

SHB 1170 - H AMD 63

By Representative Clibborn

ADOPTED 3/5/2015

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that the shipping
4 and port industries must contend with an increasingly competitive
5 global market. Historically, port districts competed against other
6 local port districts. Today, port districts compete on a global
7 scale, and the current landscape is rapidly changing with the
8 expansion of facilities in Canada and the impending widening of the
9 Panama Canal. The ports of Seattle and Tacoma are the third largest
10 container trade centers in the United States, but they are in a race
11 to hold onto this position. The legislature finds that Washington's
12 ports need to be able to work cooperatively to protect the maritime
13 base of the state.

14 The legislature intends to enable certain port districts to
15 create port public development authorities for the management of
16 their maritime activities and to act cooperatively under the
17 interlocal cooperation act, chapter 39.34 RCW. The legislature
18 intends for the port districts to be able to partner as a single
19 management team and use financial resources strategically, while
20 remaining separate entities and complying with federal regulations.
21 The legislature finds that enacting this authority will help
22 Washington remain competitive globally, protect the state's long-term
23 economic and societal interests in port district jobs and growth, and
24 provide a tool to allow ports to work together on behalf of the
25 state.

26 NEW SECTION. **Sec. 2.** The definitions in this section apply
27 throughout this chapter unless the context clearly requires
28 otherwise.

29 (1) "Port commission" means a port commission governed by chapter
30 53.12 RCW of a port district that either singly or jointly creates a
31 port development authority under the provisions of this chapter.

1 (2) "Port district" or "port districts" means a port district or
2 port districts that are located in a county with a population of more
3 than eight hundred thousand on the effective date of this section.

4 (3) "Port public development authority" or "port development
5 authority" means a port public development authority created by a
6 single port district or jointly created by two port districts in
7 accordance with section 3 of this act.

8 NEW SECTION. **Sec. 3.** (1) A port district or two port districts
9 that act jointly in accordance with subsection (3) of this section
10 may by resolution:

11 (a) Create a port development authority solely to manage maritime
12 activities of the port district or districts; and

13 (b) Transfer to any port development authority created under this
14 section, with or without consideration, any funds, real or personal
15 property, property interests, or services.

16 (2) Port development authorities created under subsection (1) of
17 this section may:

18 (a) Administer and execute federal grants or programs;

19 (b) Receive and administer private funds, goods, or services for
20 any lawful public purpose related to maritime activities of the port
21 district or districts; and

22 (c) Perform any lawful public purpose or public function related
23 to maritime activities of the port district or districts, including
24 exercise any powers of the port district or districts that created
25 the port development authority, subject to limitations provided in
26 this chapter.

27 (3) Two port districts, each located in a county with a
28 population of more than eight hundred thousand on the effective date
29 of this section, may jointly exercise the authority provided in this
30 section under an agreement for joint or cooperative action executed
31 in accordance with the interlocal cooperation act, chapter 39.34 RCW.

32 (4) Any resolution to create a port development authority that is
33 adopted by a port district under this section must limit the
34 liability of the port development authority to the assets and
35 property of the port development authority.

36 NEW SECTION. **Sec. 4.** (1) The affairs, operations, and funds of
37 a port development authority must be governed by the port district or
38 districts that created the port development authority. Each port

1 district governing the port development authority must oversee the
2 affairs, operations, and funds of the port development authority
3 exclusively through the elected port commission of the port district.
4 If the port development authority is jointly created by more than one
5 port district under section 3 of this act, then the port development
6 authority must be managed by each port district as a member of the
7 port development authority, in accordance with the terms of this
8 section and the charter for the port development authority. Each port
9 district member shall act in such capacity through its own elected
10 commissioners.

11 (2) Any port district that creates a port development authority
12 under section 3 of this act must provide for the organization and
13 operation of the port development authority, oversee the affairs,
14 operations, and funds of the port development authority in order to
15 correct any deficiency, and ensure that the purposes of each program
16 undertaken are reasonably accomplished.

17 (3) A port development authority, in managing maritime activities
18 of a port district or districts under this chapter, may:

19 (a) Own and sell real and personal property;

20 (b) Contract with individuals, associations, corporations, the
21 state, and the United States;

22 (c) Sue and be sued;

23 (d) Loan and borrow funds;

24 (e) Issue bonds, notes, and other evidences of indebtedness;

25 (f) Transfer funds, real or personal property, property
26 interests, or services; and

27 (g) Perform community services related to maritime activities
28 managed by the port development authority.

29 (4) Port development authorities do not have the power of eminent
30 domain or the power to levy taxes or special assessments.

