Linda S. Crawford *Legislative Service Commission*

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(As Reported by S. Highways & Transportation)

Sens. Oelslager, Kearns, Spada, Fingerhut

BILL SUMMARY

- 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 provides that pre- or post-1982 port authority law may not impair or contravene 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) liberalizes 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.

- Extends, for pre- and post-1982 port authorities, the authority of port authority special police officers and expands the training requirement for those officers.

- 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.

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* *This analysis was prepared before the report of the Senate Highways & Transportation Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

- 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) modifies 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.

- Repeals, for pre- and post-1982 port authorities, the required "plan for future development."

- Enacts provisions protecting trade secrets by exempting certain documents from the Public Records Law for pre- and post-1982 port authorities.

- Expands the bonding authority of a port authority.

- 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.

- Modifies or eliminates specific types of authority for post-1982 port authorities.

- Permits any municipal corporation, township, or county not included in a port authority in existence on December 16, 1964, and any of these entities together with any other political subdivision or subdivisions, to create a port authority.

- 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 (sections 135.05 to 135.21 of the Revised Code).

- Provides that the financing and credit enhancement techniques provided in the law governing private sector bond financing (sections 9.98 to 9.983 of the Revised Code) apply to certain bonds issued by a post-1982 port authority.

- Adds special police officers employed by a port authority to the definition of law enforcement officer that applies to the entire Revised Code.

- Prohibits impersonation of a port authority special police officer.
- Expands the arrest and law enforcement authority of port authority special police officers.
- Expands the ability of county governments to contract with other governmental units to permit any governmental subdivision to enter into a contract with another governmental subdivision to exercise the authority of the other governmental 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) unless the subdivision or subdivisions that created the port authority adopt a resolution or ordinance to permit the port authority to operate under sections 4582.21 to 4582.59. Upon the adoption of such a resolution or ordinance, sections 4582.01 to 4582.20 no longer apply to the port authority that is the subject of the resolution or ordinance. In that resolution or ordinance, the subdivision or subdivisions may restrict the powers of the port authority in the manner set forth in division (B) of section 4582.22. 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 the subdivision or subdivisions that created the port authority adopts a resolution or ordinance permitting the port authority to operate under sections 4582.21 to 4582.59 (referred to as post-1982 port authorities in this analysis). (Secs. 4582.201 and 4582.202.)

The bill makes numerous changes to both sets of sections dealing with port authorities. While the bill 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 bill's purpose of clearing up 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.

Pre-1982 port authorities--enactment and definitions

Definitions

Existing law. Sections 4582.01 to 4582.20 apply to port authorities that were in existence prior to July 9, 1982 (sec. 4582.201(A)). The following terms, as used in sections 4582.01 to 4582.20, are defined in existing section 4582.01: "port authority," "submerged lands," "uplands," "publication," "aviation facilities," "authorized purposes" or "purpose," "port authority facilities," and

"bonds" (sec. 4582.01--substantially similar to sec. 4582.21, see "***Post-1982 port authority--definitions***," below).

Operation of the bill. For purposes of the pre-1982 law, the bill amends the definitions in section 4582.01 as follows:

(1) It redefines "port authority" to mean a body corporate and politic created pursuant to the authority of section 4582.02 of the Revised Code (div. (A)--amended definition is the same as the amended post-1982 port authority definition).

(2) 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).

(3) 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 Sections 13 and 16 of Article VIII, Ohio Constitution (proposed 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).

(4) It defines "cost" as applied to a port authority facility to mean the following (sec. 4582.01(C)--new definition is the same as the existing post-1982 port authority definition that is not changed by the bill):

> The cost of acquisition or construction of the facility, and the cost of acquisition of all land, rights-of-way, property rights, easements, franchise rights, and interests required for that acquisition or construction, the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which those buildings or structures may be moved, the cost of acquiring or constructing and equipping a principal office of the port authority, the cost of diverting highways, interchange of highways and access roads to private property, including the cost of land or easements for the access roads, the cost of public utility and common carrier relocation or duplication,

> the cost of all machinery, furnishings, and equipment, financing charges, interest prior to and during construction and for no more than eighteen months after the completion of construction, engineering, expenses of research and development with respect to port authority facilities, legal expenses, plans, specifications, surveys, studies, estimates of cost and revenues, other expenses necessary or incident to determining the feasibility or practicability of acquiring or constructing the facility, administrative expense, and any other expenses necessary or incident to acquiring or constructing the facility, the financing of such acquisition or construction, including the amount authorized in the resolution of the port authority providing for the issuance of port authority revenue bonds to be paid into any special funds from the proceeds of the bonds and the financing of the placing of the facility in operation.
>
> Any obligation, cost, or expense incurred by any governmental agency or person for surveys, borings, the preparation of plans and specifications, and other engineering services, or any other cost described above, in connection with the acquisition or construction of a facility may be regarded as part of the cost of the facility and may be reimbursed out of the proceeds of port authority revenue bonds as authorized by this Chapter.

(5) It defines "construction," unless the context indicates a different meaning or intent, to include alteration, construction, creation, development, enlargement, improvement, installation, reconstruction, remodeling, and renovation (proposed div. (F)--the new definition is the same as the amended post-1982 port authority definition).

(6) It defines "person" to mean any individual, firm, partnership, or corporation, or any combination thereof (proposed div. (G)--the new definition is the same as the existing post-1982 port authority definition, which is not changed by the bill).

(7) It modifies the definition of "port authority facilities" to mean real or personal property, or any combination thereof, that is owned, leased, or otherwise controlled or financed by a port authority and is related to, useful for, or in

furtherance of, one or more authorized purposes (div. (D)--the amended definition is the same as the amended post-1982 port authority definition).

(8) It retains the existing definition of "bonds" without change (div. (E)--no "companion definition" in post-1982 definitions).

(9) 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 "contracting subdivision" under the bill. (Div. (H)--the new definition is the same as the new post-1982 port authority definition.)

