

Testimony of

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Wepfer Marine, Inc.

on behalf of
Wepfer Marine, Inc. and
The American Waterways Operators

Tennessee Senate Bill 2076
Tennessee House Bill 1769

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Good morning [or afternoon] Chairman Sargent and Committee Members. I am George Leavell, one of the owners and Executive Vice President of Wepfer Marine, Inc., headquartered in Memphis. Wepfer Marine has been a family-owned business for over 40 years. We provide harbor and fleeting services in Memphis, along with similar services in Arkansas, Kentucky, Mississippi, and Missouri. Our Memphis location provides a shipyard with five drydocks that service the towing industry. We are also a primary contractor for the U.S. Coast Guard's buoy tenders. Wepfer employs approximately 125 people in Memphis and 225 people company-wide. We service a wide range of shippers in McKellar Lake, including TVA's Allen Steam Plant, Valero (Tennessee's only oil refinery),

multiple grain elevators, chemical companies, and rock companies. Every day, we move key commodities in and out of the state that are critical to the Tennessee economy and the general welfare of its citizens. [Something here about "job creator."]

I am here today on behalf of the Wepfer Marine and American Waterways Operators, the national trade association for the tugboat, towboat, and barge industry. AWO's 350 members include five companies headquartered in Tennessee and over 100 companies that do business throughout Tennessee's waterways system.

I am here today to express the industry's serious concerns about SB 2076 and HB1769. We are not here because we are opposed to paying taxes. Let me repeat that, we are not here because we are opposed to paying taxes. This bill is at its best confusing and its current format is unduly burdensome, unfair, and untimely. Simply put, we are concerned how this tax will be implemented and how the amounts due under this tax will be calculated. The industry is pleased to have an opportunity to highlight several of our concerns today.

Allow me to begin by expressing our most basic concerns.

We are not here to complain about paying taxes. This bill will have an unhealthy impact on the state of Tennessee

and one of its critical modes of transportation serving the state because the application of a usage tax on our industry will be confusing and unduly burdensome to implement for the Department of Revenue and the towing industry. For the reasons that will be discussed, we are convinced this Committee will ultimately decide that this bill is premature and needs more work before passed into state law.

Changing the taxing mechanism of the towing industry is quite simply not ripe for consideration, and we ask that the towing industry be removed from this bill.

Mr. Chairman, the towing industry has been paying its fair share in fuel sales tax for many years, and we will without any hesitation continue to pay our fair share under the

existing the 7-percent fuel sales tax. This tax works because it is a point-of-service sales tax by which marine companies know the exact amount of fuel purchased and the exact amount of sales tax assessed for each purchase. The fuel sales tax is easy for the industry to calculate and for the state to audit.

However, we are frustrated that we are becoming part of a legislative fix for a problem that doesn't even involve the towing industry. It is fundamentally unfair that a bill which is designed to rectify a situation that involves a court ruling that prevents the state from collecting a 7-percent fuel sales tax from Class I railroads will result in the towing industry paying a usage tax that will be virtually impossible to

calculate, assess, or audit. The bill as amended will put the industry in a position to pay the fuel use tax retroactively which will preclude the towing industry from passing on the cost associated with the tax to their customers as mandated by their contracts. If passed, this bill will negatively impact cash flow, have a chilling effect on hiring new employees, and will deter investment in new capital expenditures. We will likely spend as much money calculation, the new tax as we will spend on the tax itself. We understand that the Tennessee House and Senate must find a solution, but it should not be solved prematurely or by unfairly taxing the most cost-effective and environmentally-friendly mode of transportation, which is

critical for creating jobs and moving the state's economy forward.

We are also concerned that the bill as currently drafted will create a situation where towing companies paying the usage tax and the Department of Revenue will face substantial confusion and undue administrative burden.

Much of this confusion will center on fuel usage and consumption where a vessel leaves an exempt waterway and enters a Tennessee waterway. As currently defined creates problems for this tax, unlike the sales tax because the boundaries are not clearly delineated for the Mississippi or Tennessee rivers. As currently written it

would be extremely difficult to calculate the tax when towing vessels enter and exit state waterways multiple times a day. Specifically, McKellar Lake where Wepfer operates would have multiple companies and towboats moving in and out of the lake every day for extremely short voyages. Checking levels fuel at the mouth of McKellar Lake for each voyage would present significant safety issues, increase congestion, create costly delays, and negatively impact service to local docks and industries dependent on the waterways. Checking fuel on a towboat is not as simple as checking fuel in your car.

More problematic and more confusing is the issue of how the industry and the state account for different fuel usage

based on marine equipment engaged in substantially different uses. Marine vessels are not equipped with uniform engine horsepower and all operate under different operating capacity based on a variety of variables including types of voyage, geographic area of operations, river currents, age of equipment, and weather conditions. There are also significant differences between fleeting and line haul operations.

There is further confusion whether the tax would apply for certain voyages even while transiting the waterways within the state based on the definitions contained in the bill.

Calculations utilized by towing vessels, especially for short voyages transiting in and out of state waters is

extremely difficult and an inexact science at best. At the end of the day, a one-size, fits all calculations and regulatory approach will not work when applying a fuel use tax to towing vessels.

In closing, Mr. Chairman, the industry is already paying its fair share in fuel sales tax and is more than willing to continue to pay the 7-percent sales tax. It is unfair that we are being included in a legislative fix for a problem that doesn't even involve the towing industry. The proposed 17-cent usage tax will result in contested audits and protracted litigation. Let me be clear, we do not want to be at odds with our regulators or the state on an ongoing basis. We respectfully request that the committee amend this bill

and remove the towing industry from its provisions or delay passage until the marine industry is able to work with the Department of Revenue to develop a framework that is clear, fair, and administratively practical for both the state and the towing industry. This will not be a quick fix and will require thoughtful analysis by the state and the towing industry.

I'd be happy to elaborate on some of the specific issues facing McKellar Lake and the Mississippi River. Glenn Hendon of Hunter Marine, based here in Nashville, would be happy to discuss issues on the Cumberland, Tennessee, and Tombigbee rivers.

We would be happy to answer any questions or provide further information that the Committee or the Department of Revenue deems necessary or useful. Thank you for the opportunity to testify today.