

HOUSE BILL REPORT

HB 1170

As Reported by House Committee On:
Local Government

Title: An act relating to the administrative powers of port districts.

Brief Description: Granting port districts certain administrative powers.

Sponsors: Representatives Clibborn, Zeiger, Tarleton, Wilcox, Springer, Jinkins, Fey, Kilduff, Fitzgibbon, Gregerson and Tharinger.

Brief History:

Committee Activity:

Local Government: 1/21/15, 1/28/15 [DPS].

Brief Summary of Substitute Bill

- Authorizes port districts, among other things, to create limited liability public corporations, commissions, and authorities, as well as grants two or more port districts authority to jointly create a public corporation pursuant to the Interlocal Cooperation Act, to: (1) administer and execute federal grants or programs; (2) receive and administer private funds, goods, or services; and (3) perform any lawful public purpose or public function.
- Grants port districts the same powers, rights, and duties as those currently possessed by counties, cities, and towns with respect to creating, organizing, and overseeing public corporations, commissions, and authorities.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Takko, Chair; Gregerson, Vice Chair; Griffey, Assistant Ranking Minority Member; Fitzgibbon, McBride, Peterson and Pike.

Minority Report: Do not pass. Signed by 2 members: Representatives Taylor, Ranking Minority Member; McCaslin.

Staff: Michaela Murdock (786-7289).

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

Background:

Federal Grants and Programs.

In carrying out the purposes of federal grants or programs, counties, cities, towns, and public corporations have various enumerated powers, including to:

- enter into agreements with the United States, any federal agency or department, or any state agency or political subdivision to receive or expend federal or private funds for any lawful public purpose;
- issue bonds, notes, or other evidence of indebtedness guaranteed or secured by federal funds, and agree to repay and reimburse the guarantor;
- provide security for the bonds, notes, or other evidence of indebtedness; and
- establish special funds to pay amounts owed on the bonds, notes, or other evidences of indebtedness.

Introduction - Public Corporations, Commissions, and Authorities.

Counties, cities, and towns (local governments) may by ordinance or resolution create public corporations, commissions, or authorities (collectively, public corporations) for the purpose of improving: the administration of authorized federal grants or programs; governmental efficiency or services; or general living conditions in urban areas of the state.

Public corporations created for these purposes may: administer and execute federal grants or programs; receive and administer private funds, goods, or services for any lawful public purpose; and perform any lawful public purpose or public function. In creating public corporations, local governments must limit the liability of the public corporation to that entity's assets and property to prevent recourse to the local government's assets or credit.

Public Corporations, Commissions, and Authorities.

A local government that creates a public corporation must provide for its organization and operation, as well as control and oversee the entity's operation and funds. Public corporations are subject to general laws regulating local governments, multi-member governing bodies, and local governmental officials, such as requirements of the State Auditor, the Public Records Act, the Open Public Meetings Act, the Code of Ethics for Municipal Officers, and local government whistleblower protection laws.

Public corporations may be empowered by the local government to, for example: own and sell real and personal property; contract with individuals, associations, corporations, the State of Washington, or the United States; loan or borrow funds; issue bonds and other instruments evidencing indebtedness; or transfer funds, real or personal property, or property interests. However, the public corporation may not exercise eminent domain or levy taxes or special assessments.

A local government that transfers real property to a public corporation must impose appropriate deed restrictions to ensure that the property continues to be used for the public purpose for which it is transferred. Additionally, a local government must require the public corporation to provide advance notice of any proposed sale or encumbrance of the property transferred by the local government. The sale or encumbrance may only occur after approval of the public corporation's governing body at a public meeting.

If a public corporation is insolvent or dissolves, the superior court of the county in which the public corporation operates has jurisdiction to appoint and supervise trustees and receivers of the corporate property and assets. All liability incurred by the public corporation must be satisfied exclusively from the assets and property of the public corporation. Creditors do not have a right of action against the county, city, or town that created the public corporation.

Taxation of Public Corporations.

A public corporation has the same immunity from taxation as that of the local government that created the entity. However, public corporations must pay an excise tax on real and personal property equal to the amount that would be paid if the property were privately owned.

Property exempt from the excise tax includes:

- property within a special review district established by ordinance prior to January 1, 1976;
- property listed on a federal or state register of historic sites;
- property owned, operated, or controlled by the public corporation that is used for specified purposes, such as for low-income housing, a convention center, performing arts center, street, public open space, or public utility corridor; and
- blighted property owned, operated, or controlled by the public corporation that is contaminated with hazardous substances and was acquired for remediation and redevelopment purposes.

