

**SUBSTITUTE FOR
HOUSE BILL NO. 5651**

A bill to amend 1978 PA 639, entitled
"Hertel-Law-T. Stopczynski port authority act,"
by amending sections 2, 4, 5, 8, 9, 10, 12, 13, 14, 16, 21, 24, 25,
and 26 (MCL 120.102, 120.104, 120.105, 120.108, 120.109, 120.110,
120.112, 120.113, 120.114, 120.116, 120.121, 120.124, 120.125, and
120.126), section 5 as amended by 2001 PA 244 and section 14 as
amended by 2002 PA 412; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (a) "Authority" means a port authority created under this act
3 and may also include the area within the jurisdiction of an
4 authority.

5 (b) "Constituent unit" means a city or county requesting the

1 incorporation of an authority.

2 (c) "Governing body of the city" means the city council or
3 city commission of a city requesting incorporation of an authority
4 created under this act.

5 (d) "Governing body of the county" means the county board of
6 commissioners of a county participating in an authority created
7 under this act.

8 (e) "Port facilities" means those facilities ~~owned by the port~~
9 ~~authority such as:~~ **THAT INCLUDE, BUT ARE NOT LIMITED TO:** seawall
10 jetties; piers; wharves; docks; boat landings; marinas; warehouses;
11 storehouses; elevators; grain bins; cold storage plants; terminal
12 icing plants; bunkers; oil tanks; ferries; canals; locks; bridges;
13 tunnels; seaways; conveyors; modern appliances for the economical
14 handling, storage, and transportation of freight and handling of
15 passenger traffic; transfer and terminal facilities required for
16 the efficient operation and development of ports and harbors; other
17 harbor improvements; or improvements, enlargements, remodeling, or
18 extensions of any of these buildings or structures; **AND OTHER REAL**
19 **OR PERSONAL PROPERTY NECESSARY TO ENHANCE COMMERCIAL OR**
20 **RECREATIONAL MARITIME ACTIVITIES.**

21 (f) "Project" means the acquisition, purchase, construction,
22 reconstruction, rehabilitation, remodeling, improvement,
23 enlargement, repair, condemnation, maintenance, or operation of
24 port facilities, **PUBLIC INFRASTRUCTURE, AND OTHER REAL AND PERSONAL**
25 **PROPERTY NECESSARY TO ACHIEVE THE PURPOSE OF THIS ACT.**

26 Sec. 4. (1) A city and county, a combination of counties or a
27 combination consisting of at least 1 city and 1 county, by joint

1 resolution of their respective governing bodies, may request the
2 governor to authorize the incorporation of an authority. **BEGINNING**
3 **JANUARY 1, 2016, A CITY OR COUNTY, BY A RESOLUTION OF THE GOVERNING**
4 **BODY OF THE CITY OR THE GOVERNING BODY OF THE COUNTY, MAY REQUEST**
5 **THE GOVERNOR TO AUTHORIZE THE INCORPORATION OF AN AUTHORITY.** The
6 governor shall consider the recommendations of the **STATE**
7 **TRANSPORTATION** department ~~of state highways and transportation and~~
8 ~~the department of commerce~~ in authorizing the authority. The
9 initial articles of incorporation shall be approved by the governor
10 and may thereafter be amended by resolution of the authority,
11 subject to approval by the governor. After approval by the
12 governor, the articles of incorporation and any amendments to those
13 articles shall be effective upon filing with the secretary of
14 state.

15 (2) An authority created under this act shall be a body
16 corporate and politic.

17 (3) The exercise by an authority of the powers conferred by
18 this act shall be considered and held to be an essential
19 governmental function and a benefit to, and a legitimate public
20 purpose of the state, the authority, and the constituent units.

21 Sec. 5. (1) Except as provided in subsection (5), an authority
22 shall consist of 5 or 7 members as follows:

23 (a) One member shall be appointed by the governor.

