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ACT SUMMARY

- Generally harmonizes the definitions for pre-1982 and post-1982 port authority law.
- Deletes required compensation of municipal corporations by pre- and post-1982 port authorities for waterfront investment, defines the area of jurisdiction of pre- and post-1982 port authorities, and recognizes that pre- or post-1982 port authority law may not conflict with applicable federal regulations.
- For pre- and post-1982 port authorities: (1) permits adjustment of the number of directors on the board of a multiple-subdivision port authority, (2) relaxes the membership requirements of the board, and (3) authorizes the board of directors to provide by rule for the removal and appointment of a director.
- Expands, for pre- and post-1982 port authorities, the port authority's insurance procurement ability to include the ability to get coverage for all employees and their families and expands the types and methods of insurance available to a port authority for its employees.
- For pre- and post-1982 port authorities: (1) modifies the authority of a port authority regarding the acquisition, control, and disposition of real

and personal property, (2) expands the bonding authority of port authorities, (3) modifies the permissible practices of a port authority in regard to any interests in real or personal property, (4) modifies the authority of a port authority in the exercise of eminent domain, and (5) modifies the posting requirements for rules and regulations adopted by a port authority.

- Eliminates, for pre- and post-1982 port authorities, requirements for a port authority to submit proposals, advertise for bids, and the related procedures for accepting the best qualified bidder.
- Permits a pre- or post-1982 port authority to contract with foreign countries or governments.
- Permits a pre- or post-1982 port authority to enter into an agreement with one or more contracting subdivisions whereby the port authority or any contracting subdivision may exercise any power, perform any function, or render any service, on behalf of the port authority or a contracting subdivision, which the port authority or the contracting subdivision is authorized to exercise, perform, or render.
- Raises from \$10,000 to \$25,000 the threshold for notice and competitive bidding requirements, modifies those requirements, and provides for exceptions to the competitive bidding requirements for pre- and post-1982 port authorities.
- Enacts provisions intended to protect trade secrets by exempting certain documents from the Public Records Law for pre- and post-1982 port authorities.
- Permits a pre-1982 port authority that elected to operate as a post-1982 port authority to elect to operate once again as a pre-1982 port authority.
- Provides that certain new port authorities may have concurrent jurisdiction with an existing port authority under specified circumstances.
- Permits political subdivisions that are not municipal corporations, townships, or counties to join a post-1982 port authority, under certain circumstances.

- Permits a municipal corporation with a population of less than 100,000 that has joined an existing port authority in a county with a population of 500,000 or less to create a port authority within the territorial jurisdiction of the municipal corporation.
- Prescribes the circumstances under which a participating political subdivision that is not authorized to create its own port authority may or may not appoint members to the board of directors of the port authority.
- Permits various transactions in real or personal property between political subdivisions and a post-1982 port authority.
- Modifies the investment authority of a post-1982 port authority by making the authority subject to the law governing public depositories.
- Provides that the financing and credit enhancement techniques provided in the law governing private sector bond financing apply to certain bonds issued by a post-1982 port authority.
- Prohibits impersonation of a port authority special police officer.
- Expands the arrest and law enforcement authority of port authority special police officers and requires additional training for them.
- Expands the ability of a county government to contract with other governmental units to permit the county or any contracting subdivision to exercise the authority of another contracting subdivision.
- Makes certain financial and proprietary information, including trade secrets, submitted to a Community Improvement Corporation confidential, and not subject to the Ohio Public Records Law.
- Adds port authorities to the definition of developer for new community developments (Chapter 349.).
- Makes technical amendments, including gender neutralization, to various provisions of pre- and post-1982 port authority law.

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CONTENT AND OPERATION

Port authorities--background

Chapter 4582. regulates port authorities. Sections 4582.01 to 4582.20 apply exclusively to port authorities in existence on July 9, 1982, (referred to as pre-1982 port authorities in this analysis). Sections 4582.21 to 4582.59 apply exclusively to a port authority created after July 9, 1982, and to a port authority in existence on that date if all subdivisions that created the port authority elect to operate under those sections (referred to as post-1982 port authorities in this analysis). (Secs. 4582.201 and 4582.202.)

The act makes numerous changes to both sets of sections dealing with port authorities. While the act may amend provisions of the pre-1982 and post-1982 law that are substantially similar, the amendments to those respective sections may not be substantially similar because of the act's purpose of clearing up some inconsistencies between the two bodies of law. If the section reference following a provision of this analysis that deals with a particular type of port authority (pre-1982 or post-1982) also contains a note that the section is similar to, substantially



similar to, or the same as another section, the second reference is to the section that contains the same subject matter for the other type of port authority.

I. PRE-1982 PORT AUTHORITIES

Pre-1982 port authorities--definitions

For purposes of the pre-1982 (Older Option) law, the act makes substantive changes to the definitions in section 4582.01 as follows:

(1) It deletes the existing definitions for "submerged lands," "uplands," "publication," and "aviation facilities" (repeal of divisions (B), (C), (D), and (E)--also repealed for post-1982 port authorities).

(2) It modifies the definition of "authorized purposes" or "purpose" to mean either of the following: (a) activities that enhance, foster, aid, provide, or promote transportation, economic development, housing, recreation, education, governmental operations, culture, or research within the jurisdiction of the port authority, or (b) activities authorized by the Ohio Constitution related to industrial development loans and housing grants and loans (div. (B)--amended definition is the same as the amended post-1982 port authority definition except that the post-1982 post authority definition includes enhancing, etc., governmental operations within the jurisdiction of the port authority).

(3) It defines "cost" as applied to a port authority facility to mean the same as the continuing post-1982 port authority definition of "cost" that is not changed by the act (sec. 4582.01(C)).

(4) It expands the meaning of "construction," unless the context indicates a different meaning or intent, to include such things as alteration, creation, development, enlargement, and improvement (proposed div. (F)--the new definition is the same as the amended post-1982 port authority definition).

(5) It modifies the definition of "port authority facilities" to mean property that is controlled or financed by a port authority and is related to any authorized purposes (div. (D)--the amended definition is the same as the amended post-1982 port authority definition).

(6) It defines "contracting subdivision" to mean any governmental subdivision or taxing district of the state that, by action of its legislative authority, enters into an agreement with a port authority, which agreement may also include other subdivisions or taxing districts. However, a transportation improvement district is specifically *not* a "contracting subdivision" under the act. (Div. (H)--the new definition is the same as the new post-1982 port authority definition.)



(7) It defines "government subdivision" as including, but not being limited to, any county, municipal corporation, township, port authority, water or sewer district, solid waste management district, school district, health district, park district, soil and water conservation district, water conservancy district, regional transit authority, airport authority, or other district, authority, or commission created pursuant to the laws of this state. A transportation improvement district is not a "government subdivision" under the act. (Div. (I)--the new definition is the same as the new post-1982 port authority definition.)

Pre-1982 port authorities--creation, status, and territorial jurisdiction

Any municipal corporation, township, county, or any combination thereof, no one of which has been included in a multi-subdivision port authority in existence on December 16, 1964, may create a port authority. The area of jurisdiction of a port authority includes all of the territory of the political subdivision or subdivisions creating it, but the same area may not be part of more than one port authority (sec. 4582.05--similar to sec. 4582.30).

Operation of the act

The act permits any municipal corporation, township, or county, or any combination of those entities, to form a port authority, provided none of the entities was in a port authority in existence on December 16, 1964. Prior law limited the formation of a port authority based on whether the creating subdivisions had been in a multi-subdivision port authority on December 16, 1964. (Sec. 4582.02--the amended sec. is the same as existing sec. 4582.22(A), which is not in the act.) The act also deletes the requirement for a county to compensate municipal corporations included in the territory of a port authority in an amount of money equal to the waterfront investment of the municipal corporations and the specification of the counties affected by the requirement (repeal of secs. 4582.021 and 4582.022--same result for post-1982 port authorities with repeal of secs. 4582.23 and 4582.24).

The act provides that the area of jurisdiction of a pre-1982 port authority must include all of the territory of the political subdivision or subdivisions creating it, provided that in no case, other than as may result from the determination of a port authority under section 4582.201(C) to change the provisions of Chapter 4582. of the Revised Code that govern its operation, shall the same area be included in more than one port authority (sec. 4582.05). In addition to the existing restrictions upon impairing laws or ordinances related to payment of revenues into sinking funds or for other purposes, impairing a political subdivision's power to develop or improve port and terminal facilities, affecting any action taken with respect to Lake Erie waters and soil or to county improvements to harbor facilities, and impairing or interfering with permits for sand or gravel removal, the act also



specifically provides that nothing contained in the pre-1982 port authority law may impair or contravene applicable federal regulations (sec. 4582.11(E)--the amendment and result of the amendment is similar to the amendment and result for sec. 4582.36(E)).

