

SENATE, No. 2181

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED JUNE 16, 2014

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SYNOPSIS

Increases transparency and accountability at PANYNJ.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 3/17/2015)

1 AN ACT concerning oversight of the Port Authority of New York
2 and New Jersey, amending various parts of the statutory law, and
3 supplementing Title 32 of the Revised Statutes.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7 1. Section 2 of P.L.1991, c.395 (C.32:1-6.2) is amended to read
8 as follows:

9 2. As used in **[this act]** P.L.1991, c.395 (C.32:1-6.1 et seq.):

10 **[a.]** "Board" means the Board of Commissioners of the Port
11 Authority of New York and New Jersey.

12 "Committee" or "committees" means any standing committee
13 established by the board including, but not limited to, the audit
14 committee, the governance committee, and the finance committee
15 required to be established pursuant to section 4 of P.L. _____,
16 c. (C. _____) (pending before the Legislature as this bill).

17 **[b.]** "Meeting" means any gathering, whether corporeal or by
18 means of communication equipment, which is attended by, or open
19 to, the board, held with the intent, on the part of the board members
20 present, to discuss or act as a unit upon the specific public business
21 of the authority. "Meeting" does not mean a gathering (1) attended
22 by less than an effective majority of the board, or (2) attended by or
23 open to all the members of three or more similar public bodies at a
24 convention or similar gathering.

25 **[c.]** "News media" means persons representing major wire
26 services, television news services, radio news services, and
27 newspapers, whether located in the States of New York or New
28 Jersey or any other state.

29 "Public business" means matters which relate in any way,
30 directly or indirectly, to the performance of the functions of the Port
31 Authority of New York and New Jersey or the conduct of its
32 business.

33 (cf: P.L.1991, c.395, s.2)

34
35 2. Section 3 of P.L.1991, c.395 (C.32:1-6.3) is amended to read
36 as follows:

37 3. a. Notwithstanding the provision of any other law to the
38 contrary, all meetings of the board are declared to be public
39 meetings and shall be open to the public and members of the news
40 media, individually and collectively, for the purpose of observing
41 the full details of all phases of the deliberation, policy-making, and
42 decision-making of the board.

43 b. The board shall adopt [and promulgate] , within six months
44 of the effective date of P.L. _____, c. (C. _____) (pending before the
45 Legislature as this bill), appropriate rules and regulations

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 concerning proper notice to the public and the news media of its
2 meetings and the right of the public and the news media to be
3 present at meetings of the authority. The rules and regulations
4 adopted pursuant to this section shall provide for the same notice
5 and right of the public and news media to be present, as well as any
6 other rights and duties as are provided in sections 17 and 18 of
7 P.L. , c. (C.) (pending before the Legislature as this bill).
8 The board may incorporate in its rules and regulations conditions
9 under which it may exclude the public from a meeting or a portion
10 thereof.

11 c. Any rules or regulations adopted hereunder shall become a
12 part of the minutes of the Port Authority of New York and New
13 Jersey and shall be subject to the approval of the Governor of New
14 Jersey and the Governor of New York.

15 d. The port authority shall make or cause to be made all
16 reasonable efforts to ensure that meetings are held in facilities that
17 permit barrier-free physical access to people with disabilities. If the
18 board determines to use videoconferencing or similar technology to
19 conduct its meetings, it shall provide an opportunity for the public
20 to attend, listen, and observe at any site at which a commissioner
21 participates.

22 (cf: P.L.1991, c.395, s.3)

23

24 3. R.S.32:1-8 is amended to read as follows:

25 ARTICLE VII.

26 The port authority shall have **[such]** additional powers and
27 duties as may hereafter be delegated to or imposed upon it from
28 time to time by the action of the legislature of either state concurred
29 in by the legislature of the other. Unless and until otherwise
30 provided, it shall make an annual report to the legislature of both
31 states pursuant to section 8 of P.L. , c. (C.) (pending before
32 the Legislature as this bill), setting forth in detail the operations and
33 transactions conducted by it pursuant to this agreement and any
34 legislation thereunder. The port authority shall not pledge the credit
35 of either state except by and with the authority of the legislature
36 thereof.

37 (cf: R.S.32:1-8)

38

39 4. (New section) a. Commissioners shall:

40 (1) Execute direct oversight of the authority's chief executive
41 and other management in the effective and ethical management of
42 the authority;

43 (2) Understand, review, and monitor the implementation of
44 fundamental financial and management controls and operational
45 decisions of the authority;

46 (3) Establish policies regarding the payment of salary,
47 compensation, and reimbursements to, and establish rules for the
48 time and attendance of, the chief executive and management;

1 (4) Adopt a code of ethics applicable to each officer, director,
2 and employee that, at a minimum, includes the applicable standards
3 established in the ethics law of both states;

4 (5) Establish written policies and procedures on personnel
5 including policies protecting employees from retaliation for
6 disclosing information concerning acts of wrongdoing, misconduct,
7 malfeasance, or other inappropriate behavior by an employee or
8 board member of the authority, investments, travel, the acquisition
9 of real property and the disposition of real and personal property
10 and the procurement of goods and services; and

11 (6) Adopt a defense and indemnification policy and disclose
12 such plan to any and all prospective board members.

13 b. (1) The commissioners shall perform each of their duties as
14 board members, including but not limited to those imposed by this
15 section, in good faith and with that degree of diligence, care, and
16 skill which an ordinarily prudent person in like position would use
17 under similar circumstances, and may take into consideration the
18 views and policies of any elected official or body, or other person
19 and ultimately apply independent judgment in the best interest of
20 the port authority, its mission, and the public.

21 (2) At the time that a commissioner takes and subscribes the
22 commissioner's oath of office, or within 60 days after the effective
23 date of P.L. , c. (C.) (pending before the Legislature as this
24 bill) if the commissioner has already taken and subscribed the
25 commissioner's oath of office, the commissioner shall execute an
26 acknowledgement, in a form developed by the port authority, in
27 which the commissioner shall, at a minimum:

28 (a) acknowledge that the commissioner understands that a
29 commissioner has a fiduciary obligation to perform duties and
30 responsibilities to the best of the commissioner's abilities, in good
31 faith and with proper diligence and care, consistent with the
32 enabling compact, mission, and by-laws of the port authority and
33 the applicable laws of both states; and that the fiduciary duty to the
34 port authority is derived from and governed by its mission;

35 (b) acknowledge that the commissioner understands the
36 commissioner's duty of loyalty and care to the port authority and
37 commitment to the port authority's mission and the public interest;
38 and the commissioner's obligation to act in the best interests of the
39 port authority and the people whom the port authority serves;

40 (c) agree that a commissioner has an obligation to become
41 knowledgeable about the mission, purpose, functions,
42 responsibilities, and statutory duties of the port authority and, when
43 necessary, to make reasonable inquiry of management and others
44 with knowledge and expertise so as to inform the commissioner's
45 decisions;

46 (d) agree to exercise independent judgment on all matters before
47 the board;

1 (e) agree not to divulge confidential discussions and
2 confidential matters that come before the board for consideration or
3 action;

4 (f) agree to disclose to the board any conflicts, or the
5 appearance of a conflict, of a personal, financial, ethical, or
6 professional nature that could inhibit the commissioner from
7 performing the commissioner's duties in good faith and with due
8 diligence and care; and

9 (g) certify that the commissioner does not have any interest,
10 financial or otherwise, direct or indirect, or engage in any business
11 or transaction or professional activity or incur any obligation of any
12 nature, which is in substantial conflict with the proper discharge of
13 the commissioner's duties in the public interest.

14 c. Individuals appointed to the board of commissioners shall
15 participate in training approved by the port authority's Inspector
16 General regarding their legal, fiduciary, financial, and ethical
17 responsibilities as directors of an authority within six months of
18 appointment to the authority. Board members shall participate in
19 continuing training as may be required to remain informed of best
20 practices, regulatory and statutory changes relating to the effective
21 oversight of the management and financial activities of public
22 authorities, and to adhere to the highest standards of responsible
23 governance.

24 d. No board member, including the chairperson, shall serve as
25 the port authority's chief executive officer, executive director, chief
26 financial officer, comptroller, or hold any other equivalent position
27 while serving as a member of the board.

