

[First Reprint]

ASSEMBLY, No. 1708

STATE OF NEW JERSEY
218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

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SYNOPSIS

Provides transparency and accountability reforms at PANYNJ; modifies governance structure; provides legislative oversight of PANYNJ; and regulates capital planning process.

CURRENT VERSION OF TEXT

As reported by the Assembly Transportation and Independent Authorities Committee on May 10, 2018, with amendments.

(Sponsorship Updated As Of: 2/15/2019)

1 AN ACT concerning reforms to the Port Authority of New York and
2 New Jersey, amending ¹**[various parts of statutory law]**
3 R.S.32:1-5 and P.L.1991, c.395¹, and supplementing Title 32 of
4 the Revised Statutes.

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

8
9 1. (New section) This act shall be known and may be cited as
10 the "Port Authority of New York and New Jersey Transparency and
11 Accountability Act."

12
13 2. R.S.32:1-5 is amended to read as follows:

14 ARTICLE IV.

15 Commissioners. The port authority shall consist of twelve
16 commissioners--six resident voters from the state of New York, at
17 least four of whom shall be resident voters of the city of New York,
18 and six resident voters from the state of New Jersey, at **[lest [least]]**
19 least four of whom shall be resident voters within the New Jersey
20 portion of the district, the New York members to be chosen by the
21 state of New York and the New Jersey members by the state of New
22 Jersey in the manner and for the terms fixed and determined from
23 time to time by the legislature of each state respectively, except as
24 herein provided.

25 Each commissioner may be removed or suspended from office as
26 provided by the law of the state from which he shall be appointed.

27 (cf: R.S.32:1-5)

28
29 3. (New section) Officers.

30 ¹**[a.** The officers of the port authority shall be a chairperson, a
31 vice chairperson, a chief executive officer, a general counsel, a
32 chief financial officer, a chief ethics and compliance officer, an
33 inspector general, a treasurer, a comptroller, and a secretary.
34 Beginning upon the next hiring of a chief executive officer but no
35 later than a year from the effective date of P.L. , c. (C.)
36 (pending before the Legislature as this bill), the positions of
37 chairperson and vice chairperson shall be rotated for a term of two
38 years among commissioners appointed by New York and New
39 Jersey, with a chairperson elected first from among those
40 commissioners appointed by the Governor of New York and a vice
41 chairperson elected first from among those commissioners
42 appointed by the Governor of New Jersey, after which the next
43 chairperson shall be elected from among those appointed by the
44 Governor of New Jersey and the next vice chairperson shall be

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ATR committee amendments adopted May 10, 2018.

1 elected from among those appointed by the Governor of New York
2 and thereafter the positions of chairperson and vice chairperson
3 shall rotate every two years in the same order as established herein
4 provided that the failure of the board of commissioners to elect a
5 new chairperson and vice chairperson shall not prevent the rotation
6 of the positions of chairperson and vice chairperson to the next
7 succeeding state.

8 b.]¹ No commissioner, including the chairperson, shall serve as
9 the port authority's ¹["chief executive officer"] executive director¹,
10 general counsel, chief financial officer, chief ethics and compliance
11 officer, inspector general, or comptroller, or hold any other
12 equivalent position while serving as a commissioner.

13

14 4. (New section) Role and responsibilities of commissioners.

15 a. The commissioners shall promulgate a commissioner's oath
16 of office in consultation with the chief ethics and compliance
17 officer.

18 b. At the time that a commissioner of the port authority takes
19 and subscribes the commissioner's oath of office, or within ¹["sixty"]
20 60¹ days after the effective date of P.L. , c. (C.) (pending
21 before the Legislature as this bill) if the commissioner has already
22 taken and subscribed the commissioner's oath of office, the
23 commissioner shall execute a statement declaring that the
24 commissioner understands the commissioner's independence and
25 fiduciary obligation to perform duties and responsibilities to the
26 best of the commissioner's abilities, in good faith and with proper
27 diligence and care which an ordinarily prudent person in like
28 position would use under similar circumstances and may take into
29 consideration the views and policies of any elected officials or
30 bodies and ultimately apply independent judgment in the best
31 interest of the port authority, its mission, and the public, consistent
32 with the enabling compact, mission, and by-laws of the port
33 authority and the applicable laws of both states; and that the
34 fiduciary duty to the port authority is derived from and governed by
35 its mission.

36 c. Individuals appointed to the board of commissioners shall
37 participate in training approved by the chief ethics and compliance
38 officer in consultation with the inspector general of the port
39 authority regarding their legal, fiduciary, financial^{1,1} and ethical
40 responsibilities as directors of an authority within six months of
41 appointment to the authority. The commissioners shall participate in
42 continuing training as may be required to remain informed of best
43 practices, regulatory and statutory changes relating to the effective
44 oversight of the management and financial activities of public
45 authorities^{1,1} and to adhere to the highest standards of responsible
46 governance.

47 d. (1) A commissioner shall not vote on or participate in any
48 board or committee discussions or decisions with respect to an item

1 if the commissioner, a member of the commissioner's immediate
2 family, or a business in which the commissioner has an interest has
3 a direct or indirect financial involvement that may reasonably be
4 expected to impair the commissioner's objectivity or independent
5 judgment or that may reasonably create the appearance of
6 impropriety. A commissioner shall report such a need for recusal to
7 the general counsel when it arises. The public shall be informed of
8 any recusals prior to any board action and the minutes shall clearly
9 reflect that recusal.

