

# ASSEMBLY APPROPRIATIONS COMMITTEE

## STATEMENT TO

### ASSEMBLY COMMITTEE SUBSTITUTE FOR **ASSEMBLY, No. 2370**

with Assembly committee amendments

# **STATE OF NEW JERSEY**

DATED: JANUARY 9, 1997

The Assembly Appropriations Committee reports favorably Assembly Bill No. 2370 (ACS), with committee amendments.

Assembly Bill No. 2370 (ACS), as amended, facilitates the unification of the ports of the Delaware river. In 1992, amendments were approved to the Compact between the Commonwealth of Pennsylvania and the State of New Jersey creating the Delaware River Port Authority (DRPA). One of the fundamental purposes of those changes was to permit the DRPA to take action to unify the ports of the Delaware River through the acquisition or control of marine terminals or facilities or transportation facilities or by the acquisition of, or merger with, the existing port authorities or corporations within the Port District, such as the South Jersey Port Corporation (SJPC) or the Philadelphia Regional Port Authority. Such action would have to conform to the applicable laws of the two states. The DRPA was also empowered to set up subsidiary corporations for this purpose.

This bill makes the changes to New Jersey law required to facilitate the transfer of the assets and liabilities of the SJPC to the New Jersey Economic Development Authority (EDA) and the operation of all or portion of its port facilities by a subsidiary or other corporation of the DRPA. The bill also authorizes the EDA to issue bonds for port development purposes and for the refinancing or refunding of the currently outstanding bonds of a port corporation or authority, including the SJPC. The bill authorizes the EDA to enter into an agreement with a subsidiary corporation of the DRPA or any other entity with respect to the lease, management or other operation of all or a portion of the port facilities, subject to the approval of the State Treasurer. However, the EDA is authorized to enter into an agreement with a subsidiary corporation of the DRPA or other entity only on the following conditions: that the By-Laws of the subsidiary corporation or other entity provide for the exercise of a veto by the Governor of New Jersey with respect to the actions of the directors or members of the subsidiary corporation or any other entity from the State of New Jersey in the same fashion as the Governor is permitted

to veto the actions of DRPA commissioners from New Jersey; that the corporation or other entity has the same number of members or directors from New Jersey as it has from each of the other states; and that no action of the corporation or other entity shall be binding unless at least a simple majority of the directors or members from New Jersey and of the members or directors from each of the other states vote in favor thereof. The gubernatorial veto under this bill would not result in a dissolution of the subsidiary corporation or other entity. On the date on which the bonds of the SJPC cease to be outstanding, the port facilities, and the assets and liabilities of the corporation, with the exception of the port facilities previously acquired from the Salem Municipal Port Authority, or from the county of Salem or the City of Salem, would be transferred to the EDA. Before this can happen, however, the State Treasurer and the EDA must approve the lease, management or operation agreement with the subsidiary corporation or other entity.

The bill also provides specifically for the following:

(1) Creation of a Port Facility Revenue Fund which may be pledged to pay for the redemption of bonds or notes, or to pay the principal and interest on bonds issued by the EDA.

(2) EDA indemnification of the State from actions, claims, judgments or awards relating to the port facilities acquired by the EDA or from acts or omissions by the SJPC or the subsidiary corporation.

(3) Indemnification of the SJPC, its employees or members for acts or omissions by or on behalf of the SJPC, or the subsidiary corporation or in relation to the port facilities transferred pursuant to this bill or arising from or as a result of the condition of these facilities.

(4) Authorization of the State Treasurer and the EDA to enter into agreements as may be necessary to effectuate the provisions of this bill, such as procedures for the transfer of monies to the Port Facility Revenue Fund.

(5) Exemption of the actions by the SJPC or otherwise pursuant to this bill from the requirements of subsection (t) of section 6 of P.L.1968, c.60 (C.12:11A-6) and making the corporation's powers under that section subject to agreements with the bondholders to transfer the port facilities to the EDA.

(6) Authorization of the State Treasurer to enter into an agreement, with the DRPA and/or the subsidiary corporation to provide that the State shall indemnify and save harmless the DRPA and/or the subsidiary corporation from any and all claims or causes of action which are based on the condition of the port facilities transferred to the EDA pursuant to this bill.

