

BERRY
12-11-85

1 EXECUTIVE SESSION

2 WEDNESDAY, DECEMBER 11, 1985

3 U.S. Senate

4 Committee on Finance

5 Washington, D.C.

6 The committee met, pursuant to notice, at 9:30 a.m. in
7 room SD-215, Dirksen Senate Office Building, the Honorable
8 Robert Packwood (chairman) presiding.

9 Present: Senators Packwood, Danforth, Heinz, Symms,
10 Grassley, Long, Bentsen, Matsunaga, Moynihan, Boren and
11 Bradley.

12 Also Present: J. Roger Mentz, Deputy Assistant
13 Secretary for Tax Policy.

14 Also Present: Bill Diefenderfer, Chief of Staff;
15 John Colvin, Chief Counsel; and Michael Stern, Minority
16 Staff Director.

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1 The Chairman. The committee will come to order, please.
2 And I hope we can finish our business expeditiously for the
3 reason that if we cannot, I am going to have to recess the
4 hearing and go to the floor on Gramm-Rudman at around 10:00
5 to 10:05 or 10:10, and I would hope we would be done with the
6 business by that time.

7 We have four nominations before us: Governor Bowen
8 for Health and Human Services; and Brunsdale for the
9 International Trade Commission; Paul Freedenberg, Assistant
10 Secretary of Commerce for Trade; and Francis Keating,
11 Assistant Secretary of the Treasury Enforcement and
12 Operations.

13 Senator Moynihan. Mr. Chairman.

14 The Chairman. Senator Moynihan.

15 Senator Moynihan. We have heard all of these
16 distinguished nominees, and I move their confirmation.

17 The Chairman. Is there objection?

18 (No response)

19 The Chairman. Let us take them one at a time because
20 I hope there is no problem with Ms. Brunsdale. If there is,
21 there will be a problem with Mr. Freedenberg, but I think
22 everything is definite.

23 Senator Danforth.

24 Senator Danforth. I think it is satisfactory, too. At
25 least I hope it is, Mr. Chairman. That is my understanding

1 talking to the Administration.

2 The Chairman. And I have talked to the two or three
3 members that had objections to Ms. Brunsdale for different
4 reasons, and I think they are all satisfied.

5 Now we will not report them out until we formally have
6 a quorum, but I would move to report Governor Bowen. Is
7 there objection?

8 (No response)

9 The Chairman. Reported, as soon as we have a quorum.
10 I would move to report Ms. Brunsdale. Is there objection?

11 (No response)

12 The Chairman. Mr. Freedenberg?

13 (No response)

14 The Chairman. Mr. Keating?

15 (No response)

16 The Chairman. All right. As soon as we have a quorum,
17 they will be reported out. If not, I am going to try to
18 poll them out because I think everything is set on those.

19 Let us now move to the port bill, the water bill. And
20 I might ask if Mike Stern would have any comments. This is
21 Mike's last markup after how many years, Mike?

22 Mr. Stern. Seventeen, Mr. Chairman.

23 The Chairman. Seventeen years. And I have been on this
24 committee a dozen, and I have regarded Mike as a close friend
25 and great ally, and one of the extraordinary public servants

1 that this committee or this Congress has ever had. And,
2 Mike, I for one am going to miss you very much.

3 (Applause)

4 The Chairman. Senator Moynihan.

5 Senator Moynihan. Mr. Chairman, I wonder if the
6 committee could not have a resolution to that effect which
7 we could vote on shortly and have embossed and presented to
8 Mr. Stern. I believe it is a unique 17-year service.

9 The Chairman. Absolutely. And if there is any
10 objection, the person will no longer be recognized on the
11 committee.

12 (laughter)

13 The Chairman. Now let us move to the port bill.

14 John, are you ready?

15 Mr. Colvin. Yes, Mr. Chairman.

16 The Chairman. All right. You have got an 8-page
17 handout, and I hope we can report the bill as it is in
18 accordance with the handout.

19 Why don't you go ahead, John, and start.

20 Mr. Colvin. The handout was distributed yesterday, and
21 it makes a number of changes that we have worked out with
22 members, staffs. Rather than go through them point by point,
23 I believe it would be quicker just for you to move their
24 adoption and open it for debate.

25 The Chairman. Senator Moynihan, comments. This came

1 from the Environment and Public Works Committee. And I have
 2 got to say, and a great portion due to Senator Moynihan
 3 helping as an arbitrator on this, we have reached an agreement
 4 between big ports and small ports, between upriver ports and
 5 coastal ports, with the barge operations, although they are
 6 not enthusiastic about the increase in the barge user fee,
 7 but I have never met anybody who was enthusiastic. But they
 8 have come along.

9 We have reached the agreements on taxes, based upon the
 10 value versus weight. And I would call upon Senator Moynihan
 11 for any comments he may have.

12 Senator Moynihan. Mr. Chairman, I want to thank the
 13 committee, the staff, that has put together a very fine
 14 summary of the legislation. This is a matter of great
 15 concern and interest to the Committee of Environment and
 16 Public Works.

17 It is the fact we have in mind the first federal water
 18 resources bill to authorize new projects since 1976, but that
 19 was a minimal matter. Literally, this is the first time in
 20 15 years that we have done this.

21 And one of the reasons we have not been able to do it in
 22 the past is there has been no way to responsibly say we will
 23 pay for these projects. This makes that provision. And I hope
 24 the measure will be adopted as it is.

25 I have one small study I would like to suggest later, but

1 Let us continue.

2 The Chairman. Further comments?

3 Senator Danforth. Yes.

4 The Chairman. Senator Danforth.

5 Senator Danforth. Well, Mr. Chairman, there is a
6 provision in this bill that non-federal sponsors of port
7 projects can also, in waterway projects, can also impose
8 fees --

9 The Chairman. To make up their portion of the --

10 Senator Danforth. Right.

11 And in the House bill, the House provides that where
12 a fee is overcharged, there is a cause of action in the
13 federal court in the district where the non-federal sponsor
14 is located to recover the overcharge. There is no similar
15 provision in the Senate bill. And I would like to offer an
16 amendment to place a similar provision in the Senate bill.

17 Senator Long. I didn't hear that.

18 Senator Danforth. In other words, supposing that a
19 community has a non-federal sponsor and imposes its own
20 user fees and it turns out that those fees were improperly
21 collected or there was an overcharge, there is a question
22 unless it is provided for in statute whether the local
23 government would be susceptible to suit for the recovery of
24 the overcharge.

25 The House bill makes it clear that the locality, the

1 non-federal sponsor, would be susceptible, the suit would
2 be within the jurisdiction of the federal district court
3 for that district.

4 This amendment would provide some more language than
5 the Senate bill.

6 The Chairman. Let me make sure I understand against
7 what the charge will lay. At the moment, states or their
8 subdivisions cannot constitutionally impose fees on imports
9 without the consent of Congress. We are giving them this
10 consent.

11 Senator Danforth. Right.

12 The Chairman. The fees that they impose are to bear
13 a reasonable relation to the project that they are undertaking.
14 And that is roughly the way we define it.

15 Senator Danforth. Right.

16 The Chairman. And you are saying that the House pro-
17 vision would allow the local port to be sued. And I assume
18 the allegation would be the fee is excessive because it
19 produces more money than is needed for a project which has
20 a reasonable relation upon whom the fee is levied.

21 Senator Danforth. That's right.

22 The Chairman. Is that roughly it?

23 Senator Danforth. Yes.

24 Senator Long. It sort of looks like we are going to
25 give them the authority to levy the fee and then limit it in

1 the same bill that gives them the authority. Doesn't it?
2 That's what that amendment would do.

3 The Chairman. I might call on John Calvin, but it
4 looks to me like what we are doing is we are not saying
5 they can't levy it and it has got to have a reasonable
6 relation to the project, but we are making that a very
7 contentious issue -- in comes a taxpayer and says this fee
8 does not bear a sufficiently reasonable relation to the
9 project, and, therefore, I'm going to sue for the overcharge.

10 Senator Long. Would not that mean or does not that
11 mean that just anybody can take them to court the minute
12 they put the fee on?

