

House Bill 5439

Sponsor: Rep. Marc Shulman

Committee: Great Lakes and Tourism

Complete to 1-28-04

A SUMMARY OF HOUSE BILL 5439 AS INTRODUCED 1-27-04

The bill would create the Michigan Port Authority Act, under which a new state port authority would be established as an independent authority within the Department of Labor and Economic Growth (DLEG) in order to promote and develop port facilities in the state.

Among its powers, the authority could construct, acquire, purchase, lease, reconstruct, improve, or equip a port facility, including related infrastructure; make grants, loans, and investments; and borrow money and issue bonds and notes to finance part or all of the costs of developing port facilities and secure the bonds and notes by mortgage, assignment, or pledge of any of its money, revenues, income, and properties. Bonds and notes of the authority would not be a debt or liability of the state. The authority's property used for a public or governmental purpose would be exempt from property taxes, and the authority's income and operation would be exempt from all taxes and special assessments of state or of local governments.

The bill would also create a Michigan Port Authority Fund under the jurisdiction and control of the authority, to be administered for the general operations of the authority and to secure any notes or bonds of the authority. Further, the bill would appropriate from the General Fund the sum of \$100,000 for initial implementation of the costs of the act.

The following is a description of some key provisions in the bill.

Governing Board. The authority would be governed by a seven-member board made up of state residents. The members would include the chief executive officer of MEGA (or a designee) as chair; the director of DLEG (or a designee); the director of the Department of Transportation (or a designee); and four members appointed by the governor with the advice and consent of the Senate, with those members to have knowledge, skill, and experience in economic development. Of the gubernatorial appointees, one would have to be appointed from one or more nominees of the Majority Leader of the Senate and one from a list of nominees of the Speaker of the House of Representatives. Board members would serve four-year terms (although initial terms would be staggered) and would be eligible for reappointment. The first meeting of the board would have to be held not more than 60 days after the date the authority was created.

Board members would be considered public servants under Public Act 317 of 1968, which deals with contracts of public servants with public entities. The act would specify that a board member or an employee or agent of the authority would have to discharge the duties of the position in a nonpartisan manner, in good faith, in the best interests of the authority, and with the degree of diligence, care, and skill that an ordinarily prudent person would exercise. In

discharging their duties in good faith, they could rely on a majority vote of a quorum of the board, authority counsel, and independent appraiser's report, and on financial statements presented to the board and represented to be correct by the officer in charge of the books and on reports from the auditor general or an independent certified public accountant.

Board Procedures. The board would be required to conduct all business at public meetings held in compliance with the Open Meetings Act, including the public notice requirements, and writings prepared, owned, used, possessed by, and retained in the performance of an official function would be available to the public under the Freedom of Information Act. The board could only act by resolution, and a majority of the members then in office, or of any committee of the board, would constitute a quorum. The board could meet in person or by means of electronic communication devices that enabled all participants to communicate with one another. A majority vote of members serving would be required to approve the issuance of bonds or to approve or amend the annual budget. Otherwise, a vote of the majority of a quorum would constitute the action of the board or a committee.

Authority Director and Staff. The board could appoint a person other than a board member to be the director of the authority and could delegate any of its administrative powers and authorization to the director. Subject to the supervision of the board, the director would supervise and be responsible for the performance of the functions of the authority; a regular report describing the activities and financial condition of the authority; the issuance of bonds and notes approved by the board; and all other necessary activities and functions. The board could also employ legal and technical experts, private consultants and engineers, accountants, and other employees for professional and technical assistance.

Department's Role. The authority would exercise its statutorily prescribed powers, duties, and functions independently of the director of the Department of Labor and Economic Growth. The budgeting, procurement, and related administrative functions of the authority would be performed under the direction and supervision of the Department of Labor and Economic Growth. The authority could contract with the department in order to maintain the rights and interests of the authority. The accounts of the authority could be subject to annual financial audits by the state auditor general. Records of the authority would have to be maintained according to generally accepted accounting principles.

Powers and Purposes. The bill would allow the new authority to "do all things necessary" to carry out the purposes of the act. Among the items cited are adopting and amending bylaws; adopting an official seal; suing and being sued; soliciting and accepting gifts, grants, loan, and other assistance from any source, including the federal, state, and local governments; researching and publishing studies, investigations, surveys, and findings on the development and operating of port facilities; financing, directing, or aiding in planning, constructing, and designing port facilities; financing, directing, or aiding in the securing of port facilities and surrounding areas; making grants, loans, and investments; constructing, acquiring, purchasing, leasing, improving, and equipping port facilities; borrowing money and issuing bonds or notes; acquiring or contracting to acquire, improve, and dispose of real or personal property; procuring insurance against loss; indemnifying members or employees of the board; investing money of the authority; contracting for goods and services; charging, imposing, and collecting fees and

charges; mortgaging or creating security interests in a port facilities; and promulgating rules under the Administrative Procedures Act to carry out the purposes of the new port authority act.

