

Legislative Analysis



PORT AUTHORITIES

House Bill 4026 as introduced
Sponsor: Rep. Dale W. Zorn
Committee: Tax Policy
Complete to 6-5-23

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SUMMARY:

House Bill 4026 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). Among other things, the changes would eliminate a current requirement that port facilities be facilities owned by a port authority.

Defined terms

Currently, as used in the Port Authority 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.

(Note that in changing the definition of *port facilities* as described above, the bill would eliminate a requirement of current law that port facilities be “facilities owned by the port authority.”)

In addition, section 2 of the Port Authority 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 Port Authority 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 real or personal property owned, leased, or used by the state or by any individual or entity under a 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 state-owned infrastructure or a 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 state-owned infrastructure.

Exception to property tax exemption

Currently, an authority created under the Port Authority 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 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 the Port Authority Act. The DWCPA was incorporated in 1981 and is, to date, the only port authority established under the Port Authority Act. Under the act, 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 bill could have a fiscal impact on the one port authority organized under the Port Authority Act, the Detroit Wayne County Port Authority. The impact is related to the DWCPA's ability to finance port facilities through the sale of revenue bonds. While the DWCPA has authority to sell revenue bonds to finance port facilities under current law, that authority is limited to port facilities owned by the port authority. The bill would effectively allow the DWCPA to sell revenue bonds for other port facility projects, including for projects not owned by the port authority. The executive director of the DWCPA testified in House committee last session that, of the 31 terminals within the port of Detroit, 30 are privately owned.

Section 8 of the Port Authority Act gives port authorities substantial authority, including the authority to: "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 therefor." House Bill 4026 would add the word "finance" after the word "maintain" in this list of authorized activities. However, this appears to be effectively a technical or clarifying 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 would also add the word "financing" to the definition of "project" in section 2.)

However, the current definitions of "port facilities" and "project" in section 2 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." Under current law, the term is defined 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 (described on page 1 of this summary). 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.

The bill would also strike a current exemption from property tax 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. It is not clear if in lifting the current property tax exemption the bill would have any impact on property currently owned by the DWCPA. The amount of potential tax revenue for credit to the state of Michigan or local units of government as a result of these provisions of the bill has not been estimated at this time but would appear to be relatively minor.

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