Pre-1982 port authorities--board of directors and employees

Board of directors

A port authority is governed by a board of directors. Continuing law generally addresses terms, compensation, and voting of the board of directors of a pre-1982 port authority. The act provides as under prior law that when a port authority is created by a combination of political subdivisions, the number of directors comprising the board must be determined by agreement between the political subdivisions; however, it states that the number of board members for such a port authority may be changed by amendment of the agreement. It further provides that a majority of the directors (instead of each member as under prior law) must have been qualified electors of, or must have had their businesses or places of employment in, one or more political subdivisions within the area of the jurisdiction of the port authority for a period of at least three years next preceding their appointment. The act also adds a provision allowing the board by rule to remove a director who fails to attend three consecutive regular board meetings. If a director is removed, a successor for the remainder of the term must be appointed in the same manner provided for the original appointment. (Sec. 4582.03(A)--the amended provision is the same as the amended version of sec. 4582.27.)

Special policemen (police officers)

Prior law. A port authority may employ "special policemen" to enforce its regulations and maintain order. They must serve as a "security force" with respect to the property under the control of the port authority, to prevent hijacking of aircraft or watercraft, suppress nuisances and disturbances and breaches of the peace, and enforce laws for the preservation of good order. In performing their duties, special policemen are vested with the same powers of arrest as police officers. (Sec. 4582.04(B) and (C)--similar to sec. 4582.28(B) and (C).) A port authority is prohibited from employing a person who goes armed while on duty unless the person has received a certificate of having satisfactorily completed an approved basic peace officer training program or unless the person has completed 20 years of active duty as a peace officer (sec. 109.78(D)).

Operation of the act. The act replaces the term "policemen" or "a security force" with the term "special police officers" and "police officers." It extends the prior authority of the police officers by requiring them to protect the property of others located on the property of the port authority and to enforce the rules (as

well as laws) of the port authority for the preservation of good order. The act also provides that any person employed as a special police officer by a port authority is a "public employee" for purposes of the Public Employees Retirement System and is not a "member of a police department" for purposes of the Police and Firemen's Disability and Pension Fund. (Sec. 4582.04(B) and (C).)

The act removes the specific prohibition against a port authority employing a person as a special police officer if the person goes armed while on duty unless the person has received a certificate of having satisfactorily completed an approved basic peace officer training program or has completed 20 years of active duty as a peace officer and instead defines port authority special police officers as "peace officers" for the purposes of the statutory provisions dealing with the training of peace officers.

In addition, the act defines as a "peace officer" for the purposes of those statutory provisions any person serving as a special police officer employed by a port authority on a permanent basis on the effective date of the act who has been awarded a certificate by the executive director of the Ohio Peace Officer Training Council attesting to the person's satisfactory completion of an approved peace officer basic training program. The act also provides that no person may receive an original appointment on a permanent basis as a special police officer employed by a port authority unless the person previously has been awarded a certificate by the Executive Director of the Ohio Peace Officer Training Commission attesting to the person's satisfactory completion of an approved peace officer basic training program. In addition, every person who is appointed on a temporary basis or for a probationary term or on other than a permanent basis as a special police officer employed by a port authority under either of those sections must forfeit the appointed position unless the person previously has satisfactorily completed or, within the time prescribed by rule by the Attorney General, satisfactorily completes an approved peace officer basic training program for temporary or probationary officers. These requirements do not apply to any person serving on a permanent basis on the effective date of the act as a port authority special police officer. (Secs. 109.71(A)(19), 109.77(B)(1)(h), (2)(g), and (4), and 109.78(D)-- these provisions apply to special police officers of both types of port authorities.)

Insurance for employees

In regard to health insurance for employees, the act does the following:

- (1) Extends coverage to all employees, not just full-time employees;
- (2) Allows coverage of "families," rather than "immediate dependents;"



- (3) Allows a port authority to procure sickness and accident insurance (as well as the other types of health benefits allowed by current law) with a certified health insuring corporation.

The act provides that a port authority may procure or contract for any authorized type of insurance on its own or as part of a group with other governmental units or agencies. A port authority also may establish and maintain an individual or joint self-insurance program for hospitalization, surgical, major medical, or sickness and accident insurance. (Sec. 4582.041--the amendment to this sec. is substantially similar to the amendment to sec. 4582.29.)

Pre-1982--port authorities--powers and duties, generally

General duties

Prior law. Prior law generally authorized a port authority to do all of the following (sec. 4582.06--similar to sec. 4582.31 but not as extensive as that section):

- (1) Purchase and operate port authority facilities;
- (2) Acquire and own real or personal property for the authorized purposes of the port authority;
- (3) Issue bonds or notes for any authorized permanent improvement;
- (4) Issue revenue bonds beyond the limit of bonded indebtedness provided by law for acquiring, constructing, or developing any port authority facility other than a residential facility (see details below);
- (5) Exercise the right of eminent domain;
- (6) Adopt and post rules;
- (7) Perform other specified functions.

Operation of the act. The act modifies the authority of a port authority as set forth above. Under the act, a port authority may acquire, construct, furnish, equip, maintain, repair, sell, exchange, lease to or from, lease with an option to purchase, convey other interests in, or operate real or personal property, or any combination thereof, related to, useful for, or in furtherance of any authorized purpose, and make charges for the use of any port authority facility, which must be not less than the charges established for the same services furnished by a public utility or common carrier in the jurisdiction of the particular port authority (sec.

4582.06(A)--the amended division is substantially similar to amended sec. 4582.31(D)).

The act deletes provisions that specified the port authority could acquire, own, hold, sell, lease, or operate real or personal property for the authorized purposes of the port authority (repeal of existing sec. 4582.06(C)). The act revises the bonding authority of a port authority, providing that a port authority may issue bonds or notes for the acquisition, construction, furnishing, or equipping of any real or personal property, or any combination thereof, related to, useful for, or in furtherance of any authorized purpose (proposed sec. 4582.06(C)--similar in effect to but not in application to sec. 4582.31(G)).

The act provides that a port authority may issue revenue bonds beyond the limit of bonded indebtedness provided by law, for the acquisition, construction, furnishing, or equipping of any real or personal property or in furtherance of any authorized purpose. It deletes provisions related to guaranteed loans for industrial development financed pursuant to Section 13 of Article VIII, Ohio Constitution. The act also deletes authority to construct, equip, or operate facilities that it may acquire without complying with bidding and contracting procedures. (Sec. 4582.06(D).)

The provisions of prior law that the act deletes generally are replaced with authority for a port authority to do any of the following in regard to any interests in any real or personal property, for such consideration and in such manner, consistent with the constitution, as the board in its sole discretion determines: (1) loan moneys to any person for the acquisition, construction, furnishing, and equipping of the property, (2) acquire, construct, maintain, repair, furnish, and equip the property, (3) sell to, exchange with, lease, convey other interests in, or lease with an option to purchase the same or any lesser interest in the property to the same or any other person or governmental entity, and (4) guarantee the obligations of any person or governmental entity. A port authority also is authorized to accept and hold whatever property and interests as consideration for the conveyance of property or any interest in that property the board in its discretion determines, notwithstanding any restrictions that apply to the investment of funds by a port authority. (Sec. 4582.06(E)--amendment similar to amended sec. 4582.31(O).)

The act also provides that a port authority may construct, maintain, repair, furnish, equip, sell, exchange, lease, or lease with an option to purchase any property that it is authorized to acquire. A port authority also may operate any property in connection with transportation, recreational, governmental operations or cultural activities. Any purchase, exchange, sale, lease, lease with an option to purchase, conveyance of other interests in, or other contract with a person or governmental entity that pertains to real or personal property in connection with an



activity contemplated by constitutional law on industrial development or housing, must be made in the manner and subject to the terms and conditions that are determined by the board of directors in its discretion. This discretionary authority to determine the terms of a contract applies to the specified contracts, notwithstanding any other provision of law that might otherwise apply, including, without limitation, any requirement of notice, any requirement of competitive bidding or selection, or any requirement for the provision of security. However, the discretionary authority does not apply to any contract secured by or to be paid from moneys raised by taxation or any contract secured exclusively by or to be paid exclusively from the general revenues of the port authority. For the purposes of the section setting forth the authority of port authorities, any revenues derived by the port authority under a lease or other agreement that, by its terms, contemplates the use of amounts payable under the agreement to either pay the costs of the improvement that is the subject of the contract or to secure obligations of the port authority issued to finance costs of such improvement, are excluded from general revenues. (Sec. 4582.06(F).)