The authority also could acquire real or personal property or rights or interests in real or personal property by gift, devise, transfer, exchange, foreclosure, purchase, or otherwise, and the authority could own, lease, convey, demolish, relocate, or rehabilitate real or personal property, consistent with the purposes of the act. Real property acquired by the authority by purchase could be obtained by any method, and the authority would have the ability to acquire property by condemnation under the Uniform Condemnation Procedures Act. The authority could control, hold, manage, maintain, operate, repair, lease, secure, prevent the waste or deterioration of, and demolish property, and take all other actions necessary to preserve the value of its property.

Bonding Provisions. The new act would contain extensive set of provisions dealing with its ability to issue bonds and notes. The authority would be able to authorize and issue bonds or notes, with all authority bonds or notes payable solely from revenues or funds pledged or available for their payment. Bonds and notes of the authority would not be a general obligation of the authority. Bonds and notes of the authority would not be a debt or liability of the state and would not create or constitute any indebtedness, liability, or obligations of the state nor constitute a pledge of the full faith and credit (or the taxing power) of the state. The face of each bond and note would have to contain a statement to that effect. Bonds and notes issued under the new act would not be subject to the Revised Municipal Finance Act but would be subject to the Agency Financing Reporting Act. The members of the authority board and any person executing bonds or notes on behalf of the authority would not be personally liable on the bonds or notes.

Purposes of Bonds and Notes. The new act would permit the authority to issue, from time to time, bonds or notes in principal amounts considered necessary to provide funds for any purpose. The act specifically cites the payment of the costs or expenses of the authority incident to and necessary and convenient to carry out its authorized purposes and powers; the payment, funding, or refunding of the principal and interest on, or the redemption premiums on, bonds or notes of the authority, whether or not the bonds or notes or interest had become due; the establishment of reserves to secure or pay authority bonds or notes or interest; and the payment of interest on bonds or notes for a period determined by the authority.

Features of Bonds and Notes. The bonds or notes of the authority would have to be authorized by resolution of the authority; would have to bear the date or dates of issuance; could be issued as tax-exempt or taxable bonds or notes; would be serial bonds, term bonds, or term and serial bonds; would have to mature no later than 40 years from the date of issuance; could provide for sinking fund payments; could provide for redemption at the option of the authority at any time and for any reason; could provide for redemption at the option of the bondholder at any time for any reason; would bear interest at a fixed or variable rate or rates of interest or at no interest; would be registered bonds, coupon bonds, or both; could contain a conversion feature; could be transferable; and could be the form, denominations, and with such other provisions and terms as determined necessary or beneficial by the authority.

Resolutions Authorizing Bonds. A resolution authorizing bonds could provide for all of the following as part of the contract with the holders of bonds or notes: a pledge of all or any part of

authority revenues and assets, of money derived from the revenue or assets, and of the proceeds of bonds or notes; a pledge of a loan, grant, or contribution from the federal, state, or local government; the establishment and setting aside of reserves or sinking funds; authorization for the issuance of additional bonds and notes; the procedure by which contracts with noteholders or bondholders could be abrogated or amended; a contract with bondholders as to the custody, collection, securing, investment, and payment of any money of the authority; the vesting in a trustee or a secured party the property, income, revenue, receipts, rights, remedies, powers, and duties determined to be necessary or appropriate to adequately secure and protect noteholders and bondholders or to limit or abrogate the right of holders of notes or bonds to appoint a trustee or to limit the right, powers, and duties of the trustee; and provide remedies to the trustee, noteholders, or bondholders in the event the authority failed or refused to comply with the new act or defaults on an agreement (with certain specific legal remedies listed).

Within the limitations contained within the issuance or authorization resolution, the authority could authorize a member of the board, the director, or other officer to perform any power, duty, function, or responsibility of the authority, including authorization to sell and deliver and receive payment for notes or bonds; refund notes or bonds; deliver notes or bonds, partly for refunding and partly for other purposes; buy notes or bonds issued and resell them; approve interest rates or methods for fixing interest rates, prices, discounts, maturities, principal amounts, denominations, etc.; direct the investment of funds; approve terms of contracts and execute and deliver contracts; and approve the terms of insurance contracts, line of credit agreements, letters of credit, etc. The bill specifies that the authority could authorize and approve an insurance contract, an agreement for a line of credit, a letter of credit, a commitment to purchase notes or bonds, an agreement to remarket bonds or notes, or any other transaction to assure timely payment of a bond or note. The authority could authorize payment from the proceeds of bonds or notes to pay for the costs of those contracts or agreements.

State “Pledge”. The new act would say in Section 18 that “This state pledges to and agrees with the holders of bonds or notes issued in accordance with this act that this state shall not limit or restrict the rights vested in the authority by this act to fulfill the terms of an agreement made with the holders of authority bonds or notes or in any way impair the rights or remedies of the holders of the bonds or notes of the authority until the bonds or notes, together with interest on the bonds or notes and interest on any unpaid installments of interest, and all costs and expenses in connection with an action or proceedings by or on behalf of those holders are fully met, paid, and discharged.”

Liberal Construction. The bill would specify that the new act is to be construed liberally to effectuate the legislative intent and its purposes. All powers granted would be cumulative and not exclusive and are to be broadly interpreted to effectuate the intent and purposes and not as a limitation of powers.

Analyst: C. Couch

■ 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.