(10) 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 bill. (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

Existing 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, comprising more than one subdivision, may create a port authority. A municipal corporation must act by ordinance, a township must act by resolution of the township trustees, and a county must act by resolution of the county commissioners, in authorizing the creation of a port authority. 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 Code. 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. 4582.02--similar to sec. 4582.22(A), not in the bill.)

The area of jurisdiction of a port authority includes all of the territory of the political subdivision or subdivisions creating it, provided that in no case shall the

same area be included in more than one port authority (sec. 4582.05--similar to sec. 4582.30).

Neither a municipal corporation nor a county creating or participating in the creation of a port authority can, during the time the port authority is in existence, exercise the rights and powers provided in those provisions of the Code that relate to the use and control of the waters and soil of Lake Erie and the making of harbor improvements.[1] In addition, nothing contained in pre-1982 port authority law may (1) impair the provisions of law or ordinance directing the payment of revenues derived from public property into sinking funds or dedicating those revenues to specific purposes, (2) impair the powers of any county, township, or municipal corporation to develop or improve port and terminal facilities except as restricted by section 4582.16, (3) enlarge, alter, diminish, or affect in any way, any lease or conveyance made, or action taken prior to the creation of a port authority by any municipal corporation under the law dealing with the use and control of Lake Erie waters and soil or by any county under the law dealing with Lake Erie harbor improvements, or (4) impair or interfere with the exercise of any permit for the removal of sand or gravel or other similar permits issued by this state or the United States. (Sec. 4582.11, similar to sec. 4582.36, and sec. 4582.16, not in the bill.)

A county that seeks to create a port authority must compensate in full municipal corporations included in its territory in an amount of money equal to the waterfront investment of such municipal corporations, including, but not limited to, certain specified appropriations, expenditures, and charges; however, such a municipal corporation may decline to demand compensation for any of the components of its waterfront investment and thereby retain its possession, custody, control, and property interest in any of the components for which no compensation is demanded. Existing law specifies that this provision applies only to counties affected by the law dealing with Lake Erie harbor improvements or containing municipal corporations affected by the law dealing with the use and control of Lake Erie water and soil. (Secs. 4582.021 and 4582.022, not in the bill--similar to secs. 4582.23 and 4582.24.)

Operation of the bill

The bill permits any municipal corporation, township, county, or any combination of a municipal corporation, municipal corporations, township, townships, county, or counties, none of which was included in a port authority in existence on December 16, 1964, to create a port authority. Under prior law, none of the listed political subdivisions could create a port authority or combine to

[1] *Revised Code sections 721.04 to 721.11 and section 307.65.*

create a port authority if any of the political subdivisions was included in a port authority that was in existence on December 16, 1964, and that was comprised of more than one subdivision. (Sec. 4582.02--the amended sec. is the same as existing sec. 4582.22(A), which is not in the bill.) The bill 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 bill 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 bill 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

Existing law. A port authority is governed by a board of directors. The number of members of the board is determined by the political subdivision that creates the port authority and are appointed by the appropriate mayor with the advise and consent of the council, township trustees, or county commissioners. If a port authority is created by a combination of political subdivisions, the number of members of the board is determined by agreement of those political subdivisions. The appointing authority at any time may remove a director appointed by it for misfeasance, nonfeasance, or malfeasance in office. Each director must have been a qualified elector of, must have had his place of business or of employment in, one or more of the political subdivisions within the jurisdiction of the port authority for at least three years immediately preceding the appointment. Directors serve four-year terms and may be reappointed. Each member of the board is entitled to receive from the port authority the sum of money that the board of

directors determines as compensation for the member's services as director and reimbursement for the member's reasonable expenses in the performance of the member's duties. A majority of the board constitutes a quorum, the affirmative vote of which is necessary for any action to be taken by the port authority. Existing law also provides that no vacancy in the membership of the board may impair the rights of a quorum to exercise all the rights and perform all the duties of the port authority. (Sec. 4582.03--sec. 4582.27 covers the same subject for post-1982 port authorities but in addition has provisions regarding aviation facilities.)

Operation of the bill. The bill provides as under existing 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 from time to time be changed by amendment of the agreement. It further provides that a majority of the directors (instead of each member as under existing 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 bill also 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. 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. 4582.03(A)--the amended provision is the same as the amended version of sec. 4582.27.)

Special policemen (police officers)

Existing 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, grounds, buildings, equipment, and facilities under the control of the port authority, to prevent hijacking of aircraft or watercraft, protect the property of the authority, suppress nuisances and disturbances and breaches of the peace, 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 under section 2935.03 of the Revised Code. (Sec. 4582.04(B) and (C)--similar to sec. 4582.28(B) and (C).) A port authority is prohibited from employing a person as a special police officer, security guard, or other position in which 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 unless the person has completed 20 years of active duty as a peace officer (sec. 109.78(D)).

Operation of the bill. The bill replaces the term "policemen" or "a security force" with the term "special police officers" and "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 to enforce the rules of the port authority for the preservation of good order as well as enforce laws for the preservation of good order. The bill also provides that any person employed as a special police officer by a port authority is a "public employee" as defined in section 145.01 of the Revised Code and is not a "member of a police department" as defined in section 742.01. (Sec. 4582.04(B) and (C).)

The bill 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 bill 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 bill 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 state, county, municipal, or Department of Natural Resources peace officer basic training program. The bill 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 state, county, municipal, or Department of Natural Resources 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 a state, county, municipal, or Department of Natural Resources peace officer basic training program for temporary or probationary officers and is awarded a certificate by the Director attesting to that completion. The above requirements for completing an approved basic peace officer training program do not apply to any person serving on a permanent basis on the effective date of the bill as a special police officer employed by a port authority. (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

Existing law. Under existing law, a port authority may procure and pay all or any part of the cost of group hospitalization, surgical, major medical, sickness and accident insurance, or group life insurance for full-time employees and their immediate families. It also may procure and pay all or any part of the cost of a plan of group hospitalization, surgical, or major medical insurance for full-time employees and their dependents. (Sec. 4582.041--similar to sec. 4582.29.)