13 The Chairman. John?

14 Mr. Colvin. It would mean that they could sue, and it
15 would create an increased litigation activity. But the
16 individuals paying the tax do have rights under Section 606,
17 and it gives them an opportunity to enforce those rights.

18 The Chairman. They have that now.

19 Mr. Colvin. Yes, sir. Senator Danforth's amendments
20 would give them the opportunity to police those rights.

21 Senator Long. To please them how now?

22 Mr. Colvin. For example, under the bill as it comes to
23 the Finance Committee, fees may not be imposed on vessels
24 with drafts less than 14 feet for improvements relating to
25 projects deeper than 20 feet. Senator Danforth's amendment

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1 would create the opportunity for a vessel owner with the
2 draft less than 14 feet to go to court to object to having
3 a fee imposed for one of those improvements.

4 Senator Long. You mean he would have the right to take
5 them to court even though it does not affect him?

6 Mr. Colvin. He would have the right to take them to
7 court if the locality --

8 Senator Danforth. To pay the fee and see it has been
9 properly charged.

10 The Chairman. Jack, I wonder if you might do this.
11 Would you be willing to withhold and let me see that. I
12 think I like the idea. And let us bring it up as an
13 amendment on the floor, if we can have a chance to look at it
14 and make sure I understand what we are doing.

15 Senator Danforth. Well, I would always rather have the
16 committee adopt reasonable amendments such as this. I want
17 to cooperate with my chairman. It seems to me that there is
18 an old adage that where is a right there should be a
19 remedy. And if there is a right to recovering overcharge,
20 it seems to me that there should be a remedy without the
21 jurisdiction pleading sovereign immunity.

22 The Chairman. Would not you rather have your chairman
23 wholeheartedly, enthusiastically supporting you on the floor
24 knowing what you are doing than --

25 Senator Danforth. Of course.

1 The Chairman. Thank you.

2 (Laughter)

3 Senator Long. Please understand, Mr. Chairman, I
4 would hope that before you commit yourself on this that you
5 at least give me an opportunity to know what you know as the
6 facts.

7 (Laughter)

8 Senator Long. And that is what difference is this
9 going to make compared with -- I mean specifically, you know.
10 What would be the difference? Usually, I am a great
11 blackboard man. If you can just put it on a blackboard so
12 we can all understand what the difference would make, then
13 I would feel a lot better about it.

14 Senator Danforth. Let me in just one minute or less
15 spell it out. Supposing that I am a barge operator. And
16 supposing that I am charged for fees that I should not be
17 charged, and that, you know, I have a legal right under the
18 bill not to pay this charge. But I have paid it. How do I
19 get my money back?

20 Well, I can file a suit in court. But suppose the
21 defense is sovereign immunity. My case does not get me
22 anywhere. So what this just does is to say that a condition
23 for the locality imposing its own user fees is that if it
24 wrongly imposes the user fees then there should be some
25 forum where the person who has been overcharged can get his

1 money back.

2 The Chairman. I understand it, and if you withhold, I
3 will look at it. And I will say to Senator Long I will
4 ensure that you have it. But if you have any fear that you
5 would like to know as much as I know on this, do not worry
6 about it. I will never know as much as you know about
7 anything.

8 Senator Long. That is just not so. I would hate to
9 say that, Senator. You would be surprised what you are
10 saying about yourself when you say that.

11 (Laughter)

12 Senator Long. You would be surprised how little I
13 know.

14 The Chairman. Is there objection to reporting the
15 bill out?

16 (No response)

17 The Chairman. It will be reported. When we get a
18 quorum -- do you want to do the extender bill, Jack?

19 Senator Danforth. Sure.

20 Senator Moynihan. Mr. Chairman, may I offer a small
21 amendment to the bill simply to ask --

22 The Chairman. To the extender bill or to --

23 Senator Moynihan. No, this measure. There is concern
24 on the part of senators from the northwest and to a much
25 lesser degree of the northeast about the possibility of the

1 the diversion of traffic from Canada in order to collect
2 the fees and the loss of traffic as a consequence.

3 But if we could have a proper study of this made by
4 the Corps of Engineers, we would be able to address it
5 at some future time --

6 The Chairman. I would be very receptive to the study.
7 And the reason I ask that is this is a contentious amendment.
8 This is not one that is going to breeze through. The
9 Administration is opposed, and they are worried about -- you
10 know, the other side of this amendment is cargo that comes
11 into the United States that is going to Canada or Mexico
12 will be exempt, but unless you bonded it, I am not sure
13 how you know when something is landed in Galveston or landed
14 in Newark where it is going.

15 And I would be very receptive to the study. I would
16 have to oppose an amendment.

17 Senator Moynihan. Understood. That is why a study is
18 proposed, and I think the chairman understands this matter.

19 The Chairman. Is there objection to the amendment of
20 the Senator from New York on a study?

21 Senator Bentsen. Let me understand, again, since I just
22 walked in. And I apologize for that.

23 What we are dealing with is the problem of the
24 competition of the Mexican ports and the Canadian ports, and
25 you are asking for a study in that regard.

1 I frankly do not think there is a serious problem on
2 the Mexican side, but the study is fine as far as I am
3 concerned.

4 The Chairman. Is there objection to adopting the
5 amendment on the study?

6 (No response)

7 The Chairman. Without objection, it is adopted and
8 appended to the bill as it goes from the committee.

9 Mr. Colvin. Mr. Chairman, you have then reported
10 S. 1567, incorporating the modifications suggested in this
11 document?

12 The Chairman. That is correct. And incorporating the
13 Moynihan amendment.

14 The extender bill. Jack, are you ready?

15 Senator Danforth. Yes.

16 The Chairman. This is the Danforth-Bentsen extender
17 bill.

18 Senator Danforth. Well, Mr. Chairman, Senator Bentsen
19 and I have been working on this, and we have introduced a
20 bill which is S. 1912 which has 68 cosponsors. The idea of
21 it is that certain provisions of the tax law expire
22 automatically. Some already have. Most of these expire
23 automatically on January 1st. And because we are not going
24 to have a tax bill at least before next summer, this would
25 extend for six months, until June 30th, 1986, various

1 provisions of the Internal Revenue Code, which are Section
 2 8618, R&D allocation; the R&D tax credit; the net operating
 3 loss moratorium; the faculty housing moratorium; the
 4 targeted jobs credit; the award of attorneys' fees in tax
 5 court; educational assistance; group legal services; van
 6 pooling; residential energy credits; business energy credits;
 7 architectural barriers; dividend reinvestment; and FICA
 8 federal judges.

9 Now, Mr. Chairman, our proposal is simply an extension
 10 for six months. No modification. I understand the House
 11 has in its version of the tax bill recommended certain
 12 changes in these programs and the repeal of some of them.
 13 And some of them probably should be repealed and some of
 14 them -- maybe all of them should be modified.

15 But I really think that we in the Senate should have a
 16 hand in any changes, substantive changes, in the law. And
 17 my hope would be that we could simply extend these programs
 18 without modifying them, and really insist with the House that
 19 we not get involved in the last few days of the Senate
 20 making substantive modifications.

21 The Chairman. I made a request yesterday, and I wonder
 22 if you would mind amending it just slightly to make the
 23 extension effective through the day that we go into the
 24 recess in August, because I think we are going to be done.
 25 If we have a tax bill, we are going to be done. And that is

1 roughly when we will be up against it, and I would hate to
2 come back with another extender at the 1st of July when we --

3 Senator Danforth. Fine.

4 Senator Bentsen. Mr. Chairman, I have no objections to --

5 Senator Long. Let me just make one suggestion in
6 connection with this. It would be all right with me to go
7 to conference with the House over the amendments that they
8 have in their bill that deal with these subjects. I think
9 it would be wrong for us -- and I would not like to see us
10 quibbling on the amendment, on this report, but I do not
11 think we ought to put anybody under the gun in having to
12 front some amendment that he would be strongly opposed to that
13 is not relevant to these subject matters. And I would hope
14 that we would have an agreement that if they want to
15 conference on that basis, we are just not going to do
16 business that way. That we are not going to agree to take
17 something that probably could not pass the Senate on its
18 own rights, and it would not be relevant to this legislation.