28 e. The board of commissioners shall establish an audit
29 committee to be comprised of not less than three independent
30 members, who shall constitute a majority on the committee, and
31 who shall possess the necessary skills to understand the duties and
32 functions of the audit committee; provided, however, that in the
33 event that a board has less than three independent members, the
34 board may appoint non-independent members to the audit
35 committee, provided that the independent members shall constitute
36 a majority of the members of the audit committee. Members of the
37 audit committee shall be familiar with corporate financial and
38 accounting practices. The committee shall recommend to the board
39 the hiring of a certified independent accounting firm to audit the
40 port authority, establish the compensation to be paid to the
41 accounting firm, and provide direct oversight of the performance of
42 the independent audit performed by the accounting firm hired for
43 these purposes.

44 f. (1) The board of commissioners shall establish a governance
45 committee to be comprised of not less than three independent
46 members, who shall constitute a majority on the committee, and
47 who shall possess the necessary skills to understand the duties and
48 functions of the governance committee; provided, however, that in

1 the event that the board has less than three independent members,
2 the board may appoint non-independent members to the governance
3 committee, provided that the independent members shall constitute
4 a majority of the members of the governance committee. It shall be
5 the responsibility of the members of the governance committee to:
6 keep the board informed of current best governance practices;
7 review corporate governance trends; recommend updates to the
8 authority's corporate governance principles; advise the port
9 authority on the skills and experiences required of potential board
10 members; examine ethical and conflict of interest issues; perform
11 board self-evaluations; and to recommend by-laws which include
12 rules and procedures for the conduct of board business.

13 (2) The governance committee shall examine, at least annually,
14 the working and professional relationship between employees
15 appointed by the Governor of New York and those appointed by the
16 Governor of New Jersey to ensure maximum communication,
17 coordination, and cooperation among and between such employees.
18 The committee shall report its findings and recommendations to the
19 full board at the first board meeting of each calendar year.

20 g. The board of commissioners shall establish a finance
21 committee to be comprised of not less than three independent
22 members, who shall constitute a majority on the committee, and
23 who shall possess the necessary skills to understand the duties and
24 functions of the committee; provided, however, that in the event
25 that a board has less than three independent members, the board
26 may appoint non-independent members to the finance committee,
27 provided that the independent members shall constitute a majority
28 of the members of the finance committee. It shall be the
29 responsibility of the members of the finance committee to review
30 proposals for the issuance of debt by the authority and its
31 subsidiaries and to make recommendations.

32 h. For the purposes of this section, an independent member is
33 one who:

34 (1) is not, and in the past two years has not been, employed by
35 the authority or an affiliate in an executive capacity;

36 (2) is not, and in the past two years has not been, employed by
37 an entity that received remuneration valued at more than \$15,000
38 for goods and services provided to the port authority or received
39 any other form of financial assistance valued at more than \$15,000
40 from the port authority;

41 (3) is not a relative of an executive officer or employee in an
42 executive position of the port authority or an affiliate; and

43 (4) is not, and in the past two years has not been, a lobbyist
44 registered under a state or local law and paid by a client to influence
45 the management decisions, contract awards, rate determinations, or
46 any other similar actions of the port authority or an affiliate.

47 i. Notwithstanding the provisions of any general, special, or
48 local law, municipal charter, or ordinance to the contrary, the board

1 shall not directly or indirectly, including through any subsidiary,
2 extend or maintain credit, arrange for the extension of credit, or
3 renew an extension of credit, in the form of a personal loan to or for
4 any officer, board member, or employee, or equivalent thereof, of
5 the port authority.

6
7 5. (New section) The port authority shall require an efficiency
8 study be conducted by an outside, independent efficiency expert to
9 identify waste or abuse involving the authority. The initial study
10 shall be completed within 12 months of the effective date of P.L. ,
11 c. (C.) (pending before the Legislature as this bill) and made
12 public at the first public meeting of the board of commissioners
13 following the completion of the initial study. Subsequent studies
14 shall be completed and made available to the public every two years
15 thereafter. A copy of each study conducted shall be submitted to the
16 port authority's office of inspector general.

17
18 6. (New section) The port authority shall require that a needs
19 assessment be conducted by an independent entity prior to any
20 increase in fees, tolls, charges, or fares. The assessment shall be
21 presented by the independent entity to the board of commissioners
22 at a public meeting to be held at least 120 days prior to any meeting
23 of the commissioners to vote to increase any fees, tolls, charges, or
24 fares.

25
26 7. (New section) a. For the purposes of this section, unless a
27 different meaning is required by the context:

28 "Contracting officer" means the officer or employee of the port
29 authority who shall be appointed by resolution of the board of the
30 port authority to be responsible for the disposition of property.

31 "Dispose" or "Disposal" means transfer of title or any other
32 beneficial interest in personal or real property in accordance with
33 this section.

34 "Property" means personal property in excess of \$5,000 in value,
35 real property, and any inchoate or other interest in such property, to
36 the extent that such interest may be conveyed to another person for
37 any purpose, excluding an interest securing a loan or other financial
38 obligation of another party.

39 b. In addition to the powers and duties set forth in R.S.32:1-8,
40 the port authority shall have the following powers, duties, and
41 responsibilities set forth in this section with respect to the disposal
42 of property:

43 (1) The port authority shall adopt by resolution comprehensive
44 guidelines which shall:

45 (a) detail the port authority's operative policy and instructions
46 regarding the use, awarding, monitoring, and reporting of contracts
47 for the disposal of property; and

1 (b) designate a contracting officer who shall be responsible for
2 the port authority's compliance with, and enforcement of, the
3 guidelines.

4 The guidelines shall be consistent with, and shall require the port
5 authority's contracting activities to comply with this section, the
6 port authority's enabling legislation, and any other applicable law
7 for the disposal of property, except that the guidelines may be
8 stricter than the provisions of this section, the port authority's
9 enabling legislation, and any other applicable law for the disposal
10 of property if the port authority determines that additional
11 safeguards are necessary to assure the integrity of its disposition
12 activities. Guidelines approved by the port authority shall be
13 annually reviewed and approved by the board of commissioners of
14 the port authority. On or before the 31st day of March in each year,
15 the port authority shall file with the state comptroller of each state a
16 copy of the guidelines most recently reviewed and approved by the
17 port authority, including the name of the port authority's designated
18 contracting officer. At the time of filing the guidelines with the
19 state comptroller, the port authority shall also post the guidelines on
20 the port authority's internet website. Guidelines posted on the port
21 authority's internet website shall be maintained on the website at
22 least until the procurement guidelines for the following year are
23 posted on the website.

24 (2) The port authority shall:

25 (a) maintain adequate inventory controls and accountability
26 systems for all property under its control;

27 (b) periodically inventory such property to determine which
28 property shall be disposed of;

29 (c) produce a written report of property in accordance with
30 paragraph (3) of this subsection;

31 (d) transfer or dispose of property as promptly as possible in
32 accordance with subsection c. of this section.

33 (3) (a) The port authority shall publish, not less frequently than
34 annually, a report listing all real property of the port authority. The
35 report shall include a list and full description of all real and
36 personal property disposed of during the period. The report shall
37 contain the price received by the port authority and the name of the
38 purchaser for all property sold by the port authority during the
39 period.

40 (b) The port authority shall deliver copies of the report to the
41 governor, state comptroller, and the legislature of each state.

42 c. (1) Except as otherwise provided in this section, the
43 contracting officer designated by the port authority shall have
44 supervision and direction over the disposition of property of the
45 authority.

46 (2) The custody and control of the property of the port authority,
47 pending its disposition, and the disposal of property shall be
48 performed by the port authority.

1 (3) Subject to subsection b. of this section, the port authority
2 may dispose of property for not less than the fair market value of
3 property by sale, exchange, or transfer, for cash, credit, or other
4 property, with or without warranty, and upon other terms and
5 conditions as the contracting officer deems proper, and it may
6 execute documents for the transfer of title or other interest in
7 property and take other action as its deems necessary or proper to
8 dispose of property under the provisions of this section. Provided,
9 however, that no disposition of real property, or any interest in real
10 property, shall be made unless an appraisal of the value of the
11 property has been made by an independent appraiser and included
12 in the record of the transaction, and, provided further, that no
13 disposition of any other property, which because of its unique
14 nature or the unique circumstances of the proposed transaction is
15 not readily valued by reference to an active market for similar
16 property, shall be made without a similar appraisal.

17 (4) A deed, bill of sale, lease, or other instrument executed by or
18 on behalf of the port authority, purporting to transfer title or any
19 other interest in property of the port authority under this section
20 shall be conclusive evidence of compliance with the provisions of
21 this section insofar as concerns title or other interest of any bona
22 fide grantee or transferee who has given valuable consideration for
23 title or other interest and has not received actual or constructive
24 notice of lack of that compliance prior to the closing.