(7) Stipulation that any agreements between the EDA and the State Treasurer entered into pursuant to section 13 of this bill require the subsidiary corporation to indemnify and save harmless the EDA, its members or employees, from claims of any type relating to the lease, operation, and management of the port facilities by the

subsidiary corporation.

(8) Continuation of membership in the State pension and health benefits system of employees of the SJPC who are employed by a subsidiary corporation or other corporation of the DRPA within 365 days of the effective date of this bill. All officers and employees of the corporation are to be employed by the subsidiary corporation until determined otherwise by that corporation.

(9) Creation of a subsidiary of the EDA to carry out the purposes of this bill.

The bill additionally provides for any port facilities of the Salem Municipal Port Authority or of the county of Salem or the City of Salem previously acquired by the SJPC to be leased to a private marine terminal operator within six months of the effective date of the bill and after the expiration of the lease to be transferred to the EDA, unless the lessee or operator has exercised an option to purchase or acquire the facilities. If the SJPC fails to enter into the lease arrangement within the six month period, the facilities are to be transferred to the EDA at the expiration of that period. Any agreement entered into pursuant to section 15 of the bill shall be subject to the approval of the State Treasurer and if such an agreement shall result in any payments to the SJPC such payments shall be remitted to the State Treasurer for deposit in the General Fund less those payments that the SJPC is required to pay to other public entities under the leases referred to in the definition of "Salem facility rights."

The bill also provides that when undertaking any construction, reconstruction or other improvement of property which is part of the marine facilities or redevelopment facilities located in the City of Camden, the EDA shall provide to the City of Camden Planning Board a written summary, for informational purposes only, or an informational presentation which shall describe the proposed development. "Redevelopment facilities" are defined as port facilities excluding marine facilities and personal property.

The bill finally provides for the port facilities transferred to the EDA to be the subject of in-lieu-of-tax payments. One class of payment is to be made by the person occupying the port facilities of the authority used as redevelopment facilities for commercial purposes as a vendee, lessee or otherwise and is to be paid to the political subdivisions in which the facilities are located, based upon the period of occupancy. The amount of this payment is to equal the taxes on real and personal property, including water and sewer charges and assessments, which that person would have been required to pay had the person been the owner of the property for the period in question. The other class of payment is to be made by the State on the authority's port facilities used as marine facilities for commercial purposes and occupied by a lessee. The payment by the State, which is subject to annual appropriation by the Legislature, is to be equal to 40 percent of the value of the property, as determined by the Department of the Treasury, multiplied by the local purposes tax rate

in the year in which payments are made. Additional provisions continue these requirements if the port facilities should be transferred to another tax exempt entity, although the tax exempt entity rather than the State would be responsible for continuing the payments which would have been made by the State unless the entity and the City of Camden enter into an agreement to provide for a different method of determining the amount of the payment or otherwise to alter the amount. The county or municipal governing body is authorized to grant by ordinance or resolution, as appropriate, a reduction in the in-lieu-of-tax payments that a vendee or lessee occupying redevelopment facilities would be required to pay, for a period of no more than 20 years, if the governing body finds it is in the best interest of the county or municipality. The reduction is to be not greater than 75 percent of the payment in lieu of taxes that would ordinarily be paid under the bill over the 20 year or lesser period.

**FISCAL IMPACT:**

Although it is possible to identify major areas that may require expenditure of State funds, it is not possible to specify the amount of future expenditures because of uncertainty as to when, or if, State assistance would be requested. These major areas are:

- (1) annual debt service for EDA issued bonds to refinance about \$85.4 million in outstanding SJPC debt;
- (2) indemnification of the SJPC, EDA and DRPA;
- (3) liability insurance premiums for the SJPC and EDA regarding the transfer ;
- (4) EDA administrative expenses associated with the port facilities;
- (5) acquisition of additional port facilities; and
- (6) payments in lieu of taxes to Camden.

**COMMITTEE AMENDMENTS:**

The committee amendments define "Salem facility rights" as those dealing with certain property and rights relating to the former port facilities of the Salem Municipal Port Authority and exempting these from the transfer provisions. The amendments further clarify the status of the Port Facility Revenue Fund as being able to receive funds other than bond funds and to expend funds for port operational purposes. The amendments also clarify the payment in lieu of taxes provisions, as well as the status of the EDA subsidiary. Finally, the amendments update the text of section 23 of the bill to include the latest version of the law.