

Legislative Analysis



PORT AUTHORITY AMENDMENTS

Phone: (517) 373-8080
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House Bill 5651 (Proposed H-1, Draft 1 Substitute)
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 9-19-16

SUMMARY:

House Bill 5651 would amend the Hertel-Law-T. Stopczynski Port Authority Act to, among other things, to provide new provisions aimed at authorities created after January, 1, 2016, by a city or a county; to allow port authorities to enter into public-private partnerships and expand the definition of port facilities beyond property owned by a port authority; and to protect private property owners in provisions dealing with eminent domain, trespass, and the transfer of property.

Currently, the act allows a port authority to be created by a city and county; a combination of counties; or a combination consisting of at least one city and one county. The bill would allow, for authorities created after January 1, 2016, that an authority be created at the request of a city or county.

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.

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.

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)

DETAILED SUMMARY OF HOUSE BILL 5651 (PROPOSED H-1):

New Port Authority

The bill would 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.

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

Public-Private Partnerships

- 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.
- 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.
- 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.)

Port Facilities

The definition of "port facilities" would be amended. Currently the term only applies to facilities owned by the port authority itself. The bill would strike the words "owned by the port authority," and would 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."

Eminent Domain

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

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.

Constituent Unit Levy for Contract Obligations

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."

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. Current law requires a combination of a city and a county, a city and more than one county, or a combination of counties to incorporate as a port authority. House Bill 5651 would amend Section 5 of the act to authorize a port authority to be incorporated by a single member – either a city by itself or a county by itself.

The bill as introduced would have authorized a port authority, under certain conditions, to levy an ad valorem property tax in its own name. These provisions regarding authority to levy a property tax are not included in the proposed substitute.

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 does not appear to have a direct fiscal impact on local units of government.

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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.