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BILL



ANALYSIS

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Senate Bill 1301 (as introduced 9-20-12)
Sponsor: Senator Mike Kowall
Committee: Transportation

Date Completed: 10-16-12

CONTENT

The bill would amend the Port Authority Act to do the following:

- Prohibit the creation of more than one port authority within the boundaries of a county or city.
- Require a port authority to foster and encourage the participation of private enterprise in the development of "port economic development facilities".
- Allow a port authority to acquire, own, construct, improve, maintain, finance, or operate port economic development facilities.
- Extend to a port economic development facility provisions regarding grants and loans that apply to a port facility.
- Include references to port economic development facilities in a provision regarding a contract between a port authority and its constituent units (cities or counties) for the acquisition, improvement, enlargement, or extension of port facilities.
- Allow, rather than require, each constituent unit to pledge its full faith and credit for the repayment of its obligations under a contract.
- Delete provisions allowing a port authority to issue revenue bonds for the cost of port facilities or certain authority projects; and instead allow an authority to issue self-liquidating bonds for purposes related to port facilities and port economic development facilities.
- Allow a port authority to borrow money and issue revenue bonds or notes to finance part or all of a project.
- Allow a port authority to borrow money and issue municipal securities, including short-term municipal securities.
- Eliminate a provision restricting the issuance of certain bonds to the purpose of acquiring port facilities.
- Revise a port authority's powers regarding port facilities.
- Exempt from taxation a port authority's real and personal property held pending development of a project.
- Eliminate a requirement that a port authority obtain approval by the governing bodies of its constituent units and the Michigan Department of Transportation before adopting plans for specific projects to be undertaken in execution of the authority's plan for future development, construction, and improvement.

The bill also would allow a port authority to do the following:

- Enter into various types of agreements in connection with the issuance of obligations, and create a reserve fund for repayment of an agreement.
- Obtain a line of credit to secure funds for operations or pay previous loans, with the approval of the State Treasurer.
- Loan money and guarantee a governmental entity's obligations in connection with a project.

- **Make loans and mortgages and enter into lease agreements regarding a project.**
- **Mortgage or create security interests in a project in favor of authority bondholders or noteholders or a trustee or credit provider.**
- **Enter into an interlocal agreement with a public agency.**
- **Acquire interests in air space.**

Participation by Private Enterprise

The bill would require an authority to foster and encourage the participation of private enterprise in the development of port economic development facilities to the fullest extent it considered practicable in the interest of limiting the authority's need to acquire, construct, and operate those facilities.

(The Act defines "authority" as a port authority. The term also may include the area within a port authority's jurisdiction.)

The bill would define "port economic development facility" as any real and/or personal property, including machinery, equipment, plants, factories, offices, buildings, and other structures and facilities that are related to, useful for, or in furtherance of one or more authorized purposes. "Authorized purposes" would mean activities that enhance, foster, aid, provide, or promote transportation, economic development, housing, recreation, education, governmental operations, culture, or research.

Creation of Port Authority

The Act allows a city and county, a combination of counties, or a combination of at least one city and one county to request the Governor to authorize the incorporation of a port authority. A port authority is a body corporate and politic.

Under the bill, not more than one port authority could be created within the boundaries of a county or city.

Port Authority Membership

An authority that is established in a county with a population of at least 1.5 million (i.e.,

Wayne County) must consist of five members as follows:

- One member appointed by the Governor.
- Two members appointed by a majority of all of the members of the county board of commissioners, nominated by the commissioners who do not reside within the political boundaries of a city with a population of at least 750,000.
- Two members appointed by the mayor of a city with a population of at least 750,000 that is located in the county.

The bill would refer to a city with a population of at least 600,000.

Disclosure

Under the bill, financial and proprietary information, including trade secrets, submitted by or on behalf of an employer to an authority or to a nonprofit corporation engaged by contract to provide economic development services for an authority, in connection with the relocation, location, expansion, improvement, or preservation of the business of that employer would not be a public record subject to the Freedom of Information Act (FOIA). Any other information submitted by an employer under these circumstances would not be a public record subject to FOIA until the employer committed in writing to proceed with the relocation, location, expansion, improvement, or preservation.

Authority Powers

The Act allows an authority to acquire, construct, reconstruct, rehabilitate, improve, maintain, lease as lessor or as lessee, repair, or operate port facilities within its territorial jurisdiction. Under the bill, an authority also could own, furnish, equip, sell, exchange, or finance such facilities.

