

SENATE BILL REPORT

HB 1257

As of March 27, 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.

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.

SENATE COMMITTEE ON TRANSPORTATION

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;
- 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.

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.

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 Bill: Washington port 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.

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: 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 ffitich, 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.