24 (b) ~~The~~ **EXCEPT AS OTHERWISE PROVIDED IN THE SUBDIVISION, THE**
25 remaining members shall be appointed by the governing body of each
26 city and the governing body of each county that requested the
27 incorporation of the authority. The representation on, and the

1 number of members of, the authority shall be determined by
2 agreement among the incorporating units and included within the
3 joint resolution requesting incorporation of the authority.

4 **HOWEVER, BEGINNING JANUARY 1, 2016, IF A CITY OR A COUNTY IS A**
5 **SINGLE CONSTITUENT UNIT REQUESTING THE INCORPORATION OF AN**
6 **AUTHORITY, THEN MEMBERS OF THE AUTHORITY SHALL BE APPROVED BY THE**
7 **GOVERNING BODY OF THE CITY OR THE GOVERNING BODY OF THE COUNTY AS**
8 **PROVIDED IN THE RESOLUTION REQUESTING INCORPORATION OF THE**
9 **AUTHORITY.**

10 (2) The members first appointed shall serve staggered terms.
11 After the first appointment, each member shall serve a term of 4
12 years, except that a person appointed to fill a vacancy shall be
13 appointed for the balance of the unexpired term. A member shall be
14 eligible for reappointment.

15 (3) The members shall elect 1 of their membership as
16 chairperson and another as vice-chairperson, shall designate the
17 terms of office of those officers, and shall appoint a secretary-
18 treasurer who need not be a member. A majority of the members of
19 the authority shall constitute a quorum. The affirmative vote of a
20 majority of the members shall be necessary for any action taken by
21 the authority.

22 (4) The members shall serve without compensation but shall be
23 reimbursed for all necessary travel and other expenses incurred in
24 the discharge of their duties.

25 (5) An authority that is established in a county having a
26 population of 1,500,000 or more shall consist of 5 members as
27 follows:

1 (a) One member shall be appointed by the governor.

2 (b) Two members shall be appointed by a majority of all the
3 members of the county board of commissioners of the county. The
4 members appointed shall be nominated by the commissioners on the
5 board who do not reside within the political boundaries of a city
6 having a population of 750,000 or more.

7 (c) Two members shall be appointed by the mayor of a city
8 having a population of 750,000 or more that is located in the
9 county.

10 (6) To the extent not protected by the immunity conferred by
11 1964 PA 170, MCL 691.1401 to ~~691.1415~~, **691.1419**, a member of the
12 authority appointed under this section who exercises the powers
13 contained in this act in good faith is immune from civil or
14 administrative liability arising from that conduct, unless the
15 conduct was gross negligence or willful and wanton misconduct.

16 Sec. 8. **(1)** An authority may:

17 (a) Adopt, amend, and repeal bylaws for the regulation of its
18 affairs and the conduct of its business.

19 (b) Sue and be sued on the same basis as the state; and adopt
20 and register with the secretary of state an official seal and alter
21 that seal at its pleasure.

22 (c) Maintain offices at a place or places, either within or
23 without its jurisdiction as it may determine.

24 (d) Acquire, construct, reconstruct, rehabilitate, improve,
25 maintain, lease as lessor or as lessee, repair, or operate port
26 facilities **AND OTHER PROPERTY IT MAY ACQUIRE OR HOLD** within its
27 territorial jurisdiction, including, **BUT NOT LIMITED TO**, the

1 dredging of ship channels and turning basins and the filling and
2 grading of land therefor. An authority may operate a leased
3 facility, owned by the authority, if the lessee defaults and a new
4 lease is negotiated or competitively bid.

5 (e) Designate the location and character of the port
6 facilities which the authority may hold or own or over which it is
7 authorized to act and regulate all matters related to the location
8 and character of those port facilities.

9 (f) Acquire, hold, and dispose of real and personal property.

10 (g) Make directly, or through the hiring of expert
11 consultants, investigations and surveys of whatever nature,
12 including studies of business conditions, freight rates, port
13 services, physical surveys of the conditions of channels and
14 structures, and the necessity for additional port facilities for
15 the development and improvement of commerce and recreation and for
16 the more expeditious handling of that commerce and recreation, and
17 make studies, surveys, and estimates, as necessary for the
18 execution of its powers under this act.

