

ASSEMBLY TRANSPORTATION AND INDEPENDENT AUTHORITIES COMMITTEE

STATEMENT TO ASSEMBLY, No. 1708

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 10, 2018

The Assembly Transportation and Independent Authorities Committee reports favorably and with committee amendments Assembly Bill No. 1708.

As amended and reported, this bill is to be known as the "Port Authority of New York and New Jersey Transparency and Accountability Act."

Officers

The bill prohibits the Port Authority of New York and New Jersey (port authority) commissioners from serving as the port authority's executive director, general counsel, chief financial officer, chief ethics and compliance officer, inspector general, comptroller, or any other equivalent position.

Roles and responsibilities of the commissioners

The board of commissioners (board) is required to promulgate a commissioner's oath of office in consultation with the chief ethics and compliance officer. Commissioners are required to take a fiduciary oath, file annual financial disclosure statements, participate in ethics training approved by the chief ethics and compliance officer. A commissioner is required to report a need for recusal to the general counsel when it arises.

In addition to commissioners, the executive director, chief ethics and compliance officer, chief financial officer, general counsel, comptroller, treasurer, inspector general, employees who hold policy-making positions, and employees whose base salaries exceed \$150,000 are required to file annual financial disclosure statements. Financial disclosures required under the bill are to be made available on the port authority's website.

The bill requires the board to adopt a mission statement that the port authority's mission is to meet the critical transportation needs of the bi-state region's people, businesses, and visitors by providing the highest quality and most efficient transportation and port commerce facilities and services to move people and goods within

the region, provide access to the nation and the world, and promote the region's economic development.

The bill requires the board to: adopt a code of conduct applicable to commissioners, employees, and vendors and other contractors with the port authority based upon the recommendations of the chief ethics and compliance officer that, at minimum, includes the applicable standards established by law in each state; establish a whistleblower program to protect employees from retaliation for disclosing information concerning acts of wrongdoing, misconduct, malfeasance, or other inappropriate conduct; establish a policy requiring all commissioners, officers, and employees with decision-making authority to maintain records regarding interaction with lobbyists; and have efficiency studies of the port authority and its operations conducted by an independent entity.

Committees

The bill requires the board to establish a committee structure that is to include, but is not limited to, committees overseeing governance responsibility, audit responsibility, and finance responsibility. The bill requires each committee established by the board to promulgate a written charter, to be approved by the board, which is to be made available to the public and posted on the port authority's website.

Whistleblower access and assistance program

The chief ethics and compliance officer is required to recommend to the board a whistleblower access and assistance program to be administered by the inspector general for the protection of employees from retaliation for disclosing information concerning acts of wrongdoing, misconduct, malfeasance, or other inappropriate conduct.

Inspector general

The bill provides that the inspector general is responsible for receiving and investigating, where appropriate, all complaints regarding fraud, waste, and abuse by commissioners, officers, and employees of the port authority or third-parties doing business with the port authority. The inspector general is to determine with respect to allegations received by the inspector general whether disciplinary action or civil prosecution by the port authority is appropriate, and whether the matter should be referred to an appropriate governmental agency for further action. The inspector general is required to prepare and make available to the public written reports of completed investigations, as appropriate and to the extent permitted by law, subject to redaction to protect confidentiality. The release of all or portions of reports may be deferred to protect the confidentiality of ongoing investigations.

Open meetings

The bill provides that all meetings of the port authority are to be open to the public and members of the news media unless a majority of the commissioners votes that a portion of the meeting may be conducted in executive session. The port authority may exclude the public if the discussion concerns certain matters enumerate in the bill.

In addition, the port authority is required to make available to the public all meeting agendas at least 72 hours before each meeting of the board and each meeting of each committee. Public notice of the time and place of a meeting is to be provided to appropriate media outlets, conspicuously posted in one or more designated areas, and conspicuously posted via the port authority's official website at least five business days before the meeting.

The bill also requires the board to make all reasonable efforts to ensure that meetings are held in facilities that permit barrier-free physical access to people with disabilities. If the board determines to use video-conferencing or similar technology to conduct its meetings, it is to provide an opportunity for the public to attend, listen, and observe the meeting.

The bill requires that the public be given at least 30 minutes, or longer when necessary, to speak on any topic on the agenda prior to the board taking action.

The bill requires the port authority to keep reasonably comprehensible minutes of all its meetings showing the time and place, the members present, the subjects considered, the actions taken, and the vote or recusal of each member. Minutes of each meeting are to be available to the public within two weeks from the date of the meeting. Each item on an agenda is to be voted on separately.