25 (5) (a) All disposals or contracts for disposal of property of the
26 port authority made or authorized by the contracting officer shall be
27 made after publicly advertising for bids except as provided in
28 subparagraph (c) of this paragraph.

29 (b) whenever public advertising for bids is required under
30 subparagraph (a) of this paragraph:

31 (i) the advertisement for bid shall be made at such time prior to
32 the disposal or contract, through methods, and on terms and
33 conditions as shall permit full and free competition consistent with
34 the value and nature of the property;

35 (ii) all bids shall be publicly disclosed at the time and place
36 stated in the advertisement; and

37 (iii) the award shall be made with reasonable promptness by
38 notice to the responsible bidder whose bid, conforming to the
39 invitation for bids, will be most advantageous to the port authority,
40 price and other factors considered; provided, that all bids may be
41 rejected when it is in the public interest to do so.

42 (c) Disposals and contracts for disposal of property may be
43 negotiated or made by public auction without regard to
44 subparagraphs (a) and (b) of this paragraph but subject to obtaining
45 such competition as is feasible under the circumstances, if:

46 (i) the personal property involved has qualities separate from
47 the utilitarian purpose of the property, such as artistic quality,
48 antiquity, historical significance, rarity, or other quality of similar

1 effect, that would tend to increase its value, or if the personal
2 property is to be sold in a quantity that, if it were disposed of under
3 subparagraph (a) and (b) of this paragraph, would adversely affect
4 the state or local market for the property, and the estimated fair
5 market value of the property and other satisfactory terms of disposal
6 can be obtained by negotiation;

7 (ii) the fair market value of the property does not exceed
8 \$15,000;

9 (iii) bid prices after advertising therefor are not reasonable,
10 either as to all or some part of the property, or have not been
11 independently arrived at in open competition;

12 (iv) the disposal will be to the state or any political subdivision,
13 and the estimated fair market value of the property and other
14 satisfactory terms of disposal are obtained by negotiation;

15 (v) under those circumstances permitted by subparagraph
16 (vi) of this subparagraph; or

17 (vi) the action is otherwise authorized by law.

18 (d) (i) An explanatory statement shall be prepared of the
19 circumstances of each disposal by negotiation of:

20 (A) any personal property which has an estimated fair market
21 value in excess of \$15,000;

22 (B) any real property that has an estimated fair market value in
23 excess of \$100,000, except that any real property disposed of by
24 lease or exchange shall only be subject to subclause (C) and (D) of
25 this subparagraph;

26 (C) any real property disposed of by lease, if the estimated
27 annual rent over the term of the lease is in excess of \$15,000;

28 (D) any real property or real and related personal property
29 disposed of by exchange, regardless of value, or any property any
30 part of the consideration for which is real property.

31 (ii) Each statement shall be transmitted to the persons entitled to
32 receive copies of the report required under subsection b. of this
33 section not less than 90 days in advance of disposal, and a copy
34 thereof shall be preserved in the files of the port authority.

35 (6) (a) No asset owned, leased, or otherwise in the control of the
36 port authority may be sold, leased, or otherwise alienated for less
37 than its fair market value except, if;

38 (i) the transferee is a government or other public entity, and the
39 terms and conditions of the transfer require that the ownership and
40 use of the asset will remain with the government or any other public
41 entity;

42 (ii) the purpose of the transfer is within the purpose, mission, or
43 governing statute of the port authority; or

44 (iii) in the event the port authority seeks to transfer an asset for
45 less than its fair market value to other than a governmental entity,
46 which disposal would not be consistent with the port authority's
47 mission, purpose, or governing statutes, the port authority shall
48 provide written notification thereof to the governor of each state,

1 and the proposed transfer shall be subject to denial by either
2 governor. Denial by the governor shall take the form of a signed
3 certification by the governor. The governor shall take any action
4 within 60 days of receiving notification of the proposed transfer. If
5 no such certification is performed within 60 days of notification of
6 the proposed transfer to the governor, the authority may effectuate
7 the transfer.

8 (b) In the event a below fair market value asset transfer is
9 proposed, the following information shall be provided to the board
10 of commissioners and the public:

11 (i) a full description of the asset;

12 (ii) an appraisal of the fair market value of the asset and any
13 other information establishing the fair market value sought by the
14 board;

15 (iii) a description of the purpose of the transfer, and a reasonable
16 statement of the kind and amount of the benefit to the public
17 resulting from the transfer, including but not limited to the kind,
18 number, location, wages or salaries of jobs created or preserved as
19 required by the transfer, the benefits, if any, to the communities in
20 which the asset is situated as are required by the transfer;

21 (iv) a statement of the value to be received compared to the fair
22 market value;

23 (v) the names of any private parties participating in the transfer,
24 and if different than the statement required by subsubparagraph (iv)
25 of this subparagraph, a statement of the value to the private party;
26 and

27 (vi) the names of other private parties who have made an offer
28 for the asset, the value offered, and the purpose for which the asset
29 was sought to be used.

30 (c) Before approving the disposal of any property for less than
31 fair market value, the board of commissioners shall consider the
32 information described in subparagraph (b) of this paragraph and
33 make a written determination that there is no reasonable alternative
34 to the proposed below-market transfer that would achieve the same
35 purpose of the transfer.

36

37 8. (New section) a. The port authority shall submit to the
38 governor, the state comptroller, and the legislature of each state,
39 within 90 days after the end of the port authority's fiscal year, a
40 complete and detailed report or reports setting forth:

41 (1) The port authority's operations and accomplishments;

42 (2) Financial reports certified by the Chair and Vice-chair of the
43 board and the executive director, deputy executive director, and
44 chief financial officer of the port authority, including:

45 (a) audited financials in accordance with generally accepted
46 accounting principles, known as GAAP, and the accounting
47 standards issued by the Governmental Accounting Standards Board,
48 known as GASB,

- 1 (b) grant and subsidy programs,
- 2 (c) operating and financial risks,
- 3 (d) current ratings, if any, of its bonds issued by recognized
- 4 bond rating agencies, and notice of changes in such ratings, and
- 5 (e) long-term liabilities, including leases and employee benefit
- 6 plans;
- 7 (3) A schedule of port authority bonds and notes outstanding at
- 8 the end of the port authority's fiscal year, together with a statement
- 9 of the amounts redeemed and incurred during such fiscal year as
- 10 part of a schedule of debt issuance that includes the date of
- 11 issuance, term, amount, interest rate, and means of repayment.
- 12 Additionally, the debt schedule shall include all refinancings, calls,
- 13 refundings, defeasements, and interest rate exchange or other such
- 14 agreements, and for any debt issued during the reporting year, the
- 15 schedule shall also include a detailed list of costs of issuance for
- 16 such debt;
- 17 (4) A compensation schedule that shall include, by position,
- 18 title, and name of the person holding that position or title, the
- 19 salary, compensation, allowance and benefits, or both, provided to
- 20 any officer, director, or employee in a decision making or
- 21 managerial position of the port authority whose salary is in excess
- 22 of \$100,000;
- 23 (5) Biographical information, not including confidential
- 24 personal information, for all directors and officers and employees
- 25 for whom salary reporting is required;
- 26 (6) The projects undertaken by the port authority during the past
- 27 year;
- 28 (7) A listing and description, in addition to the report required
- 29 by subparagraph (c) of paragraph (2) of subsection b. of section 7 of
- 30 P.L. c. (C.) (pending before the Legislature as this bill), of
- 31 all real property of the port authority having an estimated fair
- 32 market value in excess of \$15,000 that the authority acquires or
- 33 disposes of during that period. The report shall contain the price
- 34 received or paid by the port authority and the name of the purchaser
- 35 or seller for all such property sold or bought by the port authority
- 36 during such period;
- 37 (8) The port authority's code of ethics;
- 38 (9) An assessment of the effectiveness of the port authority's
- 39 internal control structure and procedures;
- 40 (10) A description of the port authority and its board structure,
- 41 including
- 42 (a) names of committees and committee members,
- 43 (b) lists of board meetings and attendance,
- 44 (c) descriptions of major authority units, subsidiaries, and
- 45 (d) number of employees;
- 46 (11) The port authority's charter, if any, and by-laws;
- 47 (12) A listing of material changes in operations and programs
- 48 during the reporting year;

