be used within the tidelands area. (Refer to box below that includes current language from the City Charter regarding the transfer of port funds.)

Per the "impartial analysis of Measure D" by City Attorney Bob Shannon, the item "addresses two separate issues."

One item changes the formula for calculation of the maximum annual transfer of harbor revenues to the Tidelands Operating Fund. "Currently the maximum transfer is an amount not to exceed ten percent (10%) of Port net income." That would be changed to "not to exceed five percent (5%) of Port gross operating revenues."

The second item, and where the real money's at, affects port oil operations. "City Charter Article XII removes from the Harbor Commission control, supervision and or jurisdiction as to all lands in the Harbor District used in connection with oil operations," the impartial analysis says. How much money are we talking about? Well, in 2008 the net income, according to a city auditor analysis, was more than \$31 million.

The city's elected officials – who are feeling the pressure of a bad economy more than ever as evidenced by their willingness to cut police officers and firefighters in large numbers – seem to be looking for that pot of gold at the end of the rainbow and can't find it. But did they find black gold – oil? The September 28 edition of the Business Journal will delve into that part of Measure D. It will also include answers to questions the Business Journal posed to the city attorney's office.

Another certainty is that over the decades, up until Measure D came along, the mayor and city council maintained an arms-length relationship with the port, allowing their own appointed harbor commissioners to run the 400-employee harbor department, providing oversight but little intrusion in the day-to-day operation of the city's number one economic engine.

This "relationship" has worked extremely well. The port continues to be recognized nationally and internationally as a well-run, efficient, professional, business-like operation despite: (1) a worldwide slowdown in goods movement that has cut dramatically into its revenue; (2) stiff competition among West Coast ports as they aim to steal its clients; (3) the imposition of strong environmental requirements to operate here that may chase away some clients to ports not requiring the same high standards (such as Mexico); and, (4) unknown impacts from the 2014 completion of the expansion of the Panama Canal that may result in containers from Asian countries bypassing West Coast ports.

Yes, the port is part of the bigger city family, as is the water department – another entity that is more commission-run (five

water commissioners as there are five harbor commissioners) than city council-run, and which has been lauded for its efficient and innovative operations.

There is something to be said for the argument made by many in and outside of Long Beach that the two best-run operations in the city are those that have an arms-length relationship with the mayor and city council: the harbor and water departments.

Historically, Long Beach city councils have approved the annual budgets of the two departments and then stepped aside. Also of importance to note is that when councilmembers had questions or concerns regarding port operations, port staff and commissioners addressed those issues, publicly, before the city council. (Some past key issues where considerable dialogue occurred before the city council were the re-use of the naval station and shipyard in the early and mid 1990s, the lengthy 2003-2007 debate over a proposed liquified natural gas terminal at the port, and the 2004 discussion regarding the environmental impact report for the expansion of Pier J.)

Another interesting tidbit about a well-run operation: The Port of Long Beach's number one competitor is its neighbor, the Port of Los Angeles. As Port of Long Beach Executive Director Richard Steinke wrote in a June 4, 2010, letter to City Auditor Laura Doud, "The two ports are comparable in size, and have similar customer mix and business models. Therefore, it is pertinent to compare their financial results in any given year. In fiscal 2009, POLB's net income was almost triple that of POLA's [\$124,237,000 million for Long Beach and \$45,971,000 for Los Angeles.]"

Steinke was providing the "management response" to the "Harbor Department Transfer Analysis Report" completed by Doud's staff at the request of the city council. Interestingly, nowhere in Doud's report is there mention of changing the transfer formula from net income to gross operating revenue.

Putting It On The Ballot

Measure D was placed on the November ballot after a raucous city council meeting August 3 in which two harbor commissioners and industry representatives requested that action be delayed until there was time to meet and discuss the ramifications of the proposal on the harbor department.

A week earlier, July 27, when the full city council sat as the Long Beach Charter Amendment Committee, and was discussing changing the formula for the annual transfer of port revenue to the city – from 10 percent of net revenue to 5 percent of gross revenue – newly seated Councilman James Johnson, and the former deputy city auditor for the city, made the following statement:

"What we have here is competing public policy goals . . . on the one hand, from an audit perspective or accounting perspective, gross makes most sense . . . it's easy, there are no disputes as Mayor [Bob] Foster mentioned, and it's quick and dirty. On the other hand, I think there are a lot of sound public policy reasons for the original net calculation. The reason we have 10 percent of net, it allows the port to do its business to make sure we have the environmental programs we need, to make sure we have the capital projects we need, and then whatever is left over, that additional money excess, or profit in the private sector, the city gets 10 percent, and I think that is the preferable choice if we can trust the calculation is done properly."

Johnson did not attend the August 3 meeting when the vote was taken to place the City Charter change before the voters (he and his wife took a pre-planned vacation). Over a period of several days during the last two weeks, the Business Journal placed numerous calls to Johnson (to his cell phone and to his council

office staff), but none were returned. It was confirmed that he was in town.

Two harbor commissioners spoke at the August 3 meeting: President Nick Sramek and Vice President Susan E. Anderson Wise, both long time, active residents of the city.

Sramek went through a lengthy list of financial support the port has provided the city over the years and reiterated the vital role the port plays in the economy and with jobs (one in eight local jobs is port related). "Mayor Foster, why don't you just call me if the city needs help? You know my number. . . . We've always provided you and the city council with whatever you asked for. . . . Last year, the city needed help with the Colorado Lagoon. We jumped on it. Same with the rescue boat. Turned funding around in a few days. . . . Why are you in such a hurry to get these things passed when there's been no discussion on the issues. . . . The changes you are proposing are significant and have not been vetted. . . . The commission voted unanimously to oppose any changes."

Wise stated: "I am concerned about what I consider to be the absence of discussion, what the role and the relationship is between the port and the city under the City Charter. I'm concerned that without that discussion there will be unintended consequences." Wise also said that there were changes to the ballot language that day [and, in fact, were going on during the city council meeting] "regarding oil and gas properties . . . I haven't had a chance to review them."

