

Legislative Analysis



DETROIT-WAYNE COUNTY PORT AUTHORITY: PORT ECONOMIC DEVELOPMENT FACILITIES

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House Bill 5029 as introduced

Sponsor: Rep. Tupac Hunter

Committee: Natural Resources, Great Lakes, Land Use, and Environment

First Analysis (9-6-05)

BRIEF SUMMARY: The Port Authority Act authorizes the creation of port authorities in the state, including the Detroit-Wayne County Port Authority, which is currently the only one. The bill would amend the act to promote "economic development facilities," and to expand the authority's borrowing powers.

FISCAL IMPACT: The Detroit-Wayne County Port Authority's annual operating budget is approximately \$1 million. The state of Michigan provides \$500,000 in funding through a line item appropriation in the state transportation budget. Additional funding is provided by the city of Detroit and Wayne County. As noted above, the bill would retain this requirement of current law: that the state provide 50 percent of the port authority's annual operating budget. However, the bill would strike the current requirement that the port authority submit its annual budget to DLEG and MDOT for approval.

THE APPARENT PROBLEM:

When port authorities were first created they oversaw waterfront commerce and maritime operations in major port cities throughout the Great Lakes region. For example, the Michigan legislature passed the first Port Districts Act in 1925, to coordinate regional maritime activities, and in 1933, the Detroit Wayne County Port District was established, with jurisdiction over the waters and shoreline of Wayne County. As development increased, the Michigan legislature enacted a law in 1978 to create the Detroit-Wayne County Port Authority. The five-member authority (one person appointed by the state, and two people appointed by both the city of Detroit and county of Wayne) was convened in 1980, and Henry Ford II served as the first chairman. See [Background Information](#).

Recently the Detroit-Wayne County Port Authority's special duties have included providing assistance to the U. S. Army Corps of Engineers as they conduct a system-wide Great Lakes navigation study; providing technical assistance to prevent soil erosion along shorelines; and ensuring heightened security at our international border crossings and largely unprotected river port facilities. In addition, the port authority oversees the movement of more than 80 million tons of cargo annually through the Detroit River, and about seven million tons of overseas and Canadian cargo crosses its docks at the Port of Detroit each year. Overall, the shipping of foreign goods through Michigan waters translates into \$2 billion to the state's economy, and foreign shipping accounts for 20 percent of all maritime activity within the state of Michigan.

During the past decade, many port authorities in the Great Lakes region have expanded their operations beyond maritime operations to serve as local economic development agencies. The independent quasi-governmental agencies work in close cooperation with private industry and local governments to encourage new business growth and expansion in port cities. One such port authority is that serving Cleveland, Ohio and surrounding Cuyahoga County, a port on Lake Erie.

In recent years the Cleveland Port Authority, originally created in 1968, has expanded its role to encompass significant economic development projects. In 1987 the Ohio legislature enacted a law that permits port authorities to issue taxable or tax-exempt revenue bonds for community development initiatives. Consequently, in its daily operations, the port authority now identifies opportunities to assist regional revitalization efforts, and cultivates development partnerships. It does so by acting on behalf of a borrowing entity, as a conduit issuer of special obligation revenue bonds, which then enables the authority to provide financing for eligible public and private community projects. Since 1993, the development group within the authority has assisted its partners in obtaining \$600 million in financing for community projects totaling nearly \$1 billion. For further information about the projects the Cleveland Port Authority has recently financed, see [Background Information](#).

Legislation has been introduced to update the law that enabled the creation of the Detroit-Wayne County Port Authority, so that it can participate in the economic revitalization of the greater Detroit area.

THE CONTENT OF THE BILL:

The Hertel-Law-T. Stopczynski Port Authority Act (Public Act 639 of 1978) authorizes the establishment of port authorities in the state, including the Detroit-Wayne County Port Authority, which is the only such authority established under the act. The bill would make several amendments to the act relative to the promotion of "economic development facilities" and the expansion of borrowing powers.

Legislative Findings

The bill includes a section of legislative findings that, in brief, states that deteriorating property values are detrimental to the economic growth of the state and local governmental units and that various provisions of the act are intended 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.

Additionally, the bill states that the port authority "should foster and encourage the participation of private enterprise in the development of port authority economic development facilities to the extent practicable in limiting the necessity of acquisition, construction, and operation of those facilities by the authority."

