

# HOUSE BILL REPORT

## HB 1257

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### As Amended by the Senate

**Title:** An act relating to the authority of cargo and passenger ports.

**Brief Description:** Concerning the authority of cargo and passenger ports.

**Sponsors:** Representatives Hackney, Abbarno and Reed.

#### Brief History:

##### Committee Activity:

Transportation: 2/1/23, 2/9/23 [DP].

##### Floor Activity:

Passed House: 2/28/23, 97-0.

Senate Amended.

Passed Senate: 4/12/23, 49-0.

#### Brief Summary of Bill

- Allows certain port districts to meet, coordinate, and implement actions on issues of mutual interest regarding the movement of cargo and passengers.

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#### HOUSE COMMITTEE ON TRANSPORTATION

**Majority Report:** Do pass. Signed by 29 members: Representatives Fey, Chair; Donaghy, Vice Chair; Paul, Vice Chair; Timmons, Vice Chair; Barkis, Ranking Minority Member; Hutchins, Assistant Ranking Minority Member; Low, Assistant Ranking Minority Member; Robertson, Assistant Ranking Minority Member; Berry, Bronoske, Chapman, Cortes, Dent, Doglio, Duerr, Entenman, Goehner, Griffey, Hackney, Klicker, Mena, Orcutt, Ramel, Ramos, Schmidt, Taylor, Volz, Walsh and Wylie.

**Staff:** David Munnecke (786-7315).

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

## **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. There are currently 74 districts in existence, located in 33 of the 39 counties in Washington.

### Port District Funds.

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 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 these powers, the districts may jointly acquire lands, property, property rights, leases, or easements necessary for their purposes that are either wholly or partially within their 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, federally recognized tribes, and other states' political subdivisions.

Antitrust Exemptions.

Pursuant to the federal Shipping Act of 1984, ocean common carriers, ports, and other entities involved in commercial shipping, who wish to act collectively, may file an agreement with the Federal Maritime Commission (FMC). Once the agreement is approved by the FMC, the ports are immune from claims arising from federal antitrust laws.

State actions are immune from federal antitrust laws, under the state action doctrine, when the conduct is in furtherance of a clearly articulated state policy. States are allowed to extend this antitrust immunity to local governments, if there is a clear statement of an intent to do so and the extension advances the interests of the state.

**Summary of Bill:**

Washington districts that carry out or seek to carry out operations involving the movement of cargo or passengers are allowed to meet, coordinate, and implement actions on issues of mutual interest regarding the movement of cargo and passengers including:

- rates and charges;
- rules, practices, and procedures;
- matters concerning their facilities; and
- other related matters.

A specific reference is made to allowing these activities without liability under federal antitrust law.

**EFFECT OF SENATE AMENDMENT(S):**

The Senate striking amendment adds intent language stating that the Legislature intends to restore parity between qualified cargo and passenger ports and the marine carrier industry.

The striking amendment redefines cargo and passenger ports as port districts that provide wharfage, dock, warehouse, or other marine terminal facilities to marine carriers, and also participate in a meeting of other cargo and passenger ports where those topics are discussed under an agreement filed with the Federal Maritime Commission.

The striking amendment expires the substantive portion of the bill 10 years after the effective date of the act.

**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) This bill confirms authority that ports in Washington have had since 1937. These ports have had antitrust immunity since 1916, but the FMC has recently called this immunity into question. Washington can extend its own antitrust immunity to the ports through this legislation, and without this immunity, ports would not be able to discuss rates with each other, while shippers could.

The federal Shipping Act allows for discussions of rates, operations, environmental activities, and other actions. This bill would allow ports to continue their work by allowing for these discussions.

The Northwest Terminal Association is made up of the deep water ports in Washington and Oregon. The organization allows ports to be competitive, and also garner sufficient funds to maintain the ports. The FMC has changed the status of numerous ports so they can no longer continue to meet.

This bill keeps ports on an even level with the international shippers. Along other items, ports have met to discuss environmental mandates and determine the rates associated with meeting these requirements.

Ports are expensive to run, but they provide support for the economy in their area. Without the ability to meet, the balance of power between ports and shippers has shifted to the shippers. Because of this, a recently signed shipping deal in Bellingham was not as advantageous as it could have been.

This bill makes planning easier for ports and therefore it's beneficial to both the manufacturing and agricultural sectors that rely on them.

(Opposed) None.

**Persons Testifying:** Representative David Hackney, prime sponsor; Mark Wilson, Port of Kalama; Dan Stahl, Port of Longview; Mike Hogan, Port of Bellingham; Eric fftich, Washington Public Ports Association; and Gordon Baxter, International Longshore and Warehouse Union.

**Persons Signed In To Testify But Not Testifying:** None.