

SENATE BILL REPORT

SJM 8009

As Passed Senate, February 6, 2024

Brief Description: Concerning the federal harbor maintenance tax.

Sponsors: Senators Hasegawa, Wagoner, Dozier, Fortunato, Frame and Stanford.

Brief History:

Committee Activity: Business, Financial Services, Gaming & Trade: 1/09/24, 1/11/24 [DPS].

Floor Activity:

Brief Summary of Joint Memorial

- Requests that the federal government reform the Harbor Maintenance Tax.

SENATE COMMITTEE ON BUSINESS, FINANCIAL SERVICES, GAMING & TRADE

Majority Report: That Substitute Senate Joint Memorial No. 8009 be substituted therefor, and the substitute joint memorial do pass.

Signed by Senators Stanford, Chair; Frame, Vice Chair; Dozier, Ranking Member; Gildon, Hasegawa, Lovick, MacEwen and Mullet.

Staff: Clint McCarthy (786-7319)

Background: The Harbor Maintenance Tax (HMT) was created based on The Water Resource Act of 1986. The fee(s) is intended to require those who benefit from maintenance of U.S. ports and harbors to share the cost of the maintenance. The tax became effective on April 11, 1987, and has been assessed on port use associated with imports, exports, and movement of cargo and passengers between domestic ports.

On March 31, 1998, the Supreme Court declared that HMT collected on exports were

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unconstitutional and as a result the HMT is no longer collected on exports. The HMT is only collected on imports, domestic shipments, Foreign-Trade Zone admissions, and passengers. The tax is assessed based on the value of the shipment. The importers are required to pay .125 percent of the value of the commercial cargo shipped if the loading and unloading occurs at a port. HMT is not collected on cargo imported or transported via air. This fee may be avoided by importers seeking to bring products into the U.S. by redirecting container traffic through Canadian ports such as the Port of Vancouver or the Port of Prince Rupert and shipping the cargo by rail into the U.S.

Once the fee(s) is collected by U.S. Customs and Border Patrol, it is deposited into the Harbor Maintenance Fund, from which Congress may appropriate amounts to pay for harbor maintenance and development projects and related expenses. Over time, the value of imports has exceeded the appropriations of the funds, which created a surplus of over \$9 billion in unused funds. The CARES Act of 2020 increased funding and expanded the uses of funds for the HMT donor ports, like the ports in Seattle and Tacoma that have naturally deep channels that require little to no traditional maintenance and provided a path towards full spending of the prior year's HMF revenues.

Summary of Joint Memorial: Congress is requested to pass, and the President to sign, legislation reforming the HMT. The specific reforms include:

- Congress directs the use of country-of-origin rules be applied to the HMT to sea cargo coming into Canada bound for the U.S.
- the full amount of harbor maintenance tax revenues be appropriated with the budget cap adjustments enacted in the CARES Act of 2020;
- specified amounts be allocated for donor and energy transfer ports consistent with the Water Resources Development Act of 2020;
- the U.S. Army Corps of Engineers (USACOE) be directed to allocate its annual workplan 12 percent of annual appropriations to eligible donor and energy transfer ports; and
- the USACOE be directed to collect appropriate data and reinstate publication of annual reports that were terminated in FY 2006 on the status of the Trust Fund.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Joint Memorial: *The committee recommended a different version of the bill than what was heard.* PRO: The Army Corps of Engineers just announced that ports in the state will be receiving funds for dredging in 2024. Cargo coming through Canada or Mexico does not have to pay this tax. Half the

cargo freight would come back to the U.S. if there was equity between the tax structure of Canada and the United States. This was all created due to NAFTA- which was supposed to equalize trade between the countries, but did not accommodate the Harbor Maintenance Tax. Make the tax fair, and give us our fair share. By eliminating the annual report, there is no transparency. The challenge is that there is an appropriate implementation of the new authorization. This joint memorial addresses the collective needs of the state by asking for a full appropriation. We have made progress, and there continues to be a loophole that encourages freight to go through Canada. International Falls is the third largest port of entry for cargo and the reason for this is the loophole that allows for freight to continue to focus on the Canadian ports.

Persons Testifying: PRO: Senator Bob Hasegawa, Prime Sponsor; Chris Herman, Washington Public Ports Association; Sean Eagan, The Northwest Seaport Alliance.

Persons Signed In To Testify But Not Testifying: No one.