Within six months of the effective date of the bill, the board is required to adopt rules and regulations concerning the proper notice to the public and news media of board meetings and the right of the public and news media to be present at board meetings.

Toll or fare increases

The board is required to have a needs assessment conducted by an independent entity prior to any increase in tolls for the use of any port authority bridge or tunnel or fares for the use of the port authority trans-Hudson corporation (PATH) rail system. The assessment is to be made publicly available in a conspicuous location on the port authority's website and presented by the independent entity to the board at a public meeting to be held at least 90 days prior to any meeting of the board to vote for any increase in the tolls for the use of any port authority bridge or tunnel or fares for the use of the PATH rail system.

The bill also requires the port authority to hold at least six public hearings not less than 30 days and not more than 90 days prior to

any vote or action taken by the board relating to any increase in the tolls for the use of any port authority bridge or tunnel, or fares for the use of the PATH rail system. The locations for public hearings are to be selected in such a way as to be geographically accessible to a majority of users of the facility or facilities to be impacted by the toll or fare increase, as determined by port authority data, provided that at least one hearing is held in each state.

In addition, at least 72 hours before the first hearing on a toll or fare increase, the port authority is required to make available to the public: the amount of revenue expected to be generated from the increase in tolls or fares; a detailed explanation of how the revenue raised from the increase in tolls or fares is expected to be spent; and a written explanation of why the increase in tolls or fares is necessary.

The port authority is required to ensure that the requirements for toll or fare increases are complied with before placing any item or matter relating to an increase in tolls or fares on a meeting agenda.

Appearing before legislative committees

The port authority, at the request of the presiding officer of each house of the state legislature of New York or New Jersey, is required to appear before a committee of the requesting state legislature to present testimony on any topic or subject requested by the committee or to respond to questions by members of the committee. Each house of each state legislature is entitled to request two appearances by the port authority per calendar year.

Subsidiaries

No less than 60 days prior to the formation of a subsidiary, the port authority is required to provide notice to the governor of each state and certain members of each state's legislatures. The creation of a subsidiary corporation is subject to approval by the board.

Within 60 days of the effective date of the bill, and on or before the first day of January of each year annually thereafter, any subsidiary corporation, in cooperation with the port authority, is required to provide to the governor and legislature of each state a report on the subsidiary corporation containing information required under the bill.

Sixty days prior to the issuance of any debt by the subsidiary, or the port authority on behalf of the subsidiary, the port authority is required to provide notice to the same individuals required to receive notice for the formation of a subsidiary.

Annual reporting

The port authority is required to publish a comprehensive annual financial report, submitted annually to the governors and state legislatures of New York and New Jersey and made available on the port authority's website within 120 days after the end of its fiscal

year. The annual report is required to include the agency's financial statements, statistical and other regional data, and a narrative of the agency's activities during the year of the report.

Audits and financial statements

The bill requires the port authority to prepare financial statements on an annual basis, in accordance with generally accepted accounting principles and the accounting standards issued by the governmental accounting standards board. The audit committee is required to arrange for an independent firm of certified public accountants to perform an audit of the financial statements each year. The bill requires the executive director and chief financial officer to make written certifications of the accuracy of the financial statements. The bill provides safeguards to ensure that the firm conducting the audit is independent.

The port authority is required to make accessible to the public via its website an executive summary of its most recent independent audit report unless the information is exempt from disclosure pursuant to either state's freedom of information laws.

Property disposition

The bill provides certain requirements for the disposition of property owned by the port authority. Any sale of real property is to be undertaken and conducted pursuant to the provisions of the existing laws governing the sale of real property in the state in which the real property is located and by approval of the board.

The port authority is not permitted to dispose of real property unless an appraisal of the value of the real property has been made by an independent appraiser and the appraisal is included in the record of the transaction.

The port authority is not permitted to sell, lease, or otherwise alienate property for less than fair market value unless: the transferee is a government entity or other public entity and the terms and conditions of the transfer require that the ownership and use of the real property will remain with the government or any other public entity; or the purpose of the transfer is within the purpose, mission, or governing statute of the port authority and a written determination is made by the board that there is no reasonable alternative to the proposed below-market transfer that would achieve the same purpose, prior to board approval of the transfer.

The bill requires the board to adopt rules and regulations concerning disposition, acquisition, and transfer of real property or any interest in real property which, at a minimum, includes a requirement that certain information be made available to the board at the meeting where approval is scheduled.

