

SENATE BILL REPORT

HB 1257

As Reported by Senate Committee On:
Transportation, April 4, 2023

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

Committee Activity: Transportation: 3/27/23, 4/04/23 [DPA].

Brief Summary of Amended Bill

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

SENATE COMMITTEE ON TRANSPORTATION

Majority Report: Do pass as amended.

Signed by Senators Lias, Chair; Lovick, Vice Chair; Shewmake, Vice Chair; King, Ranking Member; Holy, Assistant Ranking Member; Cleveland, Fortunato, Hawkins, Kauffman, Lovelett, MacEwen, Nobles, Padden, Randall, Valdez, Wilson, C. and Wilson, J..

Staff: Kelly Simpson (786-7403)

Background: Port Districts. Ports districts are special purpose districts established to acquire, construct, maintain, operate, develop, and regulate:

- harbor improvements;

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- 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.

Port 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 over 70 port districts in Washington.

Port districts are funded primarily through property taxes, service fees, bonds, and grants or gifts.

Under current law, two or more port districts may, by mutual agreement, exercise jointly all powers granted to each individual port district.

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 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 Amended Bill: Washington port districts that provide or seek to provide certain marine operations are allowed to meet, coordinate, and implement actions on issues of mutual interest regarding the movement of cargo and passengers, when those meetings are conducted under an agreement filed with the Federal Maritime Commission, 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.

The authority under the bill expires after ten years.

EFFECT OF TRANSPORTATION COMMITTEE AMENDMENT(S):

- Adds further intent language regarding restoring parity between qualified cargo and

- passenger ports and the marine carrier industry.
- Redefines cargo and passenger ports as port districts that provide wharfage, dock, warehouse, or other marine terminal facilities to marine carriers, and that participate in a meeting of other cargo and passenger ports where those topics are discussed under an agreement filed with the Federal Maritime Commission.
 - Expires the substantive portion of the bill ten years after the effective date of the act.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This bill allows port districts, particularly smaller ones, to keep running smoothly in collaboration with other ports. There has been antitrust immunity for smaller ports for many decades. However, the federal government recently indicated that immunity may no longer exist. The Legislature can provide this immunity in state law. The bill simply confirms the existing situation which existed for many years. The bill does not provide any new authority, rather it allows ports to keep doing the good collaborative work they've been doing for decades. The bill helps ports, especially smaller ports, maintain their competitiveness. The bill allows for rational decisions and learning from other ports in a collaborative way. It is good for exports both east and west of the mountains.

OTHER: The AGO is sympathetic with the stakeholders wanting this bill. But there are some changes needed regarding the antitrust immunity provision. Any antitrust immunity should not be based on association membership.

Persons Testifying: PRO: Representative David Hackney, Prime Sponsor; Eric ffitc, Washington Public Ports Association; Dan Stahl, Port of Longview; Eric Yakovich, Port of Kalama; Mike Hogan, Port of Bellingham; Gordon Baxter, International Longshore and Warehouse Union.

OTHER: Rory Paine-Donovan, Attorney General's Office.

Persons Signed In To Testify But Not Testifying: No one.