STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

DRAFT

Date Amended:	**04/29/08**	Bill No:	**SB 1582**
Tax:	**Ocean Ranger Fee**	Author:	**Simitian and Maldonado**
Related Bills:			

This analysis will only address the bill's provisions which impact the State Board of Equalization (Board).

BILL SUMMARY

This bill would authorize the imposition of a fee of one dollar ($1) per passenger per day fee upon an owner or operator of a large passenger vessel operating in the marine waters of the state to be administered and collected by the Board.

The previous version of the bill did not impact the Board.

ANALYSIS

CURRENT LAW

Under existing law, Section 71215 of the Public Resources Code requires the State Lands Commission (Commission) to establish a reasonable and appropriate fee in an amount not to exceed one thousand dollars ($1,000) per qualifying voyage, through regulation, to carry out the Marine Invasive Species Act (Division 36 (commencing with Section 71200) of the Public Resources Code). As of September 1, 2005, the fee was set at $400 per qualifying voyage. The amount of the fee may be adjusted for inflation every two years.

Under Part 22.5 (commencing with Section 44000) of Division 2 of the Revenue and Taxation Code, known as the Marine Invasive Species Fee Collection Law, the Board collects the fee from the owner or operator of each vessel that arrives at a California port or place from a port or place outside of California. The fee is not assessed on any vessel arriving at a California port or place if:

- That vessel comes directly from another California port or place, and
- During that transit has not first arrived at a port or place outside California or moved outside the exclusive economic zone (EEZ), i.e. beyond 200 nautical miles seaward, prior to arrival at the subsequent California port or place.

The fees imposed are deposited into the Marine Invasive Species Control Fund.

PROPOSED LAW

This bill would add Chapter 4.5 (commencing with Section 72435) to Division 38 of the Public Resources Code to, among other things, authorize the Department of Justice (DOJ) to assess on an owner or operator of a large passenger vessel and the Board to administer and collect the following:

- From January 1, 2009, to August 31, 2009, a fee of one dollar ($1) per passenger for each day in which the vessel is operating in the marine waters of the state; and

- On and after September 1, 2009, a fee of one dollar ($1) per passenger for each day in which the vessel is operating in the marine waters of the state and an ocean ranger is onboard the vessel.

Collection and Administration. The Board would be required to administer and collect the fee in accordance with the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code.

The Fee Collection Procedures Law contains "generic" administrative provisions for the administration and collection of fee programs to be administered by the Board. It was added to the Revenue and Taxation Code to allow bills establishing a new fee to reference this law, thereby only requiring a minimal number of sections within the bill to provide the necessary administrative provisions. Among other things, the Fee Collection Procedures Law includes collection, reporting, refund and appeals provisions, as well as providing the Board the authority to adopt regulations relating to the administration and enforcement of the Fee Collection Procedures Law.

The fee imposed January 1, 2009, to August 21, 2009, would be due and payable to the Board on or before the last day of the month in which a large passenger vessel was docked in the state. Beginning on and after September 1, 2009, the fee would be due and payable to the Board on or before the last day of each quarter in which a large passenger vessel was docked in the state. The payments must be accompanied by a return as prescribed by the Board.

The Ocean Ranger Program Fund. After deducting the administrative costs incurred in the collection of the fee, the Board would be required to deposit the remaining amount into the Ocean Ranger Program Fund (Fund), which this bill would create in the State Treasury. Notwithstanding Section 13340 of the Government Code, the money in the Fund would be continuously appropriated to the Controller for both of the following purposes:

- To pay refunds to an owner or operator of a large passenger vessel for the collection of excessive fees.
- To reimburse the DOJ for the training of ocean rangers and the implementation of this bill.

Miscellaneous. The fee imposed on and after September 1, 2009, would be revised on or before January 1, 2010, and biennially thereafter, to ensure that the fees collected are sufficient only to generate revenue to cover the costs of implementing this bill, plus a prudent reserve. The fee revision timeline, in part, is as follows:

- On or before March 1, 2009, and on or before March 1 biennially thereafter, the DOJ is required to submit to the Department of Finance (DOF) an annual work plan.
- On or before July 1, 2009, and on or before July 1 biennially thereafter, the DOF shall certify the DOJ's work plan and cost estimate.
- On or before October 1, 2009, and biennially thereafter, the DOF must report the new fee that would be effective beginning January 1, 2010, and biennially thereafter.

If the revised fee has not been settled in a timely manner, the existing fee would remain in place until a revised fee is established.

This bill would become effective January 1, 2009.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by Earth Island Institute and is intended to allow for independent verification of current compliance requirements relating to discharges from large passenger vessels and ocean going ships under the California Clean Coast Act.