19 With that understanding, I am happy to go along.

20 The Chairman. Is there objection to reporting the
21 bill?

22 Senator Grassley. Mr. Chairman.

23 The Chairman. Senator Grassley.

24 Senator Grassley. I do not have objection to reporting
25 the bill. And I am a cosponsor of the bill, but I would like

1 to point at Item Number 7 and remind my colleagues on this
 2 committee that twice last year as well as once this year
 3 as part of the reconciliation package we do have some changes
 4 in the attorney fees provisions for the tax court. The
 5 purpose of the changes we have made is to make the tax court
 6 provisions under equal access to justice exactly the same
 7 that is available in district court to any citizen involved
 8 with any government agency in like legislation that has been
 9 passed and signed by the President already.

10 And I am hoping that because we do put this provision in
 11 this extension that that does not discourage my colleagues
 12 on this committee negotiating very strongly the Senate's
 13 position over the last three years on Item Number 7 in
 14 reconciliation.

15 The Chairman. Let me assure the Senator from Iowa I
 16 think that right is on his side; I hope that might is on your
 17 side. You are absolutely right in the position you have on
 18 attorneys' fees in the tax court. And this will in no way
 19 demean that position or limit that position. This is simply
 20 to try to get us through the period until we get your
 21 position won.

22 Senator Bentsen. Mr. Chairman.

23 The Chairman. Senator Bentsen.

24 Senator Bentsen. Mr. Chairman, let me say I very much
 25 agree with my colleague from Missouri concerning what we are

1 trying to do here. And we do not pick and choose among
2 these tax credits, and I do not think we should. I think
3 for at least every member on this committee there is at
4 least one disagreeable item in those extensions that you
5 would like to debate and change.

6 But because of the shortness of time, we should not be
7 trying to do that now. And unless we extend these credits,
8 you are going to leave the taxpayers in the dark as to what
9 is going to be done because the House bill, of course,
10 chooses the date of January the 1st on those that it does
11 make applicable. But we know we are going to make some
12 substantive changes in what comes over from the House. And
13 the question is do we make it retroactive back to January the
14 1st, do we move them forward to a different date.

15 So I believe that this is the best approach to the item,
16 and I strongly support what my distinguished chairman of the
17 subcommittee is propounding.

18 The Chairman. Is there objection to reporting this
19 bill?

20 Senator Bradley. Mr. Chairman, I was curious if we
21 could not add an extender also for the period of time of the
22 tax preferences for the Superfund tax.

23 Senator Bentsen. Mr. Chairman, if I might speak to
24 that. And I understand the concern of my friend from New
25 Jersey. I share that concern. But we have a profound

1 difference in the means of raising that tax between the House
2 and the Senate.

3 I do not see any serious problem for the EPA on the
4 Superfund in the period of time that hopefully it would take
5 for us to resolve the differences with the House. And with
6 that in mind, I would prefer that we not extend the Superfund
7 tax.

8 If we were to extend it to March 31st or even to
9 July the 1st, June 30th, you are not going to see the EPA put
10 on any multi-year projects. They are not going to do it
11 without multi-year funding available to them. And we would
12 not resolve that particular issue by a simple extension of
13 the means of taxing that we now have.

14 Frankly, I would like to keep the pressure on to try to
15 see that we resolve this quickly with the House, and not --

16 The Chairman. I could not agree more. I would like to
17 go to conference tomorrow with the House on the Superfund if
18 we could. I think in this case, Bill, the more pressure we
19 leave on, the more likely we are to resolve this rather than
20 extending it.

21 Senator Bradley. Well, let me say as someone who has
22 actually proposed our approach to the Superfund tax broad
23 based, I would like to see that be the ultimate outcome as
24 well. My only concern is if somehow in the next three to five
25 months there is an emergency. Where does the money come to

1 to deal with the emergency. And that is my only concern.

2 The Chairman. My guess is if there is three to five
3 months and an emergency comes, we will appropriate somehow
4 the money for the -- I mean if you really mean a genuine
5 emergency that something has been found and discovered that
6 is an imminent, right-now health hazard, we will find the
7 money.

8 Senator Bentsen. Well, I would say I am confident that
9 is true and I am confident insofar as personnel at the EPA
10 if they have to chip enough funds to take care of that
11 situation. I share the deep concern of the Senator from New
12 Jersey as being the primary sponsor of that amendment on this
13 committee, along with my friends, Senator Wallop and Senator
14 Bradley, who is a very major part of that effort in putting
15 that together.

16 Senator Bradley. Well, with that assurance, I do not
17 see any reason to try to lose this vote. And I appreciate
18 that very much.

19 The Chairman. Is there objection to reporting the bill?

20 Mr. Mentz. Mr. Chairman.

21 The Chairman. Oh, yes.

22 Mr. Mentz. Down in the cheap seats.

23 I just wanted to say that while I think you know the
24 Administration has some problems with some of the substantive
25 provisions here as a matter of going forward with an extender,

1 we think it is a responsible concept, and we support it.

2 I would point your attention to two items on the list
3 along the lines of what Senator Grassley mentioned. Some
4 of these are coming up in reconciliation. The 861-AR&D
5 extension is coming up. That, incidentally, there is a
6 substantive agreement over on the House side, so when it comes
7 up in tax reform, you will have a chance to look at it
8 substantively.

9 But the moratorium is in your version of reconciliation.
10 And I hope you can get it there even if this bill does not
11 make it all the way.

12 The second point is on the faculty housing. The Senate
13 Finance Committee reached a solution to faculty housing. If
14 that holds in reconciliation conference, of course, you will
15 not need the moratorium.

16 The Chairman. Mr. Mentz, Mr. Secretary, anything we
17 can get in reconciliation I am sure we will be happy to drop
18 out of this list as a protector in case something goes wrong.

19 Senator Danforth. Mr. Chairman.

20 The Chairman. Senator Danforth.

21 Senator Danforth. This is, of course, a Senate bill,
22 and I hope that it will be understood. In fact, I would
23 include in the addenda to the bill itself authorization for
24 the chairman to put this on any appropriate House bill.

25 The Chairman. As soon as we can find one.

1 Now we have 11 here. I might explain to the members
2 what we have done in the past. On the four nominees, there
3 was no objection, and we are going to report them out
4 subject to a quorum being here. A quorum is here. Is there
5 any objection to the reporting of the four nominees that are
6 on the list?

7 Senator Heinz. Mr. Chairman, I have no objection, but it
8 is my hope it would be possible for the Senate to act on
9 those nominations today.

10 The Chairman. They will all be reported out of here
11 within 10 minutes after we are done; get them to the floor.
12 And I hope we can too.

13 Senator Heinz. Very well.

14 The Chairman. All right. Is there objection to
15 reporting of the extender bill, the Danforth-Bentsen extender
16 bill?

17 (No response)

18 The Chairman. Without objection. And we have reported
19 the waterway user fee bill and --

20 Senator Moynihan. Mr. Chairman, I said something
21 stupid earlier on. I suggested that it was the Corps of
22 Engineers that would study the question of diversion.
23 Obviously, this should be the Treasury and the Customs Service.

24 The Chairman. Without objection.

25 Senator Moynihan. Thank you.

1 The Chairman. Senator Bradley.

2 Senator Bradely. Yes. Mr. Chairman, on the port
3 fees, I was wondering if we could -- did I understand that
4 you have already moved the port fees?

5 The Chairman. We did not have a quorum so it is
6 technically before us because I don't want to report it out
7 without a quorum.

8 Senator Bradley. As you know, there is a harbor
9 maintenance fee of about four one-hundredths of a percent.
10 My concern is that not disadvantage U.S. ports vis-a-vis
11 Canadian ports, and result in a diversion. And my suggestion
12 would be that we exempt cargo that goes to those ports and
13 is headed to Canada from the fee. And I wondered if that --

14 The Chairman. I would speak an objection to it. You
15 and I talked earlier this morning. I will tell you why.
16 One, I very desperately want to get this bill -- and this
17 is a contentious subject. The Administration says -- now I
18 can tell you with a grain of salt this will make it subject
19 to veto. I think with everything in it it would not. But
20 it makes it contentious.