10 (2) For the purposes of this subsection, the terms:

11 "immediate family" shall mean: a spouse, parent, child, or
12 sibling; and

13 "interest" shall mean: if the business organization is a
14 partnership, the board member or the board member's immediate
15 family is a partner or owner of 10 percent or more of the assets of
16 the partnership, or if the business organization is a corporation, the
17 board member or the board member's immediate family owns or
18 controls 10 percent or more of the stock of the corporation, or
19 serves as a director or officer of the corporation.

20 e. (1) Notwithstanding any other provision of law to the
21 contrary, the commissioners, officers, and employees of the port
22 authority shall file annual financial disclosure statements as
23 provided in this section.

24 (2) (a) The commissioners appointed by the Governor of the
25 state of New York shall file annual financial disclosure statements
26 pursuant to section 73-a of the public officers law.

27 (b) The commissioners appointed by the Governor of the state
28 of New Jersey shall file annual financial disclosure statements as
29 required by New Jersey State law or executive order.

30 (c) In addition to the financial disclosures required of the
31 commissioners, financial disclosures of employees shall, at a
32 minimum, be required of the ¹**[chief executive officer]** executive
33 director¹, the chief ethics and compliance officer, the chief financial
34 officer, the general counsel, the comptroller, treasurer, and the
35 inspector general, employees who hold policy-making positions as
36 determined by the general counsel of the port authority, and
37 employees whose base salary, either in the current or previous year,
38 exceeds \$150,000, which amount shall be adjusted for inflation
39 annually in accordance with the consumer price index for all urban
40 wage earners and clerical workers (CPI-W) as calculated by the
41 federal government. These financial disclosures shall be updated
42 not less than annually and shall be made available on the port
43 authority's website.

44 f. The board of commissioners shall:

45 (1) adopt a mission statement that the port authority's mission is
46 to meet the critical transportation infrastructure needs of the bi-state
47 region's people, businesses, and visitors by providing the highest
48 quality and most efficient transportation and port commerce

1 facilities and services to move people and goods within the region,
2 provide access to the nation and the world, and promote the region's
3 economic development;

4 (2) adopt a code of conduct applicable to commissioners,
5 employees, and vendors and other contractors with the port
6 authority based upon the recommendations of the chief ethics and
7 compliance officer that shall, at minimum, include the applicable
8 standards established by law in each state;

9 (3) establish a whistleblower access and assistance program
10 protecting employees from retaliation for disclosing information
11 concerning acts of wrongdoing, misconduct, malfeasance, or other
12 inappropriate conduct based upon the recommendations of the chief
13 ethics and compliance officer;

14 (4) establish a policy requiring all commissioners, officers, and
15 employees with decision-making authority to maintain records
16 regarding contact with lobbyists.

17 As used in this paragraph:

18 (a) "contact" means any conversation, in person or by
19 telephonic or other electronic means, or correspondence between
20 any lobbyist engaged in the act of lobbying and any person within
21 the port authority who can make or influence a decision on the
22 subject of the lobbying on the behalf of the port authority, and shall
23 include, at a minimum, all members of the board of commissioners
24 and all officers of the port authority;

25 (b) "lobbyist" shall have the same meaning as defined in the
26 laws, rules^{1, 1} or regulations of either state; and

27 (c) "lobbying" shall mean and include any attempt to influence:
28 the adoption or rejection of any rule or regulation having the force
29 and effect of law by the port authority; the outcome of any
30 proceeding by the port authority to establish, levy^{1, 1} or collect fees,
31 tolls, charges^{1, 1} or fares; and the authorization, approval or award
32 of any agreements, contracts^{1, 1} or purchase orders, including any
33 settlement of port authority claims, or any extension, amendment^{1, 1}
34 or modification of any existing agreement, contract^{1, 1} or order; and

35 (5) have an efficiency study of the port authority and its
36 operations conducted by an independent entity within three years of
37 the effective date of P.L. , c. (C.) (pending before the
38 Legislature as this bill) and thereafter upon the request of the
39 governors of New York and New Jersey, and if no request is made,
40 no later than three years after the most recent efficiency study was
41 conducted.

42

43 5. (New section) Committee.

44 a. The board of commissioners shall establish a committee
45 structure that shall include, but need not be limited to, the following
46 responsibilities:

47 (1) a governance responsibility to be assigned to a committee
48 comprised of not fewer than three commissioners, who shall

1 constitute a majority on the committee, and who shall possess the
2 necessary skills to undertake the governance duties and functions.
3 It shall be the responsibility of the members of this committee to:
4 keep the board informed of current best governance practices;
5 review corporate governance trends; update the port authority's
6 corporate governance principles; examine ethical and conflict of
7 interest issues; perform board self-evaluations; investigate term
8 limits, reappointments, and board responsibilities; develop by-laws
9 which include rules and procedures for the conduct of board
10 business; and advise the port authority on the skills and experiences
11 required of potential commissioners;

12 (2) an audit responsibility to be assigned to a committee
13 comprised of not fewer than three commissioners, who shall
14 constitute a majority on the committee, and who shall possess the
15 necessary skills to undertake the audit duties and functions. It shall
16 be the responsibility of the members of this committee to:
17 recommend to the board the hiring of an independent firm of
18 certified public accountants to audit the financial statements of the
19 port authority; establish the compensation to be paid to the
20 accounting firm; and provide direct oversight of the annual
21 independent financial audit performed by the accounting firm hired
22 for auditing purposes. Members of this committee shall be familiar
23 with corporate financial and accounting practices and shall be
24 financially literate about applicable financial laws, rules,
25 regulations, and standard industry practices; and

26 (3) a finance responsibility to be assigned to a committee
27 comprised of not fewer than three commissioners, who shall
28 constitute a majority on the committee, and who shall possess the
29 necessary skills to undertake the finance duties and functions. It
30 shall be the responsibility of the members of this committee to
31 oversee and approve the issuance of debt that the port authority or
32 its subsidiaries issue.

