

5878--A

2011-2012 Regular Sessions

I N   S E N A T E

September 2, 2011

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Introduced by Sens. LANZA, FUSCHILLO -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- recommitted to the Committee on Corporations, Authorities and Commissions in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend chapter 154 of the laws of 1921, providing for the establishment of the Port of New York Authority, in relation to enacting the "Port Authority of New York and New Jersey Transparency and Accountability Act"

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Short title. This act shall be known and may be cited as  
2     the "Port Authority of New York and New Jersey Transparency and Account-  
3     ability Act".  
4     S 2. Subdivisions 2 and 3 of article XV-A of section 1 of chapter 154  
5     of the laws of 1921, providing for the establishment of the Port of New  
6     York Authority, as added by chapter 275 of the laws of 1992, are amended  
7     to read as follows:  
8     2. As used in this act:  
9     [a.] "Board" means the board of commissioners of the Port Authority of  
10    New York and New Jersey.  
11    [b.] "COMMITTEE" OR "COMMITTEES" MEANS THE AUDIT COMMITTEE, THE GOVER-  
12    NANCE COMMITTEE, AND THE FINANCE COMMITTEE REQUIRED TO BE ESTABLISHED BY  
13    THE BOARD IN ACCORDANCE WITH SUBDIVISIONS 2, 3 AND 4 OF ARTICLE XV-B OF  
14    THIS SECTION.  
15    "Meeting" means any gathering, whether corporeal or by means of commu-  
16    nication equipment, which is attended by, or open to, the board, held  
17    with the intent, on the part of the board members present, to discuss or  
18    act as a unit upon the specific public business of the authority. "Meet-  
19    ing" does not mean a gathering (1) attended by less than an effective

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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majority of the board, or (2) attended by or open to all the members of three or more similar public bodies at a convention or similar gathering.

[c.] "Public business" mean matters which relate in any way, directly or indirectly, to the performance of the functions of the port authority of New York and New Jersey or the conduct of its business.

3. The board shall adopt and promulgate appropriate rules and regulations concerning the right of the public to be present at meetings of the authority. The board may incorporate in its rules and regulations conditions under which it may exclude the public from a meeting or a portion thereof.

Any rules or regulations adopted hereunder shall become a part of the minutes of the port authority of New York and New Jersey and shall be subject to the approval of the governor of New Jersey and the governor of New York.

THE BOARD SHALL MAKE OR CAUSE TO BE MADE ALL REASONABLE EFFORTS TO ENSURE THAT MEETINGS ARE HELD IN FACILITIES THAT PERMIT BARRIER-FREE PHYSICAL ACCESS TO THE PHYSICALLY HANDICAPPED. IF AND WHEN THE BOARD USES VIDEO CONFERENCING OR SIMILAR TECHNOLOGY TO CONDUCT ITS MEETING, IT SHALL PROVIDE AN OPPORTUNITY FOR THE PUBLIC TO ATTEND, LISTEN, AND OBSERVE AT ANY SITE AT WHICH A MEMBER PARTICIPATES.

S 3. Section 1 of chapter 154 of the laws of 1921, providing for the establishment of the Port of New York Authority, is amended by adding five new articles XV-B, XV-C, XV-D, XV-E and XV-F to read as follows:

#### ARTICLE XV-B

##### 1. THE BOARD SHALL:

A. EXECUTE DIRECT OVERSIGHT OF THE AUTHORITY'S CHIEF EXECUTIVE AND OTHER SENIOR MANAGEMENT IN THE EFFECTIVE AND ETHICAL MANAGEMENT OF THE AUTHORITY;

B. UNDERSTAND, REVIEW, AND MONITOR THE IMPLEMENTATION OF FUNDAMENTAL FINANCIAL AND MANAGEMENT CONTROLS AND OPERATIONAL DECISIONS OF THE AUTHORITY;

C. ESTABLISH POLICIES REGARDING THE PAYMENT OF SALARY AND OVERTIME, REIMBURSEMENTS, AND OTHER COMPENSATION TO, AND ESTABLISH RULES FOR THE TIME AND ATTENDANCE OF, ALL OFFICERS AND EMPLOYEES OF THE AUTHORITY;

