

TITLE 33 - NAVIGATION AND NAVIGABLE WATERS
CHAPTER 36 - WATER RESOURCES DEVELOPMENT
SUBCHAPTER II - HARBOR DEVELOPMENT

§ 2236. Port or harbor dues

(a) Consent of Congress

Subject to the following conditions, a non-Federal interest may levy port or harbor dues (in the form of tonnage duties or fees) on a vessel engaged in trade entering or departing from a harbor and on cargo loaded on or unloaded from that vessel under clauses 2 and 3 of section 10, and under clause 3 of section 8, of Article 1 of the Constitution:

(1) Purposes

Port or harbor dues may be levied only in conjunction with a harbor navigation project whose construction is complete (including a usable increment of the project) and for the following purposes and in amounts not to exceed those necessary to carry out those purposes:

- (A)**
 - (i)** to finance the non-Federal share of construction and operation and maintenance costs of a navigation project for a harbor under the requirements of section 2211 of this title; or
 - (ii)** to finance the cost of construction and operation and maintenance of a navigation project for a harbor under section 2232 or 2233 of this title; and
- (B)** provide emergency response services in the harbor, including contingency planning, necessary personnel training, and the procurement of equipment and facilities.

(2) Limitation on port or harbor dues for emergency service

Port or harbor dues may not be levied for the purposes described in paragraph (1)(B) of this subsection after the dues cease to be levied for the purposes described in paragraph (1)(A) of this subsection.

(3) General limitations

(A) Port or harbor dues may not be levied under this section in conjunction with a deepening feature of a navigation improvement project on any vessel if that vessel, based on its design draft, could have utilized the project at mean low water before construction. In the case of project features which solely—

- (i)** widen channels or harbors,
- (ii)** create or enlarge bend easings, turning basins or anchorage areas, or provide protected areas, or
- (iii)** remove obstructions to navigation,

only vessels at least comparable in size to those used to justify these features may be charged under this section.

(B) In developing port or harbor dues that may be charged under this section on vessels for project features constructed under this subchapter, the non-Federal interest may consider such criteria as: elapsed time of passage, safety of passage, vessel economy of scale, under keel clearance, vessel draft, vessel squat, vessel speed, sinkage, and trim.

(C) Port or harbor dues authorized by this section shall not be imposed on—

- (i)** vessels owned and operated by the United States Government, a foreign country, a State, or a political subdivision of a country or State, unless engaged in commercial services;
- (ii)** towing vessels, vessels engaged in dredging activities, or vessels engaged in intraport movements; or
- (iii)** vessels with design drafts of 20 feet or less when utilizing general cargo and deep-draft navigation projects.

(4) Formulation of port or harbor dues

Port or harbor dues may be levied only on a vessel entering or departing from a harbor and its cargo on a fair and equitable basis. In formulating port and harbor dues, the non-Federal interest shall consider—

- (A) the direct and indirect cost of construction, operations, and maintenance, and providing the facilities and services under paragraph (1) of this subsection;
- (B) the value of those facilities and services to the vessel and cargo;
- (C) the public policy or interest served; and
- (D) any other pertinent factors.

(5) Notice and hearing

(A) Before the initial levy of or subsequent modification to port or harbor dues under this section, a non-Federal interest shall transmit to the Secretary—

- (i) the text of the proposed law, regulation, or ordinance that would establish the port or harbor dues, including provisions for their administration, collection, and enforcement;
- (ii) the name, address, and telephone number of an official to whom comments on and requests for further information on the proposal are to be directed;
- (iii) the date by which comments on the proposal are due and a date for a public hearing on the proposal at which any interested party may present a statement; however, the non-Federal interest may not set a hearing date earlier than 45 days after the date of publication of the notice in the Federal Register required by subparagraph (B) of this paragraph or set a deadline for receipt of comments earlier than 60 days after the date of publication; and
- (iv) a written statement signed by an appropriate official that the non-Federal interest agrees to be governed by the provisions of this section.

(B) On receiving from a non-Federal interest the information required by subparagraph (A) of this paragraph, the Secretary shall transmit the material required by clauses (i) through (iii) of subparagraph (A) of this paragraph to the Federal Register for publication.

(C) Port or harbor dues may be imposed by a non-Federal interest only after meeting the conditions of this paragraph.

(6) Requirements on non-Federal interest

A non-Federal interest shall—

- (A) file a schedule of any port or harbor dues levied under this subsection with the Secretary and the Federal Maritime Commission, which the Commission shall make available for public inspection;
- (B) provide to the Comptroller General of the United States on request of the Comptroller General any records or other evidence that the Comptroller General considers to be necessary and appropriate to enable the Comptroller General to carry out the audit required under subsection (b)¹ of this section;
- (C) designate an officer or authorized representative, including the Secretary of the Treasury acting on a cost-reimbursable basis, to receive tonnage certificates and cargo manifests from vessels which may be subject to the levy of port or harbor dues, export declarations from shippers, consignors, and terminal operators, and such other documents as the non-Federal interest may by law, regulation, or ordinance require for the imposition, computation, and collection of port or harbor dues; and
- (D) consent expressly to the exclusive exercise of Federal jurisdiction under subsection (c)¹ of this section.

(b) Jurisdiction

(1) The district court of the United States for the district in which is located a non-Federal interest that levies port or harbor dues under this section has original and exclusive jurisdiction over any matter arising out of or concerning, the imposition, computation, collection, and enforcement of port or harbor dues by a non-Federal interest under this section.

(2) Any person who suffers legal wrong or is adversely affected or aggrieved by the imposition by a non-Federal interest of a proposed scheme or schedule of port or harbor dues under this section may, not later than 180 days after the date of hearing under subsection (a)(5)(A)(iii) of this section, commence an action to seek judicial review of that proposed scheme or schedule in the appropriate district court under paragraph (1).

(3) On petition of the Attorney General or any other party, that district court may—

(A) grant appropriate injunctive relief to restrain an action by that non-Federal interest violating the conditions of consent in subsection (a) of this section;

(B) order the refund of any port or harbor dues not lawfully collected; and

(C) grant other appropriate relief or remedy.

(c) Collection of duties

(1) ² Delivery of certificate and manifest

(A) Upon arrival of vessel

Upon the arrival of a vessel in a harbor in which the vessel may be subject to the levy of port or harbor dues under this section, the master of that vessel shall, within forty-eight hours after arrival and before any cargo is unloaded from that vessel, deliver to the appropriate authorized representative appointed under subsection (a)(6)(C) of this section a tonnage certificate for the vessel and a manifest of the cargo aboard that vessel or, if the vessel is in ballast, a declaration to that effect.

(B) Before departure of vessel

The shipper, consignor, or terminal operator having custody of any cargo to be loaded on board a vessel while the vessel is in a harbor in which the vessel may be subject to the levy of port or harbor dues under this section shall, within forty-eight hours before departure of that vessel, deliver to the appropriate authorized representative appointed under subsection (a)(6)(C) of this section an export declaration specifying the cargo to be loaded on board that vessel.

(d) Enforcement

At the request of an authorized representative referred to in subsection (a)(6)(C) of this section, the Secretary of the Treasury may:

(1) withhold the clearance required by section 60105 of title 46 for a vessel if the master, owner, or operator of a vessel subject to port or harbor dues under this section fails to comply with the provisions of this section including any non-Federal law, regulation or ordinance issued hereunder; and

(2) assess a penalty or initiate a forfeiture of the cargo in the same manner and under the same procedures as are applicable for failure to pay customs duties under the Tariff Act of 1930 (19 U.S.C. 1202 et seq.) if the shipper, consignor, consignee, or terminal operator having title to or custody of cargo subject to port or harbor dues under this section fails to comply with the provisions of this section including any non-Federal law, regulation, or ordinance issued hereunder.

(e) Maritime Lien

Port or harbor dues levied under this section against a vessel constitute a maritime lien against the vessel and port or harbor dues levied against cargo constitute a lien against the cargo that may be recovered in an action in the district court of the United States for the district in which the vessel or cargo is found.

Footnotes

¹ See References in Text note below.

² So in original. No par. (2) has been enacted.

(Pub. L. 99–662, title II, § 208, Nov. 17, 1986, 100 Stat. 4102; Pub. L. 104–66, title I, § 1021(g), Dec. 21, 1995, 109 Stat. 713.)

References in Text

Subsection (b) of this section, referred to in subsec. (a)(6)(B), which related to audits, was struck out by Pub. L. 104–66 and subsec. (c) was redesignated as subsec. (b).

Subsection (c) of this section, referred to in subsec. (a)(6)(D), which related to jurisdiction, was redesignated as subsec. (b) by Pub. L. 104–66.

The Tariff Act of 1930, referred to in subsec. (d)(2), is act June 17, 1930, ch. 497, 46 Stat. 590, as amended, which is classified generally to chapter 4 (§ 1202 et seq.) of Title 19, Customs Duties. For complete classification of this Act to the Code, see section 1654 of Title 19 and Tables.

Codification

In subsec. (d)(1), “section 60105 of title 46” substituted for “section 4197 of the Revised Statutes of the United States (46 App. U.S.C. 91)” on authority of Pub. L. 109–304, § 18(c), Oct. 6, 2006, 120 Stat. 1709, which Act enacted section 60105 of Title 46, Shipping.

Amendments

1995—Subsecs. (b) to (f). Pub. L. 104–66 redesignated subsecs. (c) to (f) as (b) to (e), respectively, and struck out heading and text of former subsec. (b). Text read as follows: “The Comptroller General of the United States shall—

“(1) carry out periodic audits of the operations of non-Federal interests that elect to levy port or harbor dues under this section to determine if the conditions of subsection (a) of this section are being complied with;

“(2) submit to each House of the Congress a written report containing the findings resulting from each audit; and

“(3) make any recommendations that the Comptroller General considers appropriate regarding the compliance of those non-Federal interests with the requirements of this section.”