21 Two, the problem is if you are going to land cargo that
22 is going to go to Canada or Mexico, unless you bonded it,
23 you do not know when it lands if it is going to Canada or
24 Mexico. It may or it may not. And it means that you are
25 going to have to exempt, as best we can tell, \$5 to \$6 million

1 worth of fees because you don't know.

2 Senator Moynihan has offered, and we have accepted, a
3 study on this very subject, on diversion, and the committee
4 adopted that and to be reported within one year. But I
5 would appreciate it if the Senator from New Jersey would not
6 push his amendment because I think it is going to hamstring
7 our chances of getting through a very significant bill for
8 everybody.

9 Senator Bradley. Well, I don't want to do that. Is
10 the committee chairman's intention, pending the outcome of
11 the study, to revisit this issue in a year or year and a half?

12 The Chairman. Absolutely.

13 Is there objection to --

14 Senator Long.

15 Senator Long. Mr. Chairman, does this include diversion
16 both ways?

17 The Chairman. Oh, it includes diversion both ways. Yes.

18 Senator Heinz.

19 Senator Heinz. Mr. Chairman, I would just like to be
20 sure that we have report language that takes what I think is
21 the intent of everybody on this committee, and that is that
22 the ad valorem fee in this year's bill not be the first of
23 many increases in ad valorem fees, and that we fully
24 anticipate that this will be a steady state kind of thing.
25 Not something that can be ratcheted up and up and up every

1 chance someone downtown feels like it.

2 The Chairman. I would hope very seriously that applies
3 to the barge user fees also.

4 Senator Moynihan. Mr. Chairman.

5 The Chairman. Senator Moynihan.

6 Senator Moynihan. Mr. Chairman, may I just say that
7 the Committee Environment and Public Works, we have been at
8 this a long time, and we think this is enough.

9 Senator Heinz. Is there any objection, Mr. Chairman, to
10 report language so indicated?

11 The Chairman. Not at all.

12 Senator Bradley. I would like to second what Senator
13 Heinz said.

14 The Chairman. That will be included in report language.
15 Without objection, the bill is reported. And we stand in
16 adjournment to go down for Gramm-Rudman.

17 (Whereupon, at 10:00 a.m., the executive session was
18 concluded.)

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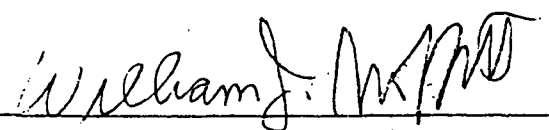
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C E R T I F I C A T E

This is to certify that the foregoing proceedings of
an Executive Session before the United States Senate,
Committee on Finance, in re S. 1629, Wednesday, December 11,
1985, were held as herein appears, and that this is the
original transcript thereof.


WILLIAM J. MOFFITT
Official Court Reporter

My Commission Expires April 14, 1989

DANFORTH; MOYNIHAN; CHAIRMAN FARKLWOOD; LONG; GRASSLEY; BENTSEN;
BRADLEY; HEINZ; SYMMS; BOREN; MATSUNAGA

EXECUTIVE SESSION
99th Congress, 1st Session
December 11, 1985

SENATE COMMITTEE ON FINANCE

EXECUTIVE SESSION

Wednesday, December 11, 1985; 9:30 a.m.; Room SD-215

1. Water Resources Development Act of 1985 (S. 1567).
2. Nomination of Otis R. Bowen, M.D., to be Secretary of the Department of Health and Human Services.
3. Nomination of Anne E. Brunsdale to be a Member of the International Trade Commission.
4. Nomination of Paul Freedenberg to be Assistant Secretary of Commerce for Trade Administration.
5. Nomination of Francis Keating to be Assistant Secretary of the Treasury for Enforcement and Operations.

Calendar No. 275

99TH CONGRESS
1st Session

SENATE

REPORT
99-126

WATER RESOURCES DEVELOPMENT ACT
OF 1985

REPORT

OF THE

COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE

TO ACCOMPANY

S. 1567

together with

ADDITIONAL VIEWS



AUGUST 1 (legislative day, JULY 16), 1985.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

50-276 O

WASHINGTON : 1985

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GENERAL STATEMENT AND DISCUSSION OF MAJOR PROVISIONS

The Federal water resources development program has been in serious decline in recent years:

- Construction spending by the primary Federal water resources agency, the U.S. Army Corps of Engineers, has dropped 78 percent in the past 20 years.
- It takes an average of 26 years to move a typical water development project into construction, once the project study is authorized.
- And no major water resources development bill, authorizing new, up-to-date projects and programs, has become law since 1976.

On several occasions during the past four Congresses, the Committee on Environment and Public Works has sought to enact omnibus water development legislation. Dozens of hearings have been conducted. Several bills were reported to, and in some cases passed by, the Senate.

Yet, in past nine years, only one item has become law, Public Law 95-502, dealing with Locks and Dam 26 on the Mississippi River and imposing an inland waterways fuel tax.

But if the water development program has slowed, with an increase in the backlog of work to do, why is any bill needed now? The answer is three-fold:

1. Reforms in the way projects are to be analyzed and financed are essential if the program is to obtain support from the Executive Branch and the Congress in the future. This bill contains those reforms.
2. Much of the work that is now authorized will never—and should never—be built. The Corps has a large backlog of authorized but unconstructed projects. At current spending rates, the agency could theoretically continue to build these projects for more than thirty years. This bill contains a new deauthorization process to weed out old, unnecessary projects.
3. There is a need for earlier implementation of newly designed projects, ones that meet today's needs. This bill authorizes 167 projects developed within the Corps, as well as other important initiatives.

For these reasons, this bill is necessarily comprehensive and controversial. It bridges a long period of inaction, and molds the existing Corps water resources program into one that is more responsive to public needs.

The Committee recommends to the Senate a bill containing eight titles. These titles contain new projects, new programs, program reforms, and a series of new approaches on the way costs are allocated. This bill contains new procedures for sharing the construction costs of harbor and flood control projects, and imposes new taxes to

defray a portion of the cost of harbor and inland waterway maintenance.

Each of these changes in law will help extend the beneficial impact of limited Federal dollars and will assure that the American taxpayers receive increased value for each dollar invested in the system.

The following section of this report discusses the more significant provisions of this legislation. Cost-sharing requirements are to be applied throughout this Act except where otherwise indicated. Specific projects are discussed in detail in the section-by-section analysis.

Costs

The projects that have been generated within the planning process of the Corps appear in titles 5, 6, and 7 of this bill. The cost of these projects is \$11.1 billion, a figure that includes both the Federal and non-Federal shares. Non-Federal cash contributions toward the construction of harbor and flood control projects, as well as the requirement that lands, easements, and rights-of-way be provided by non-Federal sponsors, will reduce that first cost to the Federal taxpayer significantly. Subsequent payback requirements on most other types of projects will reduce Federal costs further.

While it is impossible to calculate the actual "first Federal cost" of this legislation, it is likely to be 70 to 75 percent of the "total" in the bill. Following paybacks over time on some projects, the full non-Federal share of the cost of the projects in this bill is estimated at 47 percent.

SPENDING CONSTRAINTS

The civil works program of the Corps of Engineers has evolved quite differently from most Federal public works activities. Once authorized, construction of specific Corps projects may not begin for decades. The traditional authorization process imposes no limits on construction costs, or the price of subsequent operations and maintenance. These levels are established during the appropriations process, when the work to be implemented in any given year is selected, seemingly at random, from a large pool of authorized activities.

The pool of authorized, but unobligated, Corps construction work stands at \$36.2 billion. As noted, this bill adds over \$11 billion to that list of available work.

Under the traditional system, that entire amount—over \$47 billion—is available theoretically to receive appropriations during any fiscal year. This bill places several new constraints on this system.

Title 1 sets an overall limitation on the annual construction program of the Corps. The annual obligation ceiling is set in fiscal year 1986 at \$1.3 billion, the level anticipated in Corps planning. This same figure is set for each of the following four fiscal years.