- 1 (13) At a minimum, a four-year financial plan, including:
- 2 (a) a current and projected capital budget, and
- 3 (b) an operating budget report, including an actual versus
- 4 estimated budget, with an analysis and measurement of financial
- 5 and operating performance;
- 6 (14) The port authority's board performance evaluations;
- 7 provided, however, that the evaluations shall not be subject to
- 8 disclosure under the freedom of information laws of each state;
- 9 (15) A description of the total amounts of assets, services, or
- 10 both assets and services bought or sold without competitive
- 11 bidding, including:
- 12 (a) the nature of those assets and services,
- 13 (b) the names of the counterparties, and
- 14 (c) where the contract price for assets purchased exceeds fair
- 15 market value, or where the contract price for assets sold is less than
- 16 fair market value, a detailed explanation of the justification for
- 17 making the purchase or sale without competitive bidding, and a
- 18 certification by the chief executive officer and chief financial
- 19 officer of the port authority that they have reviewed the terms of
- 20 such purchase or sale and determined that it complies with
- 21 applicable law and procurement guidelines; and
- 22 (16) A description of any material pending litigation in which
- 23 the port authority is involved as a party during the reporting year.
- 24 b. The port authority shall make accessible to the public, via its
- 25 official or shared internet web site, documentation pertaining to its
- 26 mission, current activities, most recent annual financial reports,
- 27 current year budget, and its most recent independent audit report
- 28 unless this information is exempt from disclosure pursuant to either
- 29 state's freedom of information laws.
- 30 c. Every financial report submitted under this section shall be
- 31 approved by the board and shall be certified in writing by the chair
- 32 and vice chair of the board, the executive director, the deputy
- 33 executive director, and the chief financial officer of the port
- 34 authority that based on the officer's knowledge:
- 35 (1) the information provided therein is accurate, correct, and
- 36 does not contain any untrue statement of material fact;
- 37 (2) does not omit any material fact which, if omitted, would
- 38 cause the financial statements to be misleading in light of the
- 39 circumstances under which the statements are made; and
- 40 (3) fairly presents in all material respects the financial condition
- 41 and results of operations of the port authority as of, and for, the
- 42 periods presented in the financial statements.
- 43
- 44 9. (New section) a. The port authority shall submit to the
- 45 governor, the state comptroller, and legislature of each state,
- 46 together with the report described in section 8 of P.L. ,
- 47 c. (C.) (pending before the Legislature as this bill), a copy of
- 48 the annual independent audit report, performed by a certified public

1 accounting firm in accordance with generally accepted auditing
2 standards, and management letter and any other external
3 examination of the books and accounts of the port authority.

4 b. Each certified independent public accounting firm that
5 performs any audit required by this section shall timely report to the
6 audit committee of the port authority:

7 (1) All critical accounting policies and practices to be used;

8 (2) All alternative treatments of financial information within
9 generally accepted accounting principles that have been discussed
10 with management officials of the port authority, ramifications of the
11 use of alternative disclosures and treatments, and the treatment
12 preferred by the certified independent public accounting firm; and

13 (3) Other material written communications between the certified
14 independent public accounting firm and the management of the port
15 authority, including as the management letter along with
16 management's response or plan of corrective action, material
17 corrections identified, or schedule of unadjusted differences, where
18 applicable.

19 c. Notwithstanding any other provision of law to the contrary,
20 the certified independent public accounting firm providing the port
21 authority's annual independent audit will be prohibited in providing
22 services to the port authority if the lead or coordinating audit
23 partner, having primary responsibility for the audit, or the audit
24 partner responsible for reviewing the audit, has performed audit
25 services for that issuer in each of the five previous fiscal years of
26 the port authority.

27 d. The certified independent public accounting firm performing
28 the port authority's audit shall be prohibited from performing any
29 non-audit services to the port authority contemporaneously with the
30 audit, unless receiving previous written approval by the audit
31 committee including:

32 (1) Bookkeeping or other services related to the accounting
33 records or financial statements of the port authority;

34 (2) Financial information systems design and implementation;

35 (3) Appraisal or valuation services, fairness opinions, or
36 contribution-in-kind reports;

37 (4) Actuarial services;

38 (5) Internal audit outsourcing services;

39 (6) Management functions or human services;

40 (7) Broker or dealer, investment advisor, or investment banking
41 services; and

42 (8) Legal services and expert services unrelated to the audit.

43 e. It shall be prohibited for any certified independent public
44 accounting firm to perform for the port authority any audit service
45 if the chief executive officer, comptroller, chief financial officer,
46 chief accounting officer, or any other person serving in an
47 equivalent position for the port authority, was employed by that
48 certified independent public accounting firm and participated in any

1 capacity in the audit of the port authority during the one year period
2 preceding the date of the initiation of the audit.

3 f. Notwithstanding any provision of law to the contrary, the
4 port authority may exempt information from disclosure or report, if
5 the counsel of the port authority deems that the information is
6 covered by either state's freedom of information laws.

7

8 10. (New section) a. For the purposes of this section:

9 "Attorney General" means the Attorney General of the State of
10 New York and the Attorney General of the State of New Jersey.

11 "Employees" means those persons employed at the port
12 authority, including but not limited to: full-time and part-time
13 employees, those employees on probation, and temporary
14 employees.

15 "Inspector General" means the Inspector General of the Port
16 Authority.

17 "Whistleblower" means any employee of the port authority who
18 discloses information concerning acts of wrongdoing, misconduct,
19 malfeasance, or other inappropriate behavior by an employee or
20 board member of the port authority, concerning the port authority's
21 investments, travel, acquisition of real or personal property, the
22 disposition of real or personal property, and the procurement of
23 goods and services.

24 b. The inspector general, after consultation with the Attorney
25 General of both states shall develop a whistleblower access and
26 assistance program which shall include, but not be limited to:

27 (1) Evaluating and commenting on whistleblower programs and
28 policies by board commissioners pursuant to paragraph (5) of
29 subsection a. of section 4 of P.L. , c. (C.) (pending before
30 the Legislature as this bill);

31 (2) Establishing toll-free telephone and facsimile lines available
32 to employees;

33 (3) Offering advice regarding employee rights under applicable
34 state and federal laws and advice and options available to all
35 persons; and

36 (4) Offering an opportunity for employees to identify concerns
37 regarding any issue at the port authority.

38 c. Any communications between an employee and the
39 inspector general pursuant to this section shall be held strictly
40 confidential by the inspector general, unless the employee
41 specifically waives in writing the right to confidentiality, except
42 that this confidentiality shall not exempt the inspector general from
43 disclosing information, where appropriate, to any law enforcement
44 authority.

45 d. The port authority shall not fire, discharge, demote, suspend,
46 threaten, harass, or discriminate against an employee because of the
47 employee's role as a whistleblower, insofar as the actions taken by
48 the employee are legal.

1 11. (New section) a. For the purposes of this section:

2 "Lobbyist" has the same meaning as defined in the laws, rules, or
3 regulations of either state.

4 "Lobbying" means and includes any attempt to influence:

5 (1) The adoption or rejection of any rule or regulation having the
6 force and effect of law by the port authority;

7 (2) The outcome of any proceeding by the port authority to
8 establish, levy, or collect fees, tolls, charges, or fares; and

9 (3) The authorization, approval, or award of any agreements,
10 contracts, or purchase orders, including any settlement of port
11 authority claims; or any extension, amendment, or modification of
12 any existing agreement, contract, or order.

13 "Contact" means any conversation, in person or by telephonic or
14 other electronic means, or correspondence between any lobbyist
15 engaged in the act of lobbying and any person within the port
16 authority who can make or influence a decision on the subject of the
17 lobbying on behalf of the port authority, and shall include, at a
18 minimum, all members of the board of commissioners and all
19 officers of the port authority.

20 b. The port authority shall maintain a record of all lobbying
21 contacts made with the port authority.

22 c. Every board member, officer or employee of the port
23 authority who is contacted by a lobbyist shall make a
24 contemporaneous record of the contact containing the day and time
25 of the contact, the identity of the lobbyist, and a general summary
26 of the substance of the contact.

27 d. The port authority shall adopt a policy implementing the
28 requirements of this section within 180 days of the effective date of
29 P.L. , c. (C.) (pending before the Legislature as this bill).
30 The policy shall appoint an officer to whom all records shall be
31 delivered. The officer shall maintain records for not less than seven
32 years in a filing system designed to organize records in a manner so
33 as to make records useful to determine whether the decisions of the
34 authority were influenced by lobbying contacts.

