



THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

June 8, 2005

The Honorable Richard B. Cheney
President of the Senate
Washington, DC 20510

Dear Mr. President:

There is transmitted herewith a proposed bill entitled

“The St. Lawrence Seaway Development Corporation Enhancement Act.”

The proposed legislation implements the President's Budget for Fiscal Year (FY) 2006 by reinstating commercial tolls on the United States' portion of the Saint Lawrence Seaway. The proposal will return the St. Lawrence Seaway Development Corporation (SLSDC) to its pre-1986 self-financing status. The SLSDC would no longer be an appropriated agency, although the Office of Management and Budget (OMB) would continue to apportion its funding from amounts credited from receipt of tolls, and such funding would be available to pay any expense or obligation of SLSDC. Amounts not needed for current operations would be deposited into the St. Lawrence Seaway Development Corporation Fund. Consistent with returning the Seaway to its pre-1986 status, imports transiting the Seaway would be exempt from payment of the Harbor Maintenance Tax. Exports would not be subject to the tax since it was declared unconstitutional.

The budget proposed by the White House for FY 2006 calls for the new toll system to raise \$8 million in 2006, or one-half of the budget for the SLSDC. Beginning in FY 2007, SLSDC's entire \$16-million budget will be by a combination of tolls, pleasure-craft user fees, and other revenue from property-leasing. It would realign SLSDC financing with the Corporation's initial intent, making it a more parallel organization with its Canadian counterpart, which is an almost completely self-sufficient entity.

Title I contains amendments to the St. Lawrence Seaway Corporation Development Act pertaining to the collection of tolls. It repeals a section that was inserted into the SLSDC Act in 1986 after the Water Resources Development Act of 1986 established the Harbor Maintenance Trust Fund and the collection of the Harbor Maintenance Tax, which waived the collection of tolls. Once that section is repealed, the Act will again govern the procedure for establishing tolls. While it directs SLSDC to negotiate the level of tolls with Canada, it allows SLSDC to unilaterally establish rules of measurement and rates of tolls in the event that such negotiations do not result in agreement. The requirement that the parties negotiate the level of tolls was established by a 1959 exchange of diplomatic notes between the United States and Canada (10 U.S.T. 323).



THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

June 8, 2005

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

There is transmitted herewith a proposed bill entitled

“The St. Lawrence Seaway Development Corporation Enhancement Act.”

The proposed legislation implements the President's Budget for Fiscal Year (FY) 2006 by reinstating commercial tolls on the United States' portion of the Saint Lawrence Seaway. The proposal will return the St. Lawrence Seaway Development Corporation (SLSDC) to its pre-1986 self-financing status. The SLSDC would no longer be an appropriated agency, although the Office of Management and Budget (OMB) would continue to apportion its funding from amounts credited from receipt of tolls, and such funding would be available to pay any expense or obligation of SLSDC. Amounts not needed for current operations would be deposited into the St. Lawrence Seaway Development Corporation Fund. Consistent with returning the Seaway to its pre-1986 status, imports transiting the Seaway would be exempt from payment of the Harbor Maintenance Tax. Exports would not be subject to the tax since it was declared unconstitutional.

The budget proposed by the White House for FY 2006 calls for the new toll system to raise \$8 million in 2006, or one-half of the budget for the SLSDC. Beginning in FY 2007, SLSDC's entire \$16-million budget will be by a combination of tolls, pleasure-craft user fees, and other revenue from property-leasing. It would realign SLSDC financing with the Corporation's initial intent, making it a more parallel organization with its Canadian counterpart, which is an almost completely self-sufficient entity.

Title I contains amendments to the St. Lawrence Seaway Corporation Development Act pertaining to the collection of tolls. It repeals a section that was inserted into the SLSDC Act in 1986 after the Water Resources Development Act of 1986 established the Harbor Maintenance Trust Fund and the collection of the Harbor Maintenance Tax, which waived the collection of tolls. Once that section is repealed, the Act will again govern the procedure for establishing tolls. While it directs SLSDC to negotiate the level of tolls with Canada, it allows SLSDC to unilaterally establish rules of measurement and rates of tolls in the event that such negotiations do not result in agreement. The requirement that the parties negotiate the level of tolls was established by a 1959 exchange of diplomatic notes between the United States and Canada (10 U.S.T. 323).