Operation of the bill. The bill authorizes a port authority to procure and pay all or any part of the cost of group hospitalization, surgical, major medical, sickness and accident insurance, or group life insurance for employees (not just full-time as under existing law) and their families (instead of immediate dependents as under existing law). In addition to procuring and paying all or any part of the cost of a plan of group hospitalization, surgical, or major medical insurance for employees and their families, the bill also permits port authorities to procure and pay all or part of the cost of sickness and accident insurance for its employees. The bill provides that a port authority may procure or contract for any type of insurance authorized by section 4582.041 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. 4582.041--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

Existing law. A port authority may do all of the following (sec. 4582.06--similar to sec. 4582.31 but not as extensive as that section):

(1) Purchase, construct, reconstruct, enlarge, improve, equip, develop, sell, exchange, lease, convey other interests in, and operate port authority facilities and make charges for the use thereof;

(2) Straighten, deepen, and improve any canal, channel, river, stream, or other water course or way as necessary;

(3) Acquire, own, hold, sell, lease, or operate real or personal property for the authorized purposes of the port authority;

(4) Issue bonds or notes for the acquisition or construction of any permanent improvement that it is authorized to acquire or construct in compliance with Chapter 133., upon a vote of the appropriate electors, and with a net indebtedness not in excess of 2% of the total value of the property within the authority;

(5) By resolution of its directors, 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);

(6) Apply to the proper United States authorities to establish, operate, and purchase land for foreign trade zones;

(7) Exercise the right of eminent domain to appropriate land, rights, rights-of-way, franchises, easements, or other property, necessary or proper for the construction or the efficient operation of any facility of the port authority and included in its official plan, if funds equal to the appraised value of the property to be acquired as a result of the proceedings are on hand and available for that purpose provided that the port authority cannot take or disturb property or facilities belonging to any public corporation, public utility, or common carrier that is necessary for that entity's operations, unless provision is made for the restoration, relocation, or duplication of that property or, upon election of the public entity, for the payment of compensation at the sole cost of the port authority;

(8) Adopt rules, not in conflict with general laws, governing the use of its property, grounds, buildings, equipment, and facilities and governing the conduct of its employees and the public, which rules must be posted at a prominent place in each of the buildings, terminals, or facilities to which it applies;

(9) Perform other specified functions.

Operation of the bill. The bill modifies the authority of a port authority as set forth in (1), above, under "***General duties***" in the discussion of "***Existing law***" to provide that 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 bill deletes provisions described in (3), above, under "***General duties***" in the discussion of "***Existing law***" that permit the port authority to 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)) and provides (see (4), above, under "***Existing law***") 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, in compliance with Chapter 133. of the Revised Code, except that the bonds or notes only may be issued pursuant to a vote of the electors residing within the territory of the port authority (proposed sec. 4582.06(C)--similar in effect to but not in application to sec. 4582.31(G)).

The bill 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 that state the following (sec. 4582.06(D)):

> Pursuant to Section 13 of Article VIII, Ohio Constitution, and in order to create or preserve jobs and employment opportunities and improve the economic welfare, the port authority may loan moneys for or acquire, construct, reconstruct, develop, enlarge, improve, furnish, equip, sell, exchange, lease, convey other interests in, or lease with a contract or option to purchase, at such amount as the board of directors in its sole discretion may determine, real property, machinery, equipment, plants, factories, offices, and other structures and facilities for industry, commerce, distribution, and research, provided that when the costs thereof are to be paid by the port authority, the acquisition, construction, reconstruction, development, enlargement, improvement, and equipment of such property, plants, factories, offices, and other structures and facilities shall only be financed from the proceeds of revenue bonds issued under authority of this division or in a manner consistent with Section 13 of Article VIII, Ohio Constitution.
>
> The port authority may construct, reconstruct, equip, or operate any facilities which it is authorized to acquire,

> purchase, or lease. Any sale, lease, lease with option to purchase, conveyance of other interests in, or contract for acquiring, constructing, reconstructing, operating, developing, enlarging, improving, or equipping any real property, plant, factory, office, or other structure or facility for industry, commerce, distribution, recreation, and research shall be made in such manner as is determined by the board of directors and shall not be subject to the provisions of section 4582.12 of the Revised Code.

The bill permits a port authority to do any of the following in regard to any interests in any real or personal property, including machinery, equipment, plants, factories, offices, and other structures and facilities related, useful for, or in furtherance of any authorized purpose, for such consideration and in such manner, consistent with Article VIII of the Ohio 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 as consideration for the conveyance of property or any interest in that property as 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 bill 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 the acquisition, construction, maintenance, repair, furnishing, equipping, or operation of any real or personal property, or any combination of those types of requirements, related to, useful for, or in furtherance of an activity contemplated by Section 13 or 16 of Article VIII, Ohio Constitution, must be made in the manner and subject to the terms and conditions that are determined by the board of directors in its discretion. The requirement in the prior sentence applies to all contracts that are subject to the requirement, 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. The language from this paragraph 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 bill 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 removes 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 existing 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." The bill does not otherwise modify the eminent domain provisions of section 4582.06. (Sec. 4582.06(H)--amended result similar to enacted sec. 4582.31(Q).)

The bill 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 bill 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

Existing law. A port authority is empowered to foster and encourage the participation of private enterprise in the development of port authority facilities to the fullest extent that it deems 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 State within 30 days after the adoption of the authority's official plan, is required to submit a proposal to provide, operate, and maintain any facility included in that plan, by publication of and invitation to bid therefor based upon specifications prepared by the board. The board may accept, subject to section 123.151, the bid of the person, partnership, or corporation it considers 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 bill. The bill continues to require port authorities to foster and encourage the participation of private enterprise in the development of port authority facilities; however, the bill eliminates the existing provisions that specifically require a port authority to submit a proposal for and advertise for bids for specific projects upon the request of any person, partnership, or corporation 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

Existing law. A port authority may enter into such contracts or other arrangements with the United States government, or any department thereof, with persons, railroads, or other corporations, with public corporations, and with the state government of this or other states, with counties, municipalities, townships, or other governmental agencies created by or under the authority of the laws of this state, including sewerage, drainage, conservation, conservancy, or other improvement districts in this or other states as may be necessary or convenient for the exercise of powers granted to the port authority, including the making of surveys, investigations, or reports thereon; provided that the contracts or arrangements shall not be in violation of Article VIII of the Ohio Constitution. The board of directors may purchase, lease, or acquire land or other property in any county of the state of Ohio and in adjoining states for the accomplishment of an authorized purpose 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 making such improvements or development of port facilities in adjoining states. The authority granted a port authority 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 which are necessary to hold and save harmless the United States

from damages due to construction and maintenance by the United States of any work as the United States undertakes.