35
36 12. (New section) a. (1) There is hereby established the Office
37 of the Inspector General in the port authority. The head of the
38 office shall be the Inspector General who shall be appointed by, and
39 report to, the board of commissioners of the port authority.

40 (2) The Inspector General shall hold office at the discretion of
41 the board of commissioners and until the inspector general's
42 successor is appointed and has qualified.

43 (3) The Inspector General may appoint one or more deputy
44 inspectors general to serve at the Inspector General's pleasure, who
45 shall be responsible for conducting audits and investigations in the
46 port authority.

47 b. The Inspector General shall have the following duties and
48 responsibilities:

- 1 (1) Receive and investigate complaints from any source, or upon
2 the Inspector General's own initiative, concerning allegations of
3 corruption, fraud, criminal activity, conflicts of interest, or abuse in
4 the port authority or its subsidiaries;
- 5 (2) Inform the board of commissioners and executive director of
6 allegations and the progress of investigations related thereto, unless
7 special circumstances require confidentiality;
- 8 (3) Determine with respect to allegations whether disciplinary
9 action, civil or criminal prosecution, or further investigation by an
10 appropriate federal, state, or local agency is warranted, and to assist
11 in these investigations;
- 12 (4) Prepare and release to the public written reports of
13 investigations, as appropriate and to the extent permitted by law,
14 subject to redaction to protect the confidentiality of witnesses. The
15 release of all or portions of reports may be deferred to protect the
16 confidentiality of ongoing investigations;
- 17 (5) Review and examine periodically the policies and
18 procedures of the port authority with regard to the prevention and
19 detection of corruption, fraud, criminal activity, conflicts of
20 interest, or abuse;
- 21 (6) Recommend remedial action to prevent or eliminate
22 corruption, fraud, criminal activity, conflicts of interest, or abuse;
- 23 (7) Establish programs for training port authority officers and
24 employees regarding the prevention and elimination of corruption,
25 fraud, criminal activity, conflicts of interest, or abuse.
- 26 c. The Inspector General shall have the power to:
 - 27 (1) Subpoena and enforce the attendance of witnesses;
 - 28 (2) Administer oaths or affirmations and examine witnesses
29 under oath;
 - 30 (3) Require the production of any books and papers deemed
31 relevant or material to any investigation, examination, or review;
 - 32 (4) Notwithstanding any law to the contrary, examine and copy
33 or remove documents or records of any kind prepared, maintained,
34 or held by the port authority and its subsidiaries;
 - 35 (5) Require any officer or employee of the port authority or its
36 subsidiaries to answer questions concerning any matter related to
37 the performance of the officer or employee's official duties. No
38 statement or other evidence derived therefrom may be used against
39 the officer or employee in any subsequent criminal prosecution
40 other than for perjury or contempt arising from the testimony. The
41 refusal of any officer or employee to answer questions shall be
42 cause for removal from office or employment or other appropriate
43 penalty;
 - 44 (6) Monitor the implementation by the port authority of any
45 recommendations made by the Inspector General; and
 - 46 (7) Perform any other functions that are necessary or
47 appropriate to fulfill the duties and responsibilities of office.

1 d. Every officer or employee in the port authority and its
2 subsidiaries shall report promptly to the Inspector General any
3 information concerning corruption, fraud, criminal activity,
4 conflicts of interest, or abuse by another port authority officer or
5 employee relating to the officer or employee's office or
6 employment, or by a person having business dealings with the port
7 authority relating to those dealings. The knowing failure of any
8 officer or employee to so report shall be cause for removal from
9 office or employment or other appropriate penalty. Any officer or
10 employee who acts pursuant to this section by reporting to the
11 Inspector General improper governmental action shall not be
12 subject to dismissal, discipline or other adverse personnel action.

13

14 13. (New section) At least 60 days prior to the end of its fiscal
15 year, the port authority shall submit to the governor, state
16 comptroller, and legislature of each state a statement of intent to
17 guide the port authority's issuance and overall amount of bonds,
18 notes, or other debt obligations it may issue during the upcoming
19 fiscal year.

20

21 14. (New section) a. Notwithstanding any law to the contrary,
22 the port authority shall not have the power to organize any
23 subsidiary corporation unless the legislature of both states shall
24 have enacted a law granting the authority the power for the
25 organization of a specific corporation, provided, however, that the
26 port authority may organize a subsidiary corporation pursuant to the
27 following requirements:

28 (1) The purpose for which the subsidiary corporation shall be
29 organized shall be for a project or projects which the port authority
30 has the power to pursue pursuant to its corporate purposes;

31 (2) The primary reason for which the subsidiary corporation
32 shall be organized shall be to limit the potential liability impact of
33 the subsidiary's project or projects on the port authority or because
34 state or federal law requires that the purpose of a subsidiary be
35 undertaken through a specific corporate structure; and

36 (3) The subsidiary corporation shall make the reports and other
37 disclosures as are required by the port authority, unless the
38 subsidiary corporation's operations and finances are consolidated
39 with those of the port authority.

40 b. In such cases where the port authority is granted the power
41 to organize a subsidiary corporation pursuant to subsection a. of this
42 section, the authority shall file, no less than 60 days prior to the
43 formation of the subsidiary, notice to the governor, the comptroller,
44 and the legislature of each state that it will be creating a subsidiary.

45 c. Subsidiary corporations formed under subsection a. of this
46 section shall not have the authority to issue bonds, notes, or other
47 debts, provided, however, that subsidiary corporations may issue
48 notes or other debt to the port authority. No debt issued by the

1 subsidiary to the authority shall in total exceed, at any time, a
2 principal amount of \$500,000 or, during the nine months after the
3 formation of the subsidiary, \$1,000,000.

4 d. The certificate of incorporation or other document filed to
5 organize a subsidiary corporation under this section shall state that
6 the port authority is the person organizing the corporation.

7 e. On or before the first day of January 2015 and annually on
8 such day thereafter, any subsidiary corporation, in cooperation with
9 the port authority, shall provide to the governor and legislature of
10 each state a report on the subsidiary corporation. The report shall
11 include for each subsidiary:

12 (1) The complete legal name, address, and contact information
13 of the subsidiary;

14 (2) The structure of the organization of the subsidiary, including
15 the names and titles of each of its members, directors, and officers,
16 as well as a chart of its organizational structure;

17 (3) The complete bylaws and legal organization papers of the
18 subsidiary;

19 (4) A complete report of the purpose, operations, mission, and
20 projects of the subsidiary, including a statement of justification as
21 to why the subsidiary is necessary to continue its operations for the
22 public benefit for the people of both states; and

23 (5) Any other information the subsidiary corporation deems
24 important to include in the report.

25

26 15. (New section) Notwithstanding any other provisions of law
27 to the contrary, the commissioners, officers, and employees of the
28 port authority shall file annual financial disclosure statements as
29 provided in this section.

30 a. (1) The commissioners appointed by the governor from the
31 State of New York shall file annual financial disclosure statements
32 pursuant to section seventy-three-A of the Public Officers Law.

33 (2) Employees of the port authority who hold policy-making
34 positions, as determined by the port authority, or whose annual
35 salary equals or exceeds the salary rate of SG-24 as set forth in
36 paragraph A of subdivision one of section 130 of the Civil Service
37 Law of the State of New York as of April 1 of the year in which an
38 annual financial disclosure statement shall be filed, shall file annual
39 financial disclosure statements pursuant to section seventy-three-A
40 of the Public Officers Law.

41 (3) Any person who is required to file annual disclosure
42 statements pursuant to this subsection shall be subject to the
43 provisions, including the enforcement provisions, of section
44 seventy-three-A of the Public Officers Law.

45 b. The commissioners appointed by the Governor of the State
46 of New Jersey shall file annual financial disclosure statements as
47 required by New Jersey State law or Executive Order.

1 16. (New section) a. (1) Not less than 30 days and not more
2 than 90 days prior to any vote or action taken by the board of
3 commissioners relating to any increase in the tolls for the use of any
4 port authority bridge or tunnel, or fares for the use of the Port
5 Authority Trans-Hudson Corporation rail system, the port authority
6 shall conduct at least six public hearings in the manner prescribed
7 pursuant to this section:

8 (2) Locations for public hearings shall be selected in such a way
9 as to be geographically accessible to a majority of users of the
10 facility or facilities to be impacted by the toll or fare increase, as
11 determined by port authority data, provided that at least one hearing
12 shall be held in each state.

