

STATE OF NEW YORK

9838--A

IN ASSEMBLY

February 20, 2020

Introduced by M. of A. PAULIN, OTIS -- read once and referred to the Committee on Corporations, Authorities and Commissions -- reported and referred to the Committee on Ways and Means -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend chapter 154 of the laws of 1921 relating to the port authority of New York and New Jersey, in relation to port authority organization, appearance and notice

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivisions 1, 2, 5 and 6 of article 4 of section 1 of chapter 154 of the laws of 1921 relating to the port authority of New York and New Jersey, as amended by chapter 559 of the laws of 2015, are amended to read as follows:

1. Commissioners. a. The port authority shall consist of twelve voting commissioners and four non-voting commissioners as described in paragraph b of this subdivision. Of the twelve voting commissioners^[7]there shall be six resident voters from the state of New York, at least four of whom shall be resident voters of the city of New York, and six resident voters from the state of New Jersey, at least four of whom shall be resident voters within the New Jersey portion of the district, the New York members to be chosen by the state of New York and the New Jersey members by the state of New Jersey in the manner and for the terms fixed and determined from time to time by the legislature of each state respectively, except as herein provided. The New York members shall be appointed by the governor of New York with the advice and consent of the New York state senate. The New Jersey members shall be appointed by the governor of New Jersey with the advice and consent of the New Jersey state senate