

MINE

1 EXECUTIVE COMMITTEE MARK-UP SESSION ON S. 1739

2 THURSDAY, JUNE 7, 1984

3 U.S. Senate

4 Committee on Finance

5 Washington, D.C.

6 The committee met, pursuant to notice, at 9:14 a.m. in
7 room SD-215, Dirksen Senate Office Building, Senator Robert
8 J. Dole (chairman) presiding.

9 Present: Senators Dole, Packwood, Danforth, Heinz,
10 Durenberger, Long, Bentsen, and Baucus.

11 Also present: Mr. Gene Mach, Assistant Commissioner,
12 Inspection and Control, U.S. Customs Service.

13 Also present: Roderick DeArment, Esquire, Michael Stern,
14 Esquire; Richard Belas, Esquire, David Hardee, Esquire, Mr.
15 Harry Graham, Mr. Dick Ruge, and Mr. James Wetzler.

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1 The Chairman. Did we get all of this worked out?

2 Mr. Graham. Yes, Senator.

3 The Chairman. As I understand, at least we had hoped,
4 staff would have a chance, all the different people involved,
5 to get together last evening to see if they could reach some
6 agreement on what we should do on this particular area of
7 jurisdiction, which is section 502 and 1006; that's all we
8 are here for.

9 Mr. Graham. Yes, sir. We have circulated to the
10 members a staff proposal that was worked out last night.

11 The Chairman. Is that just one page?

12 Mr. Graham. Yes, sir.

13 Senator Packwood. On the second part of the proposal
14 prohibiting -- or actually reinstating the current law that
15 no tolls may be operating, that's section 504, isn't it?

16 I favor what you are doing, but I want to make sure
17 we are okay in doing it.

18 Mr. Graham. We are going to put that in new section 502.

19 Senator Packwood. All right; that's what I wanted to
20 know.

21 Mr. Graham. In the ones that we have jurisdiction over.

22 Senator Packwood. This is the part that was stricken
23 out by the Environment and Public Works in section 504, is
24 that right?

25 Mr. Graham. Yes, sir. It is simply a restatement of

1 the current law.

2 Senator Packwood. Good.

3 The Chairman. I wonder if Senator Long has had a chance
4 to look at this. David, do you know?

5 Mr. Graham. As I understand it, he has not had an
6 opportunity to look at the proposal.

7 Mr. Hardee. That is correct.

8 Mr. Graham. Although his staff has looked at it.

9 I believe that he is expected here any time now. He is
10 at a Judiciary markup hearing.

11 The Chairman. Are there any other questions from this
12 side of the aisle?

13 Senator Packwood. I think the staff proposals are fine
14 and it would achieve what we want to achieve, namely that
15 the Secretary of the Army or nobody else is going to impose
16 user fees. They can recommend until they are blue in the
17 face, but they can do that now. They can probably do that
18 without any law, if they wanted to; but they will not be
19 able to put them into effect without prior congressional
20 approval.

21 Mr. Graham. Yes, sir, that is correct.

22 The Chairman. So you are satisfied?

23 Senator Packwood. I am satisfied.

24 The Chairman. Is that all right with you, Senator
25 Heinz?

1 Senator Heinz. I think so, Mr. Chairman. I am just
2 looking over it.

3 The Chairman. Senator, do you have an amendment?

4 Senator Durenberger. Well, looking at the attendance
5 here this morning, I'm not sure that I do.

6 (Laughter)

7 The Chairman. It's going to get worse.

8 (Laughter)

9 Senator Durenberger. Unfortunately there are quite a
10 number of people on this committee who are also members of
11 the Environment and Public Works Committee, all of whom have
12 been on that committee a lot longer than I have, dealing
13 with these issues. And I am in the unfortunate position of
14 wanting to get my constituents' grain to market and not
15 wanting to impose any kind of a tax on the transporters who
16 are located in my state to get it there.

17 (Laughter)

18 Senator Durenberger. So I have watched Jim Abner, who
19 is Chairman of the Subcommittee over there, just sweat blood
20 for a year and a half trying to put together a bill that
21 will do something about an additional chamber at Lock and
22 Dam 26 and do something for the rivers and the ports in
23 Oregon, and do something for Pennsylvania, and fighting up
24 against the Administration and other folks who want to impose
25 the user fees.

1 So my concern is -- I guess I can't support this staff
2 recommendation because it kills the bill; it kills all the
3 water resource construction work that would take place. This
4 bill is not going to get through here this way. If it did,
5 it's not going to get signed by the President.