In addition, any political subdivision that has participated in the creation of a pre-1982 port authority or is within the jurisdiction of the port authority may enter into an agreement, which may be amended or supplemented, with the port authority to accomplish any of the authorized purposes of the port authority. The agreement may provide for industrial, commercial, distribution, educational, cultural, and research development within the political subdivision and may set forth the extent to which the port authority may act as the agent of the political subdivision. A port authority may mortgage its property, incur debt, and issue its obligations as provided in section 4582.06(E) for the purpose of acquiring, constructing, improving, and equipping buildings, structures, and other properties and acquiring sites therefor, for lease, sale, or conveyance of other interests in such property by the port authority. (Sec. 4582.17--substantially the same as new sec. 4582.431.)

Operation of the bill. In addition to the governmental entities that a port authority may contract with under existing law, the bill authorizes port authorities to enter into contracts with public utilities, governments of foreign countries, and counties, municipalities, townships, or other governmental agencies created by or under the authority of the laws of other states or governments of foreign countries. The bill 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 and eliminates from this provision (under existing law and the bill, such contracts can also be entered into with political subdivisions within the port authority or that participated in creating the port authority) the specific provision that states that these types of agreements with political subdivisions may provide for industrial, commercial, distribution, educational, cultural, and research development with the political subdivision. The bill also removes from section 4582.17 the specific authority of a port authority to mortgage its property, incur debt, and issue its obligations as provided in division (E) of section 4582.06 of the Revised Code for the purpose of acquiring, constructing, improving, and equipping buildings, structures, and other properties and acquiring sites therefore, for lease, sale, or conveyance of other interests in such property by the port authority.

The bill 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. Under the agreement, the port authority or a contracting subdivision may exercise, perform, or render all necessary or incidental powers, as amply as the powers, functions, or services are held, performed, or rendered, by the port authority or any contracting subdivision directly. 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

Existing law. Existing law requires that when the cost of a contract for the creation, construction, alteration, or repair of any port authority facilities undertaken by a port authority involves an expenditure exceeding $10,000 and the port authority is the contracting entity, the port authority must make a written contract after complying with section 123.151 (minority business requirements) and after notice calling for bids for the award of the contract has been given by publication as provided in section 4582.01 (sec. 4582.01(D) defines "publication as 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 is required to be made). Each contract must be let to the lowest responsive and responsible bidder, must be in writing, must be accompanied by and refer to plans and specifications for any work or construction to be done, and must be signed by the chairman of the port authority. In addition, a port authority is 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 bill. The bill 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 "***Existing 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 bill modifies the publication requirement by repealing the existing 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 bill 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 bill 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 in section 307.041 of the Revised Code, (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 bill 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).)

Plan for future improvements

Existing law. Existing law requires that the board of directors of a port authority prepare or cause to be prepared a plan for the future development, construction, and improvement of the port and its facilities, including maps, profiles, and other data and descriptions as may be necessary to set forth the location and character of the work to be undertaken by the authority. The board of directors must give notice by publication of the plan and hold a hearing on the plan. (Sec. 4582.07--similar to sec. 4582.32.) The board has the authority to modify the plans from time to time (sec. 4582.08--similar to sec. 4582.33). A plan and any modification, amendment, or extension thereof, when adopted by the board of directors after notice and hearing, is final and conclusive, and its validity is conclusively presumed (sec. 4582.09--similar to sec. 4582.34).

Operation of the bill. The bill repeals all requirements and references to the required plan for future development (repeal of secs. 4582.07, 4582.08, and 4582.09--same result for post-1982 port authorities with repeal of secs. 4582.32, 4582.33, and 4582.34).

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

Operation of the bill

The bill enacts section 4582.091, which 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 section 149.43 of the Revised Code (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 bill 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. (Proposed 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 existing law, a port authority may maintain such funds as it deems necessary (existing sec. 4582.06(I)), and specific provision is made with regard to specified financial matters including the issuance of bonds or notes for permanent improvements pursuant to a vote of the electors residing within the port authority's territory (existing sec. 4582.06(D)), and the issuance of revenue bonds by resolution of the board of directors (existing sec. 4582.06(E)).

Bonds and notes

The bill 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 in accordance with the Uniform Public Securities Law (Chapter 133.), except that the bonds or notes only may be issued pursuant to a vote of the electors residing within the territory of the port authority (sec. 4582.06(C)).

Revenue bonds

The bill 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 stating the following (existing sec. 4582.06(D)):

> Pursuant to Section 13 of Article VIII, Ohio Constitution, and in order to create or preserve jobs and employment opportunities and improve the economic welfare, the port authority may loan moneys for or acquire, construct, reconstruct, develop, enlarge, improve, furnish, equip, sell, exchange, lease, convey other interests in, or lease with a contract or option to

> purchase, at such amount as the board of directors in its sole discretion may determine, real property, machinery, equipment, plants, factories, offices, and other structures and facilities for industry, commerce, distribution, and research, provided that when the costs thereof are to be paid by the port authority, the acquisition, construction, reconstruction, development, enlargement, improvement, and equipment of such property, plants, factories, offices, and other structures and facilities shall only be financed from the proceeds of revenue bonds issued under authority of this division or in a manner consistent with Section 13 of Article VIII, Ohio Constitution.
>
> The port authority may construct, reconstruct, equip, or operate any facilities which it is authorized to acquire, purchase, or lease. Any sale, lease, lease with option to purchase, conveyance of other interests in, or contract for acquiring, constructing, reconstructing, operating, developing, enlarging, improving, or equipping any real property, plant, factory, office, or other structure or facility for industry, commerce, distribution, recreation, and research shall be made in such manner as is determined by the board of directors and shall not be subject to the provisions of section 4582.12 of the Revised Code.