What ensued was what one observer called a good old fashioned whippin' of appointed commissioners never seen before in public. Mayor Foster, City Attorney Bob Shannon, Vice Mayor Suja Lowenthal and several councilmembers took turns lashing out at the commissioners regarding unwarranted pay raises, the "culture" at the port, the fact that reviewing the transfer of port funds was not a new issue, that the port is part of the city, that the city attorney is its legal advisor, that the city auditor had made several attempts to sit down with commissioners, but to no avail, etc., etc. That last item was a major bone of contention for the elected officials, inferring that commissioners intentionally would not sit down with the city auditor after she had requested to meet.

What is foggy here is the timeline. Doud completed the pre-mentioned "Harbor Department Transfer Analysis Report" in late May, with response from port management on June 4. She submitted the report to the mayor and city council on June 15. Since there was no mention of changing the transfer formula in her report, when did that idea surface and who's idea was it between the June 15 report date and the July 27 Long Beach Charter Amendment Committee meeting?

That doesn't leave much of a window for Doud to meet with staff and commissioners, let alone allow time for the port to determine the impact of what might occur with a change in formulas. For example, a September 5 Los Angeles Times headline stated: "Carrying a Heavy Load – Debt payments may make the Alameda Corridor a financial burden on the ports." A drop in the number of containers being shipped via the corridor has affected the corridor's ability to meet its debt obligations. So guess who gets to pick up the tab? The two ports. The article quotes international trade expert John Husing: "This will put pressure on the budgets of the ports at least until this recession is finally over and done with . . ."

Mayor Responds To Commissioners

"I have been a defender of the port because I thought it was the right thing to do," Foster said at the August 3 meeting. "This isn't going to make the port less competitive. This is not about investing in the port. This is about a culture that needs to change, and we

probably have some changing to do on our side.

"This is not an attempt to get more money . . . I believe there should be an arms length relationship between the port and the city. . . . No one is trying to gouge the port. . . . or do anything inappropriate to the port. We're just trying to remove some of the contention that's been a problem in the past.

"The image of the port around the world may be important. I'm sure it's important to the port and everyone else, and may be important even to the port's business conduct, but this isn't about that. This is about the relationship between the city and the port . . . and that relationship needs to be strengthened. This issue is not new. This issue has been around for some time."

Again, that was the mayor on August 3. Last December at a council meeting, during a discussion of port revenue, especially oil field revenues, and the lack of the money in the Tidelands Fund for the upcoming years, his words were quite different. He said the following:

"The issue is how do you get between now and then? How do you fill that three-year gap? We've had a couple of discussions with the port on how that could be done. They have been remarkably cooperative. There is no proposal, but they would like to see if they can craft a way in which they can help with the three-year problem so Tidelands Fund does not go in arrears or upside down as it's called, and in fact can still go forward with the needed projects in that fund.

"I will tell you that despite whatever this port was 15 or 20 years ago, whatever the attitude was or belief that it was, I think the port has shown remarkable cooperation with this city.

"Let's be candid. The reason we aren't having enough revenue from the port is that business is substantially down. We are in a globally competitive market. . . . If you send a signal to the markets out there that you are going to structurally alter something and take more money from the port, that's how it will be perceived. Whatever the reason, whatever the merits, however great it is, it will be viewed by the international business community that this is a less desirable place to do business. That's just the impression it will leave."

At the same meeting, Councilmember Lowenthal, now vice mayor, followed those comments by stating: "That's a wonderful update on the progress of those discussions. I appreciate that and I hope we can continue to move in that direction. I would support working with the port directly and pursuing those options. . . . To increase a percentage of a revenue amount that has decreased or continues to decrease because we drive traffic away, by that I mean business, that would be detrimental not just to the port but to the city. . . . As departments within the city, and we all talk about being one city, these two bodies can work together as opposed to putting forward a structural change that would require a charter amendment. . . . We've been reminded many times that we are the only port that does this, and I certainly think that it is very risky to change that."

The general consensus of those in attendance at the August 3 meeting or watching on television was that, whether one sided with the city's arguments or with the port's arguments, there was no reason for commissioners to be treated as they were. Commissioners, on all city commissions, are citizens who are volunteering their time – often 20 hours or more per week – to hopefully make Long Beach a better place. Many are passionate about their work. If they cannot be independent, then why serve? If they cannot voice their opinion without fear of reprimand, then why serve? If they cannot disagree with our elected officials, then why serve?

Commissioners – or any member of the public, for that matter – should be allowed to disagree with elected officials as long as their comments are respectful and are not personal attacks. On August 3, Commissioners Sramek and Wise should have been thanked for their comments, and their service to the community, and not dressed down and publicly embarrassed. With the votes already committed to place the measure on the ballot, there was no reason for what occurred.

The August 3 meeting was an example of Long Beach government at its worst. Let's hope it doesn't happen again. Let's hope that the thousands of good citizens who volunteer their time to make Long Beach better continue those efforts. To all those who serve the community, be assured that the vast majority of citizens appreciate what you do.

Ballot Language Questioned

Some of the language in the ballot argument seems a bit misleading, or at least exaggerated.

For example, as stated at the beginning of this article, the argument says a yes vote "creates a more transparent, fair and reliable funding method for the Harbor Department . . ." That statement makes it sound as if the current system isn't transparent or fair, or, reading between the lines, that the port staff and commissioners are not providing accurate data. The word "for" makes it appear that the harbor department asked for the changes. It did not. The ballot measure is from the mayor and city council, not from harbor commissioners or the harbor department.

The argument also states: "The Harbor currently uses a complex formula to calculate the level of funding, which varies dramatically from year to year." The current system allows the city council annually to request that the harbor commission transfer 10 percent of the port's net income to the city's Tidelands Fund. That doesn't seem too complicated. Nor does the fact that since 1995, that 10 percent has accounted for more than \$150 million in transfers to the city.