6 So I had wrestled around with an amendment that would
7 try to delay the imposition of the two cents in '85 and maybe
8 temper the increases in some way, that I would offer some kind
9 of a compromise that would at least move this bill all the
10 way through the end of the process, but --

11 Senator Packwood. Dave, let me ask you this, because
12 I have never understood the Administration's argument: A
13 rose is a rose is a rose, and it takes money to build Lock
14 and Dam 26 for the Bonneyville Lock, or anything else. The
15 question is, does the tax -- call it what it is -- get levied
16 on the user, or is it born more generically by the general
17 public? The cost of building the project doesn't change, and
18 therefore when the Administration says there is no money to
19 do it, what it means is they are prepared to levy a tax on
20 the user to do it but not a tax on the general public to do
21 it.

22 If we were talking about river commerce in this country
23 and if we are talking about trying to tie it together, there
24 are areas that will not pay their own way. And that cost
25 ought to be borne by the general public for the general good.

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1 I don't find this a budget argument. The cost is the
2 same. It is who is going to bear the cost that is the
3 argument.

4 Senator Durenberger. Well, I think that is certainly
5 part of the argument, but within that is the competition,
6 if you will, to develop a transportation policy in this
7 country. And you have some existing inequity among a variety
8 of modes of transportation. Some of them don't have the
9 capacity of spreading the costs the way truckers on highways
10 do or the inland barge or the port transportation. So in
11 part, you even come to the consideration of a user fee in
12 order to get some equity among the various modes of
13 transportation.

14 Senator Packwood. Well, but if you and I serve 10
15 terms in the Senate, that argument will never be ended
16 whether we impose the user fee or not -- the railroads will
17 always tell us we are favoring the barges, and the barges
18 will tell us we are favoring the trucks, and they'll all say
19 we are favoring the airplanes. And they would all say that
20 if we didn't levy user fees or if we levied user fees on
21 everybody.

22 Senator Durenberger. I will acknowledge that, and I
23 would only add another dimension to your inquiry, and that
24 is that one of the objections that I think has some validity
25 from the transporters' viewpoint -- the barge companies,

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1 let us say, in the case of the Mississippi River -- is that
2 the tax is on them and not on the shippers, and it is not
3 as easy for a barge company to pass through the cost of a tax
4 to a shipper that used that service as it is for a railroad
5 to pass on tax costs that might fall on a railroad.

6 So I can't argue with you that we haven't really come
7 up with a very good use tax to offset your argument that this
8 ought to be more generally spread. But I also know it's the
9 best we can come up with for the present time and for the
10 foreseeable future, and I know that without it we aren't
11 going to get any of that construction. So --

12 Senator Packwood. As I recall, and the staff can
13 correct me if I'm wrong, in theory the fees to be imposed
14 by this bill are for future projects, aren't they? The
15 Environment and Public Works Committee approves of the bill
16 in terms of the present method of funding for current
17 projects.

18 Mr. Graham. Yes, sir. As I understand it, the projects
19 that are authorized in the bill can proceed without the user
20 fee legislation, meaning the funds for those are basically
21 for new construction.

22 The Chairman. Can I get another copy of the proposal?

23 Mr. Graham. Senator, to some extent it may depend on
24 the future funding, meaning the cap in the current bill is
25 \$646 million annually; so, to the extent that the funds

1 exceeded that cap, there would be a need for some additional
2 funding.

3 Senator Durenberger. Let me ask a question of the staff.

4 The reality here -- and this is in part in response to
5 Senator Packwood's question -- what we are talking about
6 here is a basic \$629 million a year that is spread across
7 the country, so to speak, because that is an appropriated
8 amount of money.

9 The argument then comes about how we raise money above
10 that; for example, this year update \$114 million, and then
11 beyond that. But there is no proposal before us to eliminate
12 the first \$629 million in annual appropriation, is there?

13 Mr. Graham. Yes, sir, that's correct. That is correct.
14 In fact, as I understand it, Senator Abner and several others
15 have already filed an amendment to S. 1739 that would increase
16 the \$646 million cap to \$658 million. And we do not touch
17 the cap -- meaning, that's a Committee on Environment and
18 Public Works authorization.

19 Senator Durenberger. Well, the tax that is bothering
20 the Senator from Oregon and may be bothering other people
21 at least at the present time it raises how much money
22 annually -- the 8 cent tax?