Port Economic Development Facilities

The bill adds and defines the phrase "port economic development facility" to mean any real 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 an "authorized purpose." The term "authorized purpose" refers to activities that enhance, foster, aid, provide, or promote transportation, economic development, housing, recreation, education, governmental operations, culture, or research within the state.

The act defines "port facilities" to mean a variety of buildings and structure, such as marinas, boat landings, docks, tunnels, bridges, and piers. The bill would add "ships" to this list and specify that the term "port facilities" would also include "other facilities functionally related to these buildings and structures," but not including international bridges or tunnels.

Under the act, the authority may acquire land, enter into contracts, and issue bonds related to a "project," which the act defines to mean the acquisition, purchase, construction, rehabilitation, improvement, condemnation, maintenance, or operation of port facilities. The bill would expand the definition of "project" so it would also apply to port economic development facilities. The definition of "project" would also be expanded to refer to the "financing" of port facilities and port economic development facilities.

Authority Powers

The act provides the port authority with broad authority to acquire, construct, reconstruct, rehabilitate, improve, maintain, lease, repair, or operate port facilities within its territorial jurisdiction. The bill would also permit the authority to furnish, equip, sell, and exchange port facilities, and allow all authorized activities to undertaken within or outside of the port authority's territorial jurisdiction. Additionally, the bill would provide similar authority relative to port economic development facilities.

The bill would also provide the port authority with the following powers relative to interests in any real or personal property connected to a project: (1) loaning money for the acquisition, construction, maintenance, improvement and furnishing of the property; (2) acquiring, constructing, maintaining, improving, and furnishing the property; (3) selling to, exchanging with, leasing, or conveying other interests in the property; (4) guaranteeing the obligations of any governmental entity.

Additionally, the port authority would have the authority to make secured or unsecured loans, enter into leases, mortgage or create a security interest in a project.

Finally, the port authority would possess the same rights, privileges and powers granted under the Brownfield Redevelopment Financing Act and Local Development Financing Act, and could enter into an interlocal agreement under the Urban Cooperation Act of 1967.

Property Acquisition and Condemnation

Section 12 of the act currently permits the port authority to acquire lands, structures, property rights, rights of way, franchises, easements, and other interests in lands. The bill would add air space rights to this list. The act also permits the port authority to acquire property by condemnation for the construction or efficient operation of a project. However, the act currently exempts from the port authority's condemnation authority facilities currently operated as a port facility by a terminal operator or a facility owned and operated by and for the exclusive use of the owner and a facility owned or operated by a common carrier or public utility. The bill makes modifications to the language of this condemnation section but does not materially affect the current provisions of the act.

Contracts for Port Facilities

The act permits the port authority and at least one constituent unit (the county or city) to enter into a contract for the acquisition, improvement, or extension of port facilities and for the payment related costs, with each constituent unit being required to pledge its full faith and credit of the payment of its obligations under the contract.

The bill would extend this to also apply to port economic development facilities and would permit, rather than require, each constituent unit to pledge its full faith and credit for the payment of its obligations.

Under the act, a constituent unit can raise funds by assessing a surcharge to users of the facilities owned by the port authority. The bill would also allow user charges to be assessed on facilities that are improved, controlled, operated, or maintained by the port authority.

Borrowing and Bonding

The act permits the port authority to issue revenue (self-liquidating) bonds for the purpose of funding the cost of port facilities or the cost of an extension, enlargement, or improvement of a project under the control of the authority. The bonds are subject to the provisions of the Revenue Bond Act. The bill would delete (but later replace) current language in the act related to the issuance of revenue bonds, with the exception of a provision noting that bonds issued under the act are to be paid from the revenue or income derived from the project, and are not to be considered a debt of the state, the port authority, or a political subdivision of the state, or pledge the full faith and credit of the port authority or constituent unit.

The bill would permit bonds to be issued under Revenue Bond Act for the purpose of acquiring, purchasing, constructing, improving, enlarging, furnishing, equipping, or repairing port facilities or port economic development facilities.

Additionally, the bill provides that the port authority could borrow money and issue its revenue bonds to finance or refinance all or part of a project and the costs related to

borrowing money or issuing the bonds. Bonds issued for that purpose could be secured by mortgage, assignment, or pledge of any of the authority's money, revenue, income, and properties. Bonds and notes issued for the above purposes would not be subject to the Revenue Bond Act or the Revised Municipal Finance Act.