The act modifies the authority of a port authority to exercise the right of eminent domain by specifying that it may exercise the right of eminent domain to appropriate any property that is necessary or proper for any authorized purpose and by removing language that required eminent domain to be used to appropriate any property that was necessary or proper for the construction or the efficient operation of any facility of the port authority and included in its official plan. In the prior provisions that limit a port authority's authority to take or disturb property or facilities belonging to a public corporation, the term "public corporation" is replaced with "any agency or political subdivision of the state." (Sec. 4582.06(H)--amended result similar to enacted sec. 4582.31(Q).)

The act modifies the authority of a port authority to adopt rules by specifying that a port authority may adopt rules, not in conflict with general law, governing the use of *and the safeguarding of* its property, grounds, buildings, equipment, and facilities, *safeguarding persons and their property located on or in port authority property*, and governing the conduct of its employees and the public, in order to promote the public safety and convenience in and about its terminals and grounds, and to maintain order. The act replaces the requirement that any such regulation be posted at *a prominent place in each of the buildings, terminals, or facilities to which it applies* with a requirement that any such regulation be posted *at no less than five public places in the port authority, as determined by the board of directors, for a period of not fewer than fifteen days and that the regulation be available for public inspection at the principal office of the port authority during regular business hours*. (Sec. 4582.06(N)--regulation posting amendment similar to regulation posting amendment of sec. 4582.31(N).)



Encouraging private enterprise

Prior law. A port authority was empowered to foster and encourage the participation of private enterprise in the development of port authority facilities to the fullest extent that it deemed practicable in the interest of limiting the necessity of construction and operation of such facilities by the port authority. For this purpose, the port authority, upon a written request by any person, partnership, or corporation filed with the secretary of the board of directors within 30 days after the adoption of the authority's official plan, was required to submit a proposal to provide, operate, and maintain any facility included in that plan, by publication and invitation to bid based upon specifications prepared by the board. The board could accept (subject to minority preferences), the bid of the person, partnership, or corporation it considered best qualified by financial responsibility and business experience to construct or operate the involved facility. (Sec. 4582.10--substantially the same as sec. 4582.35.)

Operation of the act. The act continues to require port authorities to foster and encourage the participation of private enterprise in the development of port authority facilities; however, the act eliminates the prior provisions that specifically required a port authority to submit a proposal for and advertise for bids for specific projects upon request and the related procedures for accepting the best qualified bidder (sec. 4582.10--amendment and result substantially the same as amendment to and result of amended sec. 4582.35).

Contracts with other governmental entities

Prior law. Prior law authorized a port authority to enter into agreements with the United States government, or any department thereof, with persons, railroads, or other corporations, with public corporations, with the state government of this or other states, and with counties, municipalities, townships, or other governmental agencies or subdivisions created by this state for the exercise of powers granted to the port authority.

In addition, any political subdivision that participated in the creation of a pre-1982 port authority or was within the jurisdiction of the port authority could enter into an agreement with the port authority to accomplish any of the authorized purposes of the port authority. The agreement specifically could provide for industrial, commercial, distribution, educational, cultural, and research development within the political subdivision and was permitted to set forth the extent to which the port authority could act as the agent of the political subdivision. A port authority was allowed to mortgage its property, incur debt, and issue its obligations for purposes related to port authority property. (Sec. 4582.17--substantially the same as new sec. 4582.431.)



Operation of the act. In addition to the governmental entities that a port authority may contract with under prior law, the act authorizes port authorities to enter into contracts with public utilities, governments of foreign countries, and subdivisions or other agencies created by or under the authority of the laws of other states or governments of foreign countries. The act also permits a political subdivision that is *adjacent* to a port authority to enter into an agreement with the port authority to accomplish any of the authorized purposes of the port authority. It eliminates the specific provision permitting agreements with political subdivisions within the port authority or that participated in creating the authority to provide for industrial, commercial, distribution, educational, cultural, and research development with the political subdivision. The act also removes the specific authority of a port authority to mortgage its property, incur debt, and issue its obligations for purposes related to port authority property.

The act permits a port authority to enter into an agreement with one or more contracting subdivisions (see "**Definitions**" above), whereby the port authority or any contracting subdivision may exercise any power, perform any function, or render any service, on behalf of the port authority or a contracting subdivision, which the port authority or the contracting subdivision is authorized to exercise, perform, or render.

Under an agreement, the port authority and any contracting subdivision have the same powers and may perform the same functions and render the same services, as are possessed, held, exercised, performed, or rendered by the port authority or any contracting subdivision that is a party to the agreement. The exercise of those powers, performance of those functions, and rendering of those services by the port authority or a contracting subdivision are governed by any procedures applicable to the port authority or contracting subdivision on behalf of which the powers are being exercised, the functions are being performed, or the services are being rendered. Any such agreement does not suspend the possession by the port authority or a contracting subdivision of, or its authority to exercise, any powers, or its authority to perform any function or render any service. A port authority or contracting subdivision is not permitted to acquire by virtue of any such agreement any power to levy or exempt taxes or any power to exercise eminent domain within, and on behalf of, any other subdivision unless approved by a majority of the electors of that contracting subdivision. (Sec. 4582.17(A) and (B)--amended section is substantially the same as new sec. 4582.431.)

Pre-1982 port authorities--contract requirements and plans for improvement

Contract requirements

Prior law. Prior law required that when the cost of a contract for the creation, construction, alteration, or repair of any port authority facilities



undertaken by a port authority involved an expenditure exceeding \$10,000 and the port authority was the contracting entity, the port authority had to make a written contract after complying with minority business requirements and after notice calling for bids for the award of the contract had been given by publication once a week on the same day of the week for three consecutive weeks in a newspaper of general circulation in the county or counties in which the publication was required to be made. Each contract had to be let to the lowest responsive and responsible bidder, had to be in writing, had to be accompanied by and refer to plans and specifications for any work or construction to be done, and had to be signed by the chairman of the port authority. In addition, a port authority was given broad general powers with regard to the making of contracts necessary or convenient to the exercise of its powers. (Sec. 4582.12--similar to sec. 4582.31(R).)

Operation of the act. The act raises from \$10,000 to \$25,000 the threshold at which a port authority must use the notice and competitive bidding requirements outlined above under "**Prior law**" and specifies that those requirements apply when the cost of a contract for the construction of any building, structure, or other improvement undertaken by a port authority involves an expenditure in excess of that threshold. The act modifies the publication requirement by repealing the prior definition of publication and requiring that bids for the award of the contract be given by publication twice, with at least seven days between publications, in a newspaper of general circulation in the area of the jurisdiction of the port authority. The act also requires that each contract be signed by an authorized officer of the port authority instead of by the chairman. (Sec. 4582.12(A)--amended division is similar to amended sec. 4582.31(R).)

The act authorizes the board of directors of a port authority by rule to provide criteria for the negotiation and award without competitive bidding of any contract as to which the port authority is the contracting entity for the construction of any building, structure, or other improvement under any of the following circumstances (sec. 4582.12(B)): (1) there exists a real and present emergency that threatens damage or injury to persons or property of the port authority or other persons, provided that, a statement specifying the nature of the emergency that is the basis for the negotiation and award of a contract without competitive bidding must be signed by the officer of the port authority that executes that contract at the time of the contract's execution and must be attached to the contract, (2) a commonly recognized industry or other standard or specification does not exist and cannot objectively be articulated for the improvement, (3) the contract is for any energy conservation measure as defined by law unaffected by the act, (4) with respect to material to be incorporated into the improvement, only a single source or supplier exists for the material, or (5) a single bid is received by the port authority after complying with the requirements for letting a contract. (Sec. 4582.12(B)--the amended division is similar to amended sec. 4582.31(R)(3).)



The act further provides that if a contract is to be negotiated and awarded without competitive bidding for the reason set forth as circumstance (2) above, the port authority must publish a notice calling for technical proposals at least twice, with at least seven days between publications, in a newspaper of general circulation in the area of the port authority. After receipt of the technical proposals, the port authority may negotiate with and award a contract for the improvement to the proposer making the proposal considered to be the most advantageous to the port authority. If a contract is to be negotiated and awarded without competitive bidding for the reason set forth as circumstance (4) above, any construction activities related to the incorporation of the material into the improvement also may be provided without competitive bidding by the source or supplier of that material. (Sec. 4582.12(C)(1) and (2).)