23 Mr. Graham. About \$40 million a year.

24 Senator Durenberger. About \$40 million a year?

25 Mr. Graham. The 8-cent tax.

1 Senator Durenberger. And then each 2 cents additional
2 raises how much?

3 Mr. Wetzler. About \$10 million or so.

4 Senator Durenberger. About \$10 million a year? So that
5 actually, in response to the Senator's question, we have
6 \$629 million, probably, if the Senator from South Dakota
7 proceeds with his amendment; we have \$658 million a year
8 appropriated from revenue sources that are spread across
9 the country, and then on top of that only \$40 million a year
10 coming from a user fee, and then if by 1985 -- under current
11 law, I guess, or at least under the proposal that came to us
12 from Environment and Public Works -- on October 1 of 1985
13 that would go up from \$40 million a year to \$50 million a
14 year. And the \$658 million would not go down; it would still
15 be there.

16 Mr. Wetzler. That's correct.

17 Senator Durenberger. And we would be talking about
18 8 cents of the total cost of maintaining this system then
19 coming from a user fee. Is that about right?

20 Mr. Graham. That is essentially correct, sir.

21 Senator Heinz. Mr. Chairman?

22 Senator Packwood. The Senator from Pennsylvania.

23 Senator Heinz. I was out of the room when Senator
24 Durenberger was arguing, but I gather he is arguing about
25 the proposal in section 502 made by the staff. Is that

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1 right?

2 The Chairman. That's right.

3 Senator Heinz. Mr. Chairman, let me say to my friend
4 from Minnesota that we have a situation today where a user
5 fee on diesel fuel is being collected at 8 cents, and
6 it is scheduled to go to 10 cents, as I know he knows.

7 Meanwhile, the waterway operators are losing money. It
8 is pretty difficult for me to understand the logic of taxing
9 people right now who are losing money, let alone giving
10 somebody lost in a building downtown the right to compound
11 the problem by simply increasing fees and taxes which we
12 don't know anything about once we delegate that authority
13 to them.

14 The Senator from Pennsylvania is actually thinking about
15 proposing an amendment to suspend the 8 cents tax until
16 we start spending some money from the trust fund. This, it
17 seems to me, is simply a way of taxing people in the name of
18 doing something for them, and then doing nothing. That
19 seems to me to be the way present law works.

20 Senator Packwood is an expert on this, by the way.

21 Senator Packwood. That same argument exists as to the
22 airways trust fund also, and it is doubly unfair, because
23 we would never have gotten these taxes to begin with had
24 the users who were going to pay them not thought they were
25 going to be spent for the purpose for which they were.

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1 intended. We simply would not have had the coalition to
2 pass the taxes at all.

3 Senator Durenberger. Well, two comments, Mr. Chairman.

4 I know the barge companies are all in tough shape, but
5 they are not in tough shape just because we aren't moving
6 product on the river; they are in tough shape because this
7 committee has participated in a process of putting every
8 doctor, lawyer, senator, and what not in this country into
9 the tax shelter business buying barges. And like we have
10 runaway business in boxcars and pigs, we've got a runaway
11 business in barges. And that's one of the large reasons
12 why those people are in trouble.

13 Senator Heinz. I wish the Senator would explain that
14 to the barge builders at Graveau who have been out of
15 building barges for the last year.

16 Senator Durenberger. Well, they have done just fine.
17 The barge builders are doing just fine.

18 Senator Heinz. No, the barge builders are out of
19 business.

20 Senator Durenberger. But the barge companies are all
21 going down the tubes.

22 Senator Heinz. That is my point. The Senator should
23 know that the biggest barge builder in the United States is
24 out of business; it has had its facilities shut for the last
25 eight or ten months. It is not building any barges. Since

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it has been closed it has not exactly been having what you might call "boom times."

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Senator Durenberger. Mr. Chairman, I don't want to argue that point.

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Senator Heinz. Unless it's the boom --

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The Chairman. Don't you regret having brought it up?

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(Laughter)

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Senator Durenberger. On the trust fund argument, though, if I sense that I have any support for my amendment, I recognize the problem that Senator Heinz brings up on the trust fund, and my proposal would say that after you do the extra two cents, which I would move off until 1986, you wouldn't do anymore taxing into this trust fund until the trust fund had been drawn down, so that we overcome the ADAP.

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Senator Packwood. I am not sure you would get the support of the Administration for that. We had that proposal and made that proposal on the ADAP funds, that if they didn't spend it the tax would go down, and they fought that.

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I would suggest we adapt the staff proposals without objections.

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The Chairman. All right. Adopt the staff proposals without objection, and then if there are amendments we can consider amendments. Can we adopt this first?

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Senator Heinz. Yes.