The bill would also permit the port authority to borrow money and issue municipal securities under the Revised Municipal Finance Act. Short term municipal securities maturing within one year of the date of issuance could not exceed 100 percent of the revenue collected in the previous fiscal year that is not pledged for the payment a security other than a short-term municipal security. In allowing the issuance of short term municipal securities, the port authority would have to approve a resolution establishing a special fund used to pay the principal and interest of the security.

Finally, the act provides that bonds may also be issued for the purposes of acquiring port facilities. The bill would expand this to allow bonds be issued for "authorized purposes" (as defined earlier).

Interest Rate Exchange

The bill would permit the port authority to enter into an interest rate exchange or swap, hedge, or similar agreement in connection with the issuance of obligations or other evidence of indebtedness. In doing so, the port authority could establish a reserve fund for making payments. The agreement would not be a debt of the port authority for any statutory or charter debt limitation purpose, and would be payable from general funds of the authority or, subject to existing contracts, from any available money or revenue source.

Line of Credit

The bill would permit the port authority, with the approval of the state treasurer, to obtain a line of credit to secure funds for operations or to pay previous loans obtained for operations under the act or another act. The authority could not pledge more than 100 percent of the revenue collected in the previous fiscal years that are not otherwise encumbered or previously pledged for the payment of a security.

Financial and Proprietary Information

The bill would add a new section to specify that any financial and proprietary information provided to the authority or contracted nonprofit organization by or on behalf of an employer related to the relocation, location, expansion, improvement, or preservation of the employer's business would not be a public record subject to the Freedom of Information Act. Other information submitted by an employer would not be subject to FOIA until that employer commits in writing to go ahead with the plans to relocate, locate, expand, improve, or preserve the business.

Port Authority Budget

Section 24 of the act currently requires the port authority to submit in writing a detailed annual budget to the governing bodies of its constituent units, the Michigan Department of Commerce (now the Department of Labor and Economic Growth, or DLEG), and the Michigan Department of Transportation (MDOT) for approval. The bill would retain the requirement that the port authority submit an annual detailed budget to its constituent units, but would strike the requirement that the budget be submitted to either DLEG or MDOT, and would strike the approval requirement.

The act currently requires the state to provide 50 percent of the port authority's operating budget through the state transportation budget, subject to legislative approval, with the remaining 50 percent provided equally by the participating county and city. The bill would not change these funding provisions.

Enacting Sections

The bill would repeal Section 14a of the act. That section provides that a petition for a referendum on the issuance of bonds is subject to the provisions of the Michigan Election Law. Additionally, the bill is tie-barred to House Bill 5028, which would create the Michigan Port Authority Act in order to establish a state port authority.

BACKGROUND INFORMATION:

For more information about the Detroit-Wayne County Port Authority, visit its website at <http://www.portdetroit.com>

Further information about the Cleveland Port Authority, including newsletters that describe its various economic development projects, visit the authority's website at <http://www.portofcleveland.com>

The St. Paul, Minnesota port authority also invests in local economic development projects. Their website is <http://www.sppa.com>

ARGUMENTS:

For:

Proponents of this legislation point-out that the ports of Cleveland (Ohio) and St. Paul (Minnesota), among others, are experiencing an economic revitalization because the legislatures of those states have enacted laws that allow the authorities to sell bonds whose proceeds finance local projects. They argue that Michigan ports, including the Port of Detroit, should have the same opportunities to invest in economic development initiatives. Over the past decade, the Port of Cleveland has sold bonds to raise more than \$600 million to finance projects totaling \$1 billion. Their investment has revitalized the community, including its waterfront. The Detroit-Wayne County Port Authority could do the same, were this legislation enacted to update a now more than 25-year old law.

Against:

Opponents of this legislation argue that an independent port authority's powers would be far too broad, allowing them to construct virtually any project in the community with little, if any, governmental oversight and control. Further, those projects would likely compete, unfairly, with existing private sector businesses or public sector cultural centers. Finally, opponents point-out that maritime transportation and port security remain the central functions of port authorities. They fear that entrepreneurs who promote economic development would not have the necessary expertise to direct daily maritime operations at the Port of Detroit on the nation's international border, most especially in an era of heightened threats to domestic security.

POSITIONS:

The Detroit/Wayne County Port Authority supports the bill. (8-31-05)

The Michigan Economic Development Authority supports the bill. (8-31-05)

The Detroit Regional Chamber of Commerce supports the bill. (8-31-05)

The Michigan State AFL-CIO supports the bill. (8-31-05)

The Michigan Department of Transportation is neutral on the bill. (8-31-05)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.