Pre-1982 port authorities--trade secrets and public records

Operation of the act

The act provides that financial and proprietary information, including trade secrets, submitted by or on behalf of an employer to a port authority or to a nonprofit corporation engaged by contract to provide economic development services for a port authority, in connection with the relocation, location, expansion, improvement, or preservation of the business of that employer is not a public record subject to existing Public Records Law, which generally requires public entities to allow public access to public records and an opportunity to copy public records. Any other information submitted by such an employer under such circumstances is not a public record subject to that section until that employer commits in writing to proceed with the relocation, location, expansion, improvement, or preservation.

The act further provides that, notwithstanding the Open Meeting Law the board of directors of a port authority and the board of trustees of a nonprofit corporation described in the prior paragraph, and any committee or subcommittee of either, when considering information that is not a public record under the provision described in the prior paragraph, may close any meeting during the consideration of that information pursuant to a vote of a majority of the members present on a motion stating that such information is to be considered. No other matters may be considered during the closed session. (New sec. 4582.07--similar in effect to amended sec. 4582.58.)

Pre-1982 port authorities--fiscal matters, revenue bonds, other bonds, and issuance of securities

Generally

Under prior law, a port authority generally could maintain such funds as it deemed necessary (prior sec. 4582.06(I)), and specific provision was made to the issuance of bonds or notes for permanent improvements pursuant to a vote of the electors residing within the port authority's territory (prior sec. 4582.06(D)), and the issuance of revenue bonds by resolution of the board of directors (prior sec. 4582.06(E)).

Bonds and notes

The act provides that a port authority may issue bonds or notes for the acquisition, construction, furnishing, or equipping of any real or personal property that is related to, useful for, or in furtherance of any authorized purpose; the issuance of bonds or notes continues to require a vote of the electors residing within the territory of the port authority (sec. 4582.06(C)).

Revenue bonds

The act further provides that a port authority may issue revenue bonds beyond the limit of bonded indebtedness provided by law for the acquisition, construction, furnishing, or equipping of any real or personal property, or any combination thereof, related to, useful for, or in furtherance of any authorized purpose, including all costs in connection with or incidental thereto, and deletes provisions related to guaranteed loans for industrial development financed pursuant to Section 13 of Article VIII, Ohio Constitution (prior sec. 4582.06(D)).

The act makes the following additional changes to the provisions governing the issuance of revenue bonds: (1) replacing references to "improvements and facilities" with "property" and (2) replacing "lien for service of the principal and interest requirements" with "a lien for the payment of the debt charges." The effect of these changes is unclear. It also provides that a trust agreement securing revenue bonds issued to acquire, construct, furnish, or equip real property, plants, factories, offices, and other structures and facilities for authorized purposes consistent with constitutionally authorized financing may mortgage the real or personal property to be acquired, constructed, furnished, or equipped. (Sec. 4582.06(D).)

The act also provides that bonds issued under authority of the chapter regulating port authorities, regardless of form or terms and regardless of any other law to the contrary, must have all qualities and incidents of negotiable instruments,



subject to provisions for registration, and may be issued in coupon, fully registered, or other form, or any combination thereof, as the board of directors determines. The act states that provision may be made for the registration of any coupon bonds as to principal alone or as to both principal and interest, and for the conversion into coupon bonds of any fully registered bonds or bonds registered as to both principal and interest. (Sec. 4582.06(D).)

The act further provides that any original issue of revenue bonds must mature not later than 40 years from their date of issue. The directors' resolution for issuance of revenue bonds must provide for the execution of the bonds, which may be by facsimile signatures unless prohibited by the resolution, and the manner of sale of the bonds. The resolution also must provide for, or provide for the determination of, any other terms and conditions relative to the issuance, sale, and retirement of the bonds that the board of directors in its discretion determines to be reasonable and proper. The act removes references to the sealing of bonds and a facsimile of the seal. (Sec. 4582.06(D).)

The act also provides that whenever a port authority considers it expedient, it may issue renewal notes and refund any bonds, whether the bonds to be refunded have or have not matured. The final maturity of any notes, including any renewal notes, must not be later than five years from the date of issue of the original issue of notes. The final maturity of any refunding bonds must not be later than the later of 40 years from the date of issue of the original issue of bonds or the date by which it is expected, at the time of issuance of the refunding bonds, that the useful life of all of the property, other than interests in land, refinanced with proceeds of the bonds will have expired. (Sec. 4582.06(D).)

The act revises the language in the section pertaining to tax exemptions on the real and personal property of the port authority. The effect of the revision is unclear. (Sec. 4582.20.)

Pre-1982 port authorities--dissolution

Subject to making due provisions for payment and performance of its obligations, a port authority may be dissolved by the subdivision or subdivisions creating it, and the properties of the port authority must be transferred to the subdivision creating it, or if created by more than one subdivision, to the subdivisions creating it in such manner as may be agreed upon between such subdivisions. The act revises the language of this section; the effect of the changes is unclear. (Sec. 4582.023.)

II. POST-1982 PORT AUTHORITIES

Post-1982 port authorities--background

Prior law

In 1982, H.B. 439 of the 114th General Assembly authorized the creation of a new type of port authority with powers in addition to the powers of port authorities that were organized under sections 4582.01 to 4582.20 of the Revised Code. Many of the sections of the post-1982 law are substantially similar to the pre-1982 sections. Sections 4582.21 to 4582.59 were enacted to regulate port authorities that were not in existence prior to July 9, 1982 (sec. 4582.201(A)). Subdivisions that created a port authority that was in existence prior to July 9, 1982, may adopt a resolution or ordinance to permit the port authority to operate under sections 4582.21 to 4582.59 (sec. 4582.201(B)). Upon adoption of such a resolution or ordinance, sections 4582.01 to 4582.20 no longer apply to the operation of the port authority. Section 4582.202 provides that sections 4582.21 to 4582.59 of the Revised Code apply exclusively to a port authority created after July 9, 1982, and to a port authority in existence on that date if the subdivision or subdivisions that created the port authority adopt a resolution or ordinance electing this option.

Operation of the act

The act allows any subdivision or subdivisions that have adopted a resolution or ordinance electing to operate under the post-1982 law to adopt a resolution or ordinance to permit the port authority to resume operating under the pre-1982 law. Upon adoption of such a resolution or ordinance and adoption of a similar resolution by the board of directors of the affected port authority, sections 4582.21 to 4582.59 ("post-1982 law") do not apply to the affected port authority, and sections 4582.01 to 4582.20 ("pre-1982 law") apply to the affected port authority from and after the time the last such resolution or ordinance is adopted. A subdivision or subdivisions that act under this division thereafter may not adopt a resolution or ordinance under electing to operate under the post-1982 law. (Sec. 4582.201(C).) Therefore, sections 4582.21 to 4582.59 apply exclusively to port authorities created after July 9, 1982, and to port authorities that were created prior to that date, that elected to be governed by those sections, and that have not adopted a resolution or ordinance to resume operating under sections 4582.01 to 4582.20 (sec. 4582.202).



Post-1982 port authorities--definitions

Prior law

Section 4582.21 is substantially similar to section 4582.01 (see Pre-1982 port authorities--enactment and definitions," above), and defines the following terms that are used in sections 4582.22 to 4582.59: (1) "port authority," "submerged lands," "uplands," "publication," "aviation facilities," "governmental agency," and "port authority facility" or "facility" (same or similar to existing section 4582.01), (2) "person," "cost," "owner," "revenues," "public roads," and "construction" (no similar definition in existing section 4582.01), and (3) "port authority revenue bonds" (prior section 4582.01 defines the term "bonds") (sec. 4582.21).

Operation of the act

The act modifies the definitions applicable to port authorities regulated by sections 4582.21 to 4582.59 as follows (sec. 4582.21):

(1) It deletes the definitions for "submerged lands," "uplands," "publication," "aviation facilities," and "owner" (repeal of prior divs. (B), (C), (D), (E), and (J)--same result for pre-1982 port authorities except that there was not a definition of "owner" for pre-1982's).

(2) It removes from the definition of "port authority" the statement that a port authority created pursuant to section 4582.22 need not be adjacent to, connected with, or have located within its jurisdiction a body of water (div. (A)--resulting definition is the same as for pre-1982 port authorities).

(3) It defines "authorized purposes" or "purpose" to mean either of the following: (a) activities that enhance, foster, aid, provide, or promote transportation, economic development, housing, recreation, education, governmental operations, culture, or research within the jurisdiction of the port authority or (b) activities authorized by Sections 13 and 16 of Article VIII, Ohio Constitution (new div. (B)--resulting definition is the same as the definition for pre-1982 port authorities except that the pre-1982 port authority definition does not include "governmental operations").

(4) It defines "port authority facility" or "facility" to mean real or personal property, or any combination thereof owned, leased, or otherwise controlled or financed by a port authority and related to, useful for, or in furtherance of, one or more authorized purposes (new div. (E)--resulting definition is the same as the definition for pre-1982 port authorities).