Another sentence reads: "The Harbor Department is part of the City of Long Beach, and while their primary mission is to provide a world-class port, they also have a responsibility to the community."

That makes it sound as if harbor commissioners and port staff have been sitting on their thumbs, unwilling to be part of the community. Nothing could be further from the truth. As we show in adjacent charts, the port has been a huge contributor to the community and, in fact, has done far more than any other entity – including the city council – in supporting the arts, charitable events, civic and business organizations, councilmember events, etc. Since January 2008, the harbor commission has approved the distribution of more than \$1.5 million to nearly 275 events or activities.

These items do not take into account the really big contributions of the port, such as \$90 million for construction of the convention center expansion back in 1994, of which \$30 million was granted without expectation of repayment; \$24 million for the world trade center development; \$2 million to develop Cesar Chavez Park; \$2.4 million to assist the housing preservation fund; \$5 million for the I-710 environmental impact study, etc. According to port records, it has invested more than \$790 million in the City of Long Beach since 1990!

Where would this city be without its port? ■

(See next page for Port Sponsorships)

America 2050 Forum	\$1,000
Consular Corps Golf/Tennis Invitational	\$2,500
Approved At July 2009 Meetings	
Long Beach Gospel Fest	\$3,000
YMCA Golf Tournament	\$605
Maritime Industry Salute and Tug Boat Race	\$5,000
Rancho Los Alamitos Foundation Fundraiser	\$1,250
Shipping and Transportation Dinner	\$5,000
Approved At August 2009 Meetings	
2009 Eddy Awards	\$5,000
Coast Guard Gold Tournament	\$1,000
Freedom Fund Banquet	\$5,000
Good Neighbor Festival	\$2,500
UCLA Transportation Symposium	\$1,500
Chamber Chairman's Circle 2010-2011	\$27,000
Honoring Those Who Serve Luncheon	\$750
Human Relations Award Dinner, 2009	\$750
Latin American Parade and Festival	\$2,500
Texas Hole 'Em Fundraiser	\$500
Approved At September 2009 Meetings	
Sustainable Shipping Conference	\$2,500
CSULB Engineering Lecture Series	\$2,500
Children's Clinic 70th Anniversary Gala	\$1,200
8th Annual Working Class Women's Luncheon	\$1,000
Nuestra Imagen Awards, 2009	\$1,000
Approved At October 2009 Meetings	
13th Annual Veterans Day Parade	\$3,000
IGT Encore 2009	\$2,100
US Green Building Council-5th Annual Green Gala	\$2,500
Approved At November 2009 Meetings	
27th Annual Belmont Shore Christmas Parade	\$2,500
I-710 Corridor to the Nation-Building Sustainable Trans	\$750
St. Mary Medical Annual Gala Auction and Dinner	\$2,500
WTS Annual Scholarship & Awards Dinner	\$1,500
Young Women Empowerment Conference 2009	\$1,000
62nd Annual Naples Parade of Boats	\$1,000
Children Today 12th Annual Holiday Event	\$1,000
Meet the Industries Expo	\$1,000
Approved At December 2009 Meetings	
22nd Annual Martin Luther King Jr. Parade	\$2,500
ILWU Retirement Celebrat on for James Spinosa	\$1,500
L.A. County Business Federation's 2nd Anniv. Celeb.	\$15,000
Approved At January 2010 Meetings	
Long Beach Play House 80th Anniversary Gala	\$1,500
Transportation Workforce Development Summit 2010	\$1,000
Memorial Medical Center Foundation Gala	\$2,000
Partners of Parks - Snow Day 2010	\$2,500
Approved At February 2010 Meetings	
20th Annual Flossie Lewis Luncheon	\$500
CCEJ Interfaith/Intercultural Breakfast	\$500
National Engineers Week Awards Celebration	\$500
15th Annual Catalina Conservancy Ball	\$1,500
California and World Ocean 2010 Conference	\$5,000
Los Angeles World Trade Week	\$10,000
2nd Annual Creating Jobs Through Exports Conf	\$3,000
CSULB Alumni Awards Banquet	\$2,500
LB Unified School District Science Fair	\$2,000
Approved At March 2010 Meetings	
Grand Prix 2010	\$155,000
Cesar Chavez Banquet	\$1,000
Long Beach Cancer League's Long Beach Gala	\$2,000
Congressional Cup 2010	\$2,500
CSULB Regional Economic Forecast	\$5,000