Currently, "port facilities" means facilities owned by a port authority, such as seawall jetties, piers, and wharves. The bill would eliminate the reference to ownership by the port authority. The bill also would include ships, as well as other facilities functionally related to the structures and equipment included in the definition. The term would not include an international bridge or international tunnel for motor vehicles used on a highway.

The bill also would allow an authority to do the following:

- Acquire by gift or purchase, own, construct, reconstruct, rehabilitate, improve, maintain, furnish, equip, sell, exchange, lease as lessor or lessee, repair, finance, or operate, or any combination of these, port economic development facilities.
- Loan money to any person in connection with a project.
- Guarantee the obligations of any governmental entity in connection with a project.
- Make secured or unsecured loans, sell loans and mortgages at public or private sale, discharge loans and mortgages, foreclose on a mortgage, or commence an action to protect or enforce a right conferred upon it by a law, mortgage, loan, contract, or other agreement.
- Enter into leases, lease purchase agreements, installment sales contracts, or loan agreements with any person for the use, sale, development, or financing of a project.
- Mortgage or create security interests in a project, a part of a project, a lease or loan, or the rents, revenue, or sums to be paid during the term of a lease or loan, in favor of holders of bonds or notes issued by the authority or in favor of a trustee or credit provider.
- Enter into an interlocal agreement with a public agency under the Urban Cooperation Act.

("Public agency" means that term as defined in Section 2 of the Urban Cooperation Act. i.e., a political subdivision of Michigan or another state or of Canada, including a state government; a county, city, village, township, charter township, school district, single or multipurpose special district, or single or multipurpose public authority; a provincial government, metropolitan government, borough, or other political subdivision of Canada; an agency of the U.S. government; or a similar entity of any other U.S. state and Canada.)

"Project" means the acquisition, purchase, construction, reconstruction, rehabilitation, remodeling, improvement, enlargement, repair, condemnation, maintenance, or operation of port facilities. The bill also would refer to port economic development

facilities in this definition, and include the financing of the facilities.

The Act allows a port authority to apply for, receive and accept from any Federal, State, or municipal agency, foundation, public or private agency, or individual, a grant or loan for the planning, construction, operation, or financing of a port facility. The bill would include a port economic development facility in this provision, in addition to a port facility.

Under the Act, an authority may acquire land, structures, property rights, rights of way, franchises, easements, and other interests in land as it considers necessary or convenient for the construction or operation of a project. Under the bill, the authority also could acquire interests in air space.

The Act allows an authority to acquire by condemnation land, property rights, rights of way, franchises, easements, and other property of a person, partnership, association, or corporation considered to be necessary for the construction or efficient operation of a project. The bill would refer to a port facility, rather than a project.

The bill would delete language under which a facility owned or operated by and for the exclusive use of the owner or operator is exempt from the condemnation provision.

Constituent Units

An authority and one or more constituent units may enter into a contract or contracts for the acquisition, improvement, enlargement, or extension of port facilities and for the payment of their costs by the contracting constituent units, with interest, over a period of up to 40 years. The bill would refer to port economic development facilities as well as port facilities.

("Constituent unit" means a city or county requesting the incorporation of an authority.)

The Act requires each contracting constituent unit to pledge its full faith and credit for the payment of its obligations under the contract. Under the bill, this would be permissive.

The Act allows contracting constituent units to raise funds by several methods, including by service charge to users of the facilities

owned by the port authority. The bill also would refer to facilities improved, controlled, operated, or maintained by the port authority.

Self-Liquidating Bonds

Currently, an authority may provide by resolution for the issuance of authority revenue bonds for the purpose of providing funds to pay the cost of port facilities, or the cost of an extension, enlargement, or improvement of a project under the authority's control. The bonds mature at a time as provided by the authority, within 40 years after the issue date. The bonds are subject to the Revenue Bond Act. The bill would delete these provisions.

Instead, for the purpose of acquiring, purchasing, constructing, improving, enlarging, furnishing, equipping, reequipping, or repairing port facilities or a port economic development facility, an authority could issue self-liquidating bonds in accordance with, and exercise all of the powers conferred upon public corporations by, the Revenue Bond Act.

Revenue Bonds & Notes

The bill would allow an authority to borrow money and issue its revenue bonds or notes to finance or refinance part or all of a project and the costs necessary or incidental to the borrowing of money and issuing of bonds or notes for that purpose. In addition, the authority could secure the bonds or notes by mortgage, assignment, or pledge of any of the authority's money, revenue, income, and property. Bonds and notes could be issued regardless of whether the authority owned or proposed to own the project. These bonds and notes would not be subject to the Revenue Bond Act or the Revised Municipal Finance Act.