31 NEW SECTION. **Sec. 5.** (1) For the management of maritime
32 activities, port districts and port development authorities are
33 authorized to enter into an agreement with the federal government,
34 any federal agency or department, and any state agency or political
35 subdivision of the state, and pursuant to the agreement:

36 (a) Receive and expend, or cause to be received and expended by a
37 trustee or custodian, federal or private funds for any lawful public
38 purpose related to management of maritime activities of the port
39 district or port development authority;

1 (b) Issue bonds, notes, or other evidences of indebtedness that
2 are guaranteed or otherwise secured by funds or other instruments
3 provided by or through the federal government; and

4 (c) Agree to repay and reimburse for any liability of a guarantor
5 of bonds, notes, or other evidences of indebtedness issued by the
6 port district or port development authority.

7 (2) A port district or port development authority may pledge as
8 security for any bond, note, or other evidence of indebtedness, or
9 for any obligation to repay or reimburse the guarantor of a bond,
10 note, or evidence of indebtedness, its right, title, and interest to
11 or in the following:

12 (a) Any federal grant or payment received by the port district or
13 port development authority, or that may be received in the future;

14 (b) Property and revenues that may be obtained directly or
15 indirectly from the use of any federal or private funds received by
16 the port district or port development authority under subsection (1)
17 of this section;

18 (c) Payments received or owing from any person as a result of the
19 lending of any federal or private funds received by the port district
20 or port development authority under subsection (1) of this section;

21 (d) Any proceeds under (a), (b), or (c) of this subsection (2),
22 and any securities or investments in which (a), (b), or (c) of this
23 subsection (2) and any associated proceeds are invested; and

24 (e) Any interest or other earnings on (a), (b), (c), or (d) of
25 this subsection (2).

26 (3)(a) A port district or port development authority may
27 establish one or more special funds relating to any or all of the
28 sources listed in subsection (2)(a) through (e) of this section. The
29 port district or port development authority may use funds from a
30 special fund to pay:

31 (i) The principal, interest, premium, if any, and other amounts
32 payable on any bond, note, or other evidence of indebtedness
33 authorized under this section; and

34 (ii) Any amounts owing on obligations for repayment or
35 reimbursement of guarantors of bonds, notes, or other evidences of
36 indebtedness as authorized under this section.

37 (b) A port district or port development authority may contract
38 with a financial institution to act as trustee or custodian to: (i)
39 Receive, administer, and expend any federal or private funds; (ii)
40 collect, administer, and make payments from any special fund

1 authorized under this subsection (3); or (iii) perform the functions
2 authorized under both (b)(i) and (ii) of this subsection (3). The
3 trustee or custodian may also perform other duties and functions in
4 connection with authorized transactions.

5 (c) If any bond, note, other evidence of indebtedness, or related
6 agreement complies with subsection (4) of this section, then any of
7 the funds held by a trustee or custodian, or by a port development
8 authority, do not constitute public moneys or funds of a port
9 district, and must be kept segregated and set apart from other funds
10 at all times.

11 (4)(a) If a port development authority loans or grants federal or
12 private funds to a private party, or uses federal or private funds to
13 guarantee any obligations of a private party, then any bond, note, or
14 other evidence of indebtedness issued or entered into for the purpose
15 of receiving the federal or private funds, or any agreement to repay
16 or reimburse guarantors, are not obligations of a port district.
17 These obligations may be paid only from:

18 (i) A special fund established in accordance with subsection (3)
19 of this section;

20 (ii) Any security pledged in accordance with this section; or

21 (iii) Both (a)(i) and (ii) of this subsection (4).

22 (b) Any bond, note, or other evidence of indebtedness to which
23 this subsection (4) applies must contain a recital establishing that
24 the bond, note, or evidence of indebtedness is not an obligation of
25 the port district or the state, and that neither the faith and
26 credit, nor the taxing power of the state, any subdivision or agency
27 of the state, or any port district is pledged to pay the principal,
28 interest, or premium, if any, on the bond, note, or evidence of
29 indebtedness.

30 (c) Any bond, note, other evidence of indebtedness, or other
31 obligation to which this subsection (4) applies may not be included
32 in any computation for purposes of limitations on indebtedness.

33 (5) For the purposes of this section, "lawful public purpose"
34 includes any use of funds related to management of the maritime
35 activities of a port district or port development authority,
36 including loans of funds to public or private parties authorized by
37 an agreement with the United States or any federal department or
38 agency through which federal or private funds are obtained or
39 authorized under the federal laws and regulations pertinent to the
40 agreement.

1 NEW SECTION. **Sec. 6.** Powers, authorities, or rights expressly
2 or impliedly granted to any port district or agents of the port
3 district under the provisions of this chapter are not operable,
4 applicable, or effective beyond the boundaries of the port district,
5 unless so provided by contract between the port district and a
6 county, a city, or another port district in accordance with an
7 agreement for joint or cooperative action under the interlocal
8 cooperation act, chapter 39.34 RCW.