(5) It defines "construction" to mean, unless the context indicates a different meaning or intent, to include alteration, construction, creation, development, enlargement, improvement, installation, reconstruction, remodeling, and renovation (new div. (I)--resulting definition is the same as the definition for pre-1982 port authorities).

(6) It modifies the definition of "governmental agency" to mean a department, division, or other unit of state government *of this state or any other state*, a municipal corporation, county, township, or other political subdivision, or any other public corporation or agency *created under the laws of this state, any other state*, the United States, or any *department* or agency thereof, and any agency, commission, or authority established pursuant to an interstate compact or agreement (new div. (C)--no counterpart definition in pre-1982 law).

(7) It modifies the definition of "port authority revenue bonds" to include, unless the context indicates a different meaning or intent, port authority revenue notes, port authority revenue renewal notes, and port authority revenue refunding bonds and removes from that definition language that stated that notes issued in anticipation of the issuance of bonds must have a maximum maturity of five years as provided in section 4582.48 of the Revised Code and notes or renewal notes issued as the definitive obligation may be issued maturing at such time or times with a maximum maturity of 40 years from the date of issuance of the original note (however, the effect of this language remains in the operative section) (new div. (J)--no counterpart definition in pre-1982 law).

(8) It defines "contracting subdivision" to mean any governmental subdivision or taxing district of the state that, by action of its legislative authority, enters into an agreement with a port authority or a port authority and one or more other governmental subdivisions or taxing districts of the state. A transportation improvement district is not a "governmental subdivision" under the act. (Div. (K)--the new definition is the same as the new pre-1982 port authority definition.)

(9) It defines "government subdivision" as including, but not being limited to, any county, municipal corporation, township, port authority, water or sewer district, solid waste management district, school district, health district, park district, soil and water conservation district, water conservancy district, regional transit authority, airport authority, or other district, authority, or commission created pursuant to the laws of this state. A transportation improvement district is not a government subdivision under the act. (Div. (L)--the new definition is the same as the new pre-1982 port authority definition.)

Post-1982 port authorities--creation, status, and territorial jurisdiction

Prior law

Any municipal corporation, township, county, or any combination of a municipal corporation, municipal corporations, township, townships, county, or counties, no one of which has been included in a port authority in existence on December 16, 1964, may create a port authority governed by sections 4582.21 to 4582.59. A port authority as created above is a body corporate and politic that may sue, be sued, plead, and be impleaded, and it has the powers and jurisdiction enumerated in the applicable Revised Code sections. The exercise by the port authority of the powers conferred upon it is declared to be an essential governmental function of the state of Ohio, but no port authority is immune from liability for that reason. (Sec. 4582.22(A), the same as sec. 4582.02.)

Sections 4582.23 and 4582.24 are substantially similar to sections 4582.021 and 4582.022 (compensation to municipal corporations--discussed above under "**Pre-1982 port authorities--creation, status, and territorial jurisdiction**"), and section 4582.36 is substantially similar to section 4582.11 (limits on powers--discussed above under "**Pre-1982 port authorities--creation, status, and territorial jurisdiction**").

Section 4582.25, which is substantially similar to section 4582.023, permits any municipal corporation, township, or county creating or participating in the creation of a port authority under section 4582.22 to appropriate and expend public funds to finance or subsidize the operation of the port authority (sec. 4582.25(A)).

Prior law generally addressed the means by which a contiguous municipal corporation, township, or county could join a port authority (sec 4582.26).

Prior law provided that a port authority included all the territory of the subdivisions that created it and, generally, the territory on which a railroad line and related facilities were located. It also provided that no political subdivision that created or joined a port authority could be included in another port authority. Also, a municipality with a population of at least 100,000 could create a port authority within a county that had previously created one, if the municipality did not join the existing authority. A county could create a port authority the area of jurisdiction of which excluded any territory that was located in that county and was in the area of jurisdiction of any port authority already in existence. (Sec. 4582.30--similar to sec. 4582.05.)



Operation of the act

The act specifies that any municipal corporation, township, or county creating a port authority could not have been included in a port authority in existence on December 16, 1964. The act allows any combination of eligible municipal corporations, townships, and counties together with any other political subdivision or subdivisions to create a port authority. The act requires "any other political subdivision" to act by resolution of its legislative authority. The act does not define "any other political subdivision." (Sec. 4582.22(A).)

The act deletes the requirement for a county to compensate municipal corporations included in its territory in an amount of money equal to the waterfront investment of the municipal corporations and the references to the counties affected by the requirement (repeal of prior secs. 4582.23 and 4582.24--same result for pre-1982 port authorities with repeal of secs. 4582.021 and 4582.022).

The act permits any municipal corporation, township, county, or other political subdivision creating or participating in the creation of a port under the post-1982 law to appropriate and expend public funds to finance or subsidize the operation and authorized purposes of the port authority (sec. 4582.25(A)).

Generally, territory of a port authority must be contiguous. This also applies to any municipal corporation, township, or county joining a port authority. The act adds "other political subdivision" to the requirement for territory of a port authority to be contiguous. (Sec. 4582.26.)

The act provides that a newly created port authority and the previously created and existing port authority possess concurrent jurisdiction over any territory that is within the jurisdiction of both a municipal corporation with a population of at least 100,000 that creates a port authority within a county that previously created an existing port authority and the pre-existing port authority (sec. 4582.30(A)(2)).

The act creates an exception to the prohibition against a political subdivision that has created or joined an existing port authority from being included in any other port authority (sec. 4582.30(B)(1)). It permits a municipal corporation with a population of less than 100,000 according to the most recent federal decennial census that has joined an existing port authority in a county with a population of 500,000 or less to create a port authority within the territorial jurisdiction of the municipal corporation (sec. 4582.30(B)(2)).

The act also specifically provides that nothing contained in the post-1982 sections of Chapter 4582. of the Revised Code may impair or contravene



applicable federal regulations (sec. 4582.36(E)--amendment and result are the same as in sec. 4582.11(E)).

Post-1982 port authorities--board of directors, employees, and professional assistants

Board of directors

Under the act, when a port authority is created by a combination of political subdivisions, the number of directors comprising the board must be determined by agreement between the political subdivisions. The number may be changed by amendment of the agreement. The act also provides that if a participating political subdivision is not authorized to create its own port authority, the political subdivision's elected legislative body, if the political subdivision has an elected legislative body, or the political subdivision's elected official or officials who appoint the legislative body of the political subdivision, must appoint the members of a board of directors of a port authority that are to be appointed by that political subdivision. If the electors of a participating political subdivision do not elect either the legislative body of the political subdivision or the official or officials who appoint the legislative body of the political subdivision, the participating political subdivision is not permitted to appoint any member of a board of directors of a port authority. (Sec. 4582.27.)

The act also: (1) provides that a majority of the directors, rather than each director as under prior law, must have been qualified electors of, or must have had their businesses or places of employment in, one or more political subdivisions within the area of the jurisdiction of the port authority, for a period of at least three years next preceding their appointment, (2) deletes provisions stating that if a port authority owns, operates, or manages one or more aviation facilities regularly used for the landing and taking off of aircraft, and there are persons who are willing and able to serve on the board of directors of the port authority and have their principal place of residence within three miles of any such aviation facility, then at least one member of the board of directors must be appointed from among such persons, and (3) provides that the board of directors by rule may provide for the removal of a director who fails to attend three consecutive regular meetings of the board and that, if a director is so removed, a successor must be appointed for the remaining term of the removed director in the same manner provided for the original appointment. (Sec. 4582.27--amended section is the same as sec. 4582.03.)

Special policemen (police officers)

The act replaces the term "policemen" or "a security force" with the term police officers. It extends the existing authority of the police officers by requiring them to protect the property of others located on the property of the port authority



and requires the police officers to enforce the *rules* of the port authority, as well as laws, for the preservation of good order. The act also provides that any person employed as a special police officer by a port authority is a "public employee" for purposes of the Public Employee's Retirement System and is not a "member of a police department" for purposes of the Police and Firemen's Disability and Pension Fund. (Sec. 4582.28, substantially similar to section 4582.04.)

Insurance for employees

The act authorizes a port authority to procure and pay all or any part of the cost of a plan of sickness and accident insurance in the same manner that it does so for group hospitalization, surgical, and insurance, and allow the port authority to do so for any employee and not just full-time employees. The act also provides that a port authority may procure or contract for any authorized type of insurance (group hospitalization, surgical, major medical, sickness and accident insurance, group life insurance) on its own or jointly as part of a group with one or more other governmental units or agencies to provide that insurance for the employees of the members of the group and their families. A port authority also may establish and maintain an individual or joint self-insurance program for hospitalization, surgical, major medical, or sickness and accident insurance. (Sec. 4582.29 substantially the same as section 4582.041.)