The bill makes technical amendments to the provisions governing the issuance of revenue bonds including the following: (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." 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 Section 13 or 16 of Article VIII of the Ohio Constitution may mortgage the real or personal property to be acquired, constructed, furnished, or equipped.

The bill 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 bill 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.

The bill 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 bill 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 bill makes technical changes to section 4582.20, which deals with tax exemptions on the real and personal property of the port authority.

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 in such event the properties of the port authority are to 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 bill makes technical changes to the language of this section. (Sec. 4582.023.)

Post-1982 port authorities--background

Existing law

In 1982, H.B. 439 of the 114th General Assembly authorized the creation of a new type of port authority that has 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 permitted under division (B) of section 4582.201 (the election) of the Revised Code.

Operation of the bill

The bill allows any subdivision or subdivisions that have adopted a resolution or ordinance under division (B) of section 4582.201 (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 may not thereafter adopt a resolution or ordinance under division (B) of section 4582.201 (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

Existing 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" (existing section 4582.01 defines the term "bonds") (sec. 4582.21).

Operation of the bill

The bill 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 existing 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 (proposed 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 (proposed 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 (proposed 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* (deleting agency having the power to acquire, construct, or operate port authority facilities), the United States, or any *department* or agency thereof, and any agency, commission, or authority established pursuant to an interstate compact or agreement (proposed 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 (proposed 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 bill. (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 bill. (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

Existing 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 municipal corporation must act by ordinance, a township must act by resolution of the township trustees, and a county must act by resolution of the county commissioners, in authorizing the creation of a port authority. 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 existing sec. 4582.02, except it does not contain the language deleted from 4582.02 by the bill.)

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)).

Section 4582.26 is substantially similar to existing section 4582.024, which is not in the bill. Section 4582.26 provides that after a port authority has been created, any municipal corporation, township, or county, acting by ordinance or resolution, which is contiguous to any municipal corporation, township, or county which participated in the creation of such port authority, or which is contiguous to any municipal corporation, township, or county which proposes to join the port authority at the same time and is contiguous to any municipal corporation, township, or county which participated in the creation of such port authority, may join the port authority, and thereupon the jurisdiction and territory of the port authority includes the municipal corporation, county, or township so joining. (Sec. 4582.26.)

Section 4582.30 covers the same subject as its counterpart section 4582.05 (area of jurisdiction--discussed above under "***Pre-1982 port authorities--enactment and definitions***") but is slightly more expansive. Section 4582.30 provides that a port authority created under section 4582.22 includes all the territory of the subdivisions that created it and, if it owns or leases a railroad line, the territory on which the line, terminals, and related facilities are located, regardless of where they are located, provided that no political subdivision that creates or joins a port authority may be included in another port authority. It also provides that a municipality with a population of at least 100,000 may create a port authority within a county that has previously created one, if the municipality did not join the existing authority. A county may create a port authority the area of

jurisdiction of which excludes any territory that is located in that county and is in the area of jurisdiction of any port authority created in accordance with section 4582.02 or section 4582.22 that is then existing in the county. (Sec. 4582.30--similar to sec. 4582.05.)

Operation of the bill

The bill amends section 4582.22 to provide that any municipal corporation, township, or county not included in a port authority in existence on December 16, 1964, may create, 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, and any of the foregoing together with any other political subdivision or subdivisions may create, a port authority. As under current law, a municipal corporation still must act by ordinance, a township still must act by resolution of the township trustees, and a county still must act by resolution of the county commissioners, in authorizing the creation of a port authority, but the bill requires any other political subdivision to act by resolution of its legislative authority. (Sec. 4582.22(A).)

The bill 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 existing secs. 4582.23 and 4582.24--same result for pre-1982 port authorities with repeal of secs. 4582.021 and 4582.022).

The bill amends section 4582.25 to permit any municipal corporation, township, county, or other political subdivision 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 and authorized purposes of the port authority (sec. 4582.25(A)).

The bill also amends section 4582.26 to provide that after a port authority has been created, any municipal corporation, township, county, or other political subdivision, acting by ordinance or resolution, which is contiguous to any municipal corporation, township, or county, or other political subdivision which participated in the creation of such port authority or to any municipal corporation, township, county, or other political subdivision which proposes to join the port authority at the same time and is contiguous to any municipal corporation, township, county, or other political subdivision which participated in the creation of such port authority, may join such port authority, and thereupon the jurisdiction and territory of the port authority includes the municipal corporation, county, township, or other political subdivision so joining. (Sec. 4582.26.)

The bill adds a provision to section 4582.30 that 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 bill 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 bill 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)). In addition, the bill also modifies the provision that specifies that nothing in the post-1982 sections of Chapter 4582. of the Revised Code may impair the powers of any county, township, or municipal corporation to develop or improve port and terminal facilities except as restricted by current law by adding the phrase "or other political subdivision" after the term "municipal corporation" (sec. 4582.36(B)).

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

Board of directors

Section 4582.27 covers the same subject as its counterpart section 4582.03 (board of directors). The bill amends section 4582.27 to provide 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, which number may from time to time be changed by amendment of the agreement. The bill also provides that if a participating political subdivision is not authorized by section 4582.22 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 bill also: (1) provides that a majority of the directors 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 (this provision has no counterpart in section 4582.03), 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)

Section 4582.28 is substantially similar to sections 4582.04 (discussed above in "***Special policemen***" under "***Pre-1982 port authorities--board of directors and employees***").