19 (h) Promulgate all necessary rules to fulfill the purposes of
20 this act.

21 (i) Issue its bonds, notes, or other evidences of indebtedness
22 as provided in this act.

23 (j) Fix and revise from time to time and charge and collect
24 rates, fees, rentals, or other charges for the use of a facility
25 owned by the authority.

26 **(K) ENTER INTO PUBLIC-PRIVATE PARTNERSHIPS WITH OTHER OWNERS**
27 **OF PROPERTY OR PORT FACILITIES WITHIN THE JURISDICTION OF THE**

1 AUTHORITY.

2 (2) NOTHING IN THIS ACT SHALL LIMIT THE PROPERTY RIGHTS OF ANY
3 PERSON THAT OWNS PROPERTY OR PORT FACILITIES WITHIN THE
4 JURISDICTION OF THE AUTHORITY.

5 (3) THE POWERS GRANTED UNDER THIS ACT ARE IN ADDITION TO THOSE
6 POWERS GRANTED BY CHARTER OR OTHER STATUTE.

7 Sec. 9. An authority may:

8 (a) Appear in its own behalf before boards, commissions,
9 departments, or other agencies of the federal government or of any
10 state or international conferences and before committees of the
11 congress of the United States and the state legislature in all
12 matters relating to the design, establishment, construction,
13 extension, operation, improvement, repair, or maintenance of a
14 project operated, ~~and maintained,~~ **FINANCED, OR SUPPORTED** by the
15 authority under this act, and appear before any federal or state
16 agencies in matters relating to transportation rates, port services
17 and charges, demurrage, switching, wharfage, towage, pilotage,
18 differentials, discriminations, labor relations, trade practices,
19 river and harbor improvements, aids to navigation, permits for
20 structures in navigable waters, and all other matters affecting the
21 physical development of, and the business interest of, the
22 authority and those it serves.

23 (b) Make application for, receive and accept from any federal,
24 state, or municipal agency, foundation, public or private agency,
25 or individual, a grant or loan for, or in aid of, the planning,
26 construction, operation, or financing of a ~~port facility;~~ **PROJECT**;
27 and receive and accept contributions from any source of money,

1 property, labor, or other things of value, to be held, used, and
2 applied for the purposes for which the grant or contribution may be
3 made.

4 (c) Appoint an executive director who shall be the chief
5 ~~administrative~~**EXECUTIVE** officer of the authority, and to whom the
6 authority may delegate any of its administrative powers and
7 authorizations. During employment the executive director shall not
8 have a financial interest in port facilities or projects over which
9 the authority has jurisdiction or power or authorization to act.

10 (d) Employ personnel as is necessary and employ the services
11 of private consultants and engineers, legal counsel, accountants,
12 construction and financial experts, and other agents for rendering
13 professional and technical assistance and advice as may be
14 necessary, and whose compensation, including the executive
15 director, shall be determined by the authority.

16 Sec. 10. An authority may:

17 (a) Subject to the authority of the federal government, ~~and~~
18 the state ~~and~~with the agreement of the constituent units, **AND**
19 **RIPARIAN RIGHTS OWNERS**, provide for the preservation of navigation
20 within its territorial jurisdiction, including the establishment by
21 regulation of lines beyond which piers, bulkheads, wharves,
22 pilings, structures, obstructions, or extensions of any character
23 may not be built, erected, constructed, or extended; provide by
24 regulation for the stationing, anchoring, and movement of vessels
25 or other watercraft; adopt rules to prevent material, refuse, or
26 matter of any kind from being thrown into, deposited, or placed
27 where it may fall, or be washed, into navigable waters under its

1 jurisdiction; ascertain the depth and course of the channels of
2 those navigable waters; erect and maintain, authorize the erection
3 and maintenance of, and make rules respecting wharves, bulkheads,
4 piers, and piling, and the keeping of the same in repair, to
5 prevent injury to navigation or health; regulate the use of
6 wharves, docks, piers, bulkheads, or pilings owned by it; lease or
7 rent the same, and impose and collect dockage from vessels and
8 watercraft lying at, or using the same; and collect wharfage and
9 other charges upon goods, wares, merchandise or other articles
10 landed at, shipped from, stored on, or passed over the same.