Post-1982 port authorities--powers and duties

General duties

Operation of the act. The act modifies or eliminates nine specific types of general authority, as follows (sec. 4582.31):

(1) It revises the authority of a port authority relative to acquiring and operating port authority facilities by specifically authorizing a port authority to acquire, construct, furnish, equip, maintain, repair, sell, exchange, lease to or from, or lease with an option to purchase, convey other interests in real or personal property, or any combination thereof, related to, useful for, or in furtherance of any authorized purpose and operate any property in connection with transportation, recreational, governmental operations, or cultural activities (div. (D)--similar to sec. 4582.06(A));

(2) It changes a reference to facilities of a "water port" to a reference to facilities of a "port authority" in the grant of authority to straighten, deepen, and improve water courses (div. (E));

(3) It authorizes port authorities to issue bonds or notes for the acquisition, construction, *furnishing, or equipping* of any port authority facility or other



permanent improvement that a port authority is authorized to acquire, construct, *furnish, or equip*, in compliance with the Uniform Public Securities Law, and retains the requirement for approval of the electors residing within the area of jurisdiction of the port authority and the limit on the net indebtedness incurred by a port authority (div. (G));

(4) The act continues to permit a port authority to issue port authority revenue bonds beyond the limit of bonded indebtedness provided by law, payable solely from pledged revenues of the port authority, for the purpose of providing funds to pay the costs of any port authority facility or facilities or parts thereof but eliminates the requirement that the bonds be issued pursuant to specific constitutional authority related to loans for industrial development and in order to create or preserve jobs and employment and improve economic welfare of the people (div. (H));

(5) The act continues to allow a port authority to apply to the proper authorities of the United States pursuant to appropriate law for the right to establish, operate, and maintain foreign trade zones and additionally allows a port authority to acquire, exchange, sell, lease to or from, lease with an option to purchase, or operate facilities, land or property therefor (div. (I));

(6) The act continues to allow a port authority to adopt rules, not in conflict with general law, but broadens the authority by replacing restrictive language that such rules govern the use of its property and conduct of its employees with authority to adopt such rules it finds necessary or incidental to the performance of its duties and the execution of its powers. Rather than being posted at a prominent place in the applicable facility as under prior law, the act requires any such rule to be posted at no less than five public places in the port authority, as determined by the board of directors, for a period of not fewer than 15 days, and further requires the rules to be available for public inspection at the principal office of the port authority during regular business hours (div. (N));

(7) and (8) The act deletes the provisions specifically permitting a port authority to acquire by gift or purchase, hold, lease, and dispose of real and personal property and interests and to acquire, in the name of the port authority, by purchase or otherwise, on such terms and in such manner as the port authority finds proper, or by the exercise of the right of condemnation, such public or private lands, including public parks, playgrounds, or reservations, or parts thereof or rights therein, rights-of-way, property, rights, easements, and interests as it finds necessary for carrying out its duties (repeal of existing divs. (O) and (P)). (Sec. 4582.31(P).)

The act replaces the deleted provisions with the following provisions, which are not necessarily related to the deleted provisions (proposed divs. (O), (P), and (Q)):

(a) A port authority may do any of the following, in regard to any interests in any real or personal property, or any combination thereof, including machinery, equipment, plants, factories, offices, and other structures and facilities related to, useful for, or in furtherance of any authorized purpose, for such consideration and in such manner, consistent with the constitution, as the board in its sole discretion may determine: (i) loan moneys to any person or governmental entity for the acquisition, construction, furnishing, and equipping of the property, (ii) acquire, construct, maintain, repair, furnish, and equip the property, (iii) sell to, exchange with, lease, convey other interests in, or lease with an option to purchase the same or any lesser interest in the property to the same or any other person or governmental entity, and (iv) guarantee the obligations of any person or governmental entity. A port authority may accept and hold as consideration for the conveyance of property or any interest therein such property or interests therein as the board in its discretion may determine, notwithstanding any restrictions that apply to the investment of funds by a port authority. (Proposed div. (O)--similar in language and effect to proposed sec. 4582.06(E).)

(b) A port authority may sell, lease, or convey other interests in real and personal property, and grant easements or rights-of-way over property of the port authority. The board of directors must specify the consideration and any terms for the sale, lease, or conveyance of other interests in real and personal property. Any determination made by the board under this division is conclusive. The sale, lease, or conveyance may be made without advertising and the receipt of bids (proposed div. (P)).

(c) A port authority may exercise the right of eminent domain to appropriate any land, rights, rights-of-way, franchises, easements, or other property, necessary or proper for any authorized purpose, pursuant to the procedure provided in the law governing eminent domain, if funds equal to the appraised value of the property to be acquired as a result of such proceedings are available for that purpose. However, the law does not authorize a port authority to take or disturb property or facilities belonging to any agency or political subdivision of this state, public utility, or common carrier, which property or facilities are necessary and convenient in the operation of the agency or political subdivision, public utility, or common carrier, unless provision is made for the restoration, relocation, or duplication of such property or facilities, or upon the election of the agency or political subdivision, public utility, or common carrier, for the payment of compensation, if any, at the sole cost of the port authority, provided that (i) if any restoration or duplication proposed to be made under this

provision involves a relocation of the property or facilities, the new facilities and location must be of at least comparable utilitarian value and effectiveness and must not impair the ability of the public utility or common carrier to compete in its original area of operation and (ii) if any restoration or duplication made under this provision involves a relocation of the property or facilities, the port authority is prohibited from acquiring any interest or right in or to the appropriated property or facilities, except as provided in (b), above, until the relocated property or facilities are available for use and until marketable title thereto has been transferred to the public utility or common carrier. (Proposed div. (Q)--similar in effect to amended sec. 4582.06(H).)

(9) The act authorizes port authorities to receive and accept from any *state or federal agency grants and loans* for and in aid of the construction of any port authority or for research and development (div. (T)).

The act provides that any purchase, exchange, sale, lease, lease with an option to purchase, conveyance of other interests in, or other contract with a person or governmental entity that pertains to real or personal property in connection with an activity contemplated by constitutional law on industrial development or housing, must be made in such manner and subject to such terms and conditions as may be determined by the board of directors in its discretion. This discretionary authority applies to the specified contracts, notwithstanding any other provision of law that might otherwise apply, including, without limitation, any requirement of notice, any requirement of competitive bidding or selection, or any requirement for the provision of security. (Sec. 4582.31(R)(5)(a) and (b).) However, the discretionary authority does not apply to either of the following: (1) any contract secured by or to be paid from moneys raised by taxation or the proceeds of obligations secured by a pledge of moneys raised by taxation, or (2) any contract secured exclusively by or to be paid exclusively from the general revenues of the port authority. For these purposes, any revenues derived by the port authority under a lease or other agreement that, by its terms, contemplates the use of amounts payable under the agreement either to pay the costs of the improvement that is the subject of the contract or to secure obligations of the port authority issued to finance costs of such improvement, are excluded from general revenues. (Sec. 4582.31(R)(5)(c).)

Eminent domain

Prior law. Prior law authorized a port authority to acquire by appropriation land, rights, or other property necessary or proper for the construction or the efficient operation of any aviation facility or water port. A port authority was required to follow general law governing appropriations (Chapter 163. of the Revised Code) in any proceedings for appropriation. Prior law restricted the

ability or a port authority to appropriate property of a public utility or any common carrier engaged in interstate commerce. (Sec. 4582.56.)

Operation of the act. The act repeals the law discussed above (sec. 4582.56). However, a port authority may exercise the right of eminent domain under other law (proposed sec. 4582.31(Q), discussed above).

Encouraging private enterprise

Prior law. A port authority was required to foster and encourage the participation of private enterprise in the development of the port facilities to the fullest extent it deems practicable in the interest of limiting the necessity of construction and operation of the facilities by the port authority. For this purpose, the port authority, upon a written request by any person, was required to submit a proposal to provide, operate, and maintain any facility included in the plan, by publication of and invitation for bids. The board could accept the bid it deemed best qualified by financial responsibility and business experience to construct and operate the facility or facilities. (Sec. 4582.35--substantially the same as sec. 4582.10.)

Operation of the act. The act continues to require port authorities to foster and encourage the participation of private enterprise in the development of port authority facilities; however, the act eliminates the prior provisions that specifically required a port authority to submit a proposal for and advertise for bids for specific projects upon request and the related procedures for accepting the best qualified bidder (sec. 4582.35--amendment and result substantially the same as amended sec. 4582.10).