33 b. Every committee established by the board of commissioners
34 shall promulgate a written charter to be approved by the board.
35 Each charter promulgated in accordance with this section shall be
36 made available to the public and posted on the port authority's
37 website.

38
39 6. (New section) Whistleblower access and assistance
40 program.

41 a. The chief ethics and compliance officer shall recommend to
42 the board of commissioners a whistleblower access and assistance
43 program to be administered by the inspector general which shall
44 include, but not be limited to:

45 (1) establishing 'an email address and' toll-free telephone
46 '[and] ,' facsimile ' ,' and text messaging¹ lines available to
47 employees;

1 (2) offering advice regarding employee rights under applicable
2 state and federal laws and advice and options available to all
3 persons; and

4 (3) offering an opportunity for employees to identify concerns
5 regarding any issue at the port authority.

6 Any communication between an employee and the inspector
7 general pursuant to this section shall be held strictly confidential by
8 the inspector general, unless the employee specifically waives in
9 writing the right to confidentiality, except that such confidentiality
10 shall not exempt the inspector general from disclosing such
11 information, where appropriate, to the board of commissioners
12 and/or any law enforcement authority.

13 b. The port authority shall not fire, discharge, demote, suspend,
14 threaten, harass, or discriminate against an employee because of the
15 employee's role as a whistleblower, insofar as the actions taken by
16 the employee are legal.

17 c. As used in this section:

18 (1) "Employees" means those persons employed at the port
19 authority, including but not limited to: full-time and part-time
20 employees, those employees on probation, and temporary
21 employees.

22 (2) "Whistleblower" means any employee of the port authority
23 who discloses information concerning acts of wrongdoing,
24 misconduct, malfeasance, or other inappropriate behavior by an
25 employee or board member of the port authority, including, but not
26 limited to, such acts concerning the port authority's investments,
27 travel, acquisition of real or personal property, the disposition of
28 real or personal property, or the procurement of goods and services.

29
30 7. (New section) Inspector general.

31 a. The inspector general shall be responsible for receiving and
32 investigating, where appropriate, all complaints regarding fraud,
33 waste, and abuse by commissioners, officers, and employees of the
34 port authority or third-parties doing business with the port
35 authority. The inspector general shall also be responsible for
36 conducting investigations upon the inspector general's own
37 initiative, as the inspector general shall deem appropriate.

38 b. The inspector general shall inform the board of
39 commissioners and the ¹【chief executive officer】 executive
40 director¹ of allegations received by the inspector general and the
41 progress of investigations related thereto, unless special
42 circumstances require confidentiality.

43 c. The inspector general shall determine with respect to
44 allegations received by the inspector general whether disciplinary
45 action or civil prosecution by the port authority is appropriate, and
46 whether the matter should be referred to an appropriate
47 governmental agency for further action.

1 d. The inspector general shall prepare and make available to
2 the public written reports of completed investigations, as
3 appropriate and to the extent permitted by law, subject to redactions
4 to protect a need for confidentiality. The release of all or portions
5 of reports may be deferred to protect the confidentiality of ongoing
6 investigations.

7 e. The inspector general shall have the power to:

8 (1) administer oaths or affirmations and examine witnesses
9 under oath;

10 (2) require the production of any books and papers deemed
11 relevant or material to any investigation, examination^{1,1} or review;

12 (3) notwithstanding any law to the contrary, examine and copy
13 or remove documents or records of any kind prepared,
14 maintained^{1,1} or held by the port authority and its subsidiaries;

15 (4) interview any officer or employee of the port authority or its
16 subsidiaries on any matter related to the performance of such officer
17 or employee's official duties. To the extent that the terms and
18 conditions of employment of any employee are established by
19 collective negotiations, any interview conducted pursuant to this
20 paragraph must be in accordance with any applicable provisions of
21 the current, or most recent, if expired, collective negotiations
22 agreement covering the terms and conditions of employment of the
23 employee;

24 (5) monitor the implementation by the port authority of any
25 recommendations made by the inspector general; and

26 (6) perform any other functions that are necessary or appropriate
27 to fulfill the duties and responsibilities of office.

28
29 8. (New section) Open meetings.