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1 The Chairman. Without objection, then, we will agree
2 to these.

3 Senator Heinz. Mr. Chairman, I have a question of the
4 staff.

5 The Chairman. All right, then Senator Danforth has
6 an amendment.

7 Senator Heinz. Let me ask: One of my constituents is
8 concerned that if we go to conference with the staff proposal
9 which we have just adopted, which proposal says that no
10 non-Federal interest -- for which I guess we can read "port
11 authority" -- can impose any such fees on commercial vessels
12 until approved by the Finance Committee, Ways and Means
13 Committee, and the Congress, that if we went to conference
14 just with that there might still be a possibility that the
15 House would force us into some compromise where people who
16 do not need a 45-foot channel might end up having to pay
17 all or most of the cost of dredging to a 45-foot-plus
18 channel. What is in the House bill on the equivalent of
19 section 1006?

20 Mr. Graham. As I understand the House proposal, to some
21 extent it would, for new construction, require additional
22 funding. At this point I think it is unclear as to how much
23 or from what sources the new funding would come.

24 Senator Heinz. You are referring to H.R. 3678?

25 Mr. Graham. Yes, sir.

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1 Senator Heinz. Which was reported by a vote of
2 49-to-nothing. I understand -- correct me if I'm wrong --
3 that section 108 of the bill, which has to do with the
4 equivalent of section 1006, says that user fees can only
5 be assessed against vessels which require a channel greater
6 than 45 feet. Is that in the House bill?

7 Mr. Graham. Yes, sir.

8 Senator Heinz. Therefore, I suppose it is logical that
9 if we went to conference with the House, that the House is
10 really protecting people with vessels that require less than
11 45 feet against some kind of unfair taxation. Is that your
12 understanding of the House provision?

13 Mr. Graham. Yes, sir.

14 Senator Heinz. Well, it seems to me, Mr. Chairman, that
15 the door is doubly locked here, and I have no amendment to
16 this section.

17 The Chairman. All right. Are there any amendments to
18 the proposal? Senator Danforth, do you have a freeze
19 amendment?

20 Senator Danforth. Yes, I do, Mr. Chairman. My amendment
21 would provide simply that we maintain the status quo.

22 Senator Packwood. And that's the 8 cents? And it would
23 not go to 10 cents on January 1st?

24 Senator Danforth. That's right. The sole reason for
25 the proposal -- well, there are two reasons for the proposal.

1 The first reason is that this industry is in a
2 depression right now, and I don't think that you pick the
3 time when an industry is in a depression to raise the tax.

4 The second argument is that the tax goes to a trust
5 fund, and as has already been pointed out today, the trust
6 fund hasn't done anything. It's just sitting there and
7 accruing money. So I think that the idea of raising a tax
8 even by two cents on an industry which is in a true state of
9 depression, and we have had ample evidence on that, for a
10 trust fund for which there is no present use is silly.

11 So my proposal is that we keep it at 8 cents.

12 The Chairman. For how long?

13 Senator Danforth. Until we decide to raise it.

14 Senator Long. I have a problem with that. We had an
15 agreement with Senator Domenici and his forces which caused
16 us to agree to this tax. I wouldn't have agreed to it
17 otherwise. And if we do this, that would in effect break
18 the faith on the compromise we made at that point, and I
19 would suppose that he and those who agreed with him would feel
20 that they had to oppose us and even fight for a higher tax.

21 So, in the hope that we can pass this bill, I would feel
22 that I can't afford to inject that issue.

23 While I would agree with you, Senator, aside from the
24 fact that I have a commitment to Senator Domenici --

25 Senator Danforth. Would you feel differently if there

1 was simply a delay?

2 Senator Long. Well, not unless he and his people --
3 or at least he, let's say -- were willing to agree that they
4 could go along with that. If you could sell them, I'd
5 be willing to support you. But I am afraid that they would
6 come and say that we're breaking the faith, that we made
7 a good faith commitment and we ought to keep it, and other-
8 wise they would be compelled to go back to war with us.

9 Senator Danforth. I wonder, though. I can't remember
10 when that agreement was entered into, but it was several
11 years ago.

12 Senator Long. Oh, yes, it was.

13 Senator Danforth. And since that time the economics
14 of the industry have changed very much.

15 Senator Long. Well, I understand that, but I just think
16 I shouldn't vote for it unless I have an understanding with
17 them.

18 Senator Durenberger. Mr. Chairman, could I just endorse
19 that? And I would update it from conversations we have had
20 in the Environment and Public Works Committee with the same
21 people that Senator Long talks about.