13 b. At least 72 hours before the first hearing held pursuant to
14 this section, the port authority shall make available to the public by
15 conspicuously posting, at a minimum, the following information in
16 one or more designated areas and on the port authority's official
17 internet website:

18 (1) the amount of revenue expected to be generated from the
19 increase in tolls or fares;

20 (2) a detailed explanation of how the revenues raised from the
21 increase in tolls or fares is expected to be spent; and

22 (3) a written explanation of why the increase in tolls or fares is
23 necessary.

24 c. Each hearing shall be attended by at least three
25 commissioners from New York and three commissioners from New
26 Jersey in office at the time of the hearing.

27 d. The port authority shall hold no more than one public
28 hearing in a single day, and at least one-half of the public hearings
29 shall be scheduled to begin after 6:30 p.m., Eastern Standard Time,
30 on a weekday.

31 e. The port authority shall ensure that each of the requirements
32 set forth in this section and in section 18 of P.L. , c. (C.)
33 pending before the Legislature as this bill) shall be complied with
34 before placing on the meeting agenda of the board of
35 commissioners, any item or matter relating to an increase in tolls,
36 fees, or other charges.

37
38 17. (New section) a. (1) All meetings of the port authority shall
39 be open to the public at all times.

40 (2) Upon a majority vote of its total membership, taken in an
41 open meeting pursuant to a motion indentifying the general area or
42 areas of the subject or subjects to be considered, the board of
43 commissioners may exclude the public only from that portion of a
44 meeting at which the board of commissioners discusses any:

45 (a) matter in which the release of information would impair a
46 right to receive funds from the Government of the United States;

47 (b) material the disclosure of which constitute an unwarranted
48 invasion of individual or personal privacy;

1 (c) collective bargaining agreement, or the terms and conditions
2 which are proposed for inclusion in any collective bargaining
3 agreement, including the negotiation of the terms and conditions
4 thereof with employees or representatives of employees of the port
5 authority;

6 (d) matter involving the purchase, lease, or acquisition of real
7 property with port authority funds, the proposed acquisition of
8 securities, the sale or exchange of securities held by the port
9 authority, or investment of port authority funds, if it could
10 adversely affect the public interest if discussion of the matter was
11 disclosed;

12 (e) matter which would imperil the public safety if disclosed;

13 (f) pending or anticipated litigation or contract negotiation in
14 which the port authority is, or may become, a party, or matters
15 falling within the attorney-client privilege, to the extent that
16 confidentiality is required in order for the attorney to exercise the
17 attorney's ethical duties as a lawyer;

18 (g) matter involving the employment, appointment, termination
19 of employment, terms and conditions of employment, evaluation of
20 the performance of, promotion, or disciplining of any specific
21 prospective officer or employee or current officer or employee
22 employed or appointed by the port authority, unless all the
23 individual employees or appointees whose rights could be adversely
24 affected request in writing that the matter or matters be discussed at
25 a public meeting; or

26 (h) deliberation of the port authority occurring after a public
27 hearing that may result in the imposition of a specific civil penalty
28 upon the responding party or the suspension or loss of a license or
29 permit belonging to the responding party as a result of an act or
30 omission for which the responding party bears responsibility.

31 b. The port authority shall keep reasonably comprehensible
32 minutes of all its meetings showing the time and place, the members
33 present, the subjects considered, the actions taken, the vote of each
34 member which shall be promptly available to the public pursuant to
35 subsection c. of this section to the extent that making these matters
36 public shall not be inconsistent with subsection a. of this section.

37 c. Minutes of each meeting shall be available to the public
38 within two weeks from the date of the meeting.

39 d. The minutes shall indicate for each item on the agenda, the
40 vote of each board member in attendance at an open meeting or an
41 executive session of the board or a committee of the board. Each
42 item on the agenda shall be voted on separately.

43
44 18. (New section) a. At each public meeting of the board and at
45 each public meeting of each committee, the public shall be allotted
46 a period of time, not less than 60 minutes, to speak on any topic on
47 the agenda. The public speaking period shall take place prior to any
48 board or committee action.

1 b. The authority shall make available to the public meeting
2 agendas at least 72 hours before each meeting of the board and each
3 meeting of each committee. Public notice of the time and place of a
4 meeting shall be provided to appropriate media outlets, shall be
5 conspicuously posted in one or more designated areas at least 72
6 hours before such meeting, and shall be conspicuously posted via
7 the port authority's official internet website at least five business
8 days before the meeting.

9 The port authority shall make available to the public documents
10 in the following manner: (1) the agenda and public documents
11 pertaining to a board or committee meeting shall be available for
12 public inspection at an office of the port authority; and (2) the
13 agenda and public documents pertaining to a board or committee
14 meeting shall be posted on the port authority's official internet
15 website. In addition, the port authority shall send via electronic
16 mail, the agenda and public documents pertaining to a board or
17 committee meeting to each member of the New York State and New
18 Jersey State legislatures.

19

20 19. (New section) a. For the purposes of this section:

21 "Immediate family" shall mean a spouse, domestic partner,
22 partner in a civil union, son, daughter, grandson, granddaughter,
23 father, mother, grandfather, grandmother, great-grandfather, great-
24 grandmother, brother, sister, nephew, niece, uncle, or aunt.
25 Relatives by adoption, half-blood, marriage, or remarriage shall be
26 treated as relatives of the whole kinship.

27 "Interest" shall mean: if the business organization is a
28 partnership, the board member or the board member's immediate
29 family is a partner or owner of 10 percent or more of the assets of
30 the partnership; or if the business organization is a corporation, the
31 board member or the board member's immediate family owns or
32 controls 10 percent or more of the stock of the corporation, or
33 serves as a director or officer of the corporation.

34 b. A board member shall not vote on, or participate in any
35 board or committee discussions with respect to, any agenda item if
36 the board member, a member of the board member's immediate
37 family, or a business organization in which the board member has
38 an interest, has a direct or indirect financial involvement that may
39 reasonably be expected to impair the board member's objectivity or
40 independence of judgment or to create the appearance of
41 impropriety. The board member shall be recused from any
42 discussions or voting on the agenda item. A board member shall
43 clearly indicate the board member's recusal from voting on an
44 agenda item and the minutes shall clearly reflect that recusal.

45

46 20. (New section) a. For the purposes of this section:

47 "GAAP" means the generally accepted accounting principles
48 established by the Governmental Accounting Standards Board.

1 “Major capital project” means an undertaking or program for the
2 acquisition, creation, or development of any crossing, transportation
3 facility, terminal facility, or commerce facility or any part thereof,
4 with an estimated total project cost in excess of \$500,000,000.

5 b. The port authority shall prepare a detailed annual operating
6 budget beginning with the fiscal year commencing after the
7 effective date of P.L. , c. (C.) (pending before the
8 Legislature as this bill).

9 (1) The initial annual operating budget shall be made publicly
10 available, including on the port authority’s internet website, in July
11 of every fiscal year, and a final annual operating budget, which
12 shall take into account public comment, shall be made available in
13 February of each fiscal year.

14 (2) It shall be the policy of the port authority that its annual
15 operating budget be balanced in accordance with GAAP principles,
16 provided, however, special circumstances may permit that deficits
17 be covered with accrued reserves or other resources.

18 c. The port authority shall prepare a long-range capital strategy
19 plan and shall revise the long-range plan every four years beginning
20 with the fiscal year commencing after the effective date of P.L. ,
21 c. (C.) (pending before the Legislature as this bill)

22 (1) The capital strategy plan shall specify the projects to be
23 initiated and the expected cost of those projects. The commitment
24 plans shall include a financing plan that identifies the source of
25 funding for each project.

26 (2) Quarterly reports shall be prepared by the port authority and
27 made publicly available with the status of each project in the capital
28 strategy plan. These reports shall compare actual and target
29 performance measures, including but not limited to costs and
30 construction schedules, and a narrative explanation of any
31 discrepancy thereof.

32 (3) The port authority shall also provide that major capital
33 projects are monitored by independent engineering consultants.
34 The independent consultants shall prepare quarterly reports to be
35 provided to the board and to the public. The quarterly reports
36 prepared by independent consultants shall include, but not be
37 limited to, a comparison of actual and target performance measures
38 including, but not limited to, costs and construction schedules, and
39 a narrative explanation of any discrepancy thereof.

40
41 21. a. The port authority, at the request of either house of the
42 state legislature, shall be required to appear before a committee of
43 the requesting state legislature to present testimony on any topic or
44 subject requested by the committee or to respond to questions by
45 members of the committee.