D. REQUIRE EACH BOARD MEMBER, AT THE TIME THAT THE BOARD MEMBER TAKES AND SUBSCRIBES THE OATH OF OFFICE, OR WITHIN 60 DAYS AFTER THE EFFECTIVE DATE OF THIS ARTICLE IF THE MEMBER HAS ALREADY TAKEN AND SUBSCRIBED THE OATH OF OFFICE, TO EXECUTE A STATEMENT, IN SUCH FORM AS THE ATTORNEYS GENERAL OF NEW YORK AND NEW JERSEY SHALL JOINTLY PRESCRIBE, IN WHICH THE BOARD MEMBER DECLARES THAT THE MEMBER UNDERSTANDS THE MEMBER'S INDEPENDENCE AND FIDUCIARY DUTIES, INCLUDING THE MEMBER'S DUTY OF LOYALTY AND CARE TO THE AUTHORITY AND COMMITMENT TO THE AUTHORITY'S MISSION;

E. REQUIRE THAT A NEEDS ASSESSMENT BE CONDUCTED BY AN INDEPENDENT ENTITY PRIOR TO ANY PROPOSED INCREASE IN FEES, TOLLS, CHARGES, OR FARES; AND

F. REQUIRE AN EFFICIENCY STUDY BE CONDUCTED BY AN EFFICIENCY EXPERT ON AN ANNUAL BASIS TO IDENTIFY ANY WASTE OR ABUSE INVOLVING THE AUTHORITY.

2. THE BOARD SHALL ESTABLISH AN AUDIT COMMITTEE TO BE COMPRISED OF NOT LESS THAN THREE BOARD MEMBERS, WHO SHALL CONSTITUTE A MAJORITY ON THE COMMITTEE, AND WHO SHALL POSSESS THE NECESSARY SKILLS TO UNDERTAKE THE DUTIES AND FUNCTIONS OF THE AUDIT COMMITTEE. THE COMMITTEE SHALL RECOMMEND TO THE BOARD THE HIRING OF AN INDEPENDENT FIRM OF CERTIFIED PUBLIC ACCOUNTANTS TO AUDIT THE AUTHORITY, ESTABLISH THE COMPENSATION TO BE PAID TO THE ACCOUNTING FIRM, AND PROVIDE DIRECT OVERSIGHT OF THE ANNUAL INDEPENDENT FINANCIAL AUDIT PERFORMED BY THE ACCOUNTING FIRM HIRED FOR

1 SUCH AUDITING PURPOSES. MEMBERS OF THE AUDIT COMMITTEE SHALL BE FAMILIAR  
2 WITH CORPORATE FINANCIAL AND ACCOUNTING PRACTICES AND SHALL BE OR BECOME  
3 FINANCIALLY LITERATE ABOUT APPLICABLE FINANCIAL LAWS, RULES, REGU-  
4 LATIONS, AND STANDARD INDUSTRY PRACTICES.

5 3. THE BOARD SHALL ESTABLISH A GOVERNANCE COMMITTEE TO BE COMPRISED OF  
6 NOT LESS THAN THREE BOARD MEMBERS, WHO SHALL CONSTITUTE A MAJORITY ON  
7 THE COMMITTEE, AND WHO SHALL POSSESS THE NECESSARY SKILLS TO UNDERTAKE  
8 THE DUTIES AND FUNCTIONS OF THE GOVERNANCE COMMITTEE. IT SHALL BE THE  
9 RESPONSIBILITY OF THE MEMBERS OF THE GOVERNANCE COMMITTEE TO KEEP THE  
10 BOARD INFORMED OF CURRENT BEST GOVERNANCE PRACTICES; TO REVIEW CORPORATE  
11 GOVERNANCE TRENDS; TO UPDATE THE AUTHORITY'S CORPORATE GOVERNANCE PRIN-  
12 CIPLES; TO ADVISE APPOINTING AUTHORITIES ON THE SKILLS AND EXPERIENCE  
13 REQUIRED OF POTENTIAL BOARD MEMBERS; TO EXAMINE ETHICAL AND CONFLICT OF  
14 INTEREST ISSUES; TO PERFORM BOARD SELF-EVALUATIONS; TO INVESTIGATE TERM  
15 LIMITS, REAPPOINTMENTS AND BOARD RESPONSIBILITIES; TO DEVELOP BY-LAWS  
16 WHICH INCLUDE RULES AND PROCEDURES FOR CONDUCT OF BOARD BUSINESS; AND TO  
17 MAKE RECOMMENDATIONS FOR NEW COMMISSIONERS.