22 I would also add this point, to reinforce this business
23 of the catch-22 we have put ourselves in and why it is
24 important that Senator Domenici support something, because
25 you can't spend money out of the trust fund unless you have

1 authorization for the projects. We can't get authorization
2 for the projects, so the money can't be spent out of the
3 trust fund. So Senator Danforth can say no money is being
4 spent out of the trust fund, why raise the tax? And so we
5 have to try to find that way here to get those projects
6 authorized.

7 The Chairman. Rod, is this an S-numbered bill that we
8 are working on?

9 Mr. DeArment. We are working on S. 1739, a Senate-
10 generated bill.

11 The Chairman. We adopted an amendment here, a tax
12 amendment. What is the impact of that? What happens on the
13 House side?

14 Mr. DeArment. The House enforces their prerogatives
15 over initiating revenue legislation, but it might well lead
16 to their decision to blue-slip it unless we put it in an
17 H.R.-numbered revenue bill. I mean, there is a dispute
18 about whether these items we are dealing with now are
19 revenue matters or not. We have taken the view that they
20 touch on that, but this clearly --

21 Senator Danforth. Will this eventually be put on a
22 House-numbered bill?

23 Mr. DeArment. I thought it was their intention to just
24 pass this S-numbered bill.

25 Mr. Graham. It is my understanding that the Committee

1 on the Environment and Public Works intends to pass it as
2 an S-numbered bill.

3 Senator Danforth. To pass it as an S-numbered bill?

4 Mr. Graham. Yes, sir.

5 It is also my understanding that the Chairman of the
6 Ways and Means Committee has already written a letter to the
7 House Parliamentarian asking for a referral of the Senate
8 bill S. 1739 if it were to come over as currently drafted.

9 Mr. DeArment. Senator Danforth, if the House bill they
10 hope to take up in two weeks gets here first, which may well
11 be the case, before this bill gets taken up, then the Senate
12 bill can't be substituted for the House bill. And to the
13 extent that they have things that are arguably revenue in
14 them, we can take the position that it is a revenue bill.

15 Senator Danforth. Well, I am going to reserve this until
16 I see what the situation is at that time, and obviously I
17 would like the support of Mr. Long, I really would, before
18 I proceed with it. So maybe I could get a reading on
19 Senator Domenici's position.

20 Senator Heinz. Mr. Chairman, as long as we are on
21 this subject -- and I hope that Senator Long and Senator
22 Danforth could reach an agreement on this -- what would be
23 the views of the members on sunseting this tax at a time
24 certain in the future if we don't get something authorized?
25 I mean, we are all sitting here saying, "Well, we made a deal

1 back in 1979" or whenever it was, and a deal is a deal
2 on both sides. And at some point -- you know, we are
3 saying, and Senator Long may be correctly saying, the deal
4 was that we wouldn't cut and run on the tax. The other
5 half of the deal as I recollect it was that we were going
6 to get something for the tax. And if that part of the
7 deal is never delivered on, it's not a deal either.

8 So it seems to me that it would be appropriate to enact
9 a sunset of this -- pick some reasonable period, twelve
10 months -- that would begin to enforce a little action on
11 whoever it is here who is reluctant to have an authorizing
12 bill.

13 The Chairman. Well, I am certainly willing to look
14 into that. Maybe we ought to get together with the people
15 who aren't complying with what we think should be done, and
16 if we can't reach some agreement we could offer that on the
17 floor.

18 Senator Packwood?

19 Senator Packwood. Mr. Chairman, I realize it is beyond
20 the scope of this bill in committee, but on the floor it is
21 my intention to offer an amendment to create a Columbia-
22 Snake Customs District unless the Customs Department can
23 indicate -- and I know there is a representative of the
24 Customs Department here today -- could indicate that they
25 would be willing to do so administratively. And I wonder

1 if I might ask them?

2 The Chairman. Sure.

3 Is there someone from Customs here?

4 Senator Packwood. I know Mr. Burt is here.

5 Well, that is not Mr. Burt standing, but if he could come
6 up here, this is the gentleman who is in the position to
7 make that authorization.

8 I might explain the situation. There is a bill
9 introduced with the complete support of the Oregon-Washington
10 and Idaho congressional delegations to create a Columbia-
11 Snake Customs District. This is the natural flow of commerce
12 through the headwaters or the farthest point of navigation
13 being Lewiston, Idaho, through Idaho into Washington on the
14 Snake River, through the Snake onto the Columbia River, and
15 down to the mouth. And I wonder if the representative of the
16 Customs Department could indicate whether or not they would
17 be willing to create that administratively, or whether we
18 would have to pass legislation to do it?

