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**SUBSTITUTE SENATE JOINT MEMORIAL 8009**

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**State of Washington 68th Legislature 2024 Regular Session**

**By** Senate Business, Financial Services, Gaming & Trade (originally sponsored by Senators Hasegawa, Wagoner, Dozier, Fortunato, Frame, and Stanford)

TO THE HONORABLE JOSEPH R. BIDEN, JR., PRESIDENT OF THE UNITED STATES, AND TO THE PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, AND TO THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES, IN CONGRESS ASSEMBLED:

We, your Memorialists, the Senate and House of Representatives of the State of Washington, in legislative session assembled, respectfully represent and petition as follows:

WHEREAS, The United States created the harbor maintenance tax under the Water Resource Development Act of 1986; and

WHEREAS, The harbor maintenance tax is an ad valorem tax on goods imported into the United States through a United States port; and

WHEREAS, The North American Free Trade Agreement was established in 1994 to create a broad North American marketplace where goods could move freely between the United States, Canada, and Mexico; and

WHEREAS, The North American Free Trade Agreement and now its successor agreement the United States, Mexico, and Canada Agreement has failed to consider the impact of the harbor maintenance tax on United States ports; and

WHEREAS, The North American Free Trade Agreement and United States, Mexico, and Canada Agreement have created an incentive for importers of foreign goods to land cargo in Canada or Mexico and then use rail or trucks to move that cargo to the United States to avoid the harbor maintenance tax; and

WHEREAS, The harbor maintenance tax is not collected on transpacific and transatlantic cargo shipped to the United States via rail or roads from ports in Mexico and Canada; and

WHEREAS, The ability to move transpacific and transatlantic cargo through Canadian ports and avoid paying the harbor maintenance tax incentivizes diversion of cargo away from United States ports; and

WHEREAS, The federal maritime commission inquiry into the harbor maintenance tax found that up to half of United States bound containers coming into Canada's west coast ports could revert to using United States west coast ports if United States importers were relieved from paying the tax; and

WHEREAS, Current United States law does not require the revenues raised through the harbor maintenance tax to be fully spent on harbor maintenance-related investments, collections have far exceeded fund appropriation and surplus collections, resulting in a surplus of billions of dollars in the harbor maintenance trust fund; and

WHEREAS, Revenue raised through the harbor maintenance tax pays for dredging and other maintenance costs, with significant amounts being spent for dredging at east coast, gulf coast, and Columbia river ports; and

WHEREAS, Certain deep water ports on the west coast that require no or little dredging, including the Northwest Seaport Alliance consisting of the ports of Seattle and Tacoma, receive just over a penny on every dollar of harbor maintenance tax paid by shippers who use their ports; and

WHEREAS, The Columbia river channel is critical to maintain global trade and the port of Vancouver USA serves as the largest wheat export gateway in the nation; and

WHEREAS, With the recent widening of the Panama Canal, Washington ports face increasing competition for maritime goods bound for the United States; and

WHEREAS, Washington ports are ready to compete on a level playing field to efficiently move goods to market; and

WHEREAS, Congress passed substantial harbor maintenance tax reform legislation in 2020, the implementation of which requires additional actions by congressional appropriators and the US Army Corps of Engineers;

NOW, THEREFORE, Your Memorialists respectfully pray that:

(1) Congress direct the use of country-of-origin rules to be applied to the harbor maintenance tax so that United States bound goods that currently still pay customs in the United States would also continue to pay the harbor maintenance tax in order to eliminate the current incentive that is leading to significant cargo diversion from United States ports to Canadian ports in violation of the spirit of the North American Free Trade Agreement.

(2) Congress appropriate the full amount of annual harbor maintenance tax revenues and unspent tax collections from the harbor maintenance trust fund consistent with the budget cap adjustments enacted in the CARES Act and the Water Resources Development Act of 2020.

(3) Congress direct the US Army Corps of Engineers to allocate the specified amounts for donor and energy transfer ports consistent with the Water Resources Development Act of 2020 and appropriate the amounts specified in section 101 of the Water Resources Development Act of 2020 to carry out subsection (c) of section 2106 of the Water Resources Reform and Development Act of 2014.

(4) The US Army Corps of Engineers allocate in its annual work plan 12 percent of annual harbor maintenance trust fund appropriations directly to eligible donor and energy transfer ports, as well as additional amounts to carry out subsection (c) of section 2106 of the Water Resources Reform and Development Act of 2014.

(5) The US Army Corps of Engineers shall collect appropriate data and reinstate publication of annual reports, which were terminated in FY 2006, on the status of the harbor maintenance trust fund. This report should also include an analysis of the impact of the harbor maintenance tax in disincentivizing shippers from using US ports and diverting freight to foreign ports, thereby avoiding the tax.

BE IT RESOLVED, That copies of this Memorial be immediately transmitted to the Honorable Joseph R. Biden, Jr., President of the United States, the President of the United States Senate, the Speaker of the House of Representatives, and each member of Congress from the State of Washington.