2010 Sea Festival	\$40,000
Women Who Make a Difference Luncheon	\$750
DLBA 2nd Annual Long Beach Bicycle Festival	\$5,000
Memorial Medical Center Foundation-Gold Classic	\$4,000
100 Black Men of Long Beach Awards Gala	\$1,000
Approved At April 2010 Meetings	
25th District Student Honors Luncheon	\$500
A Celebration of Miracles: The 24th Amistad Gala	\$2,500
LBAC Boy Scouts Distinguished Citizen Dinner	\$10,000
Friends of the LA River Great LA River Cleanup	\$2,500
ITEP 10th Anniversary Dinner	\$1,500
Cal State Lands Commission "Prevention First 2010"	\$1,000
Heal the Bay - Bring Back the Beach	\$5,000
Conservation Corps of Long Beach-Dine on Pine	\$1,000
Elias Empowerment Conf. Dulcinea/Virtus Awards	\$1,500
L.B. Police Officers Assn Charity Golf Tournament	\$1,000
American Gull Found.-Mayor's Trophy Golf Tourney	\$1,600
Museum of Latin American Art's Gala Fundraiser	\$5,000
SCAG 2010 Regional Conference/General Assembly	\$2,500
Approved At May 2010 Meetings	
28th US Coast Guard-Marine Industry Golf Tour.	\$1,000
California Maritime Leadership Symposium	\$2,500
Grape Expectations Fundraising Dinner	\$2,000
L.B. Bar Assn. Maritime Section Harbor Tour	\$3,000
Annual International Night Benefit Ball	\$2,500
CCEJ Humanitarian Awards Dinner	\$5,000
Long Beach BLAST Annual Breakfast	\$1,000
Women In Green Forum	\$2,500
ILWU-Propeller Club Seafood Feast	\$3,500
Roundtable Conference on Goods Movement	\$3,000
Mos' Inspiring Students Awards Gala	\$1,500
FuturePorts "Clearing the Air Conference"	\$2,500
L.A. Consular Corps Golf/Tennis Invitational	\$2,500
Ninth Annual So. California Transportation Summit	\$3,000
Leadership LB Class of 2010/2011 Program	\$5,000
Approved At June 2010 Meetings	
LB Police Dept. 42nd Annual Awards Ceremony	\$1,000
Aquarium Ocean Conservation Awards Gala	\$5,000
Legal Aid Foundation's Long Beach Grand Cru	\$1,800
Operation Teddy Bear Reception	\$2,500
YMCA of Greater Long Beach Golf Tournament	\$805
Rancho Los Alamitos Foundation's Ranch Roundup	\$2,500
Bixby Knolls Dragster Expo and Car Show	\$5,000
Sister Cities of Long Beach, Inc.	\$8,000
Approved At July 2010 Meetings	
LAC Economic Development Corp	\$3,000
LB Museum of Art 60th Anniversary Bash	\$10,000
Naples Holiday Boat Parade	\$2,500
Children Today Golf Tourney	\$600
Assistance League of Long Beach-70th Anniversary	\$2,500
Approved At August 2010 Meetings	
United Cambodian Community Anniversary	\$1,000
College of Engin., CSULB-Disting. Lecture Series	\$2,500
LBCC Community Studies Project's Conference	\$2,500
South Coast Air Quality Mgt. District's Luncheon	\$400
LB Centro (CHA)-Nuestra Imagen Awards	\$1,000
Children's Clinic Beach Walk	\$1,000
Southern California Relocation Council	\$1,000
Good Neighbor Festival	\$2,000
ILWU Annual Tri-Party Golf Tourney	\$2,000
Latin American Parade and Festival	\$2,500
UCLA Extension's Symposium	\$2,500
U.S. Environmental Protection Agency	\$2,500

About The Grand Prix Sponsorship

The largest sponsorship made by the Port of Long Beach in each of the past three years is for the annual running of the Toyota Grand Prix of Long Beach. In 2008, it was \$115,000. For 2009 and 2010, the sponsorship reached \$155,000 each year. According to Jim Michaelian, president of the Grand Prix Association of Long Beach, as an official sponsor, the port received the following:

- Two Pit Row Suites (\$85,000), which the port had purchased in the years prior to the sponsorship arrangement that began in 2008. Pit Row Suite purchase allows the port to conduct business with and entertain clients at Long Beach's premier event. [This is customary at most major sporting events throughout the country, and is used as both a retention and attraction tool.]

- The port gets year-round use out of the promotional Green Port Prius, which is also used on race weekends to pace all the races and is designated the Official Green Power Pace Car. When not in use, the Port Prius is displayed in the Green Power Expo.

- The port receives 20 track signs at the event which will be seen on national and international television throughout the weekend. Last year, over 10 hours of first-run programming originated from the Grand Prix.

- The port has the right to use the Grand Prix name and logo in all of its media advertising and promotions, further associating it with Long Beach's premier event.

- The port receives three commercial spots and three public address announcements per day on race weekend to get the Green Port message to the Grand Prix audience. The Port also receives advertising space in the official Souvenir Program (15,000 distribution) and Fan Guide (55,000 distribution), and, as a sponsor, its Web site is linked to the Grand Prix Web site.

- The port is incorporated into a number of Grand Prix pre-event promotions and activities, including the Long Beach student outreach program. This program features local school visits by professional race-car drivers, and the port sends their Green Port Prius and a representative to talk to the students about the port's green initiatives. ■

Ballot Argument In Favor Of Measure D

A YES vote on Measure D creates a more transparent, fair and reliable funding method for the Harbor Department (Port of Long Beach) to help keep our coastal areas clean and safe.

By law, the Harbor Department is authorized to help maintain the City's beaches and coastal areas. The Harbor currently uses a complex formula to calculate the level of funding, which varies dramatically from year to year. Measure D will simplify the formula and allow the transfer of up to 5% of Harbor gross operating revenues to improve our beaches and coastal areas. Measure D also clarifies that oil operations are the purview of the City's Gas and Oil Department, which currently handles daily oil operations.

The Harbor Department is part of the City of Long Beach, and while their primary mission is to provide a world-class port, they also have a responsibility to the community. By law, Harbor funds can only be spent to improve our coastal areas and cannot be spent in other areas of the city. The Harbor transfer is essential for improving and cleaning our beaches, providing lifeguards and beach security, improving the environmental sustainability of our City and funding critical infrastructure needs.

Measure D will provide a transparent and straightforward revenue source to fund those needs. In order to ensure the Harbor remains a vibrant economic engine, the Department will only be allowed to transfer up to 5% of their gross operating revenues after certifying that those funds are not needed to run Harbor operations.

Measure D is a simpler funding method that preserves the Harbor Department's responsibility to make Long Beach a better place for both our residents and international trade.

Please vote YES on Measure D to keep our beaches clean and safe.