19 The Chairman. Could you identify yourself for the
20 record?

21 Mr. Mach. I am Gene Mach. I am an Assistant
22 Commissioner for the Customs Service, Inspection and
23 Control.

24 We have looked this morning at the proposal to create
25 the Snake River port of entry under the Portland District.

1 I can give you our assurance I think today that that
2 particular part of the proposal could be accommodated.

3 The additional workload that goes with the proposal to
4 the Port of Lewiston, I think we could accommodate that.
5 Anything beyond that point, however, would give us some
6 concern since we are going into additional territory, so
7 to speak, where we have regional and district lines that
8 are drawn on a national basis. And to go beyond that
9 particular point would create another reorganization beyond
10 that particular proposal.

11 Senator Packwood. The point he is raising, Mr. Chairman,
12 relates basically to Boise, which under this proposal would
13 not be in this district. Boise is not on the Columbia-Snake
14 River system. I am not well enough versed to know what Boise
15 would want; I think that is an issue I would rather leave to
16 the Idaho delegation, but I am perfectly satisfied to start
17 with the assurance that we will have a Columbia-Snake
18 port of entry and that it will include Lewiston on down to
19 the mouth of the Columbia River.

20 Mr. Mach. Yes, we will put that forward, sir.

21 Senator Packwood. And I am delighted to have the
22 assurances of the Customs Department on the record that they
23 will so create that district.

24 Senator Long. Mr. Chairman, if we are going to get
25 involved in that, I would want to offer an amendment to

1 expand the New Orleans District northward to include
2 Missouri, Kentucky, and parts of Sillon, Illinois, because
3 of the Tom Bigby Waterway being built, and also because we
4 expect to have a movement of coal and more traffic in that
5 area down through the New Orleans Port. We would want to
6 expand that in the New Orleans District.

7 Senator Packwood. I am not offering an amendment at
8 this time, because Customs has indicated they will accommodate
9 what I need.

10 Senator Long. I would like to aslo see if they could
11 accommodate my proposal, then, because I think there is a
12 good case to expand the New Orleans District northward to
13 include Missouri, Kentucky, and Sillon, Illinois, and
14 Sillon, Indiana in the New Orleans District.

15 Mr. Mach. I am not familiar with that proposal,
16 Senator, but we will see.

17 The Chairman. Well, if Senator Long has it here, maybe
18 you could discuss it with him after we have completed action.

19 I would also raise a question. Senator Symms is not
20 here, but I have been advised that he would hope you might
21 expand the accommodation of Senator Packwood to include
22 Idaho, Boise, Lewiston. Do you have that? Put that into
23 your computer.

24 (Laughter)

25 The Chairman. Senator Baucus?

1 Senator Baucus. Mr. Chairman, I have a similar
2 concern. The effect of the proposal of the Senator from
3 Oregon may be to reduce some personnel in Montana,
4 particularly Great Falls, Montana, and I would like to have
5 assurances from Salem, Oregon, as well as Customs that
6 there would be some sort of hold-harmless provision so that
7 the personnel, the Customs personnel, in Great Falls,
8 Montana, would not be transferred out of Montana as a result
9 of this proposal.

10 Senator Packwood. I have no such intention. I am not
11 sure I can given any assurances one way or the other.

12 Senator Baucus. Well, it is my undertstanding that
13 our staff has worked out an agreement I think with your
14 staff and Customs.

15 The Chairman. I don't want to get delayed here on
16 something that is not even relevant.

17 Senator Danforth. I heard the magic words said by
18 Senator Long.

19 The Chairman. Missouri?

20 Senator Danforth. Yes. And before Missouri is moved
21 around I would like to be part of the discussion.

22 (Laughter)

23 Senator Long. Well, I'm all for the Senator being a
24 part of the discussion. I didn't know the matter was going
25 to come up until I came here this morning, that Senator

1 Packwood was going to raise the issue about the Oregon
2 situation, and I can assure the Senator we will give him
3 good service in New Orleans.

4 (Laughter)

5 The Chairman. Well, I think this is a matter beyond
6 the scope of what we are here for. So maybe you can hang
7 around; you may have a lot of work to do after all of this.

