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Alliance of the Ports of Canada, the Caribbean, Latin America and the United States

KURT J. NAGLE
President

1010 Duke Street
Alexandria, VA 22314-3589
Tel: (703)-684-5700
Fax: (703)-684-6321
Home Page: www.aapa-ports.org

June 29, 2005

The Honorable J. Dennis Hastert
Speaker of the House
U.S. House of Representatives
Room H-232
Washington, DC 20515

The Honorable Tom Delay
Majority Leader
U.S. House of Representatives
Room H-107
Washington, DC 20515

The Honorable Roy Blunt
Majority Whip
U.S. House of Representatives
Room H-329
Washington, DC 20515

Dear Speaker Hastert, Majority Leader Delay, and Majority Whip Blunt:

I am writing to urge you to defer action on an amendment to the Water Resources Development Act of 2005 (WRDA '05), which would include port security and infrastructure development as eligible purposes for which fees could be assessed by non-Federal interests under Section 208 of WRDA '86 (§208). We understand this amendment is expected to be offered to the full House of Representatives tomorrow when it considers the Water Resources bill.

While the American Association of Port Authorities (AAPA) appreciates the intent of the amendment for seeking to provide additional financing tools to public port authorities for the burgeoning cost of port security and infrastructure development projects, we are gravely concerned that the amendment as drafted will have a number of significant unintended consequences that will actually constrain the ability of ports to finance such projects. Because of these concerns, the nation's public port authorities can not support adoption of this amendment at this time.

The following points highlight our substantive concerns:

AAPA has been advocating for several years that Congress replace §208 with a general provision recognizing a port authority's existing ability to levy fees. This long-standing ability to levy fees, which is rooted in common-law and other legal precedents, was seriously eroded by §208 because of the adoption of onerous limitations and requirements including:

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- §208(a)(3), which severely constrains the universe of vessels a fee may be levied upon;
 - §208(a)(4), which requires non-Federal interests to undertake a burdensome assessment of the need for, and application and effects of, such fees; and,
 - §208(a) (5) & (6), which proscribe strict procedural obligations on non-Federal sponsors for noticing the proposed fee and administering the collection and enforcement of the fee.
- Since its enactment in 1986, only one port has established a fee under §208 because of complications raised by these myriad limitations and requirements.
 - As drafted in the subject amendment, fees for both security and infrastructure projects are subject to the limitations and requirements contained in §208(a) (3), (4), (5), and (6).
 - Fees for security and infrastructure projects authorized under the subject amendment would be limited to only those projects built “in conjunction with a harbor navigation project whose construction is complete...” §208(a) (1). We believe this restriction alone will severely limit the ability of port authorities to assess fees for the intended purposes. Furthermore, this provision could be used to challenge a port authority that seeks to establish a security or infrastructure fee under its existing authority when the security or infrastructure project is not done in conjunction with a harbor improvement project.
 - The subject amendment also creates a serious limitation on the collection of fees for security projects compared to fees for infrastructure projects. Security measures included in §208(a) (1) (B) could be assessed only while a port authority was collecting a port or harbor fee established under §208(a) (2) (A) because of the limitation imposed by §208(a) (2), while infrastructure projects would not be so limited.

AAPA is a trade association representing 85 public seaport authorities in the U.S. AAPA members are routinely the non-Federal interest on cost-shared Federal harbor improvement projects undertaken by the U.S. Army Corps of Engineers. We appreciate the opportunity to share our concerns with you about the subject amendment to WRDA '05 and we hope that you will defer action on this amendment until further consideration of its implications on the public port industry can be determined.

Thank you for your consideration of this important matter. Please feel free to contact me if you have any questions.

Sincerely,



Kurt J. Nagle

KJN/dbs

The Honorable Dennis J. Hastert

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cc: The Honorable Don Young
Chairman, Transportation and
Infrastructure Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable James L. Oberstar
Ranking Member, Transportation
and Infrastructure Committee
U.S. House of Representatives
Washington, DC 20515