A reference to the Saint Lawrence Seaway Authority of Canada (SLSA) as the agency designated by the government of Canada to negotiate tolls has been removed. Instead, the statute will direct SLSDC to negotiate with such agency as may be designated by Canada. This change is necessary because the SLSA was sunset in 1998 by the government of Canada and its successor, the St. Lawrence Seaway Management Corporation, is a commercial entity that no longer has the authority to negotiate tolls on behalf of Canada.

Amendatory language would continue to authorize Congress to transfer funds to SLSDC out of the Harbor Maintenance Trust Fund if toll revenues are insufficient to cover SLSDC's operations and maintenance costs. This is necessary for FY 2006 because the President's budget assumes that tolls will only provide approximately one half of the \$16 million SLSDC budget for FY 2006. While the purpose of reinstating tolls is to allow SLSDC to become financially self-sufficient, this language authorizes Congress to appropriate funds out of the Harbor Maintenance Trust Fund if, in the future, SLSDC's financial resources are insufficient to cover items such as extraordinary maintenance and other unforeseen expenses.

The draft bill amends the Internal Revenue Code of 1986 by adding language that stipulates an exemption from imposition of the Harbor Maintenance Tax for cargo transiting the U.S. locks of the St. Lawrence Seaway. This is to avoid the "double taxation" of such cargo. Another amendment to the Code reflects that the Harbor Maintenance Trust Fund will no longer be used to receive toll revenue or to rebate tolls.

Title II contains amendments clarifying SLSDC's corporate powers. It adds a new section to the Seaway Act, which establishes the St. Lawrence Seaway Development Corporation Fund as a revolving fund in the Treasury. For many years, SLSDC has had an unobligated balance or reserve that has been recognized by Congress through the appropriations process, but has never been established by statute. This reserve, in addition to the Corporation's unused borrowing authority, has been available for unforeseen expenses and extraordinary maintenance. The new fund will combine into one account all amounts received from toll revenues, amounts appropriated from the Harbor Maintenance Trust Fund, interest earned on investments of the fund, and any other receipts of the Corporation. The bill allows SLSDC to use the money in the fund for such contracts and commitments without regard to fiscal year limitations that the Administrator deems necessary or advisable. In addition, all funds not needed for current operations may be invested either in Treasury securities, or in bank deposits if approved by the Secretary of the Treasury. Another amendment enumerates the authority of SLSDC to engage in real property transactions, by removing the language "for the conduct of its business." This change will enhance the ability of the Corporation to maximize its returns from non-Federal revenue. Title II also contains an amendment to explicitly allow the SLSDC to provide services both to other government agencies and to

Page 3

The Honorable Richard B. Cheney

the private sector in order to generate non-toll revenue. For purposes of OMB Circular A-76, this section would authorize SLSDC to act as a contractor or subcontractor to the private sector in order to generate revenue. Finally, Title II references the approximately \$3.2 million in remaining borrowing authority to be used for capital expenditures.

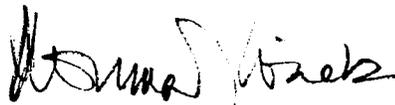
Title III contains a technical amendment to the SLSDC Act to change "Saint" to "St." when referring to the Corporation. The original reference to the Corporation was misspelled as "Saint," and has led to general confusion over the years.

This draft legislation would implement a mandatory savings proposal in the President's FY 2006 Budget. The Administration looks forward to working with the Congress to enact reconciliation legislation this year that contains the savings called for by the congressional budget resolution for FY 2006.

The Office of Management and Budget advises that there is no objection to the presentation of this proposed legislation to Congress, and that its enactment would be in accord with the program of the President.

An identical letter has been sent to the Speaker of the House of Representatives.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Norman Y. Mineta". The signature is written in a cursive style with a large, sweeping flourish at the end.