Borrowing Money & Municipal Securities

Under the bill, by resolution, an authority could borrow money and issue municipal securities in accordance with, and exercise all of the powers conferred upon municipalities by, the Revised Municipal Finance Act.

An authority, by resolution, could borrow money and issue short-term municipal securities maturing not more than one year

from the date of issue in anticipation of the collection of revenue it would be entitled to receive within one year from the issue date. The amount of the securities could not exceed 100% of the revenue collected in the preceding fiscal year not pledged for the payment of a security other than a short-term municipal security issued under the bill as conclusively certified by the authority. The resolution also would have to provide that from the receipts of the anticipated revenue, there would be set aside in a special fund to be used for the payment of principal and interest on the security a portion of each dollar received that was at least 125% of the percentage that the principal amount of the security bore to the amount certified as the revenue estimated to be collected, until the amount set aside was sufficient for the payment of principal and interest on the security.

Tax Exemption

The Act provides that a port authority is exempt from taxes on its real and personal property that is used exclusively for a public purpose. Under the bill, the exemption also would apply to an authority's property held pending development of a project.

The bill provides that instruments of conveyance to or from an authority would be exempt from all fees and taxation in Michigan.

Adoption & Modification of Authority Plan

Within two years after a port authority is created, it must prepare a plan for the future development, construction, and improvement of the authority and its facilities. The Act prescribes notice and hearing requirements for a proposed plan, as well as the modification, amendment, or extension of an adopted plan.

The plan and any modification, amendment, or extension, when adopted by the authority after notice and hearing, are conclusive. The authority, however, may not adopt plans for specific projects to be undertaken in execution of the plan without prior approval by the governing bodies of its constituent units and the Michigan Department of Transportation. The bill would delete these provisions.

Debt Service Management

Under the bill, for the purpose of managing its debt service more effectively, a port authority could enter into an interest rate exchange or swap, hedge, or similar agreement or agreement in connection with the issuance or proposed issuance of obligations or other evidences of indebtedness or in connection with its then-outstanding obligations or other evidences of indebtedness. In connection with entering into such an agreement, the authority could create a reserve fund for its payment.

The agreement would not be a debt of the authority for any statutory or charter debt limitation purposes. It would have to be payable from the authority's general funds or, subject to any existing contracts, from any available money or revenue sources, including revenue specified by the agreement, securing the obligation or evidence of indebtedness in connection with the agreement.

Line of Credit

In addition to its other powers under the Act, with the State Treasurer's approval, the bill would allow a port authority to obtain a line of credit to secure funds for operations or to pay previous loans obtained for operations under the Act or any other statute. The authority could pledge not more than 100% of the revenue collected in the preceding fiscal year that was not otherwise encumbered or pledged previously for the payment of a security.

To obtain approval for acquiring a line of credit, an authority would have to apply in the form and manner prescribed by the State Treasurer, and provide information as requested for evaluating the application. Within 20 business days after receiving a proper application, the Treasurer would have to approve or disapprove it and notify the authority, including the reasons for a disapproval.

Repealed Section

The bill would repeal Section 16, which requires revenue bonds issued pursuant to the Act to be secured by a trust agreement by and between the authority and a corporate trustee, as prescribed by the Act.

Legislative Findings

The bill states the following legislative findings:

- "That there exists in this state conditions of property value deterioration detrimental to the state economy and the economic growth of this state and its local units of government."
- "That government programs are desirable and necessary to eliminate the causes of property value deterioration thereby benefiting the economic growth of this state."
- "That it is appropriate to finance these government programs by means available to this state and local units of government in this state, including the issuance of bonds and notes."
- "That halting property value deterioration and promoting economic growth in this state are essential governmental functions and constitute essential public purposes."
- "That economic development strengthens the tax base upon which local units of government rely and that government programs to eliminate property value deterioration benefit local units of government and are for the use of local units of government."
- "That the provisions of this act are enacted to provide a means for counties and cities to eliminate property value deterioration and to promote economic growth in the communities served by those counties and cities."

MCL 120.102 et al.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill would have no direct effect on State revenue or expense. The bill could increase local unit revenue and/or expenditure by an unknown amount depending on the actions of an authority. On a secondary basis, if the actions of an authority improved property values in an area, it would potentially increase State and local property tax revenue, depending on the specific circumstances and characteristics of any changes.

Fiscal Analyst: David Zin

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.