

LEGISLATIVE FISCAL ESTIMATE TO

[Second Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, No. 2370

STATE OF NEW JERSEY

DATED: JUNE 9, 1997

BILL SUMMARY

The Second Reprint of Assembly Committee Substitute for Assembly Bill No. 2370 of 1996 provides for the unification of the Delaware River public ports in the Philadelphia-Camden region. The bill makes changes to New Jersey law to facilitate the transfer of the assets, liabilities and obligations of the South Jersey Port Corporation (SJPC) to the New Jersey Economic Development Authority (EDA). It authorizes EDA to issue bonds for port development purposes, to issue refunding bonds to refinance and defease the existing debt of the SJPC, and to enter into a contract with the State Treasurer to pay an amount equal to the debt service on the EDA bonds, subject to future appropriations by the Legislature. The bill also authorizes EDA to enter into an agreement with a subsidiary corporation of the Delaware River Port Authority (DRPA) to lease, manage, operate and maintain the transferred port facilities, subject to the approval of the State Treasurer.

The bill requires the subsidiary corporation (which is now the Port of Philadelphia and Camden) to make annual "rental" payments to EDA for ten years in return for operating the port facilities located in New Jersey. The annual payment will equal the most recent three-year average of revenues realized in excess of operation expenses by the SJPC. Currently, any excess revenues of the SJPC are applied toward maintaining the SJPC debt reserve fund at its maximum level, thereby offsetting the amount the State contributes as a subsidy to that fund.

The bill provides that the State will make payments in lieu of local taxes to the City of Camden on the port facilities used as commercial marine facilities and occupied by a lessee. The payments will be equal to 40 percent of the fair market value of the property, as determined by the Department of the Treasury at the time of the transfer of the property to EDA, multiplied by the municipal purposes tax rate.

AGENCY COMMENTS

The Department of Commerce and Economic Development, the EDA and the SJPC did not respond to a formal request for a fiscal note on this bill. However, EDA, SJPC and the Department of the

Treasury have since provided fiscal information on the current version of the bill.

OLS COMMENTS: POTENTIAL COST FACTORS

The Office of Legislative Services (OLS) estimates that the State may incur financial obligations in the following areas under the bill's provisions:

(1) Annual debt service payments to repay the bonds issued by EDA to refinance about \$78.7 million in outstanding SJPC debt. However, the State is currently subsidizing SJPC's own debt service obligations.

(2) Indemnifying and saving harmless the SJPC, EDA, DRPA or DRPA subsidiary corporation from certain actions, claims, judgments or awards arising from the transfer of the port facilities.

(3) The payment of premiums for liability insurance coverage for the SJPC and EDA regarding the transfer of port facilities.

(4) The payment of EDA's annual administrative expenses associated with the ownership and operation of the transferred port facilities.

(5) Annual payments in lieu of taxes to the City of Camden.

OLS is unable to quantify the State's contingent liabilities with regard to third party indemnification since the circumstances requiring indemnification cannot be defined in advance. The State's payment of liability insurance premiums for SJPC and EDA is permissive, not mandatory, and is subject to the approval of the State Treasurer. However, EDA anticipates that the need for insurance is real, especially with regard to environmental insurance on properties that may have contamination. With regard to EDA's administrative expenses, they could be significant in the year that the port facilities of the SJPC are transferred to EDA, and then leased or otherwise assigned to the DRPA subsidiary, the Port of Philadelphia and Camden. These would be primarily legal, financial advisory and environmental audit costs. Most of these initial costs, whether or not directly related to the cost of issuing bonds, appear to be eligible under section 5 of the bill to be capitalized as part of the bond issue and amortized over time. In future years, EDA's administrative expenses "associated with the ownership and operation of the port facilities" should be lower, since EDA has indicated that it will not be involved in the actual operation of the port facilities in New Jersey. However, EDA believes that at least one full-time position would have to be devoted to port facility oversight, asset accounting and real estate management. If this is so, OLS estimates that EDA's future administrative costs could be in the range of \$75,000 to \$125,000 annually, including fringe benefits and support costs.

Debt Service Payments

The South Jersey Port Corporation currently has \$78.7 million in debt outstanding, following the recent calling of certain series of subordinated debt in advance of maturity. Future debt service payments, including interest, equal \$148.2 million, according to the Department of the Treasury. Under the provisions of the SJPC law, the SJPC makes debt service payments to bondholders, but the State makes up any shortfall in the SJPC's debt service reserve fund. The reserve fund serves as a backup security to bondholders in the event of an inability to service debt from regular cash flow. State contributions to maintain the bond reserve fund over the past three years have been \$3.6 million (1994), \$5.5 million (1995) and \$5.3 million (1996, including an anticipated supplemental appropriation).