Norman Y. Mineta

Enclosures

A BILL

To amend the Act of May 13, 1954, P.L. 358 (33 U.S.C. 981, et seq.), as amended, to improve the operations, maintenance, and safety of the St. Lawrence Seaway, within the territorial limits of the United States, by reinstating commercial tolls collected by the Saint Lawrence Seaway Development Corporation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled

SHORT TITLE

SECTION 1. SHORT TITLE.

This Act may be cited as the "St. Lawrence Seaway Development Corporation Enhancement Act."

TITLE I--COLLECTION OF TOLLS

SEC. 101. ESTABLISHMENT OF TOLLS.

Section 12 of the Act of May 13, 1954 (33 U.S.C. 988) is amended--

(1) in subsection (a)--

(A) by inserting ", subject to the direction of the President," after "negotiate";

(B) by striking "the Saint Lawrence Seaway Authority of Canada, or such other agency" and inserting in lieu thereof "such agency";

(C) by striking "between the Corporation and the Saint Lawrence Seaway Authority of Canada" and inserting in lieu thereof "between the Corporation and the St. Lawrence Seaway Management Corporation"; and

(D) by striking "by the President" both places it appears and inserting in lieu thereof "by the Secretary of Transportation";

(2) in subsection (b)--

(A) by inserting "the Corporation, unless otherwise directed by the President, shall" after "negotiations"; and

(B) by inserting a comma after "Corporation shall"; and

(3) by adding at the end thereof the following new subsection:

"(c) In the event that revenue obtained by the Corporation under the rates established under subsections (a) and (b) is not sufficient to cover all costs of operating and maintaining the works under the administration of the Corporation, including

depreciation and payments in lieu of taxes, there may, to the extent provided in an appropriation act, be transferred to the Corporation from the Fund established pursuant to section 9505 of the Internal Revenue Code of 1986, such additional amounts as may be necessary to ensure that all such costs are covered."

SEC. 102. REPEAL OF TOLL COLLECTION WAIVER.

Section 13 of the Act of May 13, 1954, (33 U.S.C. 988a) is repealed.

SEC. 103. FUNDING.

Section 210(a)(1) of the Water Resources Development Act of 1986 (33 U.S.C. 2238(a)) is amended to read as follows:

"(1) Up to 100 percent of the eligible operations and maintenance costs of those portions of the St. Lawrence Seaway operated and maintained by the St. Lawrence Seaway Development Corporation for such fiscal year; and"

SEC. 104. ELIMINATION OF DOUBLE TAXATION.

Section 4462 of the Internal Revenue Code of 1986 is amended by redesignating subsection (i) as subsection (j), and inserting after subsection (h) the following new subsection:

"(i) Exemption for cargo transiting the U.S. locks of the St. Lawrence Seaway-- No tax under this subchapter shall be imposed on cargo that transits the U.S. locks of the St. Lawrence Seaway."

SEC. 105. HARBOR MAINTENANCE TRUST FUND.

(a) Section 9505(a) of the Internal Revenue Code of 1986 is amended by--

- (1) inserting "and" after the comma at the end of paragraph (1);
- (2) striking paragraph (2); and
- (3) redesignating paragraph (3) as paragraph (2).

(b) Section 9505(c) of the Internal Revenue Code of 1986 is amended by--

- (1) inserting "and" after the comma at the end of paragraph (1);
- (2) striking paragraph (2); and
- (3) redesignating paragraph (3) as paragraph (2).

TITLE II--CORPORATE POWERS

SEC. 201. CORPORATE POWERS.

Section 4 of the Act of May 13, 1954 (33 U.S.C. 984) is amended--

(1) in subsection (a)--

(A) by striking "for the conduct of its business" in paragraph (8);

(B) by striking the period at the end of paragraph (10) and inserting a semicolon in lieu thereof;

(C) by striking "may provide services and facilities necessary in the maintenance and operation of the seaway" in paragraph (11) and inserting in lieu thereof "may generate revenue by providing services and facilities to other government agencies and the private sector";

(D) by striking the first paragraph numbered (13) and inserting in lieu thereof--

"(13) shall be credited with amounts received from any of the activities authorized by paragraphs (5), (8), (10), and (11) of this subsection;" and

(E) by redesignating the second paragraph numbered (13) as paragraph (14); and

(2) by striking subsection (b) and inserting in lieu thereof--

"(b) Amounts credited under subsection (a)(13) of this section are available to pay any obligation or expense of the Corporation, except as specifically provided in subsection (a)(12) of this section."