46 b. The port authority shall, at a minimum, be represented by
47 the chair or vice-chair of the board, the executive director or deputy
48 executive director, the chief financial officer, and any staff deemed

1 necessary by the chair or vice-chair of the board, the executive
2 director or deputy executive director, or the chief financial officer
3 to present testimony or respond to questions at any appearance
4 required pursuant to this section. The committee may request the
5 appearance of any officer or employee of the port authority.
6

7 22. This act shall take effect upon the enactment into law by the
8 State of New York of legislation having an identical effect with this
9 act, but if the State of New York shall have already enacted such
10 legislation, this act shall take effect immediately.
11

12
13 STATEMENT
14

15 This bill enacts certain reforms to ensure the proper functioning
16 of the Port Authority of New York and New Jersey (“Port
17 Authority”) as an open, transparent, and accountable interstate
18 authority. The Port Authority’s operations include Newark Liberty,
19 LaGuardia, Kennedy, Stewart, Atlantic City, and Teterboro airports;
20 the Port of New York and New Jersey; the PATH mass transit
21 system; the World Trade Center; and numerous bridges and tunnels,
22 including the George Washington Bridge and the Lincoln and
23 Holland tunnels.
24

25 *Board Responsibilities*

26 The bill requires the Port Authority’s board of commissioners to:
27 provide direct oversight of the authority’s chief executive and
28 senior management; oversee the implementation of financial and
29 management controls and operational decisions; establish policies
30 concerning the compensation of officers and employees; adopt a
31 code of ethics; establish policies protecting employees who disclose
32 information concerning acts of wrongdoing; and adopt a defense
33 and indemnification policy. The bill also requires the Port
34 Authority to establish audit, governance, and finance committees.
35 The governance committee is to examine professional relationships
36 between those appointed by the Governor of New York and those
37 appointed by the Governor of New Jersey to ensure maximum
38 communication, coordination, and cooperation.
39

40 *Fiduciary Oath*

41 The bill requires every member of the Port Authority board to
42 perform each of their duties as a board member in good faith and
43 with that degree of diligence, care, and skill which an ordinarily
44 prudent person in similar position would exercise under similar
45 circumstances. At the time that the board member takes and
46 subscribes the oath of office, the board member is to execute an
47 acknowledgement of the board member’s role, fiduciary duty, duty

1 of loyalty and care to the organization, and commitment to the
2 authority's mission and the public interest.

3

4 *Efficiency Study*

5 Every two years, the Port Authority is required to have an
6 efficiency study conducted by an outside, independent efficiency
7 expert to identify waste or abuse involving the Port Authority.

8

9 *Disposal of Property*

10 The bill establishes various requirements concerning the disposal
11 of property by the Port Authority. The Port Authority is required to
12 designate a contracting officer to be responsible for complying with
13 the provisions established in the bill, and is required to maintain
14 adequate inventory controls and accountability systems for its
15 property, periodically inventory its property, and dispose of
16 property promptly. In addition, the Port Authority is required to
17 produce an annual list, including descriptions, of all real property.
18 Before disposing or contracting for the disposal of property, the bill
19 requires the Port Authority to publicly advertise for bids. The
20 provisions concerning the disposal of property limit the Port
21 Authority's ability to dispose of property for less than the
22 property's fair market value.

23

24 *Reporting Requirements*

25 The bill requires the Port Authority to provide, within 90 days of
26 the end of its fiscal year, a complete and detailed report setting
27 forth: the Port Authority's operations and accomplishments;
28 certified financial reports; charter and by-laws; a schedule of
29 outstanding bonds and notes, a statement of the amounts redeemed
30 and incurred during the fiscal year as part of a schedule of debt
31 issuance, and a detailed list of costs of issuance for such debt;
32 biographical information and titles of commissioners and senior
33 management, including compensation and benefits paid to
34 commissioners and to senior staff; the projects undertaken during
35 the past year; the Port Authority's code of ethics; an assessment of
36 the effectiveness of the Port Authority's internal control structure
37 and procedures; a description of the Port Authority and its board
38 structure; a listing of all real property having an estimated fair
39 market value of \$15,000 or more that the authority acquired or
40 disposed of; a description of the total amounts of assets and services
41 bought or sold without competitive bidding; a listing of material
42 changes in operations and programs; at a minimum, a four-year
43 financial plan; board performance evaluations; and a list of any
44 pending litigation to which the Port Authority is involved as a party.

45

46 *Annual Audit*

47 The Port Authority is required to submit to the governor, the
48 state comptroller, and legislature of each state, a copy of an annual

1 independent audit report, performed by a certified public accounting
2 firm in accordance with generally accepted auditing standards, and
3 management letter and any other external examination of the books
4 and accounts of the authority. The bill also establishes various
5 restrictions on what other services the auditing firm is allowed to
6 provide to the Port Authority.

7

8 *Lobbying Restrictions*

9 The Port Authority is required to maintain a record of all
10 lobbying contacts made with the Port Authority. Every board
11 member, officer, or employee of the Port Authority who is
12 contacted by a lobbyist is required to make a contemporaneous
13 record of the contact containing the day and time of the contact, the
14 identity of the lobbyist, and a general summary of the substance of
15 the contact. For the purposes of the bill, "lobbying" includes any
16 attempt to influence: the adoption or rejection of any rule or
17 regulation having the force and effect of law by the Port Authority;
18 the authorization, approval, or award of any agreements, contracts,
19 or purchase orders, including any settlement of Port Authority
20 claims; or any extension, amendment, or modification of any
21 existing agreement, contract, or order; and the outcome of any
22 proceeding by the Port Authority to establish, levy, or collect fees,
23 tolls, charges, or fares.

24

25 *Role of Inspector General*

26 The bill creates an Office of the Inspector General. The
27 Inspector General is to be appointed by, and report to, the board of
28 commissioners of the Port Authority. The Inspector General may
29 appoint one or more deputy inspectors general to serve at the
30 Inspector General's pleasure, who shall be responsible for
31 conducting audits and investigations in the Port Authority. The
32 Inspector General has the duty and responsibility to: (1) receive and
33 investigate complaints from any source concerning allegations of
34 corruption, fraud, criminal activity, conflicts of interest, or abuse;
35 (2) inform the board of commissioners and executive director of
36 allegations and the progress of investigations related thereto, unless
37 special circumstances require confidentiality; (3) determine with
38 respect to allegations whether disciplinary action, civil or criminal
39 prosecution, or further investigation by an appropriate federal, state,
40 or local agency is warranted, and to assist in these investigations;
41 (4) prepare and release to the public written reports of
42 investigations; (5) review and examine periodically the policies and
43 procedures of the Port Authority with regard to the prevention and
44 detection of corruption, fraud, criminal activity, conflicts of
45 interest, or abuse; (6) recommend remedial action to prevent or
46 eliminate corruption, fraud, criminal activity, conflicts of interest,
47 or abuse; and (7) establish programs for training Port Authority

1 officers and employees regarding the prevention and elimination of
2 corruption, fraud, criminal activity, conflicts of interest, or abuse.

3 The Inspector General shall have the power to: subpoena and
4 enforce the attendance of witnesses; administer oaths or
5 affirmations and examine witnesses under oath; require the
6 production of any books and papers; examine and copy or remove
7 documents or records of any kind prepared, maintained, or held by
8 the Port Authority and its subsidiaries; require any officer or
9 employee of the Port Authority or its subsidiaries to answer
10 questions concerning any matter related to the performance of the
11 officer or employee's official duties; monitor the implementation by
12 the Port Authority of any recommendations made by the Inspector
13 General; and perform any other functions that are necessary or
14 appropriate to fulfill the duties and responsibilities of that office.

15 The bill also requires every officer or employee in the Port
16 Authority and its subsidiaries to report promptly to the Inspector
17 General any information concerning corruption, fraud, criminal
18 activity, conflicts of interest, or abuse by another Port Authority
19 officer or employee relating to the officer or employee's office or
20 employment, or by a person having business dealings with the Port
21 Authority relating to those dealings. The knowing failure of any
22 officer or employee to so report shall be cause for removal from
23 office or employment or other appropriate penalty.