30 a. All meetings of the port authority shall be open to the public
31 and members of the news media, individually and collectively, for
32 the purpose of observing the full details of all phases of the
33 deliberation, policy-making, and decision-making of the board,
34 except for an executive session initiated upon a majority vote taken
35 in an open meeting pursuant to a motion. The board of
36 commissioners may exclude the public only from that portion of a
37 meeting at which the board of commissioners discusses any:

38 (1) matter in which the release of information would impair a
39 right to receive funds from the government of the United States;

40 (2) material the disclosure of which would constitute an
41 unwarranted invasion of individual or personal privacy;

42 (3) collective bargaining agreement, or the terms and conditions
43 which are proposed for inclusion in any collective bargaining
44 agreement, including the negotiation of the terms and conditions
45 thereof with employees or representatives of employees of the port
46 authority;

47 (4) matter involving the purchase, lease, or acquisition of real
48 property with port authority funds, the proposed acquisition of

- 1 securities, the sale or exchange of securities held by the port
2 authority, or the investment of port authority funds, if public
3 discussion of the matter would adversely affect the public interest;
- 4 (5) matter which would imperil the public safety if disclosed;
- 5 (6) pending or anticipated litigation or contract negotiation in
6 which the port authority is, or may become, a party, or matters
7 falling within the attorney-client privilege, to the extent that
8 confidentiality is required for the attorney to exercise the attorney's
9 ethical duties as a lawyer;
- 10 (7) contract negotiations disclosure of which would imperil the
11 port authority's position or an outcome in the best interest of the
12 authority, its mission, and the public;
- 13 (8) matter involving the employment, appointment, termination
14 of employment, terms and conditions of employment, evaluation of
15 the performance of, promotion or disciplining of any specific
16 prospective officer or employee or current officer or employee
17 employed or appointed by the port authority, unless all the
18 individual employees or appointees whose rights could be adversely
19 affected request in writing that the matter or matters be discussed at
20 a public meeting; or
- 21 (9) deliberation of the port authority occurring after a public
22 hearing that may result in the imposition of a specific civil penalty
23 upon the responding party or the suspension or loss of a license or
24 permit belonging to the responding party as a result of an act or
25 omission for which the responding party bears responsibility.
- 26 b. The port authority shall make meeting agendas available to
27 the public at least 72 hours before each meeting of the board and
28 each meeting of each committee. In addition, the port authority
29 shall send via electronic mail the agenda and public documents
30 pertaining to a board or committee meeting to the public
31 information office of each state's legislature at least 72 hours before
32 the meeting. Public notice of the time and place of a meeting shall
33 be provided to appropriate media outlets, shall be conspicuously
34 posted in one or more designated areas, and shall be conspicuously
35 posted via the port authority's official website at least five business
36 days before the meeting.
- 37 c. The port authority shall make available to the public
38 documents in the following manner: the agenda and public
39 documents pertaining to a board or committee meeting shall be
40 available for public inspection at an office of the port authority; and
41 the agenda and public documents pertaining to a board or
42 committee meeting shall be posted on the port authority's website.
- 43 d. At each public meeting of the board and at each public
44 meeting of each committee, the public shall be allotted at least 30
45 minutes to speak on any topic on the agenda. The board or
46 committee shall expand the comment time when necessary to
47 provide a reasonable opportunity for the public to comment. The

1 public speaking period shall take place prior to any board or
2 committee action.

3 e. The port authority shall keep reasonably comprehensible
4 minutes of all its meetings showing the time and place, the members
5 present, the subjects considered, the actions taken, and the vote of
6 each member. The minutes shall be available to the public within
7 two weeks from the date of the meeting to the extent that public
8 disclosure shall not be inconsistent with subsection a. of this
9 section. The minutes shall indicate for each item on the agenda the
10 vote or recusal of each board member in attendance at an open
11 meeting, or an executive session of the board or a committee of the
12 board. Each item on the agenda shall be voted on separately.

13

14 9. (New section) Barrier-free access.

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

21

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

24 2. As used in this act:

25 a. "Board" means the Board of Commissioners of the Port
26 Authority of New York and New Jersey.

27 b. "Committee" or "committees" means any standing
28 committee established by the board tasked with, including, but not
29 limited to, the audit responsibility, governance responsibility, and
30 finance responsibility required to be established pursuant to P.L. ,
31 c. (C.) (pending before the Legislature as this bill).

32 c. "Meeting" means any gathering, whether corporeal or by
33 means of communication equipment, which is attended by, or open
34 to, the board, held with the intent, on the part of the board members
35 present, to discuss or act as a unit upon the specific public business
36 of the authority. "Meeting" does not mean a gathering (1) attended
37 by less than an effective majority of the board, or (2) attended by or
38 open to all the members of three or more similar public bodies at a
39 convention or similar gathering.

40 **[c.]** d. "News media" means persons representing major wire
41 services, television news services, radio news services, and
42 newspapers, whether located in the state of New York or New
43 Jersey or any other state.

44 e. "Public business" means matters which relate in any way,
45 directly or indirectly, to the performance of the functions of the Port
46 Authority of New York and New Jersey or the conduct of its
47 business.

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

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

3 3. a. The board shall, within six months of the effective date
4 of P.L. , c. (C.) (pending before the Legislature as this
5 bill), adopt **【and promulgate】** appropriate rules and regulations
6 concerning proper notice to the public and the news media of its
7 meetings and the right of the public and the news media to be
8 present at meetings of the authority. The board may incorporate in
9 its rules and regulations conditions under which it may exclude the
10 public from a meeting or a portion thereof.

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

16

17 12. (New section) ARTICLE VII-B

18 Needs assessment. The port authority shall require that a needs
19 assessment be conducted by an independent entity prior to any
20 increase in tolls for the use of any port authority bridge or tunnel, or
21 fares for the use of the port authority trans-Hudson corporation rail
22 system. The assessment shall be ¹made publicly available in a
23 conspicuous location on the port authority's website and¹ presented
24 by the independent entity to the board of commissioners at a public
25 meeting to be held at least 90 days prior to any meeting of the board
26 of commissioners to vote for any increase in the tolls for the use of
27 any port authority bridge or tunnel, or fares for the use of the port
28 authority trans-Hudson corporation rail system.