SEC. 202. ST. LAWRENCE SEAWAY DEVELOPMENT CORPORATION FUND.

The Act of May 13, 1954 (33 U.S.C. 981 et. seq.) is amended by redesignating sections 5 through 12 as sections 6 through 13, respectively, and by inserting after section (4) the following:

"SEC. 5. (a) There is established in the Treasury of the United States a revolving fund to be called the St. Lawrence Seaway Development Corporation Fund, which shall be available to the St. Lawrence Seaway Development Corporation without fiscal-year limitation to carry out the purposes, functions, and powers authorized by this title.

"(b) There shall be deposited in the Fund--

"(1) amounts received from toll revenues;

"(2) amounts appropriated from the Harbor Maintenance Trust Fund, established pursuant to section 9505 of the Internal Revenue Code of 1986;

“(3) interest which may be earned on investments of the Fund;

“(4) any other receipts of the St. Lawrence Seaway Development Corporation;

“(c) The Administrator of the SLSDC may request the Secretary of the Treasury to invest such portion of the Fund as is not, in the judgment of the Administrator, required to meet the current needs of the fund. Such investments shall be made by the Secretary of the Treasury in public debt securities of the United States, with maturities suitable to the needs of the Fund, as determined by the Administrator, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

“(d) The Secretary of the Treasury shall keep the accounts of the St. Lawrence Seaway Development Corporation. If the Secretary approves, a Federal reserve bank or a bank designated as a depository or fiscal agent of the United States Government may keep the accounts.”.

SEC. 203. BORROWING AUTHORITY.

Section 5 of the Act of May 13, 1954 (33 U.S.C. 981 et. seq.) is amended by striking subsections (a) and (b) and inserting in lieu thereof the following:

“(a) The Administrator is authorized, to the extent that amounts in the Fund are insufficient (except for a reasonable reserve as determined by the Secretary of the Treasury) to meet obligations of the Fund, to issue obligations to the Secretary of the Treasury in such amounts as in the judgment of the Secretary are from time to time required to finance construction, acquisition, and renovation expenditures. The Secretary of the Treasury may, at the Secretary’s discretion, purchase or agree to purchase any such obligations, provided that the Secretary first determines that there is a reasonable assurance of repayment of such obligations in full and with interest and in a timely fashion. Such obligations shall be in such forms and denominations, bear such maturities, and shall be subject to such terms and conditions as may be prescribed by the Secretary of the Treasury, provided that the aggregate amount of any such obligations outstanding at any one time shall not exceed \$3.2 million. Such obligations shall bear interest at a rate determined by the Secretary of the Treasury taking into consideration the

organizational structure and attributes of the Corporation, the credit risk of the Corporation, as determined by the Secretary of the Treasury, and the maturities of the obligations, plus a surcharge, determined by the Secretary of the Treasury, to be sufficient to cover Treasury's administrative costs associated with the obligations. Any such surcharges for administrative costs collected by the Secretary of the Treasury shall be credited to the appropriation account which incurred the cost."

SEC 204. AMENDMENT PERMITTING PAYMENT OF INTEREST ON NEW DEBT.

Section 311 of the Act of December 18, 1982, Pub. L. 97-369 (33 U.S.C. 986a) is amended by inserting "on or before December 18, 1982" after "issued".

TITLE III-- OTHER PROVISIONS

SEC 301. REPLACING SAINT WITH ST.

Section 1 of the Act of May 13, 1954 (33 U.S.C. 981) is amended by striking "Saint" and inserting "St."

Section by Section Analysis

Section 1. Short Title.