The bill also contains provisions restricting the ability of the Corps to alter projects without further review by Congress. Each project in this bill is authorized at a specific dollar amount, based on the Corps' latest assessment. Under Section 213, the Corps may increase spending on particular projects above the authorized level

only in line with construction and land inflation. Under section 218, the design of any of several key components of a project can not be increased by more than 25 percent, unless later congressional approval is received.

In a variety of ways, the bill will restrain spending. Section 222, for example, requires that the Corps review the cost-effectiveness of all projects that cost more than \$10,000,000, if they are not yet under construction. Section 226 seeks to reduce costs by requiring the Secretary to divide contracts into pieces sufficiently small to allow broad competition among engineering and contracting firms.

In another provision designed to assure conformity, throughout the bill, Section 237 requires that every provision in the bill, unless otherwise specifically noted, be subject to the appropriate cost sharing requirements of titles 5, 6, or 7.

Another constraint is a review required by the Chief of Engineers. While each provision in titles 2 and 3 carries great merit, many have never been examined by the Corps. Section 212 requires that the Chief of Engineers study each project in the bill and report favorably before it can go forward. This, of course, includes the appropriate environmental reviews.

As noted earlier, section 203 creates an automatic process to de-authorize projects on which no money has been spent for 10 years or more. This will focus attention on newer, more needed work.

COST SHARING

The issue of cost-sharing is key to this legislation. The reason is imbedded in the failure of Congress to write a new water law for nearly a decade. That failure stems from an impasse over how costs are to be shared between the Federal taxpayer and the benefitting non-Federal sponsor.

Current cost-sharing policy is inconsistent. It reflects a one-sided partnership in the development of water resource projects, one governed by financial practices that can reasonably be considered out-of-date.

Every major review of Federal water policy in the past 30 years has recommended changes in the cost-sharing policy for water projects. For example, the National Water Commission's 1973 final report stated:

There is a critical and long recognized need for the reform of cost-sharing policies . . . (which) will not be forthcoming until cost-sharing policies receive attention and review in Congress.

The cost-sharing provisions of this Act are set forth in section 223 and in titles 5, 6, 7, and 8. They cover all types of projects the Corps builds. They cover project development from its inception as an idea for study to its long-term repayment a generation after completion.

Cost-sharing must begin with the inception of a water resource plan of improvement. The General Accounting Office found that 73 percent of Corps studies found no economically justified project. This extremely high rate of failure will be lowered if local interests play a greater role in plan formulation. Helping to pay the study

costs will give them a greater say in determining the project scope and construction alternatives.

Section 223 establishes a new two-step planning process, with the non-Federal sponsors contributing half the cost of the second stage. This will assure that the Corps takes local concerns into account in the planning stages, and likely will produce plans with more widespread support.

The bill also establishes standard cost-sharing rates and payback provisions on many types of benefits. The bill also imposes new cost-sharing requirements for flood control projects. The operative number is the 5 percent cash contribution required from non-Federal sponsors during construction on all flood control projects.

It is difficult to imagine any community where a cash contribution of 5 percent toward the cost of a flood control project will prove onerous, assuming the project provides anything close to the benefits projected in protecting flood-prone lands and saving lives.

Such a cash requirement may encourage mayors and governors to seek construction of more efficient, smaller projects: a \$10 million Federal project, rather than a larger \$20 million facility. With the number of Federal dollars available always limited, such decisions will help the Corps broaden this program to benefit more communities.

Thus, cash cost sharing is, in reality, a process that transfers to beneficiaries a greater say in the ultimate decision on the design and scope of the Federal project, and should help to assure more cost-effective development everywhere.

The provisions of title 7 are extremely flexible. They take into account the potential difficulty this requirement may pose for poorer communities. Under an ability-to-pay provision, cost-sharing requirements can be modified on a case-by-case basis. The Secretary should include among the criteria to determine ability to pay such factors as income in relation to need, unemployment, and the sponsor's ability to borrow funds.

The Corps is also expected to investigate innovative financing methods for projects. Section 215 authorizes the Secretary to enter into cost-sharing agreements with special project repayment districts organized under State law for the purpose of repaying the non-Federal project cost-share.

NAVIGATION

The gridlock in water resources policy has proved particularly debilitating to the Federal navigation program. Historically, the Federal Government has financed the full cost of designing, constructing, rehabilitating, maintaining, and operating the commercial inland waterways, as well as the coastal harbors of the United States.

To meet growing navigation needs, while imposing a reasonable market test on what is clearly commercial development, the bill contains three titles that set new policies for the development of inland waterways and coastal harbors. Each is discussed below.

Title 5 authorizes six new inland navigation projects, and requires that half their cost be financed from funds collected from the tax on the fuel used by commercial barge operators.

Title 6 authorizes important new harbor projects, and permits non-Federal public interests to collect user fees to reimburse themselves for a newly required non-Federal share of the cost.

Title 8 raises the existing fuel tax on commercial barges using the major inland waterways, and imposes a new tax to cover a portion of future harbor maintenance costs.

The taxes and fees in this legislation are not for the purpose of raising revenue. Rather, they are to repay costs related directly to the servicing of commerce. These fees and taxes offset services rendered to vessels. The provision of a new, deeper channel is as much a service rendered to the shipper as pilotage, dockage, or wharfage.

INLAND NAVIGATION

The Nation's inland waterway system consists of 25,000 miles of waterways, connected by 160 dams and 240 locks. By the end of this century, 97 of those locks will be at least 50 years old. According to the draft National Waterways Study made by the Corps, a total capital investment of between \$5.2 billion and \$12 billion may be needed by 2003 to rehabilitate and improve the existing system.

The existing inland waterways fuel tax was enacted in 1978. It will reach 10 cents a gallon October 1 of this year, producing revenues of about \$50,000,000 annually. Federal spending on the construction, operation, maintenance, and rehabilitation of the commercial components of the inland system is approximately \$650,000,000 annually.

The need to perform new work on the inland waterways, while at the same time completing old work and continuing ongoing operation and maintenance, comes at a time when Federal budget constraints are severe. Since new infusions of large sums of general revenues appear unlikely, two options exist: increase the level of non-Federal funds available to the system, or continue to fall behind in meeting the needs of commercial inland navigation.

The first alternative is preferable. Title 8, part A, moves in this direction by increasing gradually the existing barge fuel tax to 20 cents a gallon over a period of 10 years, beginning in 1988. Half the cost of building each of the six new inland projects authorized in title 5 will be financed from the Inland Waterways Trust Fund, into which the barge fuel tax is deposited.

In this way, needed work can go forward with less impact on the Government's general revenues. Funds raised from the fuel tax are not to be used for operating or maintaining the inland system. Under this bill those expenditures must come entirely from general revenues.

HARBOR CONSTRUCTION

Title 6 and part B of title 8 affect commercial harbor development and form what is the single most significant feature of this bill: a modern harbor development policy.

Throughout the history of this Nation, port and harbor development has been essential to maritime commerce. In a natural state, very few bays and estuaries have depths greater than 20 feet.

While some early harbor improvements were undertaken by private initiative, harbor development became the responsibility of

the Army Corps of Engineers because of the high costs and the engineering expertise these projects required.

Over the past 150 years, nearly 300 harbors have been improved by the Federal Government. In addition to work at large commercial ports, this program included development of fishing harbors and harbors of refuge for small commercial and recreational craft.

Changes in marine transport technology have increased the size of vessels, producing a need for deeper and deeper harbors. At the turn of the 20th century, 30-foot-deep channels accommodated virtually all ships. In subsequent decades, standard harbor depths increased to 35, 40, then 45 feet. This latter depth is now inadequate for many fully loaded tankers.

The constraints of relatively shallow harbors add to the costs of importing crude oil and petroleum products. Deeper draft harbors would facilitate the export of U.S. coal and, eventually, other bulk commodities, such as grain and ores.

This legislation continues the Federal commitment to our harbors, establishing a clear Federal policy for the construction, operation, and maintenance of such facilities.

Title 6 maintains the current Federal process for authorizing harbors, with Federal appropriations for construction and work to be undertaken by the Corps of Engineers. But the title establishes the requirement of cash cost sharing for the construction of new harbors. This is essential to set priorities, to enable the marketplace to help determine the best investment.

