

PORT AUTHORITIES

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Senate Bill 745 (S-1) as passed by the Senate

Sponsor: Sen. Dale Zorn

House Committee: Transportation

Senate Committee: Transportation and Infrastructure

Complete to 9-13-22

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

Senate Bill 745 would amend the Hertel-Law-T. Stopczynski Port Authority Act to change the definitions of certain terms used throughout the act and to modify certain provisions concerning projects and property of port authorities organized under the act (see **Background**, below).

Defined terms

Currently, as used in the act, the term *port facilities* means those facilities owned by the port authority (such as seawall jetties; piers; wharves; docks; boat landings; marinas; warehouses; storehouses; elevators; grain bins; cold storage plants; terminal icing plants; bunkers; oil tanks; ferries; canals; locks; bridges; tunnels; seaways; conveyors; modern appliances for the economical handling, storage, and transportation of freight and handling of passenger traffic; transfer and terminal facilities required for the efficient operation and development of ports and harbors; other harbor improvements; or improvements, enlargements, remodeling, or extensions of any of these buildings or structures).

The bill would remove the above definition and instead define *port facilities* to mean structures and improvements to land that are located alongside navigable water and are used for one or more of the following:

- Loading and unloading of cargo from ships, ferries, and other floating vessels.
- Support of the operation of vessels.
- Cargo handling, storage, packing, and transfer or movement to other modes of transportation.
- Assembly, processing, refinement, or improvement of goods recently received from or prior to entry into maritime transport.

In addition, section 2 of the act now defines *project* to mean the acquisition, purchase, construction, reconstruction, rehabilitation, remodeling, improvement, enlargement, repair, condemnation, maintenance, or operation of port facilities. The bill would add “financing of port facilities” to this definition and would also provide that *project* does not include a bridge or tunnel that crosses an international boundary, directly or indirectly.

Projects financed by a port authority

The act currently provides that an authority may acquire, construct, reconstruct, rehabilitate, improve, maintain, lease as lessor or as lessee, repair, or operate port facilities within its territorial jurisdiction, including the dredging of ship channels and turning basins and the filling and grading of land for those facilities. The bill would additionally allow an authority to *finance* port facilities within its territorial jurisdiction.

The act also now allows an authority to issue revenue bonds to pay for port facilities or to extend, enlarge, or improve a project then under its control. The bill would additionally allow an authority to issue revenue bonds to pay to extend, enlarge, or improve a project financed by the authority.

The bill also would allow an authority to appear in its own behalf before state, federal, or international bodies in matters relating to a project financed by the authority.

Port authority jurisdiction and activities

The bill would provide that the act does not give a port authority jurisdiction over any real or personal property owned, leased, or used by the state or by any individual or entity under any lease or contract with the state for use of such property.

The bill also would prohibit a project of an authority or financed by an authority from interfering with the construction, maintenance, or operation of any state-owned infrastructure or any seawall, jetty, pier, wharf, dock, boat landing, marina, or other improvement used on or connected to the commercially navigable waters that provide water access for the construction, maintenance, or operation of any state-owned infrastructure.

Exception to property tax exemption

Currently, an authority created under the act is exempt from and not required to pay taxes on property, both real and personal, that belongs to the authority and is used for a public purpose. However, this exemption does not apply to property belonging to an authority while a private enterprise is a lessee of the property under written lease.

The bill would expand the exception to the property tax exemption described above. Under the bill, the exemption would not apply to an operator or a lessee of the property under written lease or a concessionaire under a concession agreement notwithstanding the terms of that written lease or concession agreement.

MCL 120.102 et seq.

BACKGROUND:

The Hertel-Law-T. Stopczynski Port Authority Act (1978 PA 639) was enacted in 1978 with an effective date of January 11, 1979. The act repealed the previous port authority statute, 1925 PA 234, subject to the reorganization of existing port authorities under the new act.

The cities of Detroit and Monroe had each established port authorities under 1925 PA 234. The city of Monroe's port authority was never reorganized and still operates a marine terminal under the authority of 1925 PA 234. The city of Detroit's port commission was reorganized as the Detroit/Wayne County Port Authority (DWCPA) under the authority of 1978 PA 639. The DWCPA was incorporated in 1981 and is, to date, the only port authority established under 1978 PA 639.

Under 1978 PA 639, port authorities may be incorporated by a combination of counties or a combination of counties and cities. The DWCPA, as its name implies, has just two incorporators: the city of Detroit and the county of Wayne.

FISCAL IMPACT:

The amendments proposed by Senate Bill 745 do not appear to have a material fiscal impact on state government or the DWCPA.

Section 8 of 1978 PA 639 gives port authorities substantial authority, including the authority to “[a]cquire, construct, reconstruct, rehabilitate, improve, maintain, lease as lessor or as lessee, repair, or operate port facilities within its territorial jurisdiction, including the dredging of ship channels and turning basins and the filling and grading of land therefor.”

Senate Bill 745 would add the word “finance” after the word “maintain” in the above list of authorized activities. However, this appears to be effectively a technical amendment since section 9 of the act currently grants a port authority the power to issue revenue bonds “for the purpose of providing funds for paying the cost of port facilities, or for paying the cost of an extension, enlargement, or improvement of a project then under the control of the authority.” In other words, the addition of the word “finance” does not appear to grant a port authority additional authority to finance projects beyond that granted in current law.

The bill also would add the word “financing” to the definition of *project* in section 2 of the act.

The DWCPA has used its financing authority only once, in 2005, when it partnered with General Motors Corporation in financing a mixed-use GM facility on the Detroit River waterfront. The DWCPA does not currently operate a port facility.

However, the current definitions of *port facilities* and *project* in section 2 of the act effectively limit the authority to issue revenue bonds to port facilities owned by the port authority.

The bill would change the definition of *port facilities*. The term is currently as “those facilities owned by the port authority,” followed by a list of examples of specific kinds of port facilities. The bill would change the definition to “structures and improvements to land located alongside navigable water” that meet certain specific use criteria. This change would appear to expand the types of projects a port authority could finance. In other words, a port authority would no longer be required to own the facilities it financed.

To the extent that the bill would authorize a port authority to finance through revenue bonds certain projects it is not authorized to finance under current law, the bill could help the DWCPA, or any authority organized under the act, to establish new sources of revenue.

The bill also would also remove a current exemption from property tax of property belonging to an authority while a private enterprise is a lessee of the property under written lease. Under the bill, the property tax exemption would not apply to an operator or a lessee of the property under written lease or a concessionaire under a concession agreement notwithstanding the terms of that written lease or concession agreement. The amount of property tax revenue that lifting the current exemption would raise, and the distribution of such revenue, has not been estimated at this time.

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