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Senate Bill 893 (as introduced 5-30-24)
Sponsor: Senator Erika Geiss
Committee: Transportation and Infrastructure

Date Completed: 10-7-24

CONTENT

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

- **Allow port authorities to enter, amend, and terminate ancillary financing facilities, such as revolving credit agreements, an interest rate exchange, and a currency exchange agreement, among other facilities.**
- **Allow an authority and a city or county requesting the incorporation of an authority (constituent unit) to enter a contract for the construction, operation, or financing of facilities or to refund any prior indebtedness of the authority.**
- **Allow an authority to provide by resolution for the issuance of revenue refunding bonds to pay the cost of refunding any prior indebtedness of the authority.**
- **Allow contracting constituent units to set aside general revenues on behalf of an authority.**
- **Extend port authority activities to include port and related facilities, in addition to other extensions.**
- **Allow a port authority to enter into public-private partnerships or other agreement necessary or useful to accomplish the purposes of the Act.**
- **Provide that an authority's unencumbered funds remaining at the end of a fiscal year would not revert to the State or constituent units but would carry forward.**

Definitions

Generally, the Act allows for the creation, membership, and duties of a port authority. Under the bill, "ancillary financing facility" would mean any of the following:

- A revolving credit agreement, an agreement establishing a line of credit, or a letter of credit.
- A reimbursement agreement.
- A standby bond purchase agreement.
- An interest rate exchange or similar agreement.
- A currency exchange agreement.
- A commodity exchange agreement.
- An interest rate floor or cap.
- An option, put, call, or similar agreement to hedge payment, currency, commodity, rate, spread, or similar exposure.
- An investment agreement.
- A float agreement.
- A forward agreement or other investment arrangement.
- An insurance contract.
- A surety bond.
- A commitment to purchase or sell securities.
- A purchase or sale agreement or commitment.

- Any other contract or agreement or other security agreement approved by an authority under the Act.

"Facilities" would mean port facilities and related facilities.

("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.)

"Related facilities" would mean the following facilities located within five miles of the navigable waters within the geographic area of an authority, including the following:

- Public infrastructure.
- Real and personal property used or useful to accomplish the purposes of the authority.
- Parking lots and parking structures that may be used in connection with facilities.
- Commercial, tourism, entertainment, and recreational facilities.
- Facilities used for freight, transportation, light manufacturing, and intermodal operations and functions.

Ancillary Financing Facilities

The bill would allow an authority to enter, amend, or terminate any ancillary financing facility, as it determined necessary or appropriate, for any of the following purposes:

- To facilitate the issue, sale, resale, purchase, repurchase, or payment of bonds, or the making or performance of swap contracts, including bond insurance, letters of credit, and liquidity facilities.
- To attempt to hedge risk or achieve a desirable effective interest rate or cash flow.

An authority's determination that an ancillary financing facility, or the amendment or termination of an ancillary financing facility, was necessary or appropriate would be conclusive. The authority could determine the terms and conditions of an ancillary financing facility, including without limitation provisions as to security, default, termination, payments, remedy, and consent to service of process.

An authority could enter, amend, or terminate any ancillary financing facility, as it determined necessary or appropriate, to place the obligations or investments of the authority, as represented by the bonds or the investment of bond proceeds, in whole or in part, on the interest rate, cash flow, or other basis desired by the authority. The ancillary financing facility could include contracts commonly known as interest swap agreements and futures or contracts providing for payments based on levels of, or changes in, interest rates. The authority could enter these contracts or arrangements in connection with, or incidental to, entering into or maintaining any agreement that secured bonds of the authority or any investment of reserves or contract providing for investment of reserves, or similar ancillary financing facility guaranteeing an investment rate for a period of years.

Contracts

Currently, an authority and one or more constituent units¹ may enter a contract or contracts for the acquisition, improvement, enlargement, or extension of port facilities and for the payment of the activities by the contracting constituent units, with interest, over a period of up to 40 years. The bill would allow an authority and constituent units to enter a contract for the *construction, operation, or financing* of port and related facilities. Additionally, it would allow an authority and one or more constituent units to enter a contract or contracts for the refunding of any prior indebtedness of the authority.

If it has taxing power, each contracting constituent unit must annually levy a tax on all real and personal property within the constituent unit to the extent necessary for the prompt payment of that part of the contract obligations that fall due before the following year's tax collection. The tax must be in addition to any tax which the contracting constituent unit may otherwise be authorized to levy and may be imposed without limitation as to rate or amount but cannot be more than the rate or amount necessary to pay the contract obligations; however, the bill would delete this provision.

Other funds may be raised by an authority or contracting constituent unit, including by service charge to users of the facilities owned by the port authority. The bill would allow a port authority to levy service charges on facilities operated by the port authority. Additionally, a port authority or contracting constituent unit may set aside any other available money. The bill would allow contracting constituent units to set aside general revenues.

Bonds

The Act allows an authority to provide by resolution for the issuance of revenue bonds for the purpose of providing bonds for paying the cost of port facilities, or for paying the cost of an extension, enlargement, or improvement of an authority project. These bonds must mature at a time or times the authority may provide, not more than 40 years after their date of issuance. Under the bill, an authority also could provide by resolution for the issuance of revenue refunding bonds of the authority for the purpose of providing funds to pay the cost of refunding any prior indebtedness of the authority.

Bonds also may be issued for the purpose of acquiring port facilities. The bill would extend this provision to include the construction, improvement, enlargement, extension, operation, or financing of port and related facilities. Bonds also could be issued to refund an authority's prior indebtedness.

Port Authority Activities

The bill would extend the activities of a port authority to include port *and* related facilities. Additionally, the bill would allow an authority to finance facilities within its territorial jurisdiction, allow an authority that financed or operated facilities to regulate all matters related to the location and character of those facilities, and allow an authority that operated facilities to fix, revise, charge, and collect charges for their use. Additionally, the bill would allow an authority to appear before a governmental body in all matters concerning a project financed or supported by an authority.

Additionally, the bill would allow a port authority to enter into public-private partnerships or other agreements necessary or useful to accomplish the purposes of the Act. It specifies that

¹ "Constituent unit" means a city or county requesting the incorporation of an authority.

the powers granted by the Act would be in addition to those granted by charter or other statute.

The bill would rename an authority's administrative director as its executive director. An executive director could not have any financial interest in port or related facilities.

Funding

Currently, if at the end of a fiscal year a surplus of unencumbered funds remains after providing for the operating expenses of an authority, the authority may pay that surplus into the State's General Fund and of its constituent units in the same proportion which the appropriations made by each to the authority bear to each other. The bill would delete this provision. Instead, under the bill, if unencumbered funds remained, they would not lapse back to the State or constituent units but would be carried forward to the authority's next fiscal year.

MCL 120.102 et al.

PREVIOUS LEGISLATION

(This section does not provide a comprehensive account of previous legislative efforts on this subject matter.)

The bill is similar to Senate Bill 711 of the 2021-2022 Legislative Session. Senate Bill 711 passed the Senate but received no further action.

Legislative Analyst: Abby Schneider

FISCAL IMPACT

The bill would not have a direct fiscal impact on the State or local units of government. It would allow for ancillary finance facilities for port authorities. If port authorities chose to enter these arrangements, there would be additional costs to those port authorities in the form of interest and fees on those facilities.

Fiscal Analyst: Bobby Canell

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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.