9 NEW SECTION. **Sec. 7.** A port development authority created under
10 this chapter must comply with applicable laws including, but not
11 limited to, the following:

12 (1) Requirements concerning local government audits by the state
13 auditor and applicable accounting requirements set forth in chapter
14 43.09 RCW;

15 (2) The public records act, chapter 42.56 RCW;

16 (3) Prohibitions on using facilities for campaign purposes under
17 RCW 42.17A.555;

18 (4) The open public meetings act, chapter 42.30 RCW;

19 (5) The code of ethics for municipal officers under chapter 42.23
20 RCW; and

21 (6) Local government whistleblower protection laws set forth in
22 chapter 42.41 RCW.

23 NEW SECTION. **Sec. 8.** (1) In transferring real property to a
24 port development authority under section 3 of this act, the port
25 district or districts creating the port development authority must
26 impose appropriate deed restrictions necessary to ensure the
27 continued use of the property for the public purpose for which the
28 property is transferred.

29 (2) A port development authority must provide written notice at
30 least thirty days prior to any proposed sale or encumbrance of real
31 property that was transferred by a port district to the port
32 development authority under section 3(1) of this act. The port
33 development authority must, at a minimum, provide notice to:

34 (a) The port commission of the port district that transferred the
35 real property;

36 (b) Each local newspaper of general circulation within the
37 boundaries of the port district; and

1 (c) Each local radio station, television station, or other news
2 medium that has submitted to the port development authority a written
3 request to receive notification.

4 (3)(a) A port development authority may sell or encumber property
5 transferred by a port district under section 3(1) of this act only
6 after approval of the sale or encumbrance by the port development
7 authority at a public meeting. Notice of the public meeting must be:
8 (i) Provided in accordance with RCW 42.30.080; and (ii) published at
9 least twice in a local newspaper of general circulation no fewer than
10 seven days and no more than two weeks before the public meeting.

11 (b) Nothing in this section may be construed to prevent the port
12 development authority from holding an executive session during a
13 regular or special meeting in accordance with RCW 42.30.110(1)(c).

14 NEW SECTION. **Sec. 9.** (1) If a port development authority is
15 insolvent or dissolved, the superior court of a county in which the
16 port development authority operates has jurisdiction and authority to
17 appoint trustees or receivers of the assets and property of the port
18 development authority and to supervise the trusteeship or
19 receivership.

20 (2) All liabilities incurred by a port development authority must
21 be satisfied exclusively from the assets and properties of the port
22 development authority. No creditor or other person has any right of
23 action against the port district or districts creating the port
24 development authority on account of any debts, obligations, or
25 liabilities of the port development authority.

26 NEW SECTION. **Sec. 10.** Sections 2 through 9 of this act
27 constitute a new chapter in Title 53 RCW."

28 Correct the title.

EFFECT: (1) Retains substantive provisions of the underlying
bill, but makes the following changes:

(a) Creates a new chapter in Title 53 of the Revised Code of
Washington (RCW), the RCW title that governs port districts, and
establishes that the new chapter is comprised of sections of the
bill.

(b) Adds an intent section.

(c) Defines the terms "port commission," "port district," and
"port public development authority" (port development authority).

(d) Limits authority granted under the act to port districts that
are located in a county with a population of more than eight hundred
thousand on the effective date of the act.

(e) Authorizes creation of a port development authority to manage maritime activities of a port district or two port districts, rather than authorizing creation of a public corporation, commission, or authority for other purposes specified in the underlying bill, such as to improve governmental efficiency, services, or operations.

(f) Allows a port district or two port districts acting jointly to create a port development authority, in contrast to the underlying bill, which allows either a port district or two or more port districts acting jointly to create a public corporation, commission, or authority.

(g) Restricts the exercise of certain powers and authorizations, which are granted in the underlying bill to port development authorities, to purposes related to maritime activities of the port district or districts.

(h) Limits port districts' and public development authorities' receipt and expenditure of federal and private funds to lawful public purposes related to management of maritime activities, rather than authorizing receipt or expenditure of these funds for any lawful public purpose.

(i) Requires that the affairs, operations, and funds of a port development authority be governed by the port district or districts that created the port development authority.

(j) Establishes that each port district governing a port development authority must oversee the affairs, operations, and funds of the port development authority through the elected port commission of the port district.

(k) Specifies that port development authorities are subject to applicable laws, including the Public Records Act, the Open Public Meetings Act, and the Code of Ethics for Municipal Officers.

(l) Grants the superior court in a county in which a port development authority operates jurisdiction to appoint and supervise trustees or receivers in the event of insolvency or dissolution.

(2) Makes technical changes.

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