2. **Would the Board have sufficient time to implement the new fee program?** To effectively implement this bill, it would be necessary for the Board to notify and register owners or operators of large passenger vessels, develop computer programs, hire and train key staff, create necessary forms and schedules, and answer taxpayer inquiries. These functions should take place before the fee becomes operative. Board staff estimates that it would take approximately six months to implement the new fee program proposed by this bill.

   In order to provide the Board with the 6-month lead-time necessary to implement the proposed fee program, this bill would have to be signed into law on or before July 1, 2008. If the bill is signed into law after that date, it is suggested that the bill be amended to provide for a delayed operative date to the first day of the month six months after the bill is enacted. This would provide the Board with sufficient lead-time to successfully implement the bill.

3. **This bill should contain a specific appropriation to the Board.** This bill proposes a new fee to be imposed on or after January 1, 2009. To implement the proposed fee program, the Board would need to develop the feepayer base, reporting forms, computer programs, and hire appropriate staff in 2008, which is in the middle of the state's 2008-09 fiscal year. The Board would need an adequate appropriation to cover these administrative start-up costs not currently identified in the Board's 2008-09 budget.

4. **Additional terms need defining.** The bill does not contain a definition for the term "passenger." To avoid any ambiguity as to what constitutes a passenger (e.g. does the term passenger include crew members and hired entertainers?), it is suggested the bill be amended to define this term.

   The terms "large passenger vessel" and "marine waters of the state" are defined in Public Resources Code Section 72410, which apply to proposed Chapter 4.5 (commencing with Section 72435) of Division 38 of the Public Resources Code, which would be added by this bill.

   It should be noted that existing Section 72410(g) defines the term "marine waters of the state" to mean "coastal waters" as defined in Section 13181 of the Water Code; however, Section 13181 does not contain a definition for "coastal waters."

5. **Suggested amendments.** In order to avoid any ambiguity with the administration of the proposed fee, the author may wish to amend the bill to address the following concerns:

   - The fee imposed pursuant to this measure is due and payable to the Board on or before the last day of the reporting period specified in which a large passenger vessel was "docked in the state." What if a fee payer does not have a vessel docked every month in this state? It appears the owner or operator would not be required to file a return with the Board for the monthly periods a vessel did not

dock in this state. If this is the case, how would the Board know if the fee payer failed to file a return and pay the fee, or simply did not dock in this state?

Also, if the fee is due and payable to the Board on or before the last day of the month in which the vessel docks in the state, how would the owner or operator accurately capture the number of passengers the last days of the reporting period before remitting the fee and return to the Board? For example, a vessel docks in this state during the month of March. How would the owner or operator know the exact number of passengers on the vessel for the last days of March before remitting the fees and return by the March 31 due date? Having the due date and reporting period overlap could result in under and over-reporting of the fee, which in-turn could increase the number of claims for refund, amended returns and billings.

- The bill provides a process and time-line to revise the fee amount. The bill also states that, if the revised fee has not been settled in a timely manner, the existing fee shall remain in place until a revised fee is established. Based on the current language, it appears that the fee could be revised after the October 1 date the DOF is required to report the new fee amount, which would provide the Board and fee payers less than three months to implement the rate change.

  It is suggested amending the bill to add clarifying language to provide that adjustments to the fee that are made on or before October 1, apply to the calendar year beginning the following January 1. This would eliminate the possibility of a revised fee established after October 1 and before December 31 from becoming operative the next January 1, which would provide a short-turn around time to implement the rate change.

COST ESTIMATE

The Board would incur non-absorbable costs to adequately develop and administer a new fee program. These costs would include registering fee payers, developing computer programs, mailing and processing returns and payments, carrying out compliance and audit efforts to ensure proper reporting, developing regulations, training staff, answering inquiries from the public and investigative efforts. A cost estimate of this workload is pending.

REVENUE ESTIMATE

BACKGROUND, METHODOLOGY, AND ASSUMPTIONS

This bill would allow, from January 1, 2009 to August 31, 2009, the DOJ to assess an owner or operator of a large passenger vessel a fee of one dollar ($1) per passenger per day in which the vessel is operating in the marine waters of the state. On and after September 1, 2009, the DOJ may assess an owner or operator of a large passenger vessel a fee of one dollar ($1) per passenger per day in which the vessel is operating in the marine waters of the state and an ocean ranger is onboard the vessel. On or before January 1, 2010, the DOJ would be required to revise biennially the fee to ensure that it generates sufficient revenue to cover the costs of this implementation, plus a prudent reserve.

According to the Cruise Line International Association, California's four cruise ports (Los Angeles, Long Beach, San Diego, and San Francisco) boarded more than 1.2 million passengers for their cruises in 2006. The average number of days that a vessel is operating in the marine waters of the state is estimated to be two; so it is $2 per passenger. Therefore, the estimated revenue for the calendar year 2009 would be $2.4 million (1.2 million x $2).

REVENUE SUMMARY

This bill would generate $2.4 million annually from the vessels operating in the marine waters of the state.

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This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.