Contracts with other governmental entities

Prior law allowed the legislative authority of any municipal corporation, county, township, school district, or other political subdivision or taxing district to convey or lease to or exchange with any port authority any personal or real property, without competitive bidding and on mutually agreeable terms (sec. 4582.38).

The act permits political subdivisions and taxing districts to convey or lease to *or from, lease with an option to purchase*, or exchange with any port authority any personal or real property (sec. 4582.38).

Under law generally retained by the act, any governmental agency may enter into an agreement with a port authority to cooperate in the acquisition or construction of port authority facilities. However, under such an agreement, the port authority was required to have ownership and control of the facility acquired

or constructed by the port authority under an agreement with another governmental entity to the extent necessary or appropriate *for purposes of the issuance of port authority revenue bonds by the port authority*. The act deletes the italicized language and authorizes the port authority to exercise that ownership and control to the extent necessary or appropriate.

The act enacts a new section of law authorizing port authorities to enter into any contracts or other arrangements with the United States government, or any department thereof, with persons, railroads, or other corporations, with public corporations, with public utilities, and with the state government of this or any other state, with counties, municipalities, townships, or other governmental agencies created by this state or other states, including sewerage, drainage, conservation, conservancy, or other improvement districts in this or other states or the governments or agencies of foreign countries as may be necessary or convenient for the exercise of its powers. The contracts or arrangements must not violate the Ohio Constitution. The port authority may purchase, lease, or acquire land or other property in any county of this state and in adjoining states for the accomplishment of authorized purposes of the port authority, or for the improvement of the harbor and port facilities over which the port authority may have jurisdiction, and may let contracts or spend money for those purposes, including development of port facilities in adjoining states.

The authority granted to enter into contracts or other arrangements with the United States government or any department thereof, includes the power to enter into any contracts, arrangements, or agreements that may be necessary to hold and save harmless the United States from damages due to the construction and maintenance by the United States of work the United States undertakes.

The new section also states that any political subdivision that has participated in the creation of a port authority, or is within, or adjacent to a political subdivision that is within, the jurisdiction of a port authority, may enter into an agreement with the port authority to accomplish any of the authorized purposes of the port authority. The agreement may set forth the extent to which the port authority must act as the agent of the political subdivision.

Under the act, a port authority may enter into an agreement with one or more contracting subdivisions (see "*Definitions*" above), whereby the port authority or any contracting subdivision may exercise any power, perform any function, or render any service, on behalf of the port authority or a contracting subdivision, that the port authority or the contracting subdivision is authorized to exercise, perform, or render.

Under an agreement, the port authority and any contracting subdivision possess and may exercise the same powers and may perform the same functions

and render the same services, as are possessed and are authorized to be exercised, performed, or rendered by the port authority or any contracting subdivision that is a party to the agreement. Any such agreement does not suspend the possession by the port authority or a contracting subdivision of, or its authority to exercise, any powers, or its authority to perform any function or render any service. A port authority or contracting subdivision is not permitted to acquire by virtue of any such agreement any power to levy or exempt taxes or any power to exercise eminent domain within, and on behalf of, any other subdivision unless approved by a majority of the electors of that contracting subdivision. (Proposed sec. 4582.431--result substantially the same as the result of amended sec. 4582.17.)

Post-1982 port authorities--contracts and plans for improvement

Contract requirements

The act deletes provisions, that provided that when the cost under any contract or agreement, other than compensation for personal services, involved an expenditure of more than \$10,000, the port authority had to make a written contract with the lowest responsive and responsible bidder, after advertisement of the general character of the work and the materials to be furnished, the place where plans and specifications could be examined, and the time and place of receiving bids. Laws deleted by the act created an exception from the bidding requirements for port authority facilities associated with nongovernmental interests. The act also deleted a requirement that each bid contain the full name of every person interested in it and be accompanied by a sufficient performance bond (or certified check). (Repeal of existing 4582.31(Q).)

The act replaces the deleted bidding provisions with a provision that states when the cost of a construction contract involves an expenditure exceeding \$25,000 and the port authority is the contracting entity, the port authority must make a written contract after notice calling for bids for the award of the contract has been given by publication twice, with at least seven days between publications, in a newspaper of general circulation in the area of the port authority. Each such contract must be let to the lowest responsive and responsible bidder in accordance with general bidding law requirements for a state agency or political subdivision. Every contract must be accompanied by or must refer to plans and specifications for the work to be done, prepared for and approved by the port authority, signed by an authorized officer of the port authority and by the contractor, and must be executed in triplicate. Each bid must be awarded in accordance with specified bid and bonding requirements of existing law. The port authority may reject any and all bids.

The act further provides that the board of directors of a port authority by rule may provide criteria for the negotiation and award without competitive



bidding of any contract for the construction of any building, structure, or other improvement under any of the following circumstances:

(1) there exists a real and present emergency that threatens damage or injury to persons or property of the port authority;

(2) a commonly recognized industry or other standard or specification does not exist and cannot objectively be articulated for the improvement;

(3) the contract is for any energy conservation measure as defined by law;

(4) with respect to material to be incorporated into the improvement, only a single source or supplier exists for the material; or

(5) a single bid is received by the port authority after complying with the above contracting provisions. (Proposed section 4582.31(R)--the amended division is similar to amended sec. 4582.12(A) and (B).)

The act further provides that if a contract is to be negotiated and awarded without competitive bidding for the reason set forth in circumstance (2), above, the port authority must publish a notice calling for technical proposals at least twice, with at least seven days between publications, in a newspaper of general circulation in the area of the port authority. After receipt of the technical proposals, the port authority may negotiate with and award a contract for the improvement to the proposer making the proposal considered to be the most advantageous to the port authority. If a contract is to be negotiated and awarded without competitive bidding for the reason set forth in circumstance (4), above, any construction activities related to the incorporation of the material into the improvement also may be provided without competitive bidding by the source or supplier of that material. (Sec. 4582.31(R)(4)(a) and (b).)

Post-1982 port authorities--fiscal matters, revenue bonds, other bonds, and issuance of securities

Revenue bonds and notes

Existing law. Prior, and generally continuing, law authorizes a port authority to issue revenue bonds and notes for the purpose of paying the cost of one or more port authority facilities. A port authority may issue renewal notes, issue bonds to pay its notes and refund any bonds by the issuance of port authority revenue refunding bonds of a political subdivision creating or participating in the creation of the port authority. Whether or not the bonds or notes are of such form and character as to be negotiable instruments, the bonds or notes have all the qualities and incidents of negotiable instruments, subject only to the provisions of the bonds or notes for registration. Notes or any renewals thereof may not mature



later than five years from the date of issue of the original note and bond may not mature later than 40 years from the date of issue. The port authority may sell bonds and notes at public or private sale and at or at not less than a price that the port authority determines. The resolution authorizing any bonds or notes may contain provisions for the pledging of the revenues of the port authority to secure payment of the bonds or notes.

Neither the directors of the port authority nor any person executing the bonds or notes are liable personally on the bonds or notes or are subject to any personal liability or accountability by reason of the issuance thereof.

Operation of the act. The act changes all references in prior law to *bonds and notes to port authority revenue bonds or revenue bonds* (secs. 4582.48, 4582.50, and 4582.52). The act provides that a port authority may issue at any time renewal notes, issue bonds to retire its notes and whenever it considers refunding expedient, refund any bonds by the issuance of port authority revenue refunding bonds (it deletes the condition that the refunding bonds be bonds of a political subdivision creating or participating in the creation of the port authority). Under the act, all issues of port authority revenue bonds must be special obligations of the port authority payable out of the revenues of the port authority that are pledged for that payment (the act also deletes a requirement that the bonds be paid without preference or priority of the first bonds issued, subject only to any agreements with the holders of any particular bonds or notes pledging any particular revenues). It continues to require that port authority revenue bonds be authorized by resolution of the port authority, *requires that the bonds bear interest at such rate or rates as provided by the resolution authorizing the bonds*, and requires that the notes mature at the time or times *and in such number of installments as may be provided in or pursuant to that resolution*. It further provides that the final maturity of any port authority revenue bonds in the form of a note and any renewals of that type of bond may not exceed five years from the date of issue and that *the final maturity of any original issue of port authority revenue bonds* may not exceed 40 years, and that the final maturity of any port authority revenue bonds that refund outstanding port authority revenue bonds must not be later than the later of 40 years from the date of issue of the original issue of bonds or the date by which it is expected, at the time of issuance of the refunding bonds, that the useful life of all of the property refinanced with the proceeds of the bonds, other than interests in land, will have expired.