Current City Charter Language – Harbor Department

Sec. 1209. - FINANCE

(a)

All money received or collected from or arising out of the use or operation of any harbor or port improvement, work, appliance, facility or utility, or water craft, owned, controlled, or operated by the City in or upon or pertaining to the lands and waters under control and management of the Harbor Department; all tolls, charges and rentals collected by the Harbor Department, and all compensations or fees required to be paid for services, franchises or licenses, or otherwise by law or ordinance or order, to the City for the operation of any public service utility upon lands and waters under the control and management of the Harbor Department, shall be deposited in the City Treasury to the credit of the Harbor Revenue Fund, which fund has been heretofore created and established and is hereby continued, and shall be kept separate and apart from other monies of the City. Said fund shall be a continuing fund not subject to transfer at the close of the fiscal year.

(b)

The money deposited in the Harbor Revenue Fund may, from time to time, be invested in accordance with the provisions of applicable legislation of the State of California providing for the investment and reinvestment of any monies in any sinking fund, or any surplus monies in the treasury of cities in the State, all interest, earnings, income or profits from the investment of said money shall likewise be deposited to the credit of said fund.

(c)

Monies credited to the Harbor Revenue Fund may be appropriated and used only for the following purposes:

(1)

For the necessary expenses of promoting, conducting, managing and operating the Harbor Department, including, but not limited to, the operation, repair and maintenance of all harbor or port improvements, works, utilities, appliances, facilities and water craft, owned, controlled or operated by the City, for the promotion and accommodation of commerce, navigation, recreation or fishery, or used in connection therewith;

(2)

For the acquisition, construction, completion and maintenance, to the extent and in the manner permitted by all applicable law, of harbor and port improvements, buildings, work, utilities, appliances, facilities, and water craft, for the promotion and accommodation of commerce, navigation, recreation or fishery, or used in connection therewith, and for all other improvements and betterments authorized by law to lands and property under the control, supervision and management of the department, including the purchase or condemnation of necessary lands and other property and property rights, except that condemnation of property outside of the Harbor District shall require the consent of the City Council;

(3)

For the payment of the principal or interest, or both, of harbor improvement bonds, either general obligation bonds or revenue bonds, issued for harbor improvements;

(4)

For the transfer to the Tideland Operating Fund at the beginning of a fiscal year from revenues in the Harbor Revenue Fund of such sums as shall have been determined by the City Council, by a vote of two-thirds (2/3) of all its members, expressed by resolution, to be required to meet the lawful obligations of the Tideland Operating Fund; provided, however, that such sums designated shall not exceed ten percent (10%) of the net income of the Harbor Department as shown on the most recent available independently audited financial statements; and further provided that such transfer of funds shall be subject to the prior approval of a majority of all members of the Board of Harbor Commissioners, expressed by resolution, finding and determining that the funds proposed to be transferred will not be needed for Harbor Department operations, including, without limitation, operating expenses and capital projects, and that such transfer will not result in insufficient funds to pay the principal and interest as they fall due, or otherwise impair the ability to meet covenants, of general obligation or revenue bonds issued for harbor purposes. All such transfers shall be made by journal entry on the books of the City in the manner determined by the City Manager.

Port Of Long Beach Expenses, Transfers To City

Expenses for allocated or mandated services include the fire department, general city overhead, the health department, information services bureau, marine bureau and the police department. The Long Beach Harbor Department reimbursed the city's General Fund or other appropriate fund annually for those services.

The column listing purchases and requested services are items the Long Beach Harbor Department requested that had costs or fees attached to them, including: plan check fees, traffic and street lights, reprographics, gas/water and sewer usage, and the utility user's tax, which is 5% on phone, electric, water and gas usage.

The 10 percent transfer began in 1995 with the harbor transferring the money for use by the Tidelands Fund.

It should be noted that in her "Harbor Department Transfer Analysis Report" dated June 2010, City Auditor Laura Douv said: "The expenses related to fire and safety consist primarily of costs charged by the City for police and fire services [to the harbor department]. Fire and safety costs have consistently increased from \$8.8 million in FY 2003 to \$14.5 million in FY 2008."

Fiscal Year	Allocated Or Mandated Service	Purchases & Requested Services	Transfer Of 10% Net Income To Tidelands Fund
1990	\$6,563,216	\$1,974,962	0
1991	\$7,400,163	\$1,525,329	0
1992	\$7,653,051	\$2,199,864	0
1993	\$7,049,375	\$2,288,104	0
1994	\$5,883,442	\$2,252,938	0
1995	\$6,635,784	\$2,052,437	\$2,674,000
1996*	\$8,328,059	\$5,015,043	\$5,227,000
1997	\$6,859,144	\$3,462,271	\$4,879,000
1998	\$7,068,501	\$2,900,123	\$9,077,000
1999	\$8,493,523	\$2,923,290	\$7,542,200
2000	\$9,895,257	\$3,048,492	\$6,244,800
2001	\$10,080,256	\$3,625,436	\$6,150,900
2002	\$9,363,510	\$2,538,725	\$8,314,400
2003	\$11,388,395	\$2,042,070	\$8,676,900
2004	\$12,310,411	\$1,935,896	\$9,057,694
2005	\$13,091,529	\$1,836,153	\$6,850,777
2006	\$15,019,483	\$2,176,195	\$9,499,689
2007	\$18,096,383	\$2,010,696	\$14,222,184
2008	\$18,236,746	\$2,979,380	\$15,399,535
2009	\$20,593,601	\$2,696,831	\$16,059,464
2010**	\$19,121,001	\$1,632,198	\$28,507,678
	\$229,130,830	\$53,116,433	\$158,383,221

*Fiscal year ran 15 months. City changed its fiscal year from July 1 to October 1.

**Through early September 2010. Source: Long Beach Harbor Department.

EXHIBIT B

**Comments by George Cunningham
Before joint meeting of Propeller Club & HAIC
October 14, 2010**

Good afternoon Propeller Club members and guests. Here we are, together again – the George and Bill show or maybe it's the Bill and George show, according to which one of us you are talking to.

We do have serious stuff to talk about today - Proposition D.

If you read the description of Proposition D on the ballot, it sounds very innocent. One – Prop D will change the formula for the annual transfer of port revenues from the port to the city Tidelands Operating Fund, from a maximum of 10 percent of the net earnings to a maximum of 5 percent of the gross.