29

30 13. (New section) Public hearings.

31 Not less than 30 days and not more than 90 days prior to any
32 vote or action taken by the board of commissioners relating to any
33 increase in the tolls for the use of any port authority bridge or
34 tunnel, or fares for the use of the port authority trans-Hudson
35 corporation rail system, the port authority shall conduct at least six
36 public hearings in the manner prescribed as follows:

37 a. Locations for public hearings shall be selected in such a way
38 as to be geographically accessible to a majority of users of the
39 facility or facilities to be impacted by the toll or fare increase, as
40 determined by port authority data, provided that at least one hearing
41 shall be held in each state.

42 b. At least 72 hours before the first hearing held pursuant to
43 this section, the port authority shall make the following information
44 available to the public, including posting on the port authority's
45 official website:

46 (1) a written explanation of why the increase in tolls or fares is
47 necessary;

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

3 (3) a detailed explanation of how the revenues raised from the
4 increase in tolls or fares is expected to be spent.

5 c. Each hearing shall be attended by at least two
6 commissioners from New York and two commissioners from New
7 Jersey in office at the time of the hearing.

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

12 e. The port authority shall ensure that each of the requirements
13 set forth in this section shall be complied with before placing on the
14 meeting agenda of the board of commissioners any item or matter
15 relating to an increase in tolls or fares.

16

17 14. (New section) a. The port authority, at the request of the
18 Assembly or Senate of the New York state legislature or the
19 General Assembly or Senate of the New Jersey state legislature,
20 shall be required to appear before a committee of the requesting
21 state legislative house, upon request by the presiding officer of that
22 state legislative house, to present testimony on any topic or subject
23 requested by the committee or to respond to questions by members
24 of the committee. The Assembly of the New York state legislature,
25 the Senate of the New York state legislature, the General Assembly
26 of the New Jersey state legislature, and the Senate of the New
27 Jersey state legislature shall each be entitled to two such requests
28 per calendar year.

29 b. Unless otherwise agreed to by the presiding officer of the
30 state legislative house requesting the appearance of the port
31 authority, the port authority shall, at a minimum, be represented by
32 the chair or vice-chair of the board, ¹**【chief executive officer】** the
33 executive director¹, the chief financial officer, and any staff deemed
34 necessary by the chair or vice-chair of the board, ¹**【chief executive**
35 **officer】** the executive director¹, or the chief financial officer to
36 present testimony or respond to questions at any appearance
37 required pursuant to this section. The presiding officer may request
38 the appearance of any officer or employee of the port authority. For
39 purposes of this section, as applicable to New York state “presiding
40 officer” shall mean ¹the¹ speaker of the Assembly of the New York
41 state legislature or temporary president of the Senate of the New
42 York state legislature. For purposes of this section, as applicable to
43 the State of New Jersey “presiding officer” shall mean the President
44 of the Senate or the Speaker of the General Assembly of the State of
45 New Jersey.

46

47 15. (New section) Subsidiaries of the port authority.

- 1 a. The port authority shall provide notice to the governor of
2 each state, the majority leader of each house of the legislature of
3 each state, the Chair of the Senate Finance Committee of New
4 York, the Chair of the Senate Budget and Appropriations
5 Committee of New Jersey, the Chair of the Assembly Ways and
6 Means Committee of New York, and the Chair of the Assembly
7 Budget Committee of New Jersey that it will be creating a
8 subsidiary no less than 60 days prior to the formation of the
9 subsidiary.
- 10 b. The creation of a subsidiary corporation shall be approved
11 by the board of commissioners.
- 12 c. Within 60 days of the effective date of
13 P.L. , c. (C.) (pending before the Legislature as this bill),
14 and on or before the first day of January of each year annually
15 thereafter, any subsidiary corporation, in cooperation with the port
16 authority, shall provide to the governor and legislature of each state
17 a report on the subsidiary corporation. The report shall include for
18 each subsidiary:
- 19 (1) The complete legal name, address, and contact information
20 of the subsidiary;
- 21 (2) The structure of the organization of the subsidiary, including
22 the names and titles of each of its members, directors, and officers,
23 as well as a chart of its organizational structure;
- 24 (3) The complete bylaws and legal organization papers of the
25 subsidiary;
- 26 (4) A complete report of the purpose, operations, mission, and
27 projects of the subsidiary; and
- 28 (5) Any other information the subsidiary corporation deems
29 important to include in the report.
- 30 d. Sixty days prior to the issuance of any debt by the subsidiary
31 corporation, or the port authority on behalf of the subsidiary
32 corporation, the port authority shall provide notice to the governor
33 of each state, the majority leader of each house of the legislature of
34 each state, the Chair of the Senate Finance Committee of New
35 York, the Chair of the Senate Budget and Appropriations
36 Committee of New Jersey, the Chair of the Assembly Ways and
37 Means Committee of New York, and the Chair of the Assembly
38 Budget Committee of New Jersey. For purposes of this section, as
39 applicable to New York state “majority leader” shall mean the
40 speaker of the Assembly of the New York State Legislature or
41 temporary president of the Senate of the New York State
42 Legislature. For purposes of this section, as applicable to the State
43 of New Jersey “majority leader” shall mean the President of the
44 Senate or the Speaker of the General Assembly of the State of New
45 Jersey.

