
OLR Bill Analysis

sHB 5569

AN ACT ESTABLISHING A GOVERNANCE STRUCTURE FOR THE STATE'S DEEP WATER PORTS.

SUMMARY:

This bill establishes the Connecticut State-Wide Port Authority (i.e., the authority) as a quasi-public agency to coordinate the development of the state's ports, focusing on private and public investments, and makes technical changes to the laws governing the state's quasi-public agencies. Currently, local port authorities plan, develop, and manage the state's three deep-water ports (Bridgeport, New Haven, and New London) and the Connecticut Maritime Commission advises the governor and other policymakers on policies and programs that affect them (CGS § 13b-51a).

Under the bill, the authority must:

1. seek federal and state funds for dredging and improving port infrastructure to increase cargo movement in the ports,
2. market the ports to domestic and international shippers,
3. coordinate port improvements and how they are funded, and
4. develop strategic entrepreneurial initiatives that may be available to the state.

The bill establishes a 15-member board to govern the authority and authorizes it to hire staff, adopt budgets, acquire property, contract for financial and professional services, provide financial assistance, and report annually to the legislature on the authority's projects.

The bill gives the authority broad fiscal powers. It allows the authority to issue bonds backed by its revenue and specifies how it

may do so. It also allows the authority to raise revenue by levying rates, rents, fees, and other charges for using its facilities and services.

EFFECTIVE DATE: July 1, 2013

§§ 1, 2, 7, 10, 11, 12, & 13 — QUASI-PUBLIC AGENCY

The bill establishes the authority as a quasi-public agency charged with coordinating the planning and development of the state's ports. As such, it must meet the same statutory conditions and requirements as other quasi-public agencies. Consequently, it must obtain the state treasurer's approval before it can issue bonds or incur other debt guaranteed by the state or backed by a state-capitalized or -guaranteed capital reserve fund. Its employees must comply with the state code of ethics and enjoy the same indemnity as state employees.

As a quasi-public agency, the authority has perpetual succession as a body politic and corporate and continues operating until it repays its bonds and meets its other obligations. It may adopt and alter an official seal and adopt bylaws to conduct business and regulate its affairs.

ORGANIZATIONAL STRUCTURE

Board of Directors

§ 1 — *Membership*. The authority's board consists of 15 members, including four state officials or their designees, and 11 appointed members. The four officials, who serve ex-officio, are the (1) state treasurer and the commissioners of (2) economic and community development, (3) transportation, and (4) energy and environmental protection.

The 11 remaining members are appointed as follows:

1. four by the governor, two for four-year terms and two for two-year terms;
2. one each, to four-year terms, by the (a) House speaker, (b) House minority leader, (c) Senate president, and (d) Senate minority leader; and

3. one each, for unspecified terms, by the chief executive officers of
(a) Bridgeport, (b) New Haven, and (c) New London.

Appointed directors must have business and management experience, and experience and expertise in at least one of the following areas:

1. financial planning,
2. budgeting and assessment,
3. marketing,
4. master planning,
5. maritime trade, and
6. transportation management.

The initial board members may begin serving immediately on appointment, but not beyond the sixth Wednesday of the next regular legislative session, unless confirmed by the legislature according to law. All subsequent appointments must be made with legislative advice and consent according to law. The subsequent appointees serve for four years, starting on July 1 in the year they are appointed.

The governor must appoint the board chairperson, who serves for a four-year term. The board must elect a vice chairperson and other officers it deems necessary from among its members. Vacancies must be filled within 30 days in the same manner as the original selection. The board must establish bylaws and appoint such committees and advisory boards as may be convenient or necessary to conduct its business.

§ 1 — Reimbursement, Conflicts of Interest, and Quorums. Each director is entitled to be reimbursed for actual and necessary expenses incurred performing his or her duties. Directors may be privately employed subject to state and federal ethics and conflict of interest laws, rules, and regulations. However, regardless of the law, it is not a

conflict of interest for a trustee, director, partner, or officer of any firm or corporation, or any person with a financial interest in such a person, firm, or corporation, to serve as a director, providing he or she abstains from deliberating, acting, or voting on a matter concerning the person, firm, or corporation.

The board may delegate to eight or more directors board powers and duties it deems necessary and proper according to the bill and board bylaws. Eight directors constitute a quorum for transacting business or exercising any power, and the authority may act by a majority of the quorum present.

§ 1 — Attendance Requirements and Removal from the Board.

Appointed directors may not designate anyone to perform their duties. Any appointee who fails to attend three consecutive board meetings or half of all meetings held in a calendar year is deemed to have resigned from the board. Any such vacancy must be filled in the same way as the original appointment for the rest of the unexpired term.

The appointing authority may remove any director for inefficiency, neglect of duty, or misconduct in office. Before doing so, the appointing authority must give the director a copy of the charges against him or her, and an opportunity for a hearing, no earlier than 10 days after notice, where the director may respond personally or through an attorney. When a director is removed, the appointing authority must file with the secretary of the state a complete statement of charges against the director and the appointing authority's findings on the charges, along with a complete record of the proceedings.