And Two – it will give the city authority over all oil interests in the port district.

The ballot argument for Proposition D is that it will create a more transparent, fair, and reliable funding method for the Harbor Department (the Port of Long Beach) to help keep our coastal areas clean and safe.

There is no ballot argument against it. It was rushed through at the last minute – the initiative was still being tweaked by the City Attorney on the same night it was approved – and it left little time for opponents to organize or craft an argument against it.

Here is what Proposition D is really about. The Port has money, the city wants it. And power. Members of the City Council want to extend their power over the port.

Let's break Prop D down to its components parts.

Proposition D would change the formula for port transfers from 10 percent of net to 5 percent of gross. The City Hall folks figure that would amount to a couple extra million dollars a year, based on recent port budgets. The mayor has even said, a couple of million – not a big deal when you have a harbor department getting ready to build a billion dollar bridge to replace one that is slowly falling apart and to spend hundreds of millions more on new infrastructure.

The assumption, of course, is that the annual transfer will be a couple of million more than it was before. But let's look at it this way. The volume of containers coming through the port is once again increasing and is expected to keep on increasing. To handle all that increase, the port is planning to build new, more efficient infrastructure.

So while the gross revenues are expected to go up, so are the expenses. Theoretically under the formula, the port could actually lose money, but still transfer 5 percent of its gross to the city. Now obviously, that's not going to happen.

What is more likely to happen is that the port could cut or downsize some of its capital expenditures and perhaps some of its costly environmental programs – which could eliminate hundreds or thousands of construction jobs, result in dirtier air, and leave the port lacking the infrastructure it needs if it wants to remain competitive. And the port could be forced to raise fees to help cover the revenues lost to the city.

Bond rating agencies, which are watching these developments with keen interest, could lower the port's bond ratings, which means it will cost more money to borrow money and therefore more money to build new infrastructure.

In fairness, the City Charter currently allows the Harbor Commission to transfer its earnings to the city Tidelands Operating Fund, but only IF the money is not needed for “Harbor Department operations, including without limitation, operating expenses and capital projects.” The amended charter would not change that, so the Harbor Commission could just say NO.

But, let’s look at the history. Since 1995, the port has been asked every year by the city to transfer 10 percent of its net to the Tidelands Fund. Some of those years, the port was more than \$1 billion in debt and its debt service – the interest on that debt – was one of the largest items on its budget.

And how many times did the Harbor Commission say no? Zero. From 1995 through 2010, the port has transferred more than \$158 million in port revenue to the City Tidelands Fund. The port always came through for the city, and there is little reason to believe that would change.

And then there are the port oil properties that the city plans to take over. The port acquired the oil properties when it bought a 725-acre oil field superfund site from Union Pacific Resources back in 1994. It was a negotiated deal. The port got land on which to build terminals and Union Pacific got a chunk of cash in exchange for a polluted oil field that was nearing the end of its productive life.

Part of what the port paid for was the oil that remained, but it wasn’t long before that oil became an expense, not an asset. The price of oil at the time was such that pumping it out of the ground cost more than the oil was worth. Only when the price of oil began to climb, did the oil field become valuable.

The city taking over the field would cut the port out of about \$150 million over the next 10 years.

So let's be clear about something. This is about money. It's not about a transparent fair, reliable, funding mechanism to make sure we have clean beaches. It's about money and it's about power.

There's something that many folks in the community do not understand. The City of Long Beach does not own the port. The port is a state trust, supposedly operated by the city for the benefit of all the people of the state.

The port may be in Long Beach, and the voters in Long Beach may be the people who get to decide the issue, but what they decide can have an effect on lots of folks outside the city. The people who grow cotton or almonds or grapes up in the Central Valley, the people who work in the warehouses in Ontario or Rancho Cucamonga or in the railyards in San Bernardino or Barstow. And, of course, for a lot of you folks in this room who depend on the port for your livelihood whether you live in Long Beach or Huntington Beach or Palos Verdes, or Lakewood.

The Harbor Board may be appointed by the Mayor and confirmed by the City Council, but they also have a fiduciary duty to everybody in the state, and I have to say that I think they do not take that duty lightly. Being a Harbor Commissioner is a prestigious job, but it is also a very demanding job that takes a lot of time and effort on the part of folks who are successful in their own rights and usually very busy holding down jobs in their own chosen fields.

When the City Charter was first adopted, the port was given a large amount of autonomy so it could conduct its business without getting caught up in the petty politics of City Hall. The payoff for the city was that the port would deliver lots of paychecks, lots of business opportunity, and lots of tax revenues from those jobs and businesses that locate in the city because of the port.

It's not like that every place.

If you go across the Bay to the Port of Los Angeles things are very different. Unlike Long Beach, the Port of Los Angeles is not as much an autonomous city department. The Los Angeles City Council is very much involved in port operations and every significant decision made by the port may be questioned and overruled by the City Council.

There are a lot of good people at the Port of Los Angeles, but they operate in the middle of the political circus. When a new mayor is elected in Los Angeles, the entire commission is replaced, so port policy and focus can whipsaw from administration to administration. And if some board member doesn't vote the way the mayor wants, he or she may be gone the following month.

The Port of Los Angeles has been successful despite that environment, which is a testament to some of the folks that work there. But that constant environment of political interference is not healthy or good for the port.

Or go to the Pacific Northwest, the ports there are not departments of a city. The port commissioners are elected and the taxpayers in that port district pay to subsidize the port's operation. If you live in a \$400,000 house in Seattle, for instance, your annual property taxes will include \$87.44 for the Port of Seattle. What taxpayers get for that money is jobs, economic prosperity and all the good things that go along with a healthy and vibrant economy.

In Long Beach, on the other hand, the port subsidizes the city. And the harbor commission enjoys a fair amount of autonomy in how it conducts its business. The Long Beach commissioners often publicly disagree with one another – in a very civil sort of way – and not every vote is unanimous.

