

HOUSE BILL REPORT

ESHB 1170

As Passed House:
March 5, 2015

Title: An act relating to the administrative powers of port districts.

Brief Description: Granting port districts certain administrative powers.

Sponsors: House Committee on Local Government (originally sponsored by Representatives Clibborn, Zeiger, Tarleton, Wilcox, Springer, Jinkins, Fey, Kilduff, Fitzgibbon, Gregerson and Tharinger).

Brief History:

Committee Activity:

Local Government: 1/21/15, 1/28/15 [DPS].

Floor Activity:

Passed House: 3/5/15, 96-2.

Brief Summary of Engrossed Substitute Bill

- Authorizes port districts (districts) located in a county with a population of more than 800,000 on the effective date of the act to create a port public development authority (authority) to manage maritime activities of a district or two districts.
- Authorizes the authority to: (1) administer and execute federal grants or programs; (2) receive and administer private funds, goods, or services for any lawful public purpose related to maritime activities of the district or districts; and (3) perform any lawful public purpose or public function related to maritime activities of the district or districts.
- Authorizes districts and authorities, for the management of maritime activities, to enter into agreements with the federal or state government to receive and expend funds, issue bonds, notes, and other evidences of indebtedness, and agree to repay and reimburse guarantors of indebtedness.
- Makes provision for the creation, organization, powers, and liability of an authority formed in accordance with the act.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Takko, Chair; Gregerson, Vice Chair; Griffey, Assistant Ranking Minority Member; Fitzgibbon, McBride, Peterson and Pike.

Minority Report: Do not pass. Signed by 2 members: Representatives Taylor, Ranking Minority Member; McCaslin.

Staff: Michaela Murdock (786-7289).

Background:

Port Districts.

Ports districts (districts) are special purpose districts established to acquire, construct, maintain, operate, develop, and regulate: harbor improvements; rail, motor vehicle, water, or air transfer and terminal facilities, or any combination of such transfer and terminal facilities; other commercial transportation, transfer, handling, storage and terminal facilities; and industrial improvements. Districts may have boundaries that are coextensive with the county in which they are located, or they may be less than countywide.

Port Commissions.

Powers of a district are exercised through a port commission consisting of three or five commissioners, as permitted by statute. Only registered voters residing in a commissioner district may hold office as a commissioner of the commissioner district.

In general, districts are divided into the same number of commissioner districts as commissioner positions in the district (*i.e.*, three or five), with each commissioner district encompassing approximately the same population of residents. As an alternative, if approved by district voters at the time of district formation or at a subsequent election, districts with five commissioners may have two at-large commissioner districts and three commissioner districts that are each comprised of approximately one-third of the total district population.

Each port commission must choose from among its members a president and a secretary, adopt by resolution rules governing the transaction of its business, and adopt an official seal. All proceedings of the port commission must be by motion or resolution.

Port District Funds.

In general, a district may contract indebtedness, borrow money for district purposes, issue general obligation bonds, and issue revenue bonds.

Districts may also raise revenue by levy of an annual tax for general port purposes not to exceed 45 cents per \$1,000 of assessed value against the assessed valuation of taxable property in the district. Levies for dredging, canal construction, land leveling or filling purposes, and for industrial development district purposes are also authorized.

The county treasurer acting as port treasurer must create a fund into which all money received from the collection of district taxes must be paid. The county treasurer must also maintain other special funds created by the port commission and place moneys in the special funds as directed by the port commission.

Contracts with Other Governmental Entities.

Districts may enter into contracts with the United States, or any state, county, municipal corporation, or department of any state, county, or municipal corporation, to carry out any of the powers that each of the contracting parties may separately exercise.

Joint Exercise of Power.

Two or more districts may, by mutual agreement, exercise jointly all powers granted to each individual district. In jointly exercising powers, the districts may jointly acquire lands, property, property rights, leases, or easements necessary for their purposes that are either wholly or partially in the districts. All acquisitions by two or more districts acting jointly of real property or real property rights located in any other district may only occur with the consent of the other district.

Interlocal Cooperation Act.

The Interlocal Cooperation Act (ICA) allows public agencies to enter into agreements with one another for joint or cooperative action. Any power, privilege, or authority held by a public agency may be exercised jointly with one or more other public agencies having the same power, privilege, or authority. A "public agency" for purposes of interlocal agreements includes any agency, political subdivision, or unit of local government. The term specifically includes municipal corporations, special purpose districts, local service districts, state agencies, federal agencies, recognized Indian tribes, and other states' political subdivisions.

Summary of Engrossed Substitute Bill:

Power to Create a Port Public Development Authority.

