

Legislative Analysis



PORT AUTHORITIES: ALLOW PUBLIC-PRIVATE PARTNERSHIPS

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Senate Bill 711 (S-1) as passed by the Senate

Sponsor: Sen. Jim Stamas

House Committee: Commerce and Trade

Senate Committee: Economic Development and International Investment

Complete to 9-24-18

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

SUMMARY:

Senate Bill 711 would amend the Hertel-Law-T. Stopczynski Port Authority Act to do all of the following:

- Allow an existing port authority (i.e., the Detroit/Wayne County Port Authority) to enter into public-private partnerships to promote and develop port facilities within its jurisdiction, regardless of who owns those facilities.
- Eliminate the ability of a port authority to acquire property or property rights by power of eminent domain.
- Amend the Act's definitions of "port facilities" and "project" to exclude bridges and tunnels.

Under the Act, two or more counties, or a combination of one or more counties and one or more cities, can approve a joint resolution to request that the governor authorize the incorporation of a port authority. A port authority can exercise its powers and duties within the boundaries of the county or counties that created it, and it has jurisdiction over the commercially navigable waters within those boundaries. A port authority can acquire, construct, improve, or operate port facilities; acquire and hold real and personal property; and issue bonds and notes to pay for the cost of port facilities.

Public-private partnerships

Senate Bill 711 would allow an authority created before the bill takes effect (i.e., the Detroit/Wayne County Port Authority) to enter into public-private partnerships with other owners or property or port facilities within the jurisdiction of the authority.

The bill would further state that nothing in the Act limits the property rights of any person that owns property or port facilities within the jurisdiction of the authority and that the powers granted under the Act are in addition to those granted by charter or other statute.

Taking by condemnation (eminent domain)

Currently under the Act, an authority may acquire by condemnation property or property rights that it considers necessary for the construction or efficient operation of a project. Senate Bill 711 would eliminate this power and would make corresponding changes to language that currently refers to property "taken" by the authority for purposes of the Act.

Revenue bonds

The bill would add Section 16a to the Act to prohibit an authority from issuing revenue bonds for a project that is financed, but not owned, by an authority, unless the project is located within five miles of the commercially navigable waters that provide water access to one or more port facilities within the jurisdiction of the authority.

Definitions

Currently, the term ***port facilities*** is defined to mean facilities *owned by the port authority* such as jetties, piers, marinas, warehouses, ferries, canals, terminal facilities, etc.

The bill would revise this definition in two ways. First—but only for an authority created before the bill takes effect (i.e., the Detroit/Wayne County Port Authority)—the bill would remove the requirement that facilities must be owned by the port authority and would also specify that port facilities include other real or personal property necessary to enhance commercial or recreational maritime activities.

Second—regardless of when an authority was established—port facilities would not include a bridge or a tunnel.

For purposes of the Act, ***project*** currently means the acquisition, purchase, construction, reconstruction, rehabilitation, remodeling, improvement, enlargement, repair, *condemnation*, maintenance, or operation of port facilities.

The bill would do the following:

- Remove “condemnation” of port facilities from the definition of ***project***.
- Specify that ***project*** does not include, directly or indirectly, a bridge or a tunnel.
- Add that, for an authority created before the bill takes effect, ***project*** includes public infrastructure and other real and personal property necessary to achieve the purposes of the Act.

Other provisions

An authority may currently appear before boards, commissions, and departments in matters relating to the design, establishment, construction, or maintenance of a project *operated and maintained* by the authority. Under the bill, the authority could appear with regard to a project *operated, maintained, financed, or supported* by the authority.

Finally, an authority may currently apply for and receive grants and loans for the planning, construction, operation, or financing of a *port facility*. The bill would replace “port facility” with “project.”

MCL 120.102 et al.

FISCAL IMPACT:

Under current law, port authorities organized under Public Act 639 of 1978 are authorized to issue revenue bonds “for the purpose of providing funds for paying the cost of *port facilities*, or for paying the cost of an extension, enlargement, or improvement of a *project* under the control of the authority.” However, the current definitions of “port facilities” and “project” in Section 2 of the act effectively limit the authority to issue revenue bonds to port facilities owned by the port authority.

Senate Bill 711 would expand the authority to issue revenue bonds for authorities created before the effective date of Senate Bill 711, to include port facilities whether or not those facilities are owned by the port authority “and include other real or personal property necessary to enhance commercial or recreational maritime activities.”

Senate Bill 711 would also expanded the definition of “project” for authorities created before the effective date Senate Bill 711, to include “public infrastructure, and other real and personal property necessary to achieve the purpose of this act.”

The bill’s definition of both “port facilities” and “project” specifically excludes “a bridge or a tunnel, directly or indirectly.”

While the amendment of the definitions of “port facilities” and “project” would expand the authority of a port authority to issue revenue bonds, new Section 16a establishes a new limitation on the authority to issued revenue bonds for a project not owned by an authority, but financed by an authority, to projects located within 5 miles of the commercially navigable waters that provide water access to 1 or more port facilities within the jurisdiction of that authority.

The bill has no fiscal impact on the state of Michigan or on local units of government, other than Detroit Wayne County Port Authority, the only port authority currently established under Public Act 639 of 1978. To the extent that the bill would authorize the DWCPA to finance through revenue bonds a project it is not authorized to finance under current law, the bill could help the DWCPA establish new sources of revenue.

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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.