8 (Laughter)

9 Mr. Mach. I will be happy to hang around, Mr. Chairman.

10 The Chairman. Are there any other germane matters to
11 come before the committee -- germane matters?

12 Senator Baucus. Mr. Chairman, section 1006, I wonder
13 if we could include some reasonable kind of language so that
14 any fee assessed does not -- you know, if it's a deep draft
15 it shouldn't be assessed against ships that have shallow
16 drafts; but if it's to widen the channel then that's
17 reasonable and I think the fee should be assessed on those
18 ships that do have shallow drafts because they benefit from
19 the widening of a channel.

20 We are worried about the difference between "deep"
21 45 foot drafts, and under and over 45 feet. And it is my
22 understanding that staff has proposed some kind of
23 reasonableness language to accommodate that concern.

24 Mr. DeArment. That would be language in the committee
25 report?

1 Senator Baucus. Yes.

2 Mr. DeArment. That says "in the event, that we
3 should approve"? That's sort of our intention.

4 The Chairman. Is there any objection to that? I
5 think you may have an amendment on that, don't you, Bob?

6 Senator Long. Let me ask whether actually there is
7 going to be another amendment. I believe Senator Packwood
8 is going to have an amendment to say that there would not be
9 the privilege on the part of the States to levy fees on the
10 ports.

11 Senator Packwood. Well, what I said to the Senator from
12 Louisiana -- we were talking about draft and 45 feet, and
13 Senator Baucus is talking about a tangential issue, but
14 I know what he means, in terms of the width -- was that I
15 would prefer to wait until we go to the floor.

16 Apparently there is a provision in the House bill, so
17 if we went to conference you would have the issue of the
18 45-foot depth. I would just like to reserve judgment on that
19 and do a little further research rather than putting it on
20 here. I may be with the Senator from Louisiana on that
21 issue.

22 The Chairman. Well, what about the Senator from
23 Montana? Do you have any problem with his?

24 Senator Packwood. I am not sure; it's the first time
25 I have thought about it. I know indeed what he is talking

1 about, because any time you deepen a draft you are going to
2 widen it a bit, and there is all kinds of shallow-draft
3 vessels that will get the advantage of the widening that
4 goes along with the deepening.

5 Senator Baucus. That's right.

6 Senator Packwood. But I wonder, Max, if we could wait
7 until we get to the floor on it, and let me work with you
8 on it and see.

9 Senator Baucus. So long as I have the assurance from
10 the Senator that he is sympathetic and sensitive to an
11 understanding with an agreement with my concern.

12 Senator Packwood. I think I am, because I think I've
13 got the same problem.

14 Senator Baucus. All right.

15 The Chairman. Is that all right?

16 Senator Baucus. All right, fine.

17 The Chairman. All right, then, without objection we
18 will report whatever we've done.

19 (Laughter)

20 Mr. DeArment. Mr. Chairman, we should report this as
21 an amendment to the underlying bill, and also to the
22 substitute amendment that has been referred to this
23 committee.

24 The Chairman. I know Senator Abner and Senator
25 Stafford have spent a lot of time on this bill, and it is

1 not our intent to gut the legislation but to preserve
2 our jurisdiction.

3 I did discuss this with Senator Abner last night. I
4 don't think he has any real problem with what we have done
5 in the committee, since we are the tax-writing committee.
6 Is that correct?

7 Mr. Graham. Yes, sir. I spoke to his staff person
8 last night, and they were essentially okay on the proposed
9 staff amendments at that time.

10 The Chairman. Well, obviously they may have preferred
11 the other approach, but I don't believe that would have
12 been possible to achieve in this committee. So we hope we
13 haven't -- well, I hope it works out all right.

14 All right, then, we are going to have a meeting now
15 on the conferees on the tax bill, a private session. So
16 thank you very much.

17 (Whereupon, at 9:51 a.m., the executive session was
18 concluded.)

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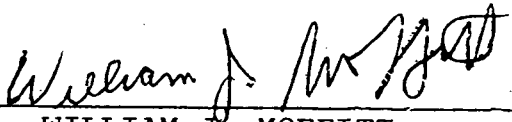
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C E R T I F I C A T E

This is to certify that the foregoing proceedings of an Executive Committee Mark-up Session on S. 1739, held on June 7, 1984, were held as herein appears and that this is the original transcript thereof.


WILLIAM J. MOFFITT

My Commission expires April 14, 1989.

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Congress of the United States

JOINT COMMITTEE ON TAXATION

Washington, D.C. 20515

June 6, 1984

MEMORANDUM

TO: Members of the Finance Committee

FROM: David H. Brockway

SUBJECT: Background Document for June 7 Finance Committee
Markup of Sections 502 and 1006 of S. 1739
(Water Resources Development Act)

Enclosed are two copies of a staff document (JCX-13-84) prepared for the June 7 Finance Committee markup consideration of sections 502 and 1006 of S. 1739 (Water Resources Development Act), which have been sequentially referred to the Finance Committee through June 8, 1984.