18 4. THE BOARD SHALL ESTABLISH A FINANCE COMMITTEE TO BE COMPRISED OF  
19 NOT LESS THAN THREE BOARD MEMBERS, WHO SHALL CONSTITUTE A MAJORITY ON  
20 THE COMMITTEE, AND WHO SHALL POSSESS THE NECESSARY SKILLS TO UNDERTAKE  
21 THE DUTIES AND FUNCTIONS OF THE COMMITTEE. IT SHALL BE THE RESPONSIBIL-  
22 ITY OF THE MEMBERS OF THE FINANCE COMMITTEE TO OVERSEE AND APPROVE THE  
23 ISSUANCE OF DEBT THAT THE AUTHORITY OR SUBSIDIARY COMMISSIONS ISSUE.

#### 24 ARTICLE XV-C

25 THE AUTHORITY SHALL SUBMIT TO THE GOVERNORS OF NEW YORK AND NEW  
26 JERSEY, THE TEMPORARY PRESIDENT AND MINORITY LEADER OF THE SENATE AND  
27 THE SPEAKER AND MINORITY LEADER OF THE ASSEMBLY OF THE STATE OF NEW  
28 YORK, THE PRESIDENT AND MINORITY LEADER OF THE SENATE AND THE SPEAKER  
29 AND MINORITY LEADER OF THE GENERAL ASSEMBLY OF THE STATE OF NEW JERSEY,  
30 THE NEW YORK STATE COMPTROLLER, AND THE STATE TREASURER OF NEW JERSEY  
31 WITHIN 90 DAYS AFTER THE END OF THE AUTHORITY'S FISCAL YEAR, A COMPLETE  
32 AND DETAILED REPORT OR REPORTS SETTING FORTH:

33 1. THE AUTHORITY'S OPERATIONS AND ACCOMPLISHMENTS;

34 2. FINANCIAL REPORTS CERTIFIED BY THE CHAIR AND VICE-CHAIR OF THE  
35 BOARD, AND THE EXECUTIVE DIRECTOR, DEPUTY EXECUTIVE DIRECTOR AND CHIEF  
36 FINANCIAL OFFICER OF THE AUTHORITY, INCLUDING (A) AUDITED FINANCIALS IN  
37 ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES (GAAP) AND THE  
38 ACCOUNTING STANDARDS ISSUED BY THE GOVERNMENTAL ACCOUNTING STANDARDS  
39 BOARD (GASB), (B) GRANT AND SUBSIDY PROGRAMS, (C) OPERATING AND FINAN-  
40 CIAL RISKS, (D) CURRENT RATINGS AND NOTICE OF CHANGES, AND (E) LONG-TERM  
41 LIABILITIES, INCLUDING LEASES AND EMPLOYEE BENEFIT PLANS;

42 3. THE AUTHORITY'S MISSION STATEMENT;

43 4. A SCHEDULE OF THE AUTHORITY'S BONDS AND NOTES OUTSTANDING AT THE  
44 END OF THE AUTHORITY'S FISCAL YEAR, TOGETHER WITH A STATEMENT OF THE  
45 AMOUNTS REDEEMED AND INCURRED DURING SUCH FISCAL YEAR AS PART OF A SCHE-  
46 DULE OF DEBT ISSUANCE THAT INCLUDES THE DATE OF ISSUANCE, TERM, AMOUNT,  
47 INTEREST RATE AND MEANS OF REPAYMENT. ADDITIONALLY, THE DEBT SCHEDULE  
48 SHALL ALSO INCLUDE ALL REFINANCINGS, CALLS, REFUNDINGS, DEFEASEMENTS AND  
49 INTEREST RATE EXCHANGES OR OTHER SUCH AGREEMENTS, AND FOR ANY DEBT  
50 ISSUED DURING THE REPORTING YEAR, THE SCHEDULE SHALL ALSO INCLUDE A  
51 DETAILED LIST OF COSTS OF ISSUANCE FOR SUCH DEBT;

52 5. BIOGRAPHICAL INFORMATION AND TITLE OF COMMISSIONERS AND SENIOR  
53 MANAGEMENT, INCLUDING COMPENSATION AND BENEFITS PAID TO COMMISSIONERS  
54 AND TO SENIOR STAFF IN ANY AMOUNT;

55 6. THE PROJECTS UNDERTAKEN BY THE AUTHORITY DURING THE PAST YEAR;

56 7. THE AUTHORITY'S CODE OF ETHICS;

1 8. AN ASSESSMENT OF THE EFFECTIVENESS OF THE AUTHORITY'S INTERNAL  
2 CONTROL STRUCTURE AND PROCEDURES;