But there are folks that would like to change that. They would like to have the City Council more involved in port operations and port decisions. And they would like an even bigger subsidy from the port. And you see that desire reflected in their actions.

Proposition D was placed on the ballot at the last minute. Although it has far-reaching implications, the harbor commission was not included in the discussion leading up to it. There was no study done to analyze what the possible repercussions of it would be.

The only thing that even approached a debate was when two Harbor Commissioners came forward as the measure was being approved for the ballot to ask for a postponement so the matter could be discussed. The mayor and the council members one-by-one took the opportunity to deliver a series of disingenuous and sanctimonious lectures to the two commissioners.

The basic message was that you work for us, and we don't want to hear about you whining about your fiduciary duty to the state of California. And you have to believe that this was part of a coordinated effort toward the emasculation of the Harbor Commission and the usurpation of the board's power.

Perhaps you could make the argument that the City Council, whose members have been directly elected by the voters, should have power over harbor department operations, much as they do it Los Angeles. But there has been no such argument made. There has been no discussion. It smells more of a coup than a decision that has been reached after proper public deliberation.

To be clear. The port is the primary driver for the local economy. In the early 90s, when the cold war ended and the so-called peace dividend turned out to be an aerospace and military bust, the Navy moved away and much of the aerospace industry that had supported the local and regional economy began to dissolve, it was the ports of

Long Beach and Los Angeles that kept the wheels of commerce turning. This port has been and remains the golden goose for the city.

For years, the port has enjoyed a period when it had little real competition. That's changing. There are competitive threats both north and south – from Prince Rupert to the Panama Canal. The local cargo will probably always mostly come through these two ports, but the discretionary cargo – the cargo headed for points east of the Rockies – will soon no longer have to.

This is the time that the port needs to prepare for the coming battle for market share that is about to erupt, because the winners of that battle are going to be the communities that get the jobs and the economic benefits that go along with that market share. And to be ready for that battle, the ports need to be financially strong.

The question that remains unanswered is this: Why can't the city of Long Beach live within its means? Huntington Beach doesn't have a port. Neither does Manhattan Beach or Newport Beach or Laguna Beach or Seal Beach or other coastal cities. But somehow they manage to get along and pay their bills and balance their budgets.

I suspect the answer is simply that Long Beach has become addicted to port money. And when hard times come, it turns to the port to once more bail it out. The city budget problems are real. Everybody is hurting and the city of Long Beach is no exception.

But Proposition D is a long-term change in policy to address a short-term problem. The economy will at some point recover, and will the city at that point decide, well we will now stop depending on the port for our yearly fix? Now we will back off and be financially responsible.

What do you think?



Cash Flow and Net Income Forecast and Impact of Bond Rating Downgrade

Sam Joumblat
Chief Financial Officer

Assumptions



- The current \$3.1 billion five-year Port capital plan will be completed as scheduled
- Operating revenue will increase at 5% year-over-year from 2011 to 2015
- A minimum cash balance of 600 days of prior year's operating expense before depreciation will be maintained
- Oil price at \$70/bbl fixed for the 2011 – 2015 period; extraction cost will start at \$30/bbl in 2011 and escalate at 3% annually
- ACTA shortfall will need to be funded starting in fiscal 2011

Scenarios – FY 2011-2015



	I	II	III	IV
(\$ = millions)	Harbor Revenue Fund	City Tidelands Fund	Harbor Revenue Fund	City Tidelands Fund
Net Oil Revenue to:				
Additional Oil Revenue received by City's Tidelands Fund	\$0	\$100	\$0	\$100
Tidelands Transfer equals:	10% of Net Income	Zero	5% of Operating Revenue	5% of Operating Revenue
Tidelands Transfer	\$62	\$0	\$95	\$95
Total Port Contribution to City's Tidelands Fund	\$62	\$100	\$95	\$195
Port Borrowing	\$1,198	\$1,263	\$1,225	\$1,349
Port Net Income	\$620	\$576	\$584	\$472

Additional Interest Cost



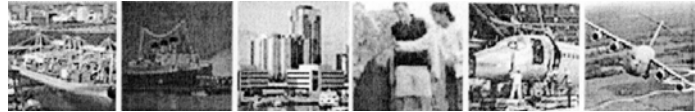
- The Port is Aa2 rated by Moody's and AA rated by S&P
- The table below shows the impact of downgrades - assuming \$1.2 billion in bonds with level payments over 30 years

Rating (Moody's/S&P)	Estimated Interest Rate Differential	Estimated Additional Interest Cost
Aa3 / AA-	0.15%	\$39,161,796
A1 / A+	0.40%	\$105,128,880
A2 / A	0.60%	\$158,518,824

Long Beach

BUSINESS JOURNAL

[home](#)
[about long beach](#)
[about the Business Journal](#)
[advertising](#)
[calendar](#)
[submitting ads](#)



Harbor Staff Releases Five-Year Forecast On Measure D; Bond Rating In Jeopardy

By Sean Belk
Staff Writer

Just weeks before the November 2 election, Long Beach Harbor Department staff presented a forecast on how Measure D would impact port revenues and cash flow over the next five years if passed by voters. The analysis also examined the potential for a downgrade in the port's bond rating.

The measure, placed on the ballot by the city council, would, if passed by the voters, amend City Charter language regarding the formula used to calculate how much port revenue the city can request each year (changing from the current 10 percent of net income to 5 percent of gross operating revenue). Port revenue transferred to the city can only be allocated to the city's Tidelands Operating Fund, which is used for maintaining the city's beaches and surrounding waterfront areas under state law. The city contends that changing the Charter merely "simplifies the formula." The measure also "clarifies" that all oil properties in the city are under the control of the city's gas and oil department, potentially costing the port an estimated \$120 million from current operations over the next four years.