§ 3 — Board of Directors' Written Procedures. The board must adopt written procedures to:

1. adopt annual budgets and operating plans and require board approval before either can take effect;
2. hire, dismiss, promote, and pay authority employees, develop an affirmative action policy, and require board approval before a position may be created or a vacancy filled;

3. acquire real and personal property and personal services, and require board approval for any non-budgeted expenditure of more than \$5,000;
4. contract for financial, legal, bond underwriting, and other professional services, and require the board to solicit proposals at least once every three years for these services;
5. issue and retire bonds and other authority obligations;
6. award loans, grants and other financial assistance, including (a) developing eligibility criteria and an application process and (b) determining the role played by employees and directors; and
7. use surplus funds as authorized by the bill or law.

§§ 2 & 4 — Reporting Requirements. The board must report each year, by December 15, to the Commerce, Environment and Transportation committees on its activities, operating and financial statements, and legislative recommendations.

It must submit to the Appropriations, Commerce, Environment, and Transportation committees a copy of each audit of the authority conducted by an independent auditing firm no later than seven days after the board receives it.

§ 1 — Executive Director

The board must appoint an executive director as the authority's chief administrative officer. The executive director (1) is exempt from classified service and receives compensation set by the board, (2) serves at its pleasure, and (3) cannot be a board member. He or she must have extensive experience in developing and managing multi-use port operations.

The executive director directs and supervises administrative and technical activities at the board's direction. He or she must approve all the authority's employees' and consultants' salaries and expenses.

The executive director must attend all board meetings; keep a

record of authority proceedings; and maintain and have custody of all books, documents, and papers filed with the authority, and of the authority's minutes or journal and its official seal. He or she may have copies made of the minutes and records, and may use the seal to certify them as true copies on which people may rely. The executive director must perform other duties as the board directs.

§ 2 — GENERAL ADMINISTRATIVE POWERS

The act gives the authority many of the powers the law grants to other quasi-public agencies that include:

1. having perpetual succession and adopting bylaws;
2. adopting and modifying an official seal;
3. employing assistants, agents, and other employees; establishing necessary or appropriate personnel policies; and engaging consultants, attorneys, and appraisers to carry out its purposes;
4. obtaining insurance against liability or loss in connection with its property and other assets in such amounts and from such insurers as it deems desirable, and to procuring insurance for employees;
5. accounting for and auditing authority funds and recipients of those funds; and
6. investing in, acquiring, leasing, purchasing, owning, managing, holding, and disposing of real property, and leasing, conveying, or entering into agreements with respect to the property on any terms necessary or incidental to carry out the authority's purpose. Such transactions are not subject to approval, review, or regulation by any state agency under laws governing the purchase, sale, or lease of state property, except the authority cannot convey fee simple ownership in land (full ownership) under its jurisdiction and control without the approval of the State Properties Review Board and attorney general.

§ 2 — OPERATIONAL POWERS

The bill also gives the authority other powers related to coordinating port development that include:

1. developing an organizational and management structure to best achieve the authority's goals;
2. creating a code of ethical conduct for board members consistent with applicable law;
3. adopting rules, which are not considered regulations and therefore do not have to go through the regulatory approval process, to conduct its business;
4. receiving and accepting aid or contributions from any source to be held, used, and applied to carry out authority purposes, subject to the conditions of the grant or contribution, which include gifts or grants from any federal or state department, agency, or instrumentality;
5. entering into agreements with any federal or state department, agency, office, or instrumentality;
6. borrowing money or securing credit on a temporary, short-term, interim, or long-term basis as the bill allows;
7. issuing bonds, bond anticipation notes, and other obligations, funding and refunding them, and providing for the rights of their holders, and securing the obligations by pledging revenue, notes, and mortgages of others;
8. acquiring, leasing, holding, and disposing of real and personal property for its corporate purposes;
9. employing, among other employees, a marketing manager with experience in (a) port market development and promotion and (b) working with vessel operators, railroads, and the shipping and trucking industries;

10. setting the compensation of employees, except for those subject to collective bargaining agreements;
11. engaging consultants and other independent professionals needed to carry out its purposes and to provide technical assistance;
12. maintaining one or more offices;
13. acting in its own name;
14. mortgaging its property to benefit the authority's bondholders;
15. when issuing bonds or other obligations, entering into (a) currency and interest rate swaps and (b) credit enhancements, liquidity agreements, and other contracts;
16. making and entering into contracts and agreements needed or incidental to its duties and powers, including granting leasehold interests; concession, access and development rights and privileges; and supplier, vendor, contractor, and consultant contracts; and
17. doing all things necessary or convenient to carry out its purposes under the bill and the law.

§§ 5-9 — BONDING

The bill authorizes the authority to issue bonds backed by its own revenue to finance improvements at the port facilities. The authority must repay the bonds no later than 40 years after issuing them. It may request assistance from the state treasurer and appoint a finance committee. The authority's directors, officers, and employees are not personally liable for the bonds.