11 (b) Make and enter into contracts and agreements necessary or
12 incidental to the performance of its duties and the execution of
13 its powers under this act.

14 (c) Lay out, construct, acquire, operate, lease, sell, and
15 convey planned industrial districts as a part of port facilities
16 within its jurisdiction, subject to the restrictions contained in
17 this act upon operation and ownership of port facilities.

18 (d) Do all acts and things necessary or convenient to promote
19 and increase commerce and recreation within its territorial
20 jurisdiction and carry out the powers expressly granted and any
21 powers implied or necessary for the exercise of the powers
22 expressly granted in this act.

23 Sec. 12. (1) An authority may acquire by purchase or lease,
24 when it considers the purchase or lease expedient, lands,
25 structures, property, rights, rights of way, franchises, easements,
26 and other interests in lands as it considers necessary or
27 convenient for the construction or operation of a project, upon

1 terms and at a price as considered reasonable and agreed upon
 2 between the authority and the owner ~~thereof.~~ **OF THAT PROPERTY.**

3 (2) ~~An~~ **EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION AND IN**
 4 **SUBSECTION (4), AN** authority may, **SUBJECT TO THE UNIFORM**
 5 **CONDEMNATION PROCEDURES ACT, 1980 PA 87, MCL 213.51 TO 213.75,**
 6 acquire by condemnation lands, property rights, rights of way,
 7 franchises, easements, and other property, or parts ~~thereof~~ **OF**
 8 **PROPERTY** or rights ~~therein,~~ **OF PROPERTY,** of a person, partnership,
 9 association, or corporation considered by the authority to be
 10 necessary for the construction or efficient operation of a project.
 11 However, a facility currently operated as a port facility by a
 12 terminal operator or a facility owned or operated by and for the
 13 exclusive use of the owner or operator and a facility owned or
 14 operated by a common carrier or public utility shall be exempt from
 15 this subsection. ~~The condemnation shall be made in the manner~~
 16 ~~provided by Act No. 295 of the Public Acts of 1966, as amended,~~
 17 ~~being sections 213.361 to 213.391 of the Michigan Compiled Laws,~~
 18 ~~except where that procedure may be inconsistent with this act.~~

19 (3) An authority may sell or remove the buildings or other
 20 structures upon lands taken by the authority, and may sell or lease
 21 lands or rights or interest in lands or other property taken or
 22 purchased for the purposes of this act.

23 **(4) A PORT AUTHORITY ESTABLISHED ON OR AFTER JANUARY 1, 2016**
 24 **SHALL NOT CONDEMN PROPERTY UNDER THIS ACT.**

25 Sec. 13. (1) An authority and 1 or more constituent units may
 26 enter into a contract or contracts for the acquisition,
 27 improvement, enlargement, or extension of port facilities and for

1 the payment of the cost thereof ~~OF THOSE IMPROVEMENTS~~ by the
2 contracting constituent units, with interest, over a period of not
3 more than 40 years.