Not less than 10 days in advance of any meeting of the board at which the board is to consider an action to authorize the sale of real

property, the executive director is required to provide public notice of the proposed action along with relevant material terms and provisions of the sale by posting the information on the port authority's website.

The executive director may authorize or arrange for contracts for the sale of personal property owned by the port authority upon terms and conditions as the executive director deems proper and execute the contract on behalf of the port authority where the value of the personal property is not in excess of \$1,000,000; provided, however, that personal property valued at more than \$250,000 is not to be sold under the authority of the executive director other than to the highest bidder after public advertisement. Where the value of the personal property is in excess of \$1,000,000, the sale of the property is dependent on authorization by the board.

Debt issuance

The issuance of any debt by the port authority is required to be undertaken in a manner consistent with applicable laws governing the port authority and covenants with the holders of the port authority's bonds, notes, or other instruments of indebtedness. At least 60 days prior to the end of its fiscal year, the port authority is required to submit to the governor, state comptroller, and legislature of each state a statement of intent in regards to the issuance of and overall amount of bonds, notes, or other debt obligations anticipated during the next fiscal year.

Capital plan and operating budget

The bill requires the port authority to adopt a 10-year capital plan that is developed using a comprehensive planning process and risk-based prioritization that considers asset condition, operational and revenue impact, threat assessment, customer service, regional benefit, and regulatory or statutory requirements. Performance progress and revisions to reflect changes in programs, policies, and projects and the environment in which the port authority operates is required to be reviewed regularly by a committee designated by the board, and the capital plan may be revised periodically as necessary and appropriate, and is required to be reviewed with the board annually. The bill requires the port authority to publish an annual report on the status of the capital program and the report is to be made publicly available on the port authority's website. Prior to adoption of a capital plan, the port authority is also required to make the proposed plan available for public review and comments on its public website for at least four weeks prior to approval, and all comments received by the port authority are to be distributed to the board for review prior to consideration of the capital plan.

The port authority is required to provide that major capital projects are monitored by independent engineering consultants.

The independent consultants are to prepare annual reports which will be provided to the board and made available to the public.

The port authority is required, no less than 60 days prior to any board adoption of a capital plan, or any major revision of a capital plan, to: provide notice to both houses of each state legislature of the intention to adopt or revise a capital plan; submit the proposed capital plan or major revision to both houses of each state legislature; and make the proposed capital plan or major revision publicly available on the port authority's website. Within 60 days of the notice, the port authority is required to conduct a public hearing about the capital plan, or major revision thereof, in New York and New Jersey.

The bill requires the port authority to conduct a status update public hearing in New York and New Jersey at least once every three years after the adoption of the capital plan.

The bill requires the port authority to prepare a detailed annual operating budget beginning with the fiscal year commencing after the effective date the bill. A preliminary annual operating budget is to be made publicly available on the port authority's website in July of every fiscal year and a final annual operating budget is to be made publicly available in February of each fiscal year.

As amended and reported, Assembly Bill No. 1708 is identical to Senate Bill No.619 (2R).

This bill was pre-filed for introduction in the 2018-2019 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

COMMITTEE AMENDMENTS

The committee amended the title of the bill to provide proper reference to the statutory provisions that have been amended in the bill. The amendments eliminate the provision listing the officers of the port authority and the requirement that the position of chairperson and vice-chairperson rotate every two years between the commissioners appointed by New York and New Jersey. The amendments change references to the "chief executive officer" to the "executive director" throughout the bill.

The amendments require the Inspector General of the port authority to establish an email address and text messaging line, in addition to the toll-free telephone and facsimile lines available to employees as a part of the whistleblower access and assistance program. The amendments require that the needs assessment conducted by an independent entity prior to a toll or fare increase be made publicly available in a conspicuous location on the port authority's website.

The amendments require that, prior to adoption of a capital plan, the port authority is to make the proposed plan available for public review and comments on its public website for at least four weeks prior to approval by the board of commissioners, instead of two weeks.

Lastly, the amendments require that, no less than 60 days prior to any board adoption of a capital plan or any major revision of the last adopted capital plan, the port authority is to submit the proposed capital plan or any proposal constituting a major revision of the last adopted capital plan, to the legislatures of New York and New Jersey for review and to make the proposed capital plan, including any proposal constituting a major revision of the last adopted capital plan, publicly available on the port authority website. The amendments eliminate the requirement that the notice of the port authority's intention to adopt a capital plan recite the major elements of the capital plan to be adopted.