1 Annual reporting. The port authority shall publish a
2 comprehensive annual financial report, submitted annually to the
3 governors and state legislatures of New York and New Jersey and
4 made available on the port authority's website within 120 days after
5 the end of its fiscal year. The annual report shall include the
6 agency's financial statements, statistical and other regional data, and
7 a narrative of the agency's activities during the year of the report.
8 The annual report shall include:

9 a. an introductory section including:

10 (1) a letter of transmittal to the governors of New York and New
11 Jersey;

12 (2) information regarding the board of commissioners, port
13 authority officers and executive management;

14 (3) a letter to the board of commissioners from the ¹['chief
15 executive officer'] executive director¹ of the port authority
16 highlighting important developments;

17 (4) a description of major agency activities undertaken during
18 the prior year; and

19 (5) a letter to the board of commissioners from the chief
20 financial officer of the port authority with respect to the
21 consolidated financial statements of the port authority.

22 b. a financial section including:

23 (1) an independent auditor's report;

24 (2) management's discussion and analysis;

25 (3) financial statements;

26 (4) its financial reports certified by the chair and vice-chair of
27 the board, ¹['chief executive officer'] executive director¹, and chief
28 financial officer of the port authority, including (a) audited
29 financials in accordance with generally accepted accounting
30 principles, known as GAAP, and the accounting standards issued by
31 the governmental accounting standards board, known as GASB, (b)
32 grant and subsidy programs, (c) current ratings, if any, of its bonds
33 issued by recognized bond rating agencies and notice of changes in
34 such ratings, and (d) long-term liabilities, including leases and
35 employee benefit plans;

36 (5) a schedule of its bonds and notes outstanding at the end of
37 its fiscal year, together with a statement of the amounts redeemed
38 and incurred during such fiscal year as part of a schedule of debt
39 issuance that includes the date of issuance, term, amount, interest
40 rate^{1, 1} and means of repayment including all refinancings, calls,
41 refundings, defeasements^{1, 1} and interest rate exchange or other such
42 agreements; and

43 (6) at a minimum a four-year financial plan, including (a) a
44 current and projected capital budget, and (b) an operating budget
45 report, including an actual versus estimated budget, with an analysis
46 and measurement of financial and operating performance.

47 c. a statistical section presenting additional information as
48 context for further understanding of the information in the financial

1 statements, note disclosures and schedules, including (1) financial
2 trends; (2) debt capacity; (3) operating and service data; (4)
3 information on port authority operating results; (5) information on
4 port authority capital program components; (6) information on port
5 authority facility traffic; and (7) selected statistical, demographic
6 and economic data on the New York-New Jersey metropolitan
7 region.

8 d. a corporate information section providing:

9 (1) a list of all real property of the port authority;

10 (2) a list and full description of real property and personal
11 property that has a sale price of over \$10,000 disposed of during the
12 period, including the price received by the port authority and the
13 name of the purchaser for all property sold by the port authority
14 during the period;

15 (3) a compensation schedule that shall include, by position, title
16 and name of the person holding such position or title, the salary,
17 compensation, allowance and/or benefits provided to any officer,
18 director^{1,1} or employee in a decision making or managerial position
19 of such authority whose base salary is in excess of \$150,000;

20 (4) biographical information, not including confidential personal
21 information, for all directors and officers and employees for whom
22 salary reporting is required;

23 (5) a description of the authority and its board structure,
24 including (a) names of committees and committee members, (b)
25 lists of board meetings and attendance, (c) descriptions of major
26 authority units and subsidiaries, and (d) number of employees;

27 (6) its mission statement, charter, if any, and by-laws; and

28 (7) a description of any material pending litigation in which the
29 port authority is involved as a party during the reporting year.

30

31 17. (New section) Audits and financial statements.

32 a. The port authority shall prepare financial statements on an
33 annual basis, in accordance with generally accepted accounting
34 principles, known as GAAP, and the accounting standards issued by
35 the governmental accounting standards board, known as GASB.

36 b. The audit committee of the board of commissioners of the
37 port authority shall arrange for an independent firm of certified
38 public accountants to perform an audit of the financial statements of
39 the port authority each year, in accordance with generally accepted
40 accounting principles and standards referenced in subsection a. of
41 this section. Each independent firm of certified public accountants
42 that performs any audit required by P.L. , c. (C.) (pending
43 before the Legislature as this bill) shall timely report to the audit
44 committee of the port authority:

45 (1) all critical accounting policies and practices to be used; and

46 (2) other material written communications, that is not privileged
47 or confidential, between the independent firm of certified public
48 accountants and the management of the port authority, including the

1 management letter along with management's response or plan of
2 corrective action, material corrections identified^{1,1} or schedule of
3 unadjusted differences.

4 c. Every financial statement prepared pursuant to this section
5 shall be approved by the board of commissioners. As a condition to
6 the issuance of the annual financial statements of the port authority,
7 the ¹["chief executive officer"] executive director¹ and the chief
8 financial officer of the port authority shall be required to make a
9 written certification to that effect that, to the best of their
10 knowledge and belief, the financial and other information in the
11 consolidated financial statements is accurate in all material respects
12 and has been reported in a manner designed to present fairly the
13 port authority's net assets, changes in net assets, and cash flows, in
14 accordance with generally accepted accounting principles and
15 standards referenced in subsection a. of this section; and, that on the
16 basis that the cost of internal controls should not outweigh their
17 benefits, the port authority has established a comprehensive
18 framework of internal controls to protect its assets from loss, theft,
19 or misuse, and to provide reasonable (rather than absolute)
20 assurance regarding the reliability of financial reporting and the
21 preparation of the consolidated financial statements in accordance
22 with generally accepted accounting principles and standards
23 referenced in subsection a. of this section.