Section 1 sets forth the short title of the bill – “The St. Lawrence Seaway Development Corporation Enhancement Act.” The Act would reinstitute the tolls on commercial vessels transiting the U.S. portion of the Seaway. The Act would return the Saint Lawrence Seaway Development Corporation (SLSDC) to its pre-1986 self-financing status. The Act would allow the SLSDC greater flexibility to invest and to expend the funds. The Act would also codify the SLSDC’s Capital Reserve; a reserve that heretofore had been recognized only through annual congressional appropriations language.

Title I – Collection of Tolls

Section 101. Establishment of Tolls.

Section 12 of the SLSDC Act (33 U.S.C. 988) is amended to govern the procedure for establishing tolls. Section 13, which waived the collection of tolls, is repealed in section 102 of this Act. While this section directs SLSDC to negotiate the level of tolls with Canada, it allows SLSDC to unilaterally establish rules of measurement and rates of tolls in the event that such negotiations do not result in agreement, subject to approval by the Secretary of Transportation. The requirement that the parties negotiate the level of tolls was established by a 1959 exchange of diplomatic notes between the United States and Canada (10 U.S.T. 323).

Subsection (1) amends section 12 of the SLSDC Act (33 U.S.C. 988) by removing the reference to the Saint Lawrence Seaway Authority of Canada (SLSA) as the agency designated by the government of Canada to negotiate tolls. Instead, the statute will direct SLSDC to negotiate, subject to the direction of the President, with such agency as may be designated by Canada. This change is necessary because the SLSA was sunset in 1998 by the Government of Canada and its successor, the St. Lawrence Seaway Management Corporation (SLSMC), is a commercial entity that no longer has the authority to negotiate tolls on behalf of Canada. In addition, subsection (1) adds language to clarify that all negotiations are subject to direction by the President, as Congress does not have the constitutional authority to direct by statute the conduct of negotiations with a foreign country or its agencies.

Subsection (2) replaces the SLSA with SLSMC in the reference to the equitable division of tolls between the U.S. and Canadian Seaway entities. This subsection also replaces references to “the President” with the “Secretary of Transportation” as the approving official to avoid judicial review of presidential decision-making.

Subsection 3 amends section 12 of the SLSDC Act by adding language to subsection (b) that would continue to authorize Congress to transfer funds to the SLSDC

out of the Harbor Maintenance Trust Fund if toll revenues are insufficient to cover the SLSDC's operations and maintenance costs. This is necessary for FY 06 because the President's FY06 budget assumes that tolls will only provide approximately one half of the \$16 million SLSDC budget. While the purpose of reinstating tolls is to allow the SLSDC to become financially self-sufficient, this language authorizes Congress to appropriate funds out of the Harbor Maintenance Trust Fund if, in the future, the SLSDC's financial resources are insufficient to cover items such as extraordinary maintenance and other unforeseen expenses.

Section 102. Repeal of the Toll Collection Waiver.

Section 102 repeals section 13, 33 U.S.C. 988a, of the SLSDC Act. This section was inserted into the SLSDC Act in 1986 after the Water Resources Development Act of 1986 established the Harbor Maintenance Trust Fund and the collection of the Harbor Maintenance Tax. The section waived the collection of tolls.

Section 103. Funding.

Section 103 amends section 210(a) of the Water Resources Development Act of 1986, 33 U.S.C. 2238(a), to clarify that the Harbor Maintenance Trust Fund is no longer required to provide 100 percent of the operating and maintenance expenses of the SLSDC, although the statute authorizes Congress to continue to appropriate funds up to 100% of the SLSDC budget if tolls and other revenues are inadequate to operate and maintain the U.S. portion of the Seaway.

Section 104. Elimination of Double Taxation.

Section 104 amends the Internal Revenue Code of 1986 by adding language that stipulates an exemption from imposition of the Harbor Maintenance Tax for cargo transiting the U.S. locks of the St. Lawrence Seaway. This is to avoid the "double taxation" of such cargo.

Section 105. Harbor Maintenance Trust Fund.

Section 105 amends section 9505 of the Internal Revenue Code of 1986 to reflect that the Harbor Maintenance Trust Fund will no longer be used to receive toll revenue or to rebate tolls.