4 (2) Each contracting constituent unit shall pledge its full
5 faith and credit for the payment of its obligations under the
6 contract. If the constituent unit has taxing power, each year it
7 ~~shall~~ **MAY** levy a tax upon all real and personal property within the
8 constituent unit, which may be imposed without limitation as to
9 rate or amount, to the extent necessary for the prompt payment of
10 that part of the contract obligations as shall fall due before the
11 following year's tax collection. The tax ~~shall~~ **MAY** be in addition
12 to any tax which the contracting constituent unit may otherwise be
13 authorized to levy and may be imposed without limitation as to rate
14 or amount, but shall not be in excess of the rate or amount
15 necessary to pay the contract obligation. If any contracting
16 constituent unit at the time of its annual tax levy has on hand in
17 cash any amount pledged to the payment of the current obligations
18 for which the tax levy is to be made, then the annual tax levy may
19 be reduced by that amount. For the purpose of obtaining the credit,
20 funds may be raised by a contracting constituent unit in 1 or more
21 of the following methods:

22 (a) By service charge to users of the facilities owned by the
23 port authority.

24 (b) By setting aside state collected funds disbursed to the
25 contracting constituent unit.

26 (c) By special assessment upon lands benefited.

27 (d) By setting aside any other available money.

1 (3) A contracting constituent unit may agree to raise all or
2 any part of its contract obligation by 1 or more of the methods
3 enumerated in subsection (2) which may be available. The various
4 powers granted in this act to a constituent unit shall be exercised
5 by its governing body.

6 (4) If a constituent unit, other than a county, operating
7 under this act elects to raise money to pay all or a portion of its
8 share of the cost of a project by assessing the costs upon
9 benefited lands, its governing body shall so determine by
10 resolution and fix the district therefor. The governing body shall
11 then cause a special assessment roll to be prepared and thereafter
12 the proceedings in respect to the special assessment roll and the
13 making and collection of the special assessments on the roll, shall
14 be in accordance with the provisions of the statute or charter
15 governing special assessments in the constituent unit, except that
16 the total assessment may be divided into any number of installments
17 not exceeding 30, and any person assessed shall have the right at
18 the hearing upon the special assessment roll to object to the
19 special assessment district previously established.

20 Sec. 14. (1) An authority may provide by resolution for the
21 issuance of revenue bonds of the authority for the purpose of
22 providing funds for paying the cost of ~~port facilities,~~ **PROJECTS,**
23 or for paying the cost of an extension, enlargement, or improvement
24 of a project then under the control of the authority. The bonds
25 issued under this section shall mature at a time or times, not
26 exceeding 40 years after their date of issuance, as the authority
27 may provide.

1 (2) Revenue bonds issued under this section are subject to the
2 revenue bond act of 1933, 1933 PA 94, MCL 141.101 to 141.140.

3 (3) Revenue bonds issued pursuant to this section shall not be
4 considered to constitute a debt of this state, a political
5 subdivision of this state, the authority, or any constituent unit,
6 or a pledge of the faith and credit of this state or a political
7 subdivision of this state or of the authority or any constituent
8 unit, but shall be payable solely from the revenues or income to be
9 derived from the projects. The revenue bonds shall contain on their
10 face a statement to the effect that the bonds and attached coupons
11 are payable solely from revenues and are not a general obligation
12 of this state, a political subdivision of this state, the
13 authority, or a constituent unit, and neither the faith and credit
14 nor the taxing power of this state, a political subdivision of this
15 state, the authority, or a constituent unit, is pledged to the
16 payment of the principal of or the interest on the bonds.

17 Sec. 16. Revenue bonds issued pursuant to this act shall be
18 secured by a trust agreement by and between the authority and a
19 corporate trustee, which may be any trust company or bank having
20 the powers of a trust company, within or without the state. The
21 trust agreement may pledge or assign the rentals and other revenues
22 of the authority, but shall not convey or mortgage part or all of a
23 project. The trust agreement shall contain provisions for
24 protecting and enforcing the rights and remedies of the bondholders
25 as may be reasonable and proper and not in violation of law,
26 including covenants setting forth the duties of the authority in
27 relation to the acquisition or construction of a project and the

1 extension, enlargement, improvement, maintenance, operation,
2 repair, and insurance of a project and the custody, safeguarding,
3 and application of all money and may contain provisions for the
4 employment of consulting engineers **AND OTHER PROFESSIONALS** in
5 connection with the construction and operation of a project. The
6 trust agreement shall set forth the rights and remedies of the
7 bondholders and of the trustee and may restrict the individual
8 right of action by the bondholders and may contain any other
9 provisions the authority may consider reasonable and proper for the
10 security of the bondholders.