24 d. Notwithstanding any other provision of law to the contrary,
25 the port authority shall not contract with an independent firm of
26 certified public accountants for audit services to the authority if the
27 lead or coordinating audit partner having primary responsibility for
28 the audit, or the audit partner responsible for reviewing the audit,
29 has performed audit services for the two previous fiscal years of
30 such authority.

31 e. The port authority shall not contract with the independent
32 firm of certified public accountants performing the port authority's
33 audit for any non-audit services to such authority
34 contemporaneously with the audit, unless receiving previous written
35 approval by the audit committee including:

36 (1) bookkeeping or other services related to the accounting
37 records or financial statements of such authority;

38 (2) financial information systems design and implementation;

39 (3) appraisal or valuation services, fairness opinions, or
40 contribution-in-kind reports;

41 (4) actuarial services;

42 (5) internal audit outsourcing services;

43 (6) management functions or human services;

44 (7) broker or dealer, investment advisor, or investment banking
45 services; and

46 (8) legal services and expert services unrelated to the audit.

47 f. The port authority shall not contract with an independent
48 firm of certified public accountants for any audit service if the

1 ¹~~chief executive officer~~ executive director¹, comptroller, chief
2 financial officer, treasurer, or any other person serving in an
3 equivalent position for the authority, was employed by that
4 independent firm of certified public accountants and participated in
5 any capacity in the audit of the authority during the one year period
6 preceding the date of the initiation of the audit.

7
8 18. (New section) The port authority shall make accessible to
9 the public via its website an executive summary of its most recent
10 independent audit report unless such information is exempt from
11 disclosure pursuant to either state's freedom of information laws.

12
13 19. (New section) ARTICLE VII-D

14 Property disposition. Any sale of real property by the port
15 authority shall be undertaken and conducted pursuant to the
16 provisions of the existing laws governing the sale of real property
17 by the port authority in the state in which such real property is
18 located and by approval of the board of commissioners.

19 a. No disposition of real property, or any interest in real
20 property, shall be made unless an appraisal of the value of such real
21 property has been made by an independent appraiser and included
22 in the record of the transaction, and, provided further, that no
23 disposition of any other real property, which because of its unique
24 nature or the unique circumstances of the proposed transaction is
25 not readily valued by reference to an active market for similar real
26 property, shall be made without a similar appraisal.

27 b. Disposal of real property for less than fair market value. No
28 property owned, leased, or otherwise in the control of the port
29 authority may be sold, leased, or otherwise alienated for less than
30 its fair market value unless:

31 (1) the transferee is a government or other public entity, and the
32 terms and conditions of the transfer require that the ownership and
33 use of the real property will remain with the government or any
34 other public entity; or

35 (2) the purpose of the transfer is within the purpose, mission, or
36 governing statute of the port authority and a written determination
37 is made by the board of commissioners that there is no reasonable
38 alternative to the proposed below-market transfer that would
39 achieve the same purpose of such transfer, prior to board approval
40 of such a transfer.

41 c. The board shall adopt, within six months of the effective
42 date of P.L. , c. (C.) (pending before the Legislature as this
43 bill), appropriate rules and regulations concerning disposition,
44 acquisition, and transfer of real property or any interest in real
45 property by the port authority which shall, at a minimum, include a
46 requirement that the following information be made available to the
47 board of commissioners at the meeting where approval of such a
48 disposition, acquisition¹,¹ or transfer is scheduled:

- 1 (1) a full description of the property;
- 2 (2) a description of the purpose of the disposition, acquisition,
3 or transfer;
- 4 (3) a statement of the value to be received from such a
5 disposition, acquisition, or transfer;
- 6 (4) the names of any private parties participating in the
7 disposition, acquisition, or transfer; and
- 8 (5) in the case of a property disposition for less than fair market
9 value, an explanation and a written determination by the board of
10 commissioners that there is no reasonable alternative to the
11 proposed below-market value that would achieve the same purpose
12 of such disposition.
- 13 d. Not less than 10 days in advance of any meeting of the board
14 of commissioners of the port authority at which the board of
15 commissioners is to consider an action to authorize the sale of real
16 property owned by the port authority, the ¹**【chief executive officer】**
17 executive director¹ of the port authority shall provide public notice
18 of such proposed action along with relevant material terms and
19 provisions of such sale including, but not limited to, the information
20 made available pursuant to subsection c. of this section, by posting
21 on the port authority's website.
- 22 e. The ¹**【chief executive officer】** executive director¹ may
23 authorize or arrange for contracts for the sale of personal property
24 owned by the port authority upon such terms and conditions as the
25 ¹**【chief executive officer】** executive director¹ may deem proper and
26 execute the same on behalf of the port authority where the value of
27 such personal property is not in excess of \$1,000,000; provided,
28 however, that personal property valued at more than \$250,000 shall
29 not be sold by authority of the ¹**【chief executive officer】** executive
30 director¹ other than to the highest bidder after public advertisement.
31 Where the value of such personal property is in excess of
32 \$1,000,000, the sale of such property must be authorized by the
33 board of commissioners of the port authority upon such terms as the
34 board of commissioners may deem proper.
- 35 f. The port authority may retain brokers or third-party vendors
36 that facilitate online auctions, or assist in disposing of surplus real
37 and personal property of the port authority.
- 38
- 39 20. (New section) Debt issuance.
- 40 a. The issuance of any bonds, notes, or other instruments of
41 indebtedness by the port authority shall be undertaken in a manner
42 consistent with applicable laws governing the port authority and
43 covenants with the holders of the port authority's bonds, notes, or
44 other instruments of indebtedness.
- 45 b. At least 60 days prior to the end of its fiscal year, the port
46 authority shall submit to the governor, state comptroller, and
47 legislature of each state a statement of intent in regards to the
48 issuance of and overall amount of bonds, notes, or other debt

1 obligations anticipated, at the time the statement is submitted,
2 during the next fiscal year.