3 9. A DESCRIPTION OF THE AUTHORITY AND ITS BOARD STRUCTURE, INCLUDING  
4 (A) NAMES OF COMMITTEES AND COMMITTEE MEMBERS, (B) LISTS OF BOARD MEET-  
5 INGS AND ATTENDANCE, (C) DESCRIPTIONS OF MAJOR AUTHORITY UNITS, AND  
6 SUBSIDIARIES, AND (D) NUMBER OF EMPLOYEES;

7 10. THE AUTHORITY'S CHARTER AND BY-LAWS;

8 11. A LISTING OF MATERIAL CHANGES IN OPERATIONS AND PROGRAMS;

9 12. AT A MINIMUM A FOUR-YEAR FINANCIAL PLAN, INCLUDING (A) A CURRENT  
10 AND PROJECTED CAPITAL BUDGET, AND (B) AN OPERATING BUDGET REPORT,  
11 INCLUDING AN ACTUAL VERSUS ESTIMATED BUDGET, WITH AN ANALYSIS AND MEAS-  
12 UREMENT OF FINANCIAL AND OPERATING PERFORMANCE;

13 13. THE AUTHORITY'S BOARD PERFORMANCE EVALUATIONS; AND

14 14. A DESCRIPTION OF ANY PENDING LITIGATION IN WHICH THE AUTHORITY IS  
15 INVOLVED AS A PARTY AND RELATED EXPENSES THERETO.

16 THE AUTHORITY SHALL MAKE ACCESSIBLE TO THE PUBLIC, VIA ITS OFFICIAL OR  
17 SHARED INTERNET WEB SITE, DOCUMENTATION PERTAINING TO ITS MISSION,  
18 CURRENT ACTIVITIES, MOST RECENT ANNUAL FINANCIAL REPORTS, CURRENT YEAR  
19 BUDGET AND ITS MOST RECENT INDEPENDENT AUDIT REPORT.

20 ARTICLE XV-D

21 1. A. NOT LESS THAN 30 DAYS PRIOR TO ADOPTION BY THE AUTHORITY OF ANY  
22 INCREASE IN ANY FEE, TOLL, CHARGE, OR FARE FOR THE USE OF THE TRANSPOR-  
23 TATION FACILITIES OF THE AUTHORITY, OR NOT LESS THAN 15 DAYS PRIOR TO  
24 ADOPTION BY THE AUTHORITY OF AN AMENDMENT TO THE PROPOSED FEE, TOLL,  
25 CHARGE, OR FARE INCREASE, THE BOARD SHALL CONDUCT AT LEAST 10 PUBLIC  
26 HEARINGS.

27 B. NOT LESS THAN ONE PUBLIC HEARING REQUIRED PURSUANT TO PARAGRAPH A  
28 OF THIS SUBDIVISION SHALL BE CONDUCTED IN EACH COUNTY IN NEW YORK AND  
29 NEW JERSEY DIRECTLY AFFECTED BY THE PROPOSED FEE, TOLL, CHARGE, OR FARE  
30 INCREASE, AS DETERMINED BY THE BOARD IN CONSULTATION WITH LOCAL AND  
31 STATE OFFICIALS.

32 2. EACH PUBLIC HEARING SHALL BE ATTENDED BY ALL OF THE COMMISSIONERS  
33 OF THE AUTHORITY THEN IN OFFICE AT THE TIME OF THE HEARING AND NO MORE  
34 THAN ONE PUBLIC HEARING SHALL BE HELD IN A SINGLE DAY.

35 3. AT LEAST ONE-HALF OF THE PUBLIC HEARINGS SHALL BE SCHEDULED TO  
36 BEGIN AFTER 6LABOR P.M., EASTERN STANDARD TIME, ON A WEEKDAY.

37 ARTICLE XV-E

38 1. AT EACH MEETING OF THE BOARD AND AT EACH MEETING OF EACH COMMITTEE,  
39 THE PUBLIC SHALL BE ALLOTTED A PERIOD OF TIME, NOT LESS THAN 30 MINUTES,  
40 TO SPEAK ON ANY TOPIC ON THE AGENDA. THE PUBLIC SPEAKING PERIOD SHALL  
41 TAKE PLACE PRIOR TO ANY BOARD OR COMMITTEE ACTION.

