

Legislative Analysis



PORT AUTHORITY AMENDMENTS

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

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 9-15-16

REVISED SUMMARY:

House Bill 5651 would amend the Hertel-Law-T. Stopczynski Port Authority Act to, among other things, provide for the creation of a port authority in a county with a population between 165,000 and 195,000 (i.e., Muskegon County); to allow port authorities to enter into public-private partnerships and expand the definition of port facilities; and to specifically authorize a port authority to receive revenue through the levying of a property tax approved by constituent local governmental units and voters, up to two mills.

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 5651 also repeals a previous repealer: the Port Authority Act currently contains a provision that would repeal the Port District Act of 1925 when constituent units operating under that act join the Port Authority Act instead. This was a reference to the Monroe Port Authority. As noted in the compiler's notes to the Michigan Compiled Laws, "The Monroe Port Authority has not created an authority under the Port Authority Act, and continues to operate under, and derive its power from, Act 234 of 1925."¹ House Bill 5651 would leave the 1925 act in place indefinitely. (It should be noted that under that act, a port district has the power to raise revenue by a property tax up to two mills, with voter approval.)

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." The term "port facilities" was included within the larger term, "economic development activities" within the MSF Act in 2014 legislation.

DETAILED SUMMARY:

House Bill 5651
HB 5651 would do the following:

¹ [http://www.legislature.mi.gov/\(S\(fyzrspy0c0voajxdz321c4yd\)\)/mileg.aspx?page=getObject&objectName=mcl-120-130](http://www.legislature.mi.gov/(S(fyzrspy0c0voajxdz321c4yd))/mileg.aspx?page=getObject&objectName=mcl-120-130)

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.
- The provision in current statute that require the state to provide 50% of a port authority's annual operating budget would not apply to this new port authority, since under the bill, that funding provision would only apply to an authority created before January 1, 2016.

Eminent Domain

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

Millage for Port Authority

The bill says an authority with the approval of the governing body of its constituent unit or each constituent unit could levy an ad valorem property 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 property taxes, 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." (For other tax-related provisions in current law, see *Fiscal Impact*.)

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 key 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 within 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.)
- A provision that currently allows agents and employees of a port authority to enter upon the lands, waters, and premises in the authority would be amended to add, "subject to permission of the property owner."
- 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 not apply, since under the bill, that provision would only apply 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 authorize a port authority, under certain conditions (as described below), to levy an ad valorem property tax in its own name.

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.

Legislative Analyst: Chris Couch
Fiscal Analyst: William E. Hamilton

■ 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.