Under the bill, the assets and liabilities of the SJPC will be transferred to EDA. EDA will issue about \$77 million in refunding bonds to refinance and legally defease the existing SJPC debt. EDA will contract with the State Treasurer to have the State pay the full debt service on the EDA bonds, subject to annual appropriations by the Legislature. Due to federal IRS restrictions on the advance funding of tax-exempt debt originally issued for "private purposes," roughly two-thirds of the face value of the refunding bonds will have to be issued as taxable debt, with the remainder tax-exempt. This will have the effect of raising the true interest cost on the EDA refunding bonds. Under three scenarios prepared by the Department of the Treasury, total debt service on the refunding bonds could range from \$162.8 million (current interest rates) to \$169.8 million (current rates plus 50 basis points), assuming final maturity in 2023. Each scenario is based on a sale date of October 1, 1997. Treasury's calculations show a net present value cost (negative savings) from the refunding transaction, due to the higher interest rates on the taxable bonds. However, the refunding would still have to be conducted to defease existing restrictive bond covenants on the SJPC debt.

Under the Treasury outline, annual debt service (assuming current interest rates) would be flat at \$6.5 million per year beginning in calendar 1998 and ending in 2023. Therefore, the State's gross annual cost to service the EDA debt will be higher by roughly \$1.2 million per year than the \$5.3 million the State is contributing this year to subsidize the SJPC debt reserve fund. It is important to note, however, that the actual debt service schedule for EDA's refunding bond issue will not be established until the time of sale and will depend in part on market conditions at that time, as well as Treasury determinations on how best to structure the bond issue.

Payments in Lieu of Taxes

The SJPC has not made payments in lieu of property taxed to the

City of Camden and Camden County since FY 1994, which was the last year that the State subsidized those payments under a provision in the current SJPC law. The State appropriation in FY 1994 was \$3.9 million for this purpose.

Section 19 of the Second Reprint of the Assembly Committee Substitute for A-2370 requires the State to make in lieu of tax payments to the City of Camden (but not to Camden County) after the EDA takes ownership of the port facilities. The payments would be made on behalf of those port facilities utilized as marine facilities, as opposed to the portion of the property designated for commercial redevelopment. The payment would equal 40 percent of the fair market value of the property, times the municipal purposes tax rate. The Department of the Treasury would establish the fair market value at the time of the transfer.

A Treasury analysis prepared in January 1997 noted that a market appraisal of the Camden port facilities would have to be conducted, since the assessed values of the parcels which are currently on file with the county clerk are probably out of date. Treasury estimated that annual P.I.L.O.T. payments to the city could range from \$1 million to \$2 million depending on the final valuation. Private lessees occupying the parcels slated for commercial redevelopment would also have to make P.I.L.O.T. payments to the city.

"Rental" Payments to the State

As noted above, the bill requires the DRPA's port management subsidiary (the Port of Philadelphia and Camden) to make annual "rental" payments to EDA for ten years in return for operating and managing the port facilities located in New Jersey. The annual payment will equal the most recent three-year average of revenues realized in excess of operation expenses by the SJPC. Currently, any excess revenues of the SJPC are applied toward maintaining the SJPC debt reserve fund at its maximum level, thereby offsetting the amount the State contributes as a subsidy to that fund.

The Department of the Treasury and the SJPC have provided different interpretations of how this three-year average is calculated. The difference appears to be based on how much the SJPC is currently contributing from its own resources toward retiring its debt. Based on Treasury data, SJPC contributions for the past three calendar years were \$3.6 million (1994), \$1.9 million (1995) and \$2.1 million (1996), for a three-year average of \$2.55 million. The SJPC figures show excess revenues of \$2.3 million, \$1.4 million and \$1.7 million over the same three-year period, for an average of \$1.8 million. OLS cannot at this point verify the accuracy of either figure, which will eventually require interpreting the SJPC's audited financial statements against the wording of the bill ("...revenues realized by the South Jersey Port Corporation in excess of operation expenses").

At this point, the rental payments to be made by the Port of Philadelphia and Camden to the EDA would appear to be between \$1.8 million and \$2.55 million annually for a period of ten years.

Summary of State Costs

The following table summarizes the major cost factors discussed above from the perspective of the State:

1. Estimated annual debt svc., EDA bonds	\$6.5 million*
2. Estimated P.I.L.O.T. to Camden (max.)	<u>\$2.0 million</u>
3. Total annual State costs	\$8.5 million
4. Less: Port rental payments to EDA	<u>(\$1.8m - \$2.55m)</u>
5. Net annual State cost	\$5.95m - \$6.7m
6. Less: Current (FY97) State subsidy to SJPC	<u>\$5.3 million</u>
7. Incremental annual State costs	\$0.65 m - \$1.4m**

* Subject to future determination

**Plus EDA operating expenses and insurance costs

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.