Districts located in a county with a population of more than 800,000 on the effective date of the act are granted the power to create a port public development authority (authority) to manage maritime activities of the district or districts. Authorities may be created by a single district or two districts acting jointly in accordance with an agreement for joint or cooperative action under the ICA. The district or districts may transfer to the authority any funds, real or personal property, property interests, or services.

Powers of the Port Public Development Authority.

Authorities may be created to: (1) administer and execute federal grants or programs; (2) receive and administer private funds, goods, or services for any lawful public purpose related to maritime activities of the district or districts; and (3) perform any lawful public purpose or public function related to maritime activities of the district or districts. Authorities are granted various powers, including to own and sell real and personal property, sue and be sued, and loan and borrow funds.

Authorities do not have the power of eminent domain, or the power to levy taxes or special assessments.

Organization and Management of the Port Public Development Authority.

The affairs, operations, and funds of an authority must be governed by the district or districts that created the authority. Each district that has either singly or jointly created an authority must oversee and manage the affairs, operations, and funds of the authority through the

district's own elected port commission. Specifically, districts that jointly create an authority must each manage the authority through the district's own elected commissioners. In addition, the district or districts creating an authority must provide for the organization and operation of the authority.

Authorities are subject to applicable laws including the Public Records Act, the Open Public Meetings Act, and the Code of Ethics for Municipal Officers.

Contracts with the Federal or State Government.

For the management of maritime activities, districts and authorities are allowed to enter into agreements with the federal or state government to:

- receive and expend federal and private funds;
- issue bonds, notes, and other evidences of indebtedness that are guaranteed or secured by funds provided by the federal government; and
- agree to repay and reimburse guarantors of indebtedness.

Districts and authorities may also pledge security, create special funds relating to authorized federal or private funds, and contract with financial institutions to act as trustee or custodian of federal or private funds.

Transfers of Real Property to a Port Public Development Authority.

A district that transfers real property to an authority must impose appropriate deed restrictions to ensure that the property continues to be used for the public purpose for which it is transferred. An authority must provide advance written notice of any proposed sale or encumbrance of real property transferred to it by a district. The sale or encumbrance of such real property may only occur after approval by the authority at a public meeting.

Insolvency or Dissolution of a Port Public Development Authority.

If an authority is insolvent or dissolves, the superior court of a county in which the authority operates has jurisdiction to appoint and supervise trustees and receivers of the authority's property and assets. All liabilities incurred by the authority must be satisfied exclusively from its assets and property. Creditors do not have a right of action against the district or districts that created the authority.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Although this bill may sound simple, it has great importance for an alliance between the Ports of Seattle and Tacoma, and will provide important tools for creating that partnership. In the past, the ports have cooperated on security and other measures, but they have also competed in ways that do not benefit the region. By working together instead of

competing with each other, the two ports will attract more shipping and be a much stronger, competitive entity.

The partnership between the ports is not a merger; it is an alliance. Each port will retain its own separate structures, governance, assets, etc., but they will be able to form a single management team, leverage assets, and be more responsible and strategic with limited financial resources. With an alliance, the ports will be indifferent about whether growth happens in Seattle or Tacoma; they will simply want the growth to occur.

Within the port industry, there is tremendous competition on a global scale. Customers already recognize the Seattle and Tacoma ports as a single gateway; they do not distinguish between them in terms of how they do business. Washington ports are competing with gateways in Canada, Southern California, and the Suez and Panama canals for shipping business. It is critical to our state that we attract shipping and port activities, and remain competitive in the global market. We need to hold on to cargo and jobs, and grow economic activity and opportunities in this region. The global climate has brought the Seattle and Tacoma ports together.

The Seattle and Tacoma ports are currently in a due diligence period. A proposed business plan is being developed, and the structure and operating procedures of the alliance are being defined. Given rapid changes in the industry and the competitive nature of the market, the ports' goal is to share the business agreement with the public by March or April, and then submit it to the Federal Maritime Commission in Washington D.C. This bill needs to move quickly, so the ports can meet those deadlines.

The legislation will give ports powers already held by local governments; it does not give them different, new powers.

(Opposed) While supporting and maintaining our state's infrastructure is a critical need, and one that affects the state's competitiveness in the global market, this bill is not the way to do it. Port districts are not very transparent entities; they act beyond the oversight of citizens. The type of powers given to ports by the bill will allow them to further veil their activities from the public. Public corporations run by port districts will not be any more responsible to the public. Current statutory authority provides port districts with sufficient tools, and we do not need to give them wholesale new powers.

Persons Testifying: (In support) Representative Clibborn, prime sponsor; John Wolfe, Port of Tacoma; and Kurt Beckett, Port of Seattle.

(Opposed) Arthur West.

Persons Signed In To Testify But Not Testifying: None.