The first part of the document is a summary of the revenue-related provisions of S. 1739. The second part provides data on the budget status of the Inland Waterways Trust Fund and the estimated fuels tax revenues going into the Fund.

Enclosures: 2 (JCX-13-84)

**BACKGROUND FOR FINANCE COMMITTEE MARKUP ON
SECTIONS 502 AND 1006 OF S. 1739**

(Water Resources Development Act)

I. Summary of Revenue-Related Provisions of S. 1739

S. 1739 (Water Resources Development Act) was reported by the Committee on Environment and Public Works on November 17, 1983 (S. Rept. No. 98-340), and was reported by the Committee on Energy and Natural Resources on April 27, 1984 (S. Rept. No. 98-418). Sections 502 and 1006 of S. 1739 were referred on May 16, 1984, to the Committee on Finance for a period not to exceed beyond June 8, 1984. The Finance Subcommittee on Taxation and Debt Management held a public hearing on these provisions on June 5, 1984.

Administration Budget

The Administration's budget for fiscal year 1985 contains a proposal for \$200 million in user charges on inland and coastal channels and waterways and deep-draft waterways. Revenues from the user fees would be treated as offsetting receipts, i.e., they would appear in the budget accounts of the agency responsible for the expenditures--the Corps of Engineers Civil functions--as a reduction in outlays.

The Administration based its budget recommendation on the belief that shipping companies and their customers who receive the benefits of Federal navigation projects should pay a greater share of construction and operations and maintenance costs.

Fiscal 1984 expenditures and receipts.--In fiscal year 1984, the Federal expenditures were about \$650 million to maintain shipping channels and inland waterways. The existing user fuel tax (currently 8 cents per gallon) on inland waterway commercial cargo users is estimated to raise \$39 million in fiscal 1984.

Section 502--Inland Waterway User Charges

Section 502 of S. 1739 would authorize the Secretary of the Army "to impose, collect and obligate use charges on the commercial users of the inland waterways and harbors of the United States to the degree necessary for additional

construction, rehabilitation, renovation, operation, and maintenance of commercial navigational features and components of the inland waterways and harbors...so they are sufficient to meet the needs of the commercial waterway users, as recommended by the Inland Waterways Users Board..." The user charges could be instituted only if spending for such inland waterway and harbor purposes is to exceed the \$646 million annual ceiling set by section 501 of the bill for fiscal years 1986-1999.

Section 1006--Port Development Fees

Section 1006 would authorize a non-Federal interest, e.g., a State or a port authority, to recover its obligations for construction and incremental maintenance costs relating to harbors by collecting user fees from vessels in commercial waterway transportation. Direct beneficiaries would be assessed 80 percent of the costs. The fees would be used only to pay for the non-Federal share of the construction and incremental maintenance costs of work on harbors.

II. Status of Inland Waterway Trust Fund

Some of the expenditures for inland waterways projects that are authorized in S. 1739 would be made from the Inland Waterways Trust Fund. The budget status of the trust fund is described in the following table.

Inland Waterways Trust Fund

Amounts Available for Appropriation
(\$ millions)

	Fiscal years		
	1983 actual	1984 est.	1985 est.
Unappropriated balance, start of year	55.5	91.5	142.5
Receipts			
Inland waterway fuel tax	28.8	39.0	46.0 ^{1/}
Interest and profits on investments	7.2	12.0	16.0
Total available for appropriation	91.5	142.5	204.5
Unappropriated balance, end of year	91.5	142.5	204.5

^{1/} Revenues are projected at \$55 million and \$59 million for fiscal years 1986 and 1987, respectively.

The Inland Waterways Trust Fund was established in accordance with the Inland Waterways Revenue Act of 1978. Revenue is derived from receipts from taxes imposed on fuel used in cargo vessels in commercial inland and intracoastal waterway transportation. The tax currently is 8 cents per gallon, and it is scheduled to increase to 10 cents per gallon on October 1, 1985. The tax does not apply to deep-draft ocean-going vessels, passenger or fishing vessels, or certain barges primarily used as cargo containers on ocean-going vessels. The Act provides that amounts in the trust fund shall be available, by appropriations acts, for making construction and rehabilitation expenditures for navigation on the inland waterways described in section 206 of the 1978 Act. No appropriation from the trust fund was requested for either of fiscal years 1983, 1984 or 1985.