11 Sec. 21. **(1)** The governing bodies of constituent units may, by
12 majority vote, and with or without consideration, transfer or cause
13 to be transferred to the authority or may place in its possession
14 and control, by lease, or other contract or agreement, either for a
15 limited period or in fee, any dock, waterfront, or riparian
16 property owned or controlled by a constituent unit.

17 **(2) SUBSECTION (1) DOES NOT APPLY TO AN OWNER OF PRIVATE**
18 **PROPERTY THAT ENTERS INTO A PUBLIC-PRIVATE PARTNERSHIP WITH AN**
19 **AUTHORITY UNLESS THE PUBLIC-PRIVATE PARTNERSHIP AGREEMENT**
20 **SPECIFICALLY PROVIDES FOR THAT TRANSFER OF POSSESSION OR CONTROL OF**
21 **PROPERTY OR RIGHTS IN PROPERTY.**

22 Sec. 24. (1) The authority shall submit in writing a detailed
23 estimate of the budget required for the business and conduct of an
24 authority's affairs, initially, for a 2-year period, and annually
25 thereafter to the governing bodies of its constituent units ~~the~~
26 ~~department of commerce,~~ and the **STATE TRANSPORTATION** department ~~of~~
27 ~~state highways and transportation~~ for approval. The state shall

1 provide 50% of the operating budget of ~~the~~ **ANY** authority **CREATED**
2 **BEFORE JANUARY 1, 2016, to** ~~WHICH SHALL~~ be included in the **STATE**
3 **TRANSPORTATION** department ~~of state highways and transportation~~
4 budget which shall be subject to legislative approval. Fifty
5 percent of the operating budget of an authority in which not more
6 than 1 county and not more than 1 city participate shall be funded
7 equally by the participating county and city.

8 (2) A city or county creating or participating in an authority
9 may appropriate for the use of the authority, and include in its
10 levy for general fund purposes, an amount considered proper.
11 However, the total amount permitted by law to be levied by a city
12 or county for general fund purposes shall not be considered
13 increased by this section.

14 (3) As used in this section, "operating budget" means solely
15 operation and maintenance expenses of an authority not included in
16 the cost of a specific project, and interest on notes, but excludes
17 amounts for debt service on bonds and amounts for acquisition,
18 construction, enlargement, improvement, or extension of port
19 facilities.

20 Sec. 25. If at the end of a fiscal year a surplus of
21 unencumbered funds remains after providing for the operating
22 expenses of an authority, ~~the authority may pay that surplus into~~
23 ~~the general funds of the state and of its constituent units in the~~
24 ~~same proportion which the appropriations made by each to the~~
25 ~~authority bear to each other.~~ **FUNDS SHALL NOT LAPSE BACK TO THIS**
26 **STATE OR ITS CONSTITUENT UNITS BUT SHALL BE CARRIED FORWARD FOR THE**
27 **NEXT FISCAL YEAR OF THE AUTHORITY.**

1 Sec. 26. For the purpose of making surveys, soundings,
2 drillings, examinations, and investigations as it considers
3 necessary or convenient for the purposes of this act, an authority
4 and its authorized agents and employees may enter upon the lands,
5 waters, and premises in the authority, **SUBJECT TO PERMISSION OF THE**
6 **PROPERTY OWNER**, and that entry shall not be considered a trespass;
7 nor shall an entry for these purposes be considered an entry under
8 any condemnation proceedings which may be then pending. The
9 authority shall make reimbursement for actual damages resulting to
10 the lands, waters, or premises as a result of these activities.

11 Enacting section 1. Section 30 of the Hertel-Law-T.
12 Stopczynski port authority act, 1978 PA 639, MCL 120.130, is
13 repealed.