Proceeds from the excise tax must be allocated by the county treasurer to various taxing authorities in which the property is situated in the same manner as property taxes.

Property Taxes and Leasehold Excise Taxes.

All real and personal property in Washington is subject each year to the state's property tax based on its value, unless a specific exemption is provided by law. The tax is determined by multiplying the assessed value of property by the tax rate for each taxing district in which the property is located.

Property owned by federal, state, or local governments is exempt from the property tax. However, private lessees of government property are subject to the leasehold excise tax, which imposes a tax burden on persons using publicly-owned, tax-exempt property, similar to the property tax that would be paid if the property were privately owned.

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, recognized Indian tribes, and other states' political subdivisions.

Summary of Substitute Bill:

Federal Grants and Programs.

For purposes of carrying out federal grants or programs, port districts are granted various powers similar to a county, city, town, or public corporation, including authority to:

- enter into agreements with the United States, any federal agency or department, or any state agency or political subdivision to receive or expend federal or private funds for any lawful public purpose;
- issue bonds, notes, or other evidence of indebtedness guaranteed or secured by federal funds, and agree to repay and reimburse the guarantor;
- provide security for the bonds, notes, or other evidence of indebtedness; and
- establish special funds to pay amounts owed on the bonds, notes, or other evidences of indebtedness.

Port District Creation of Public Corporations, Commissions, and Authorities.

Port districts are granted the same powers, rights, and duties as counties, cities, and towns with respect to the creation, organization, and supervision of public corporations, commissions, and authorities. Port districts may create public corporations, and two or more port districts may jointly create a public corporation pursuant to an agreement for joint or cooperative action under the ICA.

Limitation on Port District Powers.

The powers, authorities, or rights granted to any port district or its agents under applicable statute do not have any effect beyond the limits of the incorporated areas of the port district, unless: (1) provided by contract between the city and another city, a county, or a port district, or among one or more port districts; or (2) as provided in an agreement for joint or cooperative action in accordance with the ICA.

Substitute Bill Compared to Original Bill:

The substitute bill changes the method by which port districts may exercise powers granted to them by the bill's provisions. Instead of exercising such powers by adoption of an ordinance or resolution, as provided in the original bill, port districts may exercise such powers only by adoption of a resolution.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Although this bill may sound simple, it has great importance for an alliance between the Ports of Seattle and Tacoma, and will provide important tools for creating that

partnership. In the past, the ports have cooperated on security and other measures, but they have also competed in ways that do not benefit the region. By working together instead of competing with each other, the two ports will attract more shipping and be a much stronger, competitive entity.

The partnership between the ports is not a merger; it is an alliance. Each port will retain its own separate structures, governance, assets, etc., but they will be able to form a single management team, leverage assets, and be more responsible and strategic with limited financial resources. With an alliance, the ports will be indifferent about whether growth happens in Seattle or Tacoma; they will simply want the growth to occur.

Within the port industry, there is tremendous competition on a global scale. Customers already recognize the Seattle and Tacoma ports as a single gateway; they do not distinguish between them in terms of how they do business. Washington ports are competing with gateways in Canada, Southern California, and the Suez and Panama canals for shipping business. It is critical to our state that we attract shipping and port activities, and remain competitive in the global market. We need to hold on to cargo and jobs, and grow economic activity and opportunities in this region. The global climate has brought the Seattle and Tacoma ports together.

The Seattle and Tacoma ports are currently in a due diligence period. A proposed business plan is being developed, and the structure and operating procedures of the alliance are being defined. Given rapid changes in the industry and the competitive nature of the market, the ports' goal is to share the business agreement with the public by March or April, and then submit it to the Federal Maritime Commission in Washington D.C. This bill needs to move quickly, so the ports can meet those deadlines.

The legislation will give ports powers already held by local governments; it does not give them different, new powers.

(Opposed) While supporting and maintaining our state's infrastructure is a critical need, and one that affects the state's competitiveness in the global market, this bill is not the way to do it. Port districts are not very transparent entities; they act beyond the oversight of citizens. The type of powers given to ports by the bill will allow them to further veil their activities from the public. Public corporations run by port districts will not be any more responsible to the public. Current statutory authority provides port districts with sufficient tools, and we do not need to give them wholesale new powers.

Persons Testifying: (In support) Representative Clibborn, prime sponsor; John Wolfe, Port of Tacoma; and Kurt Beckett, Port of Seattle.

(Opposed) Arthur West.

Persons Signed In To Testify But Not Testifying: None.