The bill 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 for the preservation of good order as well as enforce laws for the preservation of good order. The bill also provides that any person employed as a special police officer by a port authority is a "public employee" as defined in section 145.01 of the Revised Code and is not a "member of a police department" as defined in section 742.01. The provisions discussed above in "***Special policemen***" under "***Operation of the bill***" under " ***Pre-1982 port authorities--board of directors and employees***" that apply to training apply to police officers of post-1982 port authorities. (Sec. 4582.28.)

Insurance for employees

Section 4582.29 is substantially the same as section 4582.041 (insurance for employees--see "***Pre-1982 port authorities--board of directors and employees***." The bill 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 bill also provides that a port authority may procure or contract for any type of insurance authorized by section 4582.29 (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.)

Post-1982 port authorities--powers and duties

General duties

Existing law. Section 4582.31 is similar to but more extensive than section 4582.06, both of which set forth the general duties of port authorities. Although there are similarities between the two sections, the existing sections have many provisions that are not similar and that do not correspond to a similar provision in the other section. Under existing law, a post-1982 port authority may do any of the following (this list does not include any authority with respect to which the bill makes no change) (sec. 4582.31):

(1) Acquire, purchase, construct, reconstruct, enlarge, furnish, equip, maintain, repair, sell, exchange, lease or rent to, lease or rent from, or operate port authority facilities;

(2) Straighten, deepen, and improve any channel, river, stream, or other water course or way which may be necessary or proper in the development of the facilities of a water port;

(3) Issue bonds or notes for the acquisition or construction of any port authority facility or other permanent improvement that a port authority is authorized to acquire or construct, in compliance with the Uniform Public Securities Law (Chapter 133. of the Revised Code), except that such bonds or notes may only be issued pursuant to a vote of the electors residing within the area of jurisdiction of the port authority. The net indebtedness incurred by a port

authority shall never exceed 2% of the total value of all property within the territory comprising the port authority as listed and assessed for taxation.

(4) Issue port authority revenue bonds beyond the limit of bonded indebtedness provided by law, payable solely from revenues as provided in section 4582.48 of the Revised Code, unless the bonds be refunded by refunding bonds, for the purpose of providing funds to pay the costs of any port authority facility or facilities or parts thereof, pursuant to Section 13 of Article VIII, Ohio Constitution, and in order to create or preserve jobs and employment opportunities and improve the economic welfare of the people of the state;

(5) Apply to the proper authorities of the United States pursuant to appropriate law for the right to establish, operate, and maintain foreign trade zones within the area of jurisdiction of the port authority and to establish, operate, and maintain foreign trade zones;

(6) Adopt rules, not in conflict with general law, governing the use of its property, grounds, buildings, equipment, and facilities, and governing the conduct of its employees and the public, in order to promote the public safety and convenience in and about its facilities and grounds, and to maintain order. Any such rule shall be posted at a prominent place in each of the facilities to which it applies (existing law prohibits any person from violating any lawful rule adopted and posted as provided in this provision);

(7) Acquire by gift or purchase, hold, lease, and dispose of real and personal property and interests therein in the exercise of the powers of the port authority;

(8) 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 in the manner provided by section 4582.56 of the Revised Code, 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 sections 4582.21 to 4582.59 of the Revised Code (existing law requires that compensation be paid for public or private lands so taken);

(9) Receive and accept from any federal agency grants for or in aid of the construction of any port authority facility or for research and development with respect to port authority facilities, and receive and accept aid or contributions from any source of money, property, labor, or other things of value, to be held, used, and applied only for the purposes for which the grants and contributions are made.

Operation of the bill. The bill modifies or eliminates the nine specific types of authority set forth in "***Existing law***," above, as follows (sec. 4582.31):

(1) It authorizes 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 Chapter 133. of the Revised Code, 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 bill continues to permit a port authority to issue port authority revenue bonds beyond the limit of bonded indebtedness provided by law, payable solely from revenues as provided in section 4582.48 of the Revised Code, 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 Section 13 of Article VIII of the Ohio Constitution and in order to create or preserve jobs and employment and improve economic welfare of the people (div. (H));

(5) The bill also provides that a port authority may 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 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 bill also allows the port authority to adopt rules, not in conflict with general law, it finds necessary or incidental to the performance of its duties and the execution of its powers. Any such rule must 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 must be available for public inspection at the principal office of the port authority during regular business hours (div. (N));

(7) and (8) The bill deletes the provisions 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 in the manner provided by section 4582.56 of the Revised Code (which the bill repeals), 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 bill 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 Article VIII, Ohio 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 sections 163.01 to 163.22 of the Revised Code, 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, nothing contained in sections 4582.201 to 4582.59 authorizes 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 bill 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 bill 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 the acquisition, construction, maintenance, repair, furnishing, equipping, or operation of any real or personal property, or any combination thereof, related to, useful for, or in furtherance of an activity contemplated by Section 13 or 16 of Article VIII, Ohio Constitution, 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. The prior sentence applies to all contracts that are subject to its provisions, 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).) The above provisions do 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 the purposes of section 4582.31, 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

Existing law. Current law authorizes a port authority to acquire by appropriation any land, rights, rights-of-way, franchises, easements, or other property necessary or proper for the construction or the efficient operation of any aviation facility or water port. A port authority must follow general law governing appropriations (Chapter 163. of the Revised Code) in any proceedings for appropriation. Current law does not empower the port authority to take or disturb property or facilities belonging to and required for the proper and convenient operation of any public utility or any common carrier engaged in interstate commerce, unless provision is made for the restoration, relocation, or duplication of such property or facilities elsewhere at the sole cost of the port authority. (Sec. 4582.56.)

Operation of the bill. The bill 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

Existing law. A port authority is 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, partnership, or corporation filed with the secretary of the board of directors within 30 days following the journalization of the order of the adoption of an official, must submit a proposal to provide, operate, and maintain any facility included in the plan, by publication of and invitation for bids therefor based upon specifications prepared by the board of directors. The board of directors may accept the bid of the person, partnership, or corporation it deems best qualified by financial responsibility and business experience to construct and operate the facility or facilities in accordance with its official plan. (Sec. 4582.35--substantially the same as sec. 4582.10.)

