

Legislative Analysis



PORT AUTHORITY AMENDMENTS

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House Bill 5651 as introduced
Sponsor: Rep. Holly Hughes

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

House Bill 5652 as introduced
Sponsor: Rep. Wendell L. Byrd

Committee: Commerce and Trade
Complete to 9-9-16

SUMMARY:

House Bill 5651 would amend the Hertel-Law-T. Stopczynski Port Authority Act to provide for the creation of a port authority in a county with a population between 165,000 and 195,000 (i.e., Muskegon); to allow port authorities generally to levy a property tax up to two mills; and to make other amendments affecting port authorities.

The Detroit-Wayne County Port Authority is currently the only authority organized under the H-L-S Port Authority Act. (See *Fiscal Impact* for additional information.)

House Bill 5652 would make a complementary amendment to the Michigan Strategic Fund Act to expand the definition of "port facilities" beyond the current list of facilities to include "any other real or personal property necessary to enhance commercial maritime activities."

House Bill 5651

HB 5651 would do the following:

New Port Authority

- Allow, beginning January 1, 2016, a city or county to request the governor to authorize the incorporation of a port authority; this would be done by a resolution of the governing body of the city or the governing body of the county.
- Specify that an authority established in a county with a population of 165,000 or more but less than 195,000 consist of nine [board] members. (The act currently requires five or seven members.) These members would be appointed as follows:
 - One member appointed by the governor.
 - One member appointed by a majority of all members of the county board of commissioners.
 - One member appointed by the governing body of the city with the greatest number of port facilities in the county.
 - Three members appointed by a majority of all the members of the county board of commissioners, from individuals who own and operate port facilities in the county that will be affected by the authority. Two of those must own and operate port facilities with 35 or more total acres of real property or who ship in excess of 300,000 tons of shipping each year.

- Three members appointed by the governing body of the city, using the same criteria as in the preceding paragraph. The city appointees cannot be owner or operators of the same port facilities as the county appointees.
- For an authority described above, the articles of incorporation would provide only for the initial creation of the authority. All other governing actions, powers, and duties of the authority would be provided in the bylaws as determined by members of the authority.
- Those bylaws could, for certain actions, provide, that all members who own affected port facilities must concur in that action for the authority to act. Also, all such members would have to concur in the bylaws for them to take effect.

Eminent Domain

A port authority established on or after January 1, 2016, could not condemn property under the act.

Taxing Power

Under the bill, an authority with the approval of the governing body of its constituent unit or each constituent unit could levy an ad valorem tax up to two mills on non-exempt real and tangible personal property as finally equalized. The authority could levy the tax only with voter approval; a majority vote would be required by the electors of the constituent unit or constituent units creating the authority. The tax would be collected at the same time and in the same manner as other ad valorem taxes are paid and would be paid to the treasurer of the authority for purposes of the authority.

The bill also amends an existing tax provision. The act currently says a constituent unit that has taxing power shall levy a property tax each year to the extent necessary for the prompt payment of contract obligations that fall due before the following year's tax collections. (Such a tax can be reduced by funds on hand already pledged to that purpose.) The bill would change the "shall" to "may."

Unencumbered Funds

The act currently says that the authority must pay any surplus over operating expenses at the end of a fiscal year to the General Fund of the state and the general funds of constituent proportionately. The bill, instead, says surplus funds would not lapse back to the state or constituent units but are to be carried forward for the next fiscal year.

Other Provisions

In addition to technical amendments, the following are other provisions in the bill applying to port authorities.

- The definition of "port facilities" would be amended to add "and other real or personal property necessary to achieve the purposes of this act." The definition of "project" would be amended to include "public infrastructure and other real or personal property necessary to achieve the purposes of this act."
- Section 8 dealing with the powers of the authority would be expanded to include "entering into public-private partnerships with other owners of property or port

facilities within the jurisdiction of the authority." The bill says that nothing in the act could limit the property rights of any person that owns property or port facilities with the authority's jurisdiction. The bill also says, within Section 8, that the powers granted in the act are in addition to powers granted by charter or other statute.

- The bill would note that riparian rights owners must also agree to activities aimed at preserving navigation (in addition to the federal government and constituent units.)
- The act currently allows the governing body of constituent units to transfer certain property and facilities to the authority. The bill specifies that this does not apply to an owner of private property that enters into a private-public partnership agreement, unless that agreement provides for such a transfer.
- A provision that calls for the state transportation budget to provide 50% of an authority's operating budget would only apply, under the bill, to an authority created before January 1, 2016.

FISCAL IMPACT:

Impact on State Government

House Bill 5651 would have no direct impact on state revenue or expense.

Section 24 of the Hertel-Law-T. Stopczynski Port Authority Act currently requires a port authority to submit in writing a detailed annual budget to the governing bodies of its constituent units, as well as to the Michigan Department of Commerce (now the Department of Licensing and Regulatory Affairs or LARA), and the Michigan Department of Transportation (MDOT) for approval. The bill would retain the requirement that a port authority submit an annual detailed budget to its constituent units, and to MDOT, for approval but would strike the requirement that the budget also be submitted to the Michigan Department of Commerce/LARA.

The act currently requires the state of Michigan to provide 50% of the port authority's operating budget through the state transportation budget, subject to legislative approval, with the remaining 50% provided equally by the participating county and city. The bill would retain these provisions with respect to port authorities organized prior to January 1, 2016, but would not mandate state participation in the budget of a port authority organized after January 1, 2016.

The Detroit-Wayne County Port Authority is currently the only authority organized under the H-L-S Port Authority Act. The Detroit-Wayne County Port Authority's annual operating budget is approximately \$1 million. The state of Michigan provides \$468,200 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 the requirement of current law that the state provide 50% of the port authority's annual operating budget. As a result, the bill would have no impact on state

funding for the Detroit-Wayne County Port Authority. Because the bill does not require a state contribution to the budget of an authority organized after January 1, 2016, the bill would establish no new state funding mandate.

Impact on Local Units of Government

The H-L-S Port Authority act authorizes, but does not mandate, the creation of port authorities as a type of local unit of government. House Bill 5651 would amend Section 5 of the act to provide specific conditions for an authority established in a county having a population between 165,000 and 195,000. Based on the 2010 Census, these provisions would apply only to Muskegon County.

House Bill 5651 would expand port authority taxing authority.

Section 13 of the act currently permits a 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.

This section currently also mandates that if a constituent unit has taxing power, that unit must levy a tax upon all real and personal property within the constituent unit to the extent necessary for the prompt payment of obligations related to a contract for the acquisition, improvement, or extension of port facilities. The bill would amend this section to make the imposition of a property tax optional rather than mandatory.

The bill would add a new section, Section 24a, to authorize an authority, with the approval of the governing body of its constituent unit or each constituent unit, to levy an ad valorem tax of up to 2 mills on non-exempt real and tangible personal property. The port authority could levy the tax only if a majority of the electors of the constituent unit or constituent units voted to approve the tax. This additional taxing authority would appear to allow a port authority to levy a property tax, with voter approval, for general operating revenue and not simply to fund contractual obligations related to port facility projects.

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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.