The act also repeals a provision stating that at least three days prior to the delivery of bonds issued under authority of this section, the port authority must send a written notice by certified mail to the clerk of the legislative authority of each political subdivision which participated in the creation of the port authority advising such legislative authority of the proposed delivery of the bonds, the



amount of the bonds, the user, and a general description of the facility or facilities to be financed. (Sec. 4582.48.)

Investments

The act modifies the authority of a port authority to invest its funds by deleting the authority to invest in notes, bonds, or other obligations of the United States or any agency or instrumentality of the United States, or in obligations of this state or any political subdivision of this state and replacing it with authority to invest as permitted by existing law dealing with inactive deposits, interim deposits, active deposits, and miscellaneous provisions of the Uniform Depository Act (sec. 4582.54).

Post-1982 port authorities--trade secrets and public records

Prior law

Prior law provided that all final actions of the port authority had to be journalized and that the journal and the records of the port authority had to be open to public inspection at all reasonable times, except that any records or information relating to marketing plans, specific business strategy, financial projections, financial statements, or secret processes or secret methods of manufacture or production that obtained by the port authority or other persons acting under the applicable law were confidential and could not be disclosed.

Operation of the act

The act deletes the confidentiality provision disclosed above and replaces the provision with the following provisions (sec. 4582.58--the amended section is similar to new sec. 4582.07):

A requirement for every port authority, not later than the first day of April of every year, to submit a report to the Director of Development detailing the projects and activities of the port authority during the prior calendar year. The report must include all aspects of those projects and activities, including the progress and status of the projects and their costs and other information the Director determines should be in the report.

Financial and proprietary information, including trade secrets, submitted by or on behalf of an employer to a port authority or to a nonprofit corporation engaged by contract to provide economic development services for a port authority, in connection with the relocation, location, expansion, improvement, or preservation of the business of that employer is not a public record subject to the public records law that generally requires that all public records be open to inspection and available for copying. Any other information such an employer



submits under those circumstances is not a public record until that employer commits in writing to proceed with the relocation, location, expansion, improvement, or preservation.

The board of directors of a port authority and the board of trustees of a nonprofit corporation described above, and any committee or subcommittee of either, when considering information that is not a public record may close any meeting during the consideration of that information pursuant to a vote of the majority of the members present on a motion stating that the information is to be considered. No other matters may be considered during the closed session.

Financing and credit enhancement techniques for certain port authority revenue bonds

Existing law (sections 9.98 to 9.983) provides for the use of certain financing and credit enhancement techniques for revenue bonds on which debt service is contracted to be paid directly or indirectly by a private or public entity other than the issuer of the bonds and that are authorized under specified statutory provisions, including revenue bonds issued by pre-1982 port authority's board of directors beyond the limit of bonded indebtedness provided by law for acquiring, constructing, or developing any port authority facility other than a residential facility and post-1982 port authority revenue bonds issued beyond the limit of bonded indebtedness provided by law payable solely from revenues. The financing and credit enhancement techniques include floating interest rate structures, put arrangements, special interest payment dates, conversion of bond terms regarding interest rates, rate structures, and payment dates and put arrangements, the issuance of bonds as commercial paper under master bond proceedings without necessity for reauthorization of successive issues and sale of bonds at a discount with or without interest to be separately payable on the bonds. They also authorize bond agreements to include credit facilities, interest rate hedges, and agreements with indexing, remarketing, or administrative agents.

The act provides that the existing law applies to bonds that are authorized to be issued by a port authority (sec. 9.981(A)(2)). Under the applicable port authority law, a port authority created after 1982 or that subjects itself to such provisions may issue at any time revenue bonds and notes as are necessary in the opinion of the port authority to pay the cost of one or more port authority facilities or parts of such facilities. The port authority may issue renewal notes, issue bonds to pay such notes and refund any bonds by the issuance of port authority revenue refunding bonds of a political subdivision creating or participating in the creation of the port authority.



Port authority special policemen--inclusion within definitions of law enforcement officer and peace officer, impersonation of such an officer, and arrest powers

Definition of law enforcement officer

The act includes a special police officer employed by either type of port authority within the definition of "law enforcement officer" that applies for the entire Revised Code. Therefore, any reference to the authority or powers of a "law enforcement officer" that appears anywhere in the Revised Code applies to a port authority special police officer. (Sec. 2901.01(A)(11)(k).)

Impersonation of a peace officer

Continuing law prohibits any person from (1) impersonating a peace officer or a private policeman, (2) by impersonating a peace officer or private policeman, arresting or detaining any person, searching any person, or searching the property of any person, (3) with purpose to commit or facilitate the commission of an offense, impersonating a peace officer, a private policeman, or an officer, agent, or employee of the state, or (4) commit a felony while impersonating a peace officer, a private policeman, or an officer, agent, or employee of the state. A violation of the first prohibition is a misdemeanor of the fourth degree, a violation of the second prohibition is a misdemeanor of the first degree, a violation of the third prohibition is a misdemeanor of the first degree or a felony of the fourth degree, and a violation of the fourth prohibition is a felony of the third degree. (Sec. 2921.51.)

The act includes a special police officer employed by either type of port authority within the definition of "peace officer" that is used for section 2921.51. Therefore, the prohibitions against impersonating a peace officer in that section apply to a port authority special police officer. (Sec. 2921.51(A)(1).)

Definition of peace officer

The act includes a special police officer employed by either type of port authority within the definition of "peace officer" that is used for the chapter of existing law that sets forth the arrest authority and other law enforcement authority of a peace officer; therefore, a port authority special police officer has the same arrest and other law enforcement authority of the other types of peace officers included within that definition. (Sec. 2935.01(B).)

The act also specifically authorizes in the same manner as for other peace officers under existing law a special police officer employed by either type of port authority to arrest and detain until a warrant can be obtained, a person found

violating within the limits of the port authority a law of this state, an ordinance of a municipal corporation, or a resolution of a township. Similarly, it extends to a special police officer employed by either type of port authority the authority given under existing law to other peace officers to arrest and detain until a warrant can be obtained any person whom the special police officer has reasonable cause to believe is guilty of an offense of violence, criminal child enticement, public indecency, domestic violence, violating a protection order, menacing by stalking, aggravated trespass, a theft offense, or a felony drug abuse offense when there is reasonable ground to believe the offense has been committed within the limits of the port authority. It also extends to port authority special police officers the same "fresh pursuit" authority that existing law gives to other peace officers. A port authority special police officer who exercises any arrest authority or pursuit authority is subject to the same restrictions and requirements as other peace officers. (Sec. 2935.03(A), (B)(1), and (D).)

New community developer--include port authority within definition

The act adds *port authority* to the definition of "developer" that is used in continuing law regulating new community developments. Under the act, "developer" includes a port authority that owns land, either by voluntary acquisition or condemnation in order to eliminate slum, blighted, and deteriorated or deteriorating areas and to prevent the recurrence thereof. As such, a port authority may exercise the economic development powers of developers granted under existing law. A developer may petition for the formation of a new community district. A new community development includes facilities for industrial, commercial, residential, cultural, educational, and recreational activities. It is unclear how status as a "developer" under new community law modifies the authority of a port authority. (Sec. 349.01(E).)

The act also provides that when a Community Improvement Corporation (CIC) is acting as the designated agent of a political subdivision for the industrial, commercial, distribution, and research development in the political subdivision, both of the following apply:

(1) Any financial and proprietary information, including trade secrets, submitted by or on behalf of an entity to the CIC in connection with the relocation, location, expansion, improvement, or preservation of the business of that entity held or kept by the CIC, or by any political subdivision for which the CIC is acting as agent, is confidential information and is not a public record subject to the Ohio Public Records Law (sec. 1724.11(A)(1)).

(2) Any other such information submitted to the CIC is confidential information and is not a public record subject to the Ohio Public Records Law until the submitting entity commits in writing to proceed with the relocation,



location, expansion, improvement, or preservation of its business (sec. 1724.11(A)(2)).

Under the act, when the board of trustees of a CIC or any committee or subcommittee of such a board meets to consider information that is not a public record under the act, by unanimous vote of all members present, they may close the meeting during consideration of the confidential information. The board, committee, or subcommittee cannot consider any other information during the closed session. (Sec. 1724.11(B)(1).)

(3) Any meeting at which a decision or determination of the board is made in connection with the relocation, location, expansion, improvement, or preservation of the business of the entity must be open to the public (sec. 1724.11(B)(2)).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	04-29-99	pp. 362-363
Reported, S. Highways & Transportation	06-23-99	p. 659
Passed Senate (31-2)	06-23-99	pp. 661-662
Reported, H. Transportation & Public Safety	11-10-99	p. 1354
Passed House (95-1)	01-12-00	pp. 1498-1499

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