42 2. THE AUTHORITY SHALL MAKE AVAILABLE TO THE PUBLIC MEETING AGENDAS  
43 AND PUBLIC DOCUMENTS PROVIDED TO THE BOARD AT LEAST 5 BUSINESS DAYS  
44 BEFORE EACH MEETING OF THE BOARD AND EACH MEETING OF EACH COMMITTEE.  
45 PUBLIC NOTICE OF THE TIME AND PLACE OF A MEETING SHALL BE PROVIDED TO  
46 APPROPRIATE MEDIA OUTLETS, SHALL BE CONSPICUOUSLY POSTED IN ONE OR MORE  
47 DESIGNATED AREAS AT LEAST 72 HOURS BEFORE SUCH MEETING, AND SHALL BE  
48 CONSPICUOUSLY POSTED VIA THE AUTHORITY'S OFFICIAL INTERNET WEBSITE AT  
49 LEAST 5 BUSINESS DAYS BEFORE THE MEETING.

50 THE AUTHORITY SHALL MAKE AVAILABLE TO THE PUBLIC SUCH DOCUMENTS IN THE  
51 FOLLOWING MANNER: (A) THE AGENDA AND PUBLIC DOCUMENTS PERTAINING TO A  
52 BOARD OR COMMITTEE MEETING SHALL BE AVAILABLE FOR PUBLIC INSPECTION AT  
53 AN OFFICE OF THE AUTHORITY; AND (B) THE AGENDA AND PUBLIC DOCUMENTS  
54 PERTAINING TO A BOARD OR COMMITTEE MEETING SHALL BE POSTED ON THE  
55 AUTHORITY'S OFFICIAL INTERNET WEBSITE. IN ADDITION, THE AUTHORITY SHALL  
56 SEND VIA ELECTRONIC MAIL, THE AGENDA AND PUBLIC DOCUMENTS PERTAINING TO

1 A BOARD OR COMMITTEE MEETING TO EACH MEMBER OF THE NEW YORK LEGISLATURE  
2 AND THE NEW JERSEY LEGISLATURE.

3 3. MINUTES SHALL BE TAKEN AT ALL OPEN MEETINGS OF THE AUTHORITY. THE  
4 MINUTES SHALL CONSIST OF A RECORD OR SUMMARY OF ALL MOTIONS, PROPOSALS,  
5 RESOLUTIONS, AND ANY OTHER MATTER FORMALLY VOTED UPON AND THE VOTE THERE-  
6 EON. MINUTES SHALL BE TAKEN AT EXECUTIVE SESSIONS OF ANY ACTION THAT IS  
7 TAKEN BY FORMAL VOTE AND SHALL CONSIST OF A RECORD OR SUMMARY OF THE  
8 FINAL DETERMINATION OF SUCH ACTION, AND THE VOTE THEREON; PROVIDED,  
9 HOWEVER, THAT SUCH SUMMARY NEED NOT INCLUDE ANY MATTER WHICH IS NOT  
10 REQUIRED TO BE MADE PUBLIC BY EITHER NEW YORK'S FREEDOM OF INFORMATION  
11 LAW OR NEW JERSEY'S OPEN PUBLIC RECORDS ACT, P.L. 1963, C. 73 (C.47:1A-1  
12 ET SEQ.). MINUTES OF EACH MEETING SHALL BE AVAILABLE TO THE PUBLIC WITH-  
13 IN 2 WEEKS FROM THE DATE OF SUCH MEETING.

14 ARTICLE XV-F

15 NOT MORE THAN 90 DAYS PRIOR TO THE IMPLEMENTATION OF A TOLL INCREASE  
16 ADOPTED BY THE AUTHORITY PRIOR TO THE EFFECTIVE DATE OF THIS ARTICLE,  
17 THE BOARD SHALL CONDUCT AT LEAST 10 PUBLIC HEARINGS CONCERNING THE  
18 ADOPTED TOLL INCREASE IN THE MANNER PRESCRIBED PURSUANT TO ARTICLE XV-D  
19 OF THIS SECTION.

20 S 4. This act shall take effect upon the enactment into law by the  
21 state of New Jersey of legislation having an identical effect with this  
22 act, but if the state of New Jersey shall have already enacted such  
23 legislation, this act shall take effect immediately; provided that the  
24 board of commissioners of the port authority of New York and New Jersey  
25 shall notify the legislative bill drafting commission upon the occur-  
26 rence of the enactment of the legislation provided for in sections two  
27 and three of this act in order that the commission may maintain an accu-  
28 rate and timely effective data base of the official text of the laws of  
29 the state of New York in furtherance of effectuating the provisions of  
30 section 44 of the legislative law and section 70-b of the public offi-  
31 cers law.