

DETROIT/WAYNE COUNTY PORT AUTHORITY

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Senate Bill 893 as reported from House committee

Sponsor: Sen. Erika Geiss

House Committee: Transportation, Mobility and Infrastructure

Senate Committee: Transportation and Infrastructure

Complete to 12-7-24

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

SUMMARY:

Senate Bill 893 would amend the Hertel-Law-T. Stopczynski Port Authority Act to extend the allowable activities of a port authority, including the issuance of revenue bonds, to include those that pertain to facilities that it does not own, as well as related facilities as defined by the bill. The bill would authorize a port authority to enter into public-private partnerships or other agreements necessary or useful to accomplish the purposes of the act. The bill also would allow a port authority to enter into certain financing arrangements as it determines necessary or appropriate. The Detroit/Wayne County Port Authority is the only port authority organized under the act.

Port facilities and related facilities

The act currently defines *port facilities* as facilities owned by the port authority (such as piers, bridges, marinas, canals, grain bins, oil tanks, etc.). The bill would remove the requirement of port authority ownership. The bill would provide that international bridges are not port facilities. The bill also would define the term *related facilities* to mean the following facilities located within five miles of the navigable waters within the geographic area of an authority, including, but not limited to, all of the following:

- Public infrastructure.
- Real and personal property used or useful to accomplish the purposes of the authority.
- Parking lots and parking structures that may be used in connection with facilities.
- Commercial and tourism facilities related to maritime and public recreational facilities.
- Facilities used for freight, transportation, light manufacturing, and intermodal operations and functions.

The bill would define the term *facilities* as meaning both port facilities and related facilities. In several places in the act that now refer to *port facilities* (which currently requires facility ownership by the authority and does not include *related facilities* as defined above), the bill would instead refer to *facilities*. This includes the definition of the term *project*, as used in the act, which would mean the acquisition, purchase, construction, reconstruction, rehabilitation, remodeling, improvement, enlargement, repair, condemnation, maintenance, or operation of *facilities* (instead of *port facilities*). In addition to instances described below, the term *facilities* would be used instead of *port facilities* in provisions related to the issuance of revenue bonds; the requirement that executive director not have a financial interest; the receipt of grants or loans; the exclusion of debt service from the operating budget; industrial districts; municipal contracting to use facilities; planning; and investigations and surveys.

Currently the act allows the port authority to acquire, construct, reconstruct, rehabilitate, improve, maintain, lease as lessor or as lessee, repair, or operate *port facilities* within its

territorial jurisdiction. In addition to changing *port facilities* to *facilities*, the bill would add “finance” to the list of verbs in this provision.

Similarly, the act now allows the port authority to designate the location and character of the *port facilities* the authority may hold or own or over which it is authorized to act, and regulate all matters related to the location and character of those *port facilities*.

The bill would instead allow the port authority to designate the location and character of the *facilities* the authority may hold, own, *finance*, or *operate*, or over which it is authorized to act, and regulate all matters related to the location and character of those *facilities*.

Ancillary financing

The bill would authorize the port authority to enter into, amend, or terminate an ***ancillary financing facility***, as it determines necessary or appropriate, for either of the following purposes:

- To facilitate the issue, sale, resale, purchase, repurchase, or payment of bonds, or the making or performance of swap contracts, including bond insurance, letters of credit, and liquidity facilities.
- To attempt to hedge risk or achieve a desirable effective interest rate or cash flow.

Ancillary financing facility would mean any of the following:

- A revolving credit agreement, an agreement establishing a line of credit, or a letter of credit.
- A reimbursement agreement.
- A standby bond purchase agreement.
- An interest rate exchange or similar agreement.
- A currency exchange agreement.
- A commodity exchange agreement.
- An interest rate floor or cap.
- An option, put, call, or similar agreement to hedge payment, currency, commodity, rate, spread, or similar exposure.
- An investment agreement.
- A float agreement.
- A forward agreement or other investment arrangement.
- An insurance contract.
- A surety bond.
- A commitment to purchase or sell securities.
- A purchase or sale agreement or commitment.
- Any other contract or agreement or other security agreement approved by an authority under the act, including any arrangement referred to in the act.

The bill would allow the port authority to enter into, amend, or terminate an ancillary financing facility, as it determines necessary or appropriate, to place the obligations or investments of the port authority, as represented by the bonds or the investment of bond proceeds, in whole or in part, on the interest rate, cash flow, or other basis desired by the port authority. The ancillary financing facility could include contracts commonly known as interest swap agreements and futures or contracts providing for payments based on levels of, or changes in, interest rates. A

port authority could enter into these contracts or arrangements in connection with, or incidental to, entering into or maintaining any agreement that secures bonds of the port authority or any investment of reserves or contract providing for investment of reserves, or similar ancillary financing facility guaranteeing an investment rate for a period of years.

Under the bill, the port authority's determination that an ancillary financing facility, or the amendment or termination of an ancillary financing facility, is necessary or appropriate would be conclusive. The port authority could determine the terms and conditions of an ancillary financing facility, including without limitation provisions as to security, default, termination, payments, remedy, and consent to service of process.

Other amendments

The bill would allow the port authority to enter into public-private partnerships or other agreements necessary or useful to accomplish the purposes of the act.