On October 18, Sam Joublat, the port's chief financial officer, gave a brief presentation to the Long Beach Board of Harbor Commissioners at the request of Commissioner Mike Waller.

The analysis included a chart showing four financial scenarios that may occur between fiscal years 2011 to 2015, taking into account oil revenues and the city's annual money transfer request, along with foreseen net income and the amount of funds to be borrowed for capital projects. Staff also discussed what would happen if the port's bond rating was downgraded from its current high "AA" status.

The forecast is based on the assumption that the port's operating revenues would increase 5 percent year-over-year for the next five years. The analysis also assumes the current \$3.1 billion port capital plan would be completed as scheduled, all environmental documents would be certified as planned and oil prices would remain at \$70 a barrel by the end of that time period.

Under the assumptions, Joublat presents four scenarios that take into account the city's annual request for a money transfer along with oil revenues that may change if voters pass Measure D this election.

In addition to any changes from Measure D, Joublat presented the potential loss or gain of about \$100 million in new oil revenues that the city would decide to hand over to either the harbor department or to the city's Tideland's Operating Fund within the next few years. That pertains to a contract the city has with Occidental Petroleum (Oxy) for drilling new oil sites located in the port district. He said the city has already cut a deal with Oxy that any revenue from any new oil that will be found would be split 50 percent between the city's Tidelands Fund and Oxy. But the analysis assumes the city may decide to give those funds to the port depending on how things play out over time.

The scenario that would give the city's Tidelands Fund the most money, given the port staff's projected market assumptions, falls under scenario four, which would be a total port contribution of \$195 million by the end of fiscal year 2015. That would occur if Measure D passed and the port granted the city's request of 5 percent operating revenue each year and the \$100 million oil revenue share would go solely to the Tidelands Fund.

Scenario one would give the city the least amount of money. In that case, the port would get the \$100 million in additional oil revenue instead of the city, which would make the port's entire contribution to the city's Tidelands Fund a total of \$62 million from fiscal year 2011 to fiscal year 2015.

The difference between scenario one and four is about \$133 million, which is "more than triple the status quo," Joublat added, or about \$26.6 million per year in more revenues for the tidelands.



Long Beach Business Journal

Even with oil revenues out of the equation, Joublat points out, just changing the City Charter transfer formula from 10 percent net income (\$62 million in five years) to 5 percent gross operating revenue (\$95 million in five years) would still mean that the city's Tidelands Fund would see a total of \$33 million more in funds by the end of the five fiscal years, or about \$6.6 million more per year.

Joublat estimates that, given all assumptions and with the current bond rating status, by the end of 2015, the port will be borrowing more money for capital improvement projects while net income will decrease, regardless of the projected 5 percent increase in operating revenues.

Bond Rating

The port's financial staff also shared figures on additional interest costs if the port's bond rating drops, assuming \$1.2 billion in bonds with level payments over 30 years.

Earlier this year, Fitch Ratings gave the port an "AA" rating, the second highest, on two series of port bonds, "reflecting the port's strong financial position," according to a press release in March. The higher rating would mean lower risk to investors and a lower interest rate on debt. This year, the port issued \$218 million in harbor revenue bonds and up to \$354 million in harbor revenue refunding bonds.

In 1993, the port's bond rating dropped one notch to "AA-" during a very similar time in which the country was experiencing a recession and the state had just begun to allow the city to start tapping into port reserves.

Joublat's analysis estimates that if bond ratings, provided by Moody's and S&P, dropped one, two or three notches, additional interest costs on debt could range from about \$39 million to \$158 million. But, in order for that to happen, port staff said that would depend on a bond rating agency's perception of the port's finances and the relationship between the port and the city.

"Some of the questions we've been asked recently are about control and additional funding needs and additional transfers to the city," Joublat said. "So it depends on their perspective." Also, agencies look at the level of reserves, as the port has increased its capital to debt coverage ratio to 600 days, and would want to make sure adequate funds cover debt service.

Commissioner Walter said he would like to see more of an analysis in the future showing how container traffic or revenues would be affected by the price of oil. "Clearly it impacts our shipping industry," he said.

Commission President Nick Sramek said he needed more time to go over the new information presented. "I'm slowly trying to understand this thing," he said.

However, Richard Steinke, the port's executive director, pointed out that all money transfers to the city's Tidelands Fund are "discretionary" and under the authority of the harbor commission, regardless of whether Measure D passes or not. "If the port saw us going down that slippery slide, the port staff would certainly make a strong recommendation for some other arrangements to intervene," he said. "We don't want to get ourselves into a scenario to take that perilous road. . . . We're trying to keep our financial position as much as possible." Steinke added that any unforeseen catastrophic event would make the port even more cautious of its financial situation.

Trade Industry Groups Speak Out

Meanwhile, on the same day of the commission meeting, the Propeller Club of Los Angeles-Long Beach circulated a press release indicating that six trade industry organizations have taken a stance against Measure D, urging Long Beach residents to vote 'no.' They say the proposed measure would "threaten local jobs" and lessen the port's competitive edge to remain as a "premier international port and solid economic engine for the region."

Dan Meylor, president of the Los Angeles Customs Brokers and Freight Forwarders Association, stated: "Measure D is just a bad idea. . . . City politicians put it on the ballot without thinking about the negative impact on the local economy, jobs or important projects ensuring clean air in the Long Beach Community. It will likely affect the Port's bond ratings and associated borrowing costs, driving up the cost of every project and program and reducing the number of these that can be accomplished, which in turn will drive discretionary cargo to other ports in the United States."

The Pacific Merchant Shipping Association, Harbor Association of Industry & Commerce, Future Ports and CALMITSAC also oppose to the measure.

On October 21, the Long Beach Area Chamber of Commerce Government Affairs Committee weighed in with a near unanimous vote to oppose Measure D. The chamber board meets October 28, just four days before election day, to consider the committee's recommendation.