It can issue bonds to finance (1) general improvements and back them with some or all of its revenue and (2) a specific improvement and back it only with the revenue the improvement generates.

The authority may use the proceeds from the bond sales to:

1. cover construction costs, including labor and material;
2. acquire land and interests needed to construct or operate facilities, apparently including by condemnation, and any subsequent damage costs;
3. purchase machinery and equipment needed for these purposes;
4. capitalize reserve funds for repaying the bonds;
5. provide initial working capital;
6. cover administrative, legal, architectural, and engineering expenses;
7. cover audit and bond issuance costs; and
8. cover all other expenses related to planning, acquisition, project construction, or placing the project in operation.

The bonds do not count toward the state's bond cap, and only the authority is liable for them. The bill explicitly exempts the state, municipalities, and other political subdivisions from any obligation to repay the bonds. It exempts the principal and interest payments to the bondholders from all taxes except the estate and gift tax, but requires them to include the interest payments when computing excise and franchise taxes.

The bill allows the authority to determine how it will issue and repay the bonds and specifies the kinds of terms and conditions it may include in its agreements with the bondholders. The terms and conditions may indicate if the bonds are exempt from federal income taxes. The bill declares the bonds negotiable instruments under the Uniform Commercial Code subject only to their registration requirements. The bill makes the bonds securities in which governments and private entities may invest. The authority may sell the bonds (1) at a public sale on sealed proposals at a price and time it chooses or (2) by negotiating with investors.

The bill authorizes or requires several actions to assure bondholders that the authority will repay them. It specifies that the state will not limit or alter the authority's rights until the authority repays its outstanding bonds and authorizes the authority to create and maintain special capital reserves to back them. It also appropriates from the General Fund any amount needed to maintain these special capital reserves at the required minimum level. The funds must be appropriated as needed annually on or before December 1. The authority's chairperson or vice chairperson must certify the amount to the treasurer and the OPM secretary. Subject to any agreements with bond holders, the authority must repay the state any amount it appropriated to maintain the authority's special capital reserves.

The bill requires the authority to secure principal and interest payments by pledging its revenue, such as by a mortgage, which is also immediately subject to lien without any action on the bondholders' part. It allows the authority to secure that pledge by entering into agreements with a trustee representing the bondholders' interests (i.e., trust of indenture).

When the authority expects to issue bonds for a project but is not ready to do so, the bill allows it to cover its immediate costs by issuing temporary notes. If the authority does so, it must repay the notes with the proceeds from the bonds it issues. The bill also allows the authority to issue bonds to refund its outstanding bonds and specifies conditions for doing so. It also allows the authority to use its funds to purchase its bonds and those of the state and dispose of the bonds as the bond agreements allow.

§ 8 — REVENUE

Income

The bill authorizes the authority to fix, revise, charge, and collect rates and fees and charges for the use of, or services provided by its facilities and to contract for their use or services. It must fix and adjust the rates and charges to provide enough money to pay to improve, maintain, repair, and operate the facilities of the authority; pay principal and interest on outstanding revenue obligation; and create

and maintain reserves and sinking funds, required, permitted, or provided for such obligations.

The authority must set aside, at regular intervals, in a reserve, sinking, or similar fund enough money (1) to pay the cost of maintenance, repair, and operation, and to provide reserves and (2) for renewals, replacements, extension, enlargements, and improvements provided for in the resolution authorizing the issuance of any bonds or in the trust agreement securing the bonds.

Investments

The bill allows the authority to manage its funds, including bond proceeds. The authority can invest and reinvest its funds in obligations, securities, and other investments. It can also deposit and redeposit them in banks. But, in either case, it must comply with the bond agreements.

§ 8 — BUDGETING

The authority must, within 30 days of the start of the next fiscal year, approve an annual operating budget for its facilities. The budget must provide for:

1. payment of the facilities' maintenance and operating costs;
2. payment of principal and interest of the authority's outstanding revenue obligations;
3. the creation and maintenance of reserves and sinking funds; and
4. compliance with rate covenants required, permitted, or provided for in any resolution authorizing, or trust agreement securing, the obligations.

The annual budget must include an estimate of the authority's revenue to meet the estimated expenditures of the authority's facilities for the fiscal year.

§ 8 — PERSONNEL

The bill requires the authority to comply with all laws governing

state employees and state property and other laws that apply to the authority's facilities to remain in effect. All pension, retirement, or similar benefits vested or acquired with respect to state employees must continue unaffected and as if the salaries and wages of the employees were still paid from the General Fund. Because the bill does not refer to state employees working for the authority, it is not clear what effect this has.

BACKGROUND

Related Bill

sSB 1043 also establishes the Connecticut State-Wide Port Authority under nearly identical provisions.

COMMITTEE ACTION

Commerce Committee

Joint Favorable

Yea 19 Nay 0 (03/21/2013)