The act now allows the port authority to fix, and revise from time to time, and charge and collect rates, fees, rentals, or other charges for the use of a facility owned by the authority. The bill would add "or operated" by the port authority.

The act allows the port authority to appear on its own behalf before federal and state entities in matters relating to the design, establishment, construction, extension, operation, improvement, repair, or maintenance of a project operated and maintained by the authority. The bill would additionally refer to projects financed or supported by the authority.

The act allows an authority and one or more constituent units (a municipality that formed the authority) to enter into a contract or contracts for the acquisition, improvement, enlargement, or extension of *port facilities* and for the payment of the cost by the contracting constituent units, with interest, over a period of up to 40 years. The bill would change *port facilities* to *facilities* and allow construction, operation, and financing of a project under these provisions. The bill also would additionally allow an authority and one or more constituent units to enter into a contract or contracts for the refunding of any prior indebtedness of the authority.

Under the above provisions, the act allows a contracting constituent unit (a municipality that formed the authority) to pledge its full faith and credit for payment obligations and requires it to use any taxing power it has to levy a tax on all real and personal property in the constituent unit, which can be imposed without limitation as to rate or amount, to the extent necessary for the prompt payment of that part of the contract obligations that fall due before the following year's tax collection. The act also now adds that the tax must be in addition to any tax the contracting constituent unit is otherwise authorized to levy and can be imposed without limitation as to rate or amount as long as it does not exceed the rate or amount necessary to pay the contract obligation. The bill would eliminate this provision (the preceding sentence).

The act also allows funds to be raised by the port authority or contracting constituent unit by service charge to users of the facilities owned by the port authority (the bill would add "or operated") or by setting aside any other available money (the bill would add "including the general revenues of the contracting constituent units").

The act allows, and provides procedures for, bonds to be issued for the purpose of acquiring facilities. The bill would additionally allow bonds to be issued to construct, improv, enlarge, extend, operate, or finance facilities or to refund prior indebtedness of the authority.

Relatedly, the bill would authorize the port authority to provide by resolution for its issuance of revenue refunding bonds to provide funds to pay the cost of refunding any prior indebtedness of the authority.

The bill would provide that powers granted to a port authority under the act are in addition to those granted by charter or other statute.

Finally, the bill would eliminate language that requires a port authority to pay the surplus of unencumbered funds into the general funds of the state and of its constituent units. The bill would instead provide that port authority surplus funds do not lapse to the state or constituent units but are carried forward by the authority into the next fiscal year.

MCL 120.102 et seq.

BACKGROUND:

The Hertel-Law-T. Stopczynski Port Authority Act was enacted in 1978 with an effective date of January 11, 1979. The act repealed the previous port authority statute, 1925 PA 234, subject to the reorganization of existing port authorities under the new act.

The cities of Detroit and Monroe had each established port authorities under 1925 PA 234. The city of Monroe's port authority was never reorganized and still operates a marine terminal under the authority of 1925 PA 234. The city of Detroit's port commission was reorganized as the Detroit/Wayne County Port Authority (DWCPA) under the authority of the Port Authority Act. The DWCPA was incorporated in 1981 and is, to date, the only port authority established under the Port Authority Act. Under the act, port authorities may be incorporated by a combination of counties or a combination of counties and cities. The DWCPA, as its name implies, has just two incorporators: the city of Detroit and the county of Wayne.

FISCAL IMPACT:

Under current law, port authorities organized under the Hertel-Law-T. Stopczynski Port Authority Act 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.” 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 893 would expand the authority of a port authority to issue revenue bonds in part through changes to defined terms. The bill would amend the term *facilities* to mean both *port facilities* and *related facilities*—both defined terms under the bill. In changing the current definition of *port facilities*, the bill would eliminate a requirement of current law that port facilities be “facilities owned by the port authority.”

The bill also would amend the definition of *project* to include activities related to *facilities*, and not (as under current law) those related only to *port facilities*.

The bill has no fiscal impact on the state of Michigan or on local units of government, other than the Detroit Wayne County Port Authority, the only port authority currently established under the Hertel-Law-T. Stopczynski Port Authority Act. As noted above, the bill would expand the DWCPA’s authority to finance projects through revenue bonds.

The bill does not materially change provisions of current law that require that the state provide 50% of the port authority’s annual operating budget, with the remaining 50% provided equally by the participating county and city, respectively. The DWCPA’s annual operating budget is approximately \$1.2 million. For both FY 2023-24 and 2024-25, the state of Michigan, through appropriations in the state transportation budget, provided \$600,000 in operating assistance to the DWCPA from the state restricted Comprehensive Transportation Fund.

The bill would eliminate language in section 25 that requires that a port authority pay the “surplus of unencumbered funds” into the general funds of the state and of its constituent units. The bill would instead direct that port authority surplus funds—effectively fund balance—do not lapse to the state or constituent units but are carried forward by the authority into the next fiscal year. This change does not appear to have an actual fiscal impact. The current language, part of the act’s original 1978 enactment, appears to be an anachronism and is no longer in effect.

POSITIONS:

A representative of the Detroit/Wayne County Port Authority testified in support of the bill. (11-14-24)

Operating Engineers Local 324 indicated support for the bill. (11-14-24)

The Michigan Department of Transportation indicated a neutral position on the bill. (11-14-24)

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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.