Operation of the bill. The bill continues to require port authorities to foster and encourage the participation of private enterprise in the development of port authority facilities; however, the bill eliminates the existing provisions that specifically require a port authority to submit a proposal for and advertise for bids for specific projects upon the request of any person, partnership, or corporation 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

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

A port authority may charge, alter, and collect rentals or other charges for the use or services of any port authority facility and contract with one or more persons, one or more governmental agencies, or any combination thereof, desiring the use or services of the facility, and fix the terms, conditions, rentals, or other charges for the use or services. The rentals or other charges cannot be subject to supervision or regulation by any other authority, commission, board, bureau, or agency of the state, and the contract may provide for acquisition by the person or governmental agency of all or any part of the port authority facility for such consideration payable over the period of the contract or otherwise as the port authority in its sole discretion determines to be appropriate, but subject to the provisions of any resolution authorizing the issuance of port authority revenue bonds or any trust agreement securing the bonds. Any governmental agency that has power to construct, operate, and maintain port authority facilities may enter into a contract or lease with a port authority whereby the use or services of any port authority facility will be made available to the governmental agency.

Any governmental agency or combination of governmental agencies may cooperate with the port authority in the acquisition or construction of port authority facilities and must enter into the agreements with the port authority as may be appropriate, with a view to effective cooperative action and safeguarding of the respective interests of the parties, which agreements must provide for contributions by the parties in a proportion agreed upon and other terms as may be mutually satisfactory to the parties including, without limitation, the authorization of the construction of the facility by one of the parties acting as agent for all of the parties and the ownership and control of the facility by the port authority to the extent

necessary or appropriate *for purposes of the issuance of port authority revenue bonds by the port authority*. Any governmental agency may provide the funds for the payment of any contribution required under such agreements by the levy of taxes or assessments if otherwise authorized by the laws governing the governmental agency in the construction of the type of port authority facility provided for in the agreements and may pay the proceeds from the collection of the taxes or assessments; or the governmental agency may issue bonds or notes in anticipation of the collection of the taxes or assessments or may make an appropriation to pay the contribution.

When the contribution of any governmental agency is to be made over a period of time from the proceeds of the collection of special assessments, existing law provides specific rules for assessing and collecting interest on any assessments levied to pay that contribution. Any governmental agency, pursuant to a favorable vote of the electors in an election held for the purpose of issuing bonds to provide funds to acquire, construct, or equip, or provide real estate and interests in real estate for, a port authority facility, may issue such bonds or notes in anticipation of the issuance of the bonds and pay the proceeds of the bonds or notes to the port authority in accordance with its agreement with the port authority; provided, that the legislative authority of the governmental agency finds and determines that the port authority facility to be acquired or constructed by the port authority in cooperation with the governmental agency will serve the same public purpose and meet substantially the same public need as the facility otherwise proposed to be acquired or constructed by the governmental agency with the proceeds of the bonds and notes. (Sec. 4582.43.)

Operation of the bill. The bill amends section 4582.38 to permit political subdivisions and taxing districts to convey or lease to *or from, lease with an option to purchase*, or exchange with any port authority, and permits any port authority to convey or lease to *or from, lease with an option to purchase*, or exchange with any political subdivision or taxing district, any personal or real property (sec. 4582.38).

The bill makes one substantive change to the provisions of existing section 4582.43 that are discussed under "***Existing law***," above. In the provision that authorizes the port authority to have ownership and control of a facility acquired or constructed by the port authority and another governmental entity to the extent necessary or appropriate *for purposes of the issuance of port authority revenue bonds by the port authority*, the bill deletes the italicized language and authorizes the port authority to exercise that ownership and control to the extent necessary or appropriate.

The bill enacts new section 4582.431, which authorizes those types of 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 or under the authority of the laws of 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, including the making of surveys, investigations, or reports thereon; provided that the contracts or arrangements must not be in violation of Section 13 or 16 of Article VIII, 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, which may be amended or supplemented, 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 bill, 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, 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 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. Under the agreement, the port authority or a contracting subdivision may exercise, perform, or render all necessary or incidental powers, as

amply as the powers, functions, or services are held, performed, or rendered, by the port authority or any contracting subdivision directly. 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. (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

Existing division (Q) of section 4582.31 (proposed sec. 4582.31(R)) is comparable to section 4582.12 (see "***Contract requirements***," above, under "***Pre-1982 port authorities--contract requirements and plans for improvement***"). The bill deletes those provisions, which provide that when the cost under any contract or agreement, other than compensation for personal services, involves an expenditure of more than $10,000, the port authority must make a written contract with the lowest responsive and responsible bidder, in accordance with section 9.312 of the Revised Code, after advertisement once a week for not less than two consecutive weeks in a newspaper of general circulation in the county where the facility is located, and in such other publications as the port authority determines, which notice must state the general character of the work and the general character of the materials to be furnished, the place where plans and specifications therefor may be examined, and the time and place of receiving bids; provided, that a contract or lease for the operation of a port authority facility constructed and owned by the port authority or an agreement for cooperation in the acquisition or construction of a port authority facility pursuant to section 4582.43 of the Revised Code or any contract for the construction of a port authority facility that is to be leased by the port authority to, and operated by, persons who are not governmental agencies and the cost of such facility is to be amortized exclusively from rentals or other charges paid to the port authority by persons who are not governmental agencies is not subject to the foregoing requirements and the port authority may enter into such contract, lease, or agreement pursuant to negotiation and upon such terms and conditions and for such period as it finds to be reasonable and proper in

the circumstances and in the best interests of proper operation or of efficient acquisition or construction of such facility. It also deletes a requirement that each bid must contain the full name of every person interested in it and must be accompanied by a sufficient bond or certified check on a solvent bank that if the bid is accepted a contract will be entered into and the performance thereof secured. (Repeal of existing 4582.31(Q).)

It replaces the deleted provisions with a provision that states when the cost of a contract for the construction of any building, structure, or other improvement undertaken by a port authority 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 section 9.312. 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 sections 153.54, 153.57, and 153.571. The port authority may reject any and all bids.

The bill 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 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: (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 in section 307.041 of the Revised Code, (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 bill 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).)

Plan for future development

Sections 4582.32, 4582.33, and 4582.34 are substantially similar to sections 4582.07, 4582.08, and 4582.09, respectively (see "***Plan for future development***," above, under "***Pre-1982 port authorities--contracts and plans for improvements***"). The bill repeals all requirements and references to the required plan for future improvement (repeal of secs. 4582.32, 4582.33, and 4582.34).

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

Revenue bonds and notes

Existing law. Existing section 4582.48 authorizes a port authority to issue revenue bonds and notes in such principal amounts as, in the opinion of the port authority, are necessary for the purpose of paying the cost of one or more port authority facilities or parts thereof. 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 the bonds to be refunded have or have not matured, and issue partly to refund bonds then outstanding and partly for any other authorized purpose. The refunding bonds must be sold and the proceeds applied to the purchase, redemption, or payment of the bonds to be refunded. Except as may otherwise be expressly provided by the port authority, every issue of its revenue bonds or notes are special obligations of the port authority payable out of the revenues of the port authority that are pledged for such payment, without preference or priority of the first bonds issued, subject only to any agreements with the holders of particular bonds or notes pledging any particular revenues. The pledge must be valid and binding from the time the pledge is made and the revenues so pledged and thereafter received by the port authority shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of the pledge is valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the port authority,

irrespective of whether those parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records 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 shall have all the qualities and incidents of negotiable instruments, subject only to the provisions of the bonds or notes for registration.

The bonds and notes must be authorized by resolution of the port authority, shall bear such date or dates, and shall mature at such time or times, in the case of any such note or any renewals thereof may not exceed five years from the date of issue of the original note and in the case of any such bond not exceeding 40 years from the date of issue, and must be executed in a manner as the resolution or resolutions may provide. The bonds and notes bear interest at the rate, are in the denominations and the form, either coupon or registered, carry the registration privileges, are payable in the medium of payment and at the place or places, and are subject to the terms of redemption that the port authority may authorize. The port authority may sell the 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 or any issue of bonds or notes may contain provisions for the pledging of the revenues of the port authority to secure payment of the bonds or notes.

At least three days prior to the delivery of bonds issued under authority of the above provisions, the port authority must send a written notice by certified mail to the clerk of the legislative authority of each political subdivision that participated in the creation of the port authority advising the 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.

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

Operation of the bill. The bill changes all references in section 4582.48 to *bonds and notes* to *port authority revenue bonds* or *revenue bonds* (secs. 4582.48, 4582.50, and 4582.52). The bill provides that a port authority may at any time issue 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 (the bill 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 bill, 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 bill 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. The bill 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 bill also repeals a provision from section 4582.48 that states 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

Existing law. Under existing section 4582.54, moneys in the funds of the port authority, except as otherwise provided in any resolution authorizing the issuance of its revenue bonds or in any trust agreement securing the bonds, in excess of current needs, may be invested 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. Income from all investments of moneys in any fund must be credited to the funds that the port authority determines, subject to the provisions of any such resolution or trust agreement, and the investments may be sold at any time the port authority determines. (Sec. 4582.54.)

Operation of the bill. The bill 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 sections 135.05 to 135.21 of the Revised Code (those sections deal 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

Existing law

Existing section 4582.58 provides that all final actions of the port authority must be journalized and that the journal and the records of the port authority must 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 may be obtained by the port authority or other persons acting under sections 4582.22 to 4582.59 of the Revised Code are confidential and must not be disclosed.

Operation of the bill

The bill deletes the provision stating that "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 may be obtained by the port authority or other persons acting under sections 4582.22 to 4582.59 of the Revised Code are confidential and shall not be disclosed" and replaces the provision with the following provisions (sec. 4582.58--the amended section is similar to new sec. 4582.07):

(1) 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 section 149.43 of the Revised Code (the public records law that generally requires that all public records be open to inspection and available for copying). Any other information submitted by such an employer under those 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.

(2) The new language also provides that, notwithstanding section 121.22 of the Revised Code (the Open Meetings Law), the board of directors of a port authority and the board of trustees of a nonprofit corporation described in (1), above, and any committee or subcommittee of either, when considering information that is not a public record under (1), above, or this paragraph, 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.

(3) Not later than the first day of April of every year, every port authority must 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 (sec. 4582.58(A)).

Financing and credit enhancement techniques for certain port authority revenue bonds

Sections 9.98 to 9.983 provide 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 section 4582.05(E) (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 section 4582.31(H) (post-1982 port authority revenue bonds issued beyond the limit of bonded indebtedness provided by law payable solely from revenues as provided in section 4582.48). 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 bill provides that sections 9.98 to 9.983 apply to bonds that are authorized to be issued under section 4582.48 (sec. 9.981(A)(2)). Under section 4582.48, a port authority created after 1982 or that subjects itself to such provisions may at any time issue 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 bill includes *a special police officer employed by a port authority under section 4582.04 or 4582.28 of the Revised Code* 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

Existing section 2921.51 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 bill includes *a special police officer employed by a port authority under section 4582.04 or 4582.28 of the Revised Code* 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 bill includes *a special police officer employed by a port authority under section 4582.04 or 4582.28 of the Revised Code* within the definition of "peace officer" that is used for Chapter 2935. of the Revised Code. That chapter 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 bill also specifically authorizes in the same manner as for other peace officers under existing law *a special police officer employed by a port authority under section 4582.04 or 4582.28 of the Revised Code* 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 a port authority under section 4582.04 or 4582.28 of the Revised Code* 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 granted under any provision of Chapter 2935. 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 bill adds *port authority* to the definition of "developer" that is used in Chapter 349., which regulates new community developments. Under the bill, "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 Chapter 349. (Sec. 349.01(E).)

The bill 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 bill, 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 bill, 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
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Reported, S. Highways & Transportation	---	---

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