24

25 *Whistleblower Protections*

26 The bill requires the Port Authority Inspector General, after
27 consultation with the Attorneys General of both states, to develop a
28 whistleblower access and assistance program which shall include,
29 but not be limited to: evaluating and commenting on whistleblower
30 programs and policies; establishing toll-free telephone and
31 facsimile lines available to employees; offering advice regarding
32 employee rights under applicable state and federal laws and advice
33 and options available to all persons; and offering an opportunity for
34 employees to identify concerns regarding any issue at the port
35 authority. The Port Authority is prohibited from firing, demoting,
36 suspending, threatening, harassing, or discriminating against an
37 employee because of the employee's role as a whistleblower,
38 insofar as the actions taken by the employee are legal.

39

40 *Subsidiary Corporations*

41 With certain exceptions, this bill limits the ability of the Port
42 Authority to organize additional subsidiary corporations unless the
43 legislatures of both states shall have enacted a law granting the
44 power for the organization of a specific corporation. A subsidiary
45 corporation may be organized if the purpose for which the
46 subsidiary corporation is to be organized is for a project or projects
47 which the Port Authority has the power to pursue pursuant to its
48 corporate purposes; the primary reason for the subsidiary

1 corporation is to limit the potential liability impact of the
2 subsidiary's project or projects on the Port Authority or because
3 state or federal law requires that the purpose of a subsidiary be
4 undertaken through a specific corporate structure; and the
5 subsidiary corporation makes the reports and other disclosures as
6 are required by the Port Authority.

7

8 *Financial Disclosure Statements*

9 The bill requires the Port Authority commissioners appointed by
10 the governor from the State of New York to file annual financial
11 disclosure statements pursuant to the Public Officers Law of New
12 York. Employees of the Port Authority who hold policy-making
13 positions, as determined by the Port Authority, or whose annual
14 salary equals or exceeds the salary rate of SG-24 as set forth in the
15 Civil Service Law of New York, are also required to file annual
16 financial disclosure statements pursuant to the Public Officers Law
17 of New York. The commissioners appointed by the Governor of the
18 State of New Jersey are required to file annual financial disclosure
19 statements as required by New Jersey State law or Executive Order.

20

21 *Needs Assessment*

22 The Port Authority is required to have a needs assessment
23 conducted by an independent entity prior to any increase in fees,
24 tolls, charges, or fares. The assessment is to be presented by the
25 independent entity to the board of commissioners at a public
26 meeting to be held at least 120 days prior to any meeting of the
27 commissioners to vote to increase any fees, tolls, charges, or fares.

28

29 *Hearings Before Toll or Fare Increase*

30 Under the bill, the Port Authority is required to hold at least six
31 public hearings not less than 30 days and not more than 90 days
32 prior to any vote or action taken by the board of commissioners
33 relating to any increase in the tolls for the use of any Port Authority
34 bridge or tunnel, or fares for the use of the Port Authority Trans-
35 Hudson Corporation rail system. The locations for public hearings
36 are to be selected in such a way as to be geographically accessible
37 to a majority of users of the facility or facilities to be impacted by
38 the toll or fare increase, as determined by Port Authority data,
39 provided that at least one hearing shall be held in each state.

40 In addition, at least 72 hours before the first hearing, the Port
41 Authority is required to make available to the public: the amount of
42 revenue expected to be generated from the increase in tolls or fares;
43 a detailed explanation of how the revenue raised from the increase
44 in tolls or fares is expected to be spent; and a written explanation of
45 why the increase in tolls or fares is necessary.

46 Each public hearing is to be attended by at least three
47 commissioners from the State of New York and three
48 commissioners from the State of New Jersey and no more than one

1 public hearing may be held in a single day. At least one-half of the
2 public hearings are to be scheduled to begin after 6:30 p.m., Eastern
3 Standard Time, on a weekday. The public is to be allotted a period
4 of time, not less than 60 minutes, to speak at each hearing.

5 The Port Authority is to ensure that each of these requirements
6 are complied with before placing on the meeting agenda of the
7 board of commissioners, any item or matter relating to an increase
8 in tolls, fees, or other charges.

9
10 *Open Public Meetings*

11 The bill provides that all meetings of the Port Authority are to be
12 open to the public at all times unless a majority of the commissions
13 votes that a portion of the meeting may be conducted in closed
14 session. The Port Authority may only exclude the public if the
15 discussion concerns: a matter in which the release of information
16 would impair a right to receive funds from the government of the
17 United States; material the disclosure of which constitutes an
18 unwarranted invasion of individual or personal privacy; a collective
19 bargaining agreement; a matter involving the purchase, lease, or
20 acquisition of real property with Port Authority funds, the proposed
21 acquisition of securities, or sale or exchange of securities held by
22 the Port Authority, or investment of Port Authority funds, if it could
23 adversely affect the public interest if discussion of the matters were
24 disclosed; matters which will imperil the public safety if disclosed;
25 pending or anticipated litigation or contract negotiation in which the
26 Port Authority is, or may become, a party, or matters falling within
27 the attorney-client privilege, to the extent that confidentiality is
28 required in order for the attorney to exercise the attorney's ethical
29 duties as a lawyer; a matter involving the employment,
30 appointment, termination of employment, terms and conditions of
31 employment, evaluation of the performance of, promotion, or
32 disciplining of any specific prospective officer or employee or
33 current officer or employee employed or appointed by the Port
34 Authority; or deliberations of the Port Authority occurring after a
35 public hearing that may result in the imposition of a specific civil
36 penalty upon the responding party or the suspension or loss of a
37 license or permit belonging to the responding party as a result of an
38 act or omission for which the responding party bears responsibility.

39 The Port Authority is required to keep reasonably
40 comprehensible minutes of all its meetings showing the time and
41 place, the members present, the subjects considered, the actions
42 taken, the vote of each member which shall be promptly available to
43 the public. Minutes of each meeting are to be available to the
44 public within two weeks from the date of the meeting.

45 The minutes are to indicate for each item on the agenda, the vote
46 of each board member in attendance at an open meeting or an
47 executive session of the board or a committee of the board. Each
48 item on the agenda is to be voted on separately.

1 Finally, the board is to make or cause to be made all reasonable
2 efforts to ensure that meetings are held in facilities that permit
3 barrier-free physical access to people with disabilities. If the board
4 determines to use videoconferencing or similar technology to
5 conduct its meetings, it shall provide an opportunity for the public
6 to attend, listen.

7

8 *Public Participation at Meetings/Notice Provisions*

9 The bill requires that the public be given not less than 60 minutes
10 to speak at each public meeting of the Port Authority.

11 In addition, the Port Authority is required to make available to
12 the public meeting agendas at least 72 hours before each meeting of
13 the board and each meeting of each committee. Public notice of the
14 time and place of a meeting is to be provided to appropriate media
15 outlets, conspicuously posted in one or more designated areas at
16 least 72 hours before such meeting, and conspicuously posted via
17 the port authority's official internet website at least five business
18 days before the meeting.

19

20 *Recusals*

21 The bill prohibits a board member from voting on, or
22 participating in any board or committee discussions with respect to,
23 any agenda item if the board member, a member of the board
24 member's immediate family, or a business organization in which
25 the board member has an interest, has a direct or indirect financial
26 involvement that may reasonably be expected to impair the board
27 member's objectivity or independence of judgment or to create the
28 appearance of impropriety. The board member is to be recused
29 from any discussions or voting on the agenda item. A board
30 member is to clearly indicate the board member's recusal from
31 voting on an agenda item and the minutes are to clearly reflect that
32 recusal.

33

34 *Operating Budget/Capital Strategy Plan*

35 The Port Authority is required to prepare a detailed annual
36 operating budget. It is to be the policy of the Port Authority that its
37 annual operating budget be balanced in accordance with generally-
38 accepted accounting principles, provided, however, special
39 circumstances may permit that deficits be covered with accrued
40 reserves or other resources.

41 The Port Authority is also required to prepare a long-range
42 capital strategy plan and revise the long-range plan every four
43 years. The capital strategy plan is to specify the projects to be
44 initiated and the expected cost of those projects. The plans are also
45 to include a financing plan that identifies the source of funding for
46 each project. The Port Authority is required to prepare quarterly
47 reports with the status of each project in the capital strategy plan.

1 The Port Authority is required to provide that major capital
2 projects are monitored by independent engineering consultants. A
3 major capital project is defined to mean certain projects with a cost
4 in excess of \$500,000,000.

5

6 *Appearing Before Legislatures*

7 Finally, the Port Authority, at the request of either house of the
8 state legislature of New York or New Jersey, is required to appear
9 before a committee of the requesting state legislature to present
10 testimony on any topic or subject requested by the committee or to
11 respond to questions by members of the committee.

12

13 The bill takes effect when New Jersey and New York have
14 enacted substantively identical legislation.