3

4 21. (New section) Capital plan.

5 a. The port authority shall adopt a 10-year capital plan that is
6 developed using a comprehensive planning process and risk-based
7 prioritization that considers asset condition, operational and revenue
8 impact, threat assessment, customer service, regional benefit, and
9 regulatory or statutory requirements. The capital plan shall be
10 dependent upon the availability of sufficient funding and other
11 resources to pursue the capital projects proposed for the 10-year
12 period. Performance progress and revisions to reflect changes in
13 programs, policies, and projects and the environment in which the
14 port authority operates shall be reviewed regularly by a committee
15 designated by the board of commissioners, and the capital plan shall
16 be revised periodically as necessary and appropriate, and shall be
17 reviewed with the board of commissioners annually. The port
18 authority shall publish an annual report on the status of the capital
19 program and such report shall be made publicly available on the
20 port authority's website. Prior to adoption of a capital plan, the port
21 authority shall make the proposed plan available for public review
22 and comments on its public website for at least ~~two~~ four¹ weeks
23 prior to approval, and all comments received by the port authority
24 are to be distributed to the board of commissioners for review prior
25 to consideration of the capital plan.

26 b. The port authority shall also provide that major capital
27 projects are monitored by independent engineering consultants.
28 The independent consultants shall prepare annual reports to be
29 provided to the board and made available to the public. The annual
30 reports prepared by independent consultants shall include, but not
31 be limited to, a comparison of actual and target performance
32 measures including, but not limited to, costs and construction
33 schedules, and a narrative explanation of any discrepancy thereof.
34 For the purposes of this section: "Major capital project" means an
35 undertaking or program for the acquisition, creation, or
36 development of any crossing, transportation facility, or commerce
37 facility or any part thereof, with an estimated total project cost in
38 excess of \$500,000,000.

39 c. No less than 60 days prior to any board adoption of a capital
40 plan, as described in subsection a. of this section, or any major
41 revision of the last adopted capital plan, the port authority shall¹;
42 (1)¹ notify the Assembly and Senate of the New York state
43 legislature and the General Assembly and Senate of the New Jersey
44 state legislature of its intention to adopt a capital plan, or any major
45 revision of the last adopted capital plan ¹; (2) submit to the
46 Assembly and Senate of the New York state legislature and the
47 General Assembly and Senate of the New Jersey state legislature
48 the proposed capital plan, or any proposal constituting a major

1 revision of the last adopted capital plan, for review by each state
2 legislature; and (3) make the proposed capital plan, including any
3 proposal constituting a major revision of the last adopted capital
4 plan, publicly available on the port authority website.¹ ¹【In either
5 case, the notice shall recite the major elements of the capital plan to
6 be adopted.】¹

7 d. Within 60 days of the notice provided in subsection c. of this
8 section, the port authority shall conduct a public hearing about the
9 capital plan or any major revision thereof in New York state and in
10 the State of New Jersey.

11 e. The port authority shall conduct a status update public
12 hearing in New York state and in the State of New Jersey at least
13 once every three years after the adoption of the capital plan by the
14 port authority. Such public hearing shall be known as “capital status
15 update hearing” and at such hearing the port authority shall provide
16 in detail a written description of the status of all capital plan
17 projects and the costs and the expected costs of those projects. At
18 such public hearing, the port authority shall provide a financing
19 plan that identifies the source of funding for each project. The port
20 authority shall provide an analysis that compares actual and target
21 performance measures, and a detailed written explanation of any
22 discrepancy thereof at the public hearing.

23
24 22. (New section) Operating budget.

25 The port authority shall prepare a detailed annual operating
26 budget beginning with the fiscal year commencing after the
27 effective date of P.L. , c. (C.) (pending before the
28 Legislature as this bill). A preliminary annual operating budget
29 shall be made publicly available on the port authority's website in
30 July of every fiscal year and a final annual operating budget shall be
31 made publicly available in February of each fiscal year.

32
33 23. Severability clause. If any clause, sentence, paragraph,
34 subdivision, section or part of P.L. , c. (C.) (pending before
35 the Legislature as this bill) shall be adjudged by any court of
36 competent jurisdiction to be invalid, such judgment shall not affect,
37 impair, or invalidate the remainder thereof, but shall be confined in
38 its operation to the clause, sentence, paragraph, subdivision, section
39 or part thereof directly involved in the controversy in which such
40 judgment shall have been rendered. It is hereby declared to be the
41 intent of the legislature that P.L. , c. (C.) (pending before
42 the Legislature as this bill) would have been enacted even if such
43 invalid provisions had not been included herein.

44
45 24. This act shall take effect upon the enactment into law by the
46 State of New York of legislation having an identical effect, but if
47 the State of New York shall have already enacted such legislation,
48 then this act shall take effect immediately.