Title 6 establishes three categories of harbors, and sets cost sharing requirements for cash during construction on each:

- Projects shallower than 20 feet, 10 percent non-Federal;
- Harbors between 20 and 45 feet in depth, 25 percent non-Federal; and
- The "superports" harbors deeper than 45 feet, 50 percent non-Federal.

In addition, every new harbor construction project, no matter what its depth, must pay 10 percent of the project cost over time, once the project is completed.

The policy of title 6 will encourage the marketplace to determine which harbors should be expanded and deepened. It allows those harbors that can obtain financing to be constructed expeditiously, while retaining a substantial Federal role in both the construction and maintenance of all harbors.

Federal studies have shown that as many as 34 harbors could be depended to superport dimensions for efficient coal exporting. Under current law, there is no way to identify the two or three priority projects for construction in the short term, the number of projects which most studies indicated are needed now. The continuance of traditional harbor development policy will not meet national needs because it does not provide a market test for project selection. In the absence of such a test it is unlikely that the Federal Government will finance the construction of such port improvements when the cost of these superports approaches a half billion dollars apiece.

In a recent report, the Congressional Budget Office said:

To the extent that users of services are willing to repay the government for investments made in their behalf, revenues become available to support those projects. But to the extent that higher fees prompt users to reduce demand, investment needs decline. When high fees cause reductions in demand, investments can be tailored accordingly.

Under present law the evaluation of navigation benefits centers on the reduction in the cost of transporting goods. Transportation savings should result from the use of larger vessels, reduction in transit time, lower cargo handling and tug assistance costs, and reduced storage costs. If the Federal Government uses that evaluation to justify to the Congress a \$10,000,000 project or one costing a half billion dollars, a similar analysis should be as compelling to non-Federal financing bodies. To argue otherwise is to question the very basis of the Corps' evaluation procedures.

As proposed by the Corps of Engineers, three "superport" proposals—Norfolk, New Orleans, and Mobile—are approved in this bill. Since the discussion of cost-sharing arose, non-Federal interests at each of these ports have begun to discuss less costly options, ones that would achieve superport depths in a more cost-efficient manner than the Corps plan.

This would never have occurred using the traditional approach. This search for cost-effectiveness comes only as it becomes clear that the beneficiaries will need to finance a portion of the cost.

As with items covered by title 7, there is no distinction between projects newly authorized, and those already on the books. All projects, unless they are now under construction, must contribute the same percentage of non-Federal cash during or after construction. For a program with a backlog that could last well into the 21st century, such a clarification is essential.

HARBOR MAINTENANCE

In recent years, the Committee considered a variety of proposals involving harbor maintenance. These ranged from diverting a portion of customs revenues for harbor work to port-by-port maintenance fees to more studies. The debate in some cases is between high maintenance harbors and low maintenance harbors; in others it is between large ports and small ports; or between bulk cargo and containerized cargo ports.

Part B of title 8 imposes a harbor maintenance tax, one that will be uniform across the nation. This tax is set at 4 cents per \$100 value of the cargo passing through harbors. This will raise an estimated \$140,000,000 yearly. The fees will be collected on all cargos loaded and unloaded at America's commercial harbors, including those in the Great Lakes.

Part B places the revenues into a Harbor Maintenance Trust Fund, which will be used to finance up to 40 percent of the costs of future harbor maintenance dredging.

The bill sets this cargo tax on the value of the commercial cargo loaded or unloaded. The tax in title 8 is not on the harbor, nor is it on the vessel's operator or owner. The tax is set on the value of the cargo, and is to be paid by the owner of the cargo, or his agent.

To help to defray the costs of maintaining new harbors deeper than 45 feet, local sponsors will also be required to pay half of the cost of maintenance below 45 feet, a requirement totally separate from the the requirement of part B.

The method of tax collection under part B is left to the discretion of the Secretary of the Treasury. The use of the U.S. Customs Service appears to be logical and suitable, but this is not mandated.

All cargoes are subject to this ad valorem tax, except unprocessed fish and aquatic animals fresh caught during the course of the voyage.

Title 8, which includes the inland waterway fuel tax as well as the harbor taxes, will be considered by the Finance Committee. That committee may well alter title 8 insofar as the structure of the actual tax and fees. But the use of the money collected pursuant to this section will remain as described by the Committee on Environment and Public Works elsewhere in this bill.

OTHER PROVISIONS

Section 224 establishes an important new program that will assure adequate mitigation of fish and wildlife losses at all Corps of Engineers projects. This section initiates two new approaches: It creates a new on-going mitigation authority that will be used at older Corps projects, and it requires that the Corps, in all future work, assure that mitigation is considered, and moves forward in advance of, or in concert with, actual project construction.

There are presently over 67,000 dams in the United States. Large numbers of these exist in States that have little or no capability to review and inspect them for safety. In addition, approximately 1,600 new dams are built yearly, often with little or no State review.

Testimony before the Committee indicated the need to augment the Federal role in dam safety. While the safety of non-Federal dams is primarily a non-Federal responsibility, inadequacies exist in many State dam safety programs.

Title 4 contains provisions that will help the States establish more effective programs to monitor the safety of non-Federal dams. It finances a program of research into innovative dam safety inspection techniques, authorizes funds to update the National Inventory of Dams and establishes a National Dam Safety Review Board to advise the Secretary in implementing this program.

Title 4 only provides support for State dam safety programs. In no way is it intended to assist the States in the actual construction, repair, or reconstruction of any non-Federal dam.

SECTION 606

This section authorizes the non-Federal sponsor of a harbor construction project to collect fees in order to recover the cost of its share of a project's costs, plus 50 percent of the incremental maintenance costs of maintaining harbors below 45 feet, if appropriate.

The section provides non-Federal sponsors with a means to recover its obligations for construction work, including associated administrative expenses, through the imposition and collection of fees for the use of such projects by vessels in commercial waterway transportation. The precise nature of such fees, the fee structure and schedule, and the frequency with which such fees should be collect-

ed is left entirely to the discretion of the appropriate non-Federal sponsors, pursuant to the terms of this section and State law.

It must be stressed that nothing in this section requires a user fee. The whole cost, or partial cost, of providing the non-Federal share of project costs, may be carried as a general expense of local government, if non-Federal sponsors so decide. These fees are non-Federal fees. Authorizing non-Federal interests to charge them is necessary to provide many non-Federal sponsors the flexibility to share in the cost of navigation improvements to harbors.

The provision recognizes that a link should exist between the imposition of a local user fee on vessels and cargoes and the benefits to those specific vessels and cargoes resulting from the improvement or maintenance of a project.

Several exemptions from the fees authorized by this section are provided: No fees shall be imposed on vessels owned and operated by the United States, any U.S. political subdivision, or any vessel owned or operated by any other nation when the vessel is not engaged in commercial transportation. No fees will be imposed on vessels engaged in dredging activities or those involved strictly in an intraport movement, or a vessel with design draft of 14 feet or less, if the harbor improvement for which the fee would be assessed goes deeper than 20 feet.

TITLE VIII

Part A of this title requires the gradual doubling of the existing inland waterways fuel tax established under Public Law 95-502. Part B of this title creates a Harbor Maintenance Trust Fund to

pay a portion of the cost of maintaining coastal channels and harbors. The Trust Fund would be financed by a national uniform fee on the value of cargo loaded or unloaded at the Nation's commercial harbors.

PART A—INLAND WATERWAYS

SECTION 801

This section amends section 4042 of the Internal Revenue Code of 1954 as amended by Public Law 95-502. That statute imposes a tax on the fuel used by barges operating on a portion of the inland navigation system. Under existing law this tax will reach 10 cents per gallon at the start of fiscal year 1986, and remain at that level.

Under this section, the tax on barge fuel will be continued at 10 cents per gallon until January 1, 1988, when it would be increased to 11 cents per gallon, then increased a penny per gallon each year until it reaches 20 cents per gallon on January 1, 1997. The tax will remain 20 cents per gallon in subsequent years, unless changed by act of Congress.

Receipts from this tax are deposited into the Inland Waterways Trust Fund. Subject to authorization, monies in the Inland Waterways Trust Fund may be appropriated for obligation by the Secretary for construction of commercial inland navigation projects by the Corps. Sections 501 and 803 of this bill authorize money to be spent from the Trust Fund to pay half the cost of the six inland lock projects authorized in this bill.

SECTION 802

This provision adds the Tennessee-Tombigbee Waterway to the list of inland waterways on which the tax on barge fuel is to be collected. This waterway was not included on the list of waterways in Public Law 95-502 because at the time the Tennessee-Tombigbee Waterway was under construction and no commercial traffic used the system. In the late spring of 1985, after a Federal expenditure of close to \$2 billion, the Tennessee-Tombigbee was opened to commercial traffic. It is, therefore, appropriate to include this waterway on the list of waterways on which the barge fuel tax is to be applied.

SECTION 803

This section, in coordination with section 501, specifically authorizes the appropriation of monies from the Inland Waterway Trust Fund to the Secretary for a position of the cost of construction of the inland navigation lock and dam projects authorized in section 502 and 504(e) of this act.

These projects are: Oliver Lock, Alabama; Gallipolis Lock and Dam, Ohio and West Virginia; Bonneville Lock and Dam, Oregon and Washington; Lock and Dam 7 and Lock and Dam 8 on the Monongahela River, Pennsylvania; and the second chamber of Lock and Dam 26, Illinois and Missouri.

Trust Fund monies can neither be used for operations and maintenance of locks and dams, nor for construction of inland harbor projects. The term construction is defined to mean construction, re-

habilitation, or modification, including the costs of post authorization planning.

PART B—HARBOR MAINTENANCE

SECTION 811

This section provides several definitions for this title as follows: (1) the term "commercial cargo" means any commodity, class or category of commodities, or classification of articles of waterborne commerce, including the carriage of transportation of passengers for hire. This term does not mean bunker fuel, ships' stores, sea stores, unprocessed fish and aquatic animals fresh caught in voyage, or the legitimate equipment necessary to the operation of a vessel.

Fish and aquatic animals which are unprocessed includes fish and seafood which have been cleaned and fileted at sea and those frozen in bulk. The term "fish and other aquatic animals" means finfish, mollusks, crustaceans, and all other forms of marine life, other than marine animals and birds. For example, lobsters and shrimp are within the terms of this definition, and would therefore be excluded from the tax.

The value of such seafood brought into the Nation's harbors is minor in comparison to the difficulties inherent in collecting a tax from fishermen. Further, no other food source is subject to Federal tax at the point of harvest.

(2) The term "commercial vessel" means a vessel engaged in waterborne commerce, but does not mean any vessel engaged primarily in the short-haul ferrying of passengers or vehicles between points within the United States, or vessels owned by the United States Government;

(3) The term "person" means partnership, corporation, or other business organizations, and also any government or governmental unit or agency engaged in waterborne commerce other than the governments of the United States, Canada, a State, or a State's political subdivisions, or agencies. The term does not include public or quasi-public corporations or entities operating under a charter under the authority of the United States, Canada, a State, a political subdivision of a State or an interstate authority, agreement or compact;

(4) The term "State" means any of the States of the United States, the District of Columbia, as well as the Commonwealth of Puerto Rico and any other territories or possession of the United States.

(5) The term "value" means the declared value of any commercial cargo shown by a sworn declaration of value which is required by subsection 816 (a) of this title, or by any bill of lading, cargo manifest, contract for carriage or other documentary evidence of value, or if the cargo does not have a declared value, the fair market value of the cargo as determined by the Secretary of the Treasury. In the case of carriage or transportation of passengers for hire, the term "value" means the actual charge paid for such service or the prevailing charge for comparable service if no actual charge is paid; and

(6) The term "waterborne commerce" means any commercial activity relating to the carriage or transportation of commercial cargo by a commercial vessel.

SECTION 812

This section establishes a Harbor Maintenance Trust Fund in the Treasury of the United States. The Secretary of the Treasury, in consultation with the Secretary of the Army, shall report annually to Congress on the operation and states of this Trust Fund. The Secretary of the Treasury is to transfer into the Trust Fund each month a sum equal to the amount collected in the preceding month from the fees established in sections 813, 814, and 815, plus an amount equal to the preceding month's collections from tolls on the U.S. portion of the St. Lawrence Seaway. Congress may also appropriate funds into the trust fund.

Monies in the trust fund are to be used only for the purposes authorized under Section 607 of this act. Section 607 provides that monies in the Trust Fund can be used only to pay 100 percent of the operation and maintenance costs of U.S. portions of the St. Lawrence Seaway, plus up to 40 percent of the operation and maintenance costs of the commercial channels and harbors of the United States.

In the planning and implementaton of navigation projects within the Great Lakes, the Secretary shall consult and cooperate with the respective State or States in choosing nearshore or onshore disposal areas for dredged material that might prove suitable for beach nourishment.

SECTION 813

This section establishes a national uniform fee of 0.04 percent (4 cents per \$100) on the value of any commercial cargo loaded onto or unloaded from any commercial vessels using the harbors of the United States. This fee does not apply to cargo unloaded from a vessel and then reloaded back onto the same vessel at the same harbor.

SECTION 814

This section imposes a similar uniform fee of 0.04 percent on the value (4 cents per \$100) of any commercial cargo on a vessel using Great Lakes navigation improvements operated or maintained by the United States. No matter how many navigation improvements a vessel may use, a particular shipment of cargo on a particular vessel shall be assessed this fee only once.

SECTION 815

This section imposes a fee of \$0.005 (½ of a cent) per net registered ton on a vessel utilizing a commercial channel or harbor including Great Lakes navigation improvements, for purposes other than loading or unloading commercial cargo. This would include such things as bunkering, refitting, or repair. This fee can be assessed a maximum of three times on any vessel during any fiscal year.

SECTION 816

This section requires the person or agent who sends commercial cargo by water to provide the master of the vessel on which the cargo is transported, a sworn declaration of the value of the cargo being transported. The vessel master will then provide the information contained in this sworn declaration to the Customs Service of the United States or other agent designated by the Secretary of the Treasury to receive such information.

Upon the loading or unloading of the vessel's cargo in any commercial channel or harbor in the United States, including Great Lakes facilities operated and maintained by the United States.

SECTION 817

The section provides that the taxes imposed by this title be collected, except for the Great Lakes, at the port of loading for foreign-bound cargo, and at the point of unloading for all other cargo. Within the Great Lakes, the taxes are to be collected at points designated by the Secretary of the Treasury. The Secretary of the Treasury shall also issue regulations on the collection of the taxes on vessels using harbors for purposes other than the loading or unloading of cargo.

SECTION 818

This section makes a number of changes in Public Law 83-358 to incorporate the U.S. portion of the St. Lawrence Seaway into the national system of coastal channels and harbors. This section authorizes the St. Lawrence Seaway Corporation to accept appropriations from the Harbor Maintenance Trust Fund established in section 812 of this title. In addition, the section would waive the tolls on the Seaway whenever U.S. tolls on the Seaway on a particular voyage exceeded the cargo fee imposed by section 813 of this Title.

Thus, vessels which have paid the fee authorized by section 814 will not be assessed tolls on the U.S. portion of the St. Lawrence Seaway.

There are inherent difficulties in attempting to incorporate the U.S. locks on the Seaway into the national harbor system, particularly in view of the complex nature of the joint Canadian/United States administration of the Seaway and its toll structure.

SECTION 819

This section directs the Secretary of State, in consultation with the Secretary of Transportation, to initiate discussions with the Canadian government on the economic effects of reducing or eliminating all tolls on the Great Lakes and St. Lawrence Seaway. The Secretary of Transportation is to report to the Congress on these discussions with two years of the date of enactment of this bill.

At the end of section 606, add the following:

- "(c) The United States District Court for the district in which is located a non-Federal sponsor that imposes fees subject to this section shall have original and exclusive jurisdiction over any matter arising out of, or concerning, the imposition, computation, or collection of such fees by a non-Federal sponsor under this section and, upon petition of the Attorney General or any other party, may grant appropriate injunctive relief to restrain any act by that non-Federal sponsor that violates the conditions in this section, shall order that refunds be paid to the extent it is found that fees were collected in violation of this section, and grant other relief or remedy as appropriate. Prior to the start of construction of a project subject to section 602 or 604, the non-Federal sponsor shall notify the Secretary that it consents to court jurisdiction as set forth in this subsection."

PROPOSED AMENDMENT TO REQUIRE DEPARTMENT OF TREASURY STUDY
OF DIVERSION OF CARGO TO CANADIAN OR MEXICAN PORTS
AS A RESULT OF THE AD VALOREM CARGO FEE

(by Senator Moynihan)

Title VI is amended by inserting after section 606(b) the following new subsection 606(c):

Sec. 606(c) STUDY OF CARGO DIVERSION

Congress directs the Secretary of the Treasury, in consultation with the U.S. Customs Service and other appropriate federal agencies, to study the impact of the ad valorem cargo tax on potential diversions of cargo to Canada and Mexico from U.S. ports. The Secretary of the Treasury shall provide a written report to Congress transmitted to the Finance Committee of the United States Senate and to the Ways and Means Committee of the U.S. House of Representatives within one year of passage of this Act.

Sen. Bradley
S. 1567

Amendment to S. 1567 on Cargo Diversion

Amend Section 813 as follows: on page 133, after line 6, insert the following:

"(d) (1) The commercial cargo on which the fee is imposed shall not include commercial cargo arriving from a foreign country and destined for a country contiguous to the United States or commercial cargo arriving from a country contiguous to the United States destined for a foreign country."

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United States Senate

COMMITTEE ON FINANCE
WASHINGTON, DC 20510

WILLIAM DIEFENDERFER, CHIEF OF STAFF
MICHAEL STERN, MINORITY STAFF DIRECTOR

DECEMBER 10, 1985

MEMO

FROM: FINANCE COMMITTEE STAFF
TO: FINANCE COMMITTEE MEMBERS
SUBJECT: S. 1567, WATER RESOURCES DEVELOPMENT ACT OF 1985

The Water Resources Development Act of 1985, S. 1567 (S. Rept. 99-126), authorizes the Secretary of the Army to construct various projects for improvements to river and harbor waterways of the United States and provides cost-sharing procedures. The revenue aspects of S. 1567 are in section 606 and Title VIII. Section 606 authorizes local sponsors (e.g., a port) to impose user fees to recover its share of the cost of a project, plus certain maintenance costs. Title VIII is divided into two parts. Part A calls for a gradual doubling of the barge fuel tax by 1997. Part B creates a trust fund financed by a user tax to pay portions of operations and maintenance costs for coastal channels and harbors.

These provisions of S. 1567 were referred to the Finance Committee. The House bill, H.R. 6 (H. Rept. No. 99-251), passed the House on November 13, 1985, and is now pending in the Senate.

REVENUE PROVISIONS OF S. 1567 WITH POSSIBLE MODIFICATIONS

I. BARGE FUEL TAX

- A. Rate. On October 1, 1985, the barge fuel tax increased from 8¢ to 10¢ per gallon. Under S. 1567, this tax would increase by 1¢ per gallon per year for ten years beginning January 1, 1988, until it reaches 20¢ per gallon on January 1, 1997. Receipts from this tax are deposited in the Inland Waterways Trust Fund, to be used for commercial inland navigation projects.
- B. Trust Fund. The Committee may wish to place the provisions of the Inland Waterways Trust Fund in the Trust Fund Code of the Internal Revenue Code, consistent with recent trust fund legislation.
- C. Tennessee-Tombigbee. S. 1567 adds the Tennessee-Tombigbee Waterway to the list of inland waterways on which the barge fuel tax is to be collected.

II. NATIONAL PORT USE FEE

- A. Rate. Under S. 1567, a port use fee of .04 percent (4¢ per \$100) would be imposed on the

value of commercial cargo loaded onto or unloaded from commercial vessels at U.S. harbors or commercial channels. Commercial cargo is defined to include the transportation of passengers for hire (e.g., luxury liners).

S. 1567 would impose a use fee of \$0.005 (1/2 of 1 ¢) per net registered ton on a vessel using a channel or harbor for purposes other than loading or unloading such as bunkering, refitting or repair (not more than three times in any fiscal year).

The Committee may wish to place these provisions within the Internal Revenue Code.

B. Tax Liability. S. 1567 is silent as to who is responsible for payment of the use fee. The Committee may wish to clarify that it shall be paid by:

1. the importer, in the case of cargo entering the United States;
2. the exporter, in the case of cargo to be exported from the United States;

3. the shipper, in all other cases.

C. Collection and Enforcement. The Committee may wish to clarify that the Customs Service shall administer the port use fee and that all administrative and enforcement provisions of customs law shall apply.

D. Exemptions

1. Hawaii and U.S. possessions. The Committee may wish to exempt from the port use fee the loading and unloading of --

a. cargo loaded at a U.S. mainland port for ultimate use or consumption in Hawaii or a U.S. possession (Puerto Rico, Guam, U.S. Virgin Islands, Northern Marianas, American Samoa and the Trust Territory of the Pacific Islands), and

b. cargo loaded in Hawaii or U.S. possession for ultimate use or consumption in the U.S. mainland.

2. Channels or harbors not receiving public funds. The Committee may wish to provide

that the ports use fee does not apply to

--

- a. ports which were deauthorized prior to 1985, and
 - b. ports which have received no federal funds since 1977 and which receive no federal funds in the future.
3. Fish and aquatic animals. The Committee may wish to clarify the exemption provided in S. 1567 relating to fish and aquatic animals by providing that fish and aquatic animals not previously landed would be exempt from the port use fee.
 4. Short-haul ferrying. S. 1567 exempts the short-haul ferrying of passengers and vehicles between points within the United States. The Committee may wish to make this exemption also apply to short-haul ferrying between points between the United States and contiguous countries.
 5. U.S. vessels. S. 1567 would exempt vessels owned by the United States.

6. Cargo taxed only once. The Committee may wish to clarify that the ports use fee applies to the total cargo only once per trip on the same vessel.
 7. Loading and reloading. The Committee may wish to clarify that the port use fee does not apply if the identical cargo is loaded and reloaded at the same place.
 8. Barge Fuel Tax. S. 1567 is silent with respect to the relationship between the port use fee and the barge fuel tax. The Committee may wish to clarify that cargoes are exempt from the port use fee if they were carried on vessels which paid the barge fuel tax for that trip.
- E. Harbor Maintenance Trust Fund. S. 1567 would establish a Harbor Maintenance Trust Fund to be financed by the collection of the port use fee, St. Lawrence Seaway tolls, and any Congressional appropriations. The Committee may wish to place the provisions of the Trust Fund in the Trust Fund Code of the Internal Revenue Code, consistent with recent trust fund legislation.

- F. Treatment of the St. Lawrence Seaway. S. 1567 would provide for a waiver of St. Lawrence Seaway tolls payable on the U.S. portion of the Seaway when the vessel's cargo is also subject to the use fee.

In lieu of a waiver, the Committee may wish to provide for a rebate of tolls collected on the U.S. portion of the Seaway. Seaway tolls and charges would be transferred to the Harbor Maintenance Trust Fund, and rebated to persons certified by the St. Lawrence Seaway Development Corporation as having paid the tolls.

- G. Effective Date. The Committee may wish to provide that the ports use fee is effective April 1, 1986.

III. LOCAL PORT/NON-FEDERAL USER FEES

- A. Grant of Authority. Under S. 1567 a local sponsor of a waterway improvement project is authorized by Congress to collect user fees in order to pay its share of the project's cost.
- B. Limitations on the Fee Structure. S. 1567 would require that the fee structure reflect

to a reasonable degree the benefits provided by the project to a particular class or type of vessel.

C. Exemptions. Under S. 1567, local sponsors may not assess fees on:

1. Intra-port vessel movement;
2. Non-commercial vessels owned or operated by the United States, foreign countries, or states;
3. Dredging vessels; and
4. Vessels with a draft of 14 feet or less if the project for which the fee is imposed is deeper than 20 feet.

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