Title II - Corporate Powers

Section 201. Corporate Powers.

Section 201 amends section 4 of the SLSDC Act (33 U.S.C. 984) to clarify the scope of SLSDC's corporate powers. Amends section 4(a)(8), which enumerates the authority of the SLSDC to engage in real property transactions, by removing the

limitation “for the conduct of its business”. This change will enhance the ability of the corporation to maximize its returns from non-Federal revenue.

It amends section 4(a)(11) of the SLSDC Act to allow explicitly the SLSDC to provide services both to other government agencies and to the private sector in order to generate non-toll revenue. For purposes of OMB circular A-76, this section would authorize SLSDC to act as a contractor or subcontractor to the private sector in order to generate revenue.

It amends section 4(a) of the SLSDC Act to clarify that if any activities and transactions of the SLSDC generate revenue, the SLSDC will be credited with such revenue.

Also, it amends section 4(b) of the SLSDC Act (33 U.S.C. 984) to clarify that amounts credited under subsection (a)(13) are available to pay any obligation or expense of the Seaway, and that any excess funds will be deposited into the SLSDC Capital Reserve, which is recognized by Section 203 of this Act.

Section 202. St. Lawrence Seaway Development Corporation Fund.

This section adds a new section 5 to the SLSDC Act . Section 5(a) establishes the St. Lawrence Seaway Fund as a revolving fund in the Treasury. The SLSDC may use the money in the fund without fiscal year limitation for all the purposes, functions and powers authorized by Title II of the Seaway Act, as amended. This is consistent with SLSDC’s status as a government corporation.

Subsection (b) specifies that all of the amounts received by the Corporation will be deposited in the fund, including toll revenue, amounts received from the Harbor Maintenance Trust Fund, interest earned on the investment of the fund, and any other receipts of the Corporation.

Subsection (c) amends the SLSDCSLSDC Act to allow funds not required for current operations to be invested in Treasury securities. This is to allow the Corporation the flexibility needed to maximize its return on its financial reserves.

Subsection (d) is added to ensure that aside from investing reserves in Treasury securities, the Corporation has the authority to invest in bank deposits outside of the Treasury if approved by the Secretary of the Treasury. SLSDC currently has the approval of the Secretary of the Treasury to hold deposits in banks pursuant to the Minority Bank Deposit Program, and has invested amounts not needed for current operations in various minority banks.

Section 203. Borrowing Authority.

Section 203 references the approximately \$3.2 million in remaining borrowing authority that is available for capital expenditures.

The Corporation maintains a minimum of \$10 million as a reasonable reserve. The reserve account ensures its ability to immediately react to an infrastructure failure or emergency. Estimates by the U.S. Army Corps of Engineers and other infrastructure consultants of a double lock gate failure and replacement to maintain operations range up to \$12 million depending upon the cause and extent of damage, repair, or replacement. To that end, the SLSDC has maintained a performance goal of maintaining a year-end minimum balance of \$10 million. This \$10 million goal has been included in performance and accountability contracts between the SLSDC Administrator and the Transportation Secretary since FY 1999.

Subsection (b) repeals an amendment to the Act that provided that debt issued by the SLSDC would be interest free. That provision was added to the Act in order to relieve SLSDC from the obligation to repay the interest on the original construction bonds. That debt was forgiven in 1982, so this section is no longer needed. All new debt of the Corporation will accrue interest based on a rate and maturity determined by the Secretary of the Treasury.

Section 204. Amendment Permitting Payment of Interest on New Debt

Section 204 add the words “on or before December 18, 1982” to 33 U.S.C. section 986a, which forgives the outstanding debt of the Corporation. The amendment is necessary to allow the Corporation to issue new debt without such bonds being automatically forgiven at issuance.

Title III - Other Provisions

Section 301. Replacing Saint with St.

Section 301 amends Section 1 of the SLSDC Act, (33 U.S.C. 981) by changing “Saint” to “St.” when referring to the Corporation. The original reference to the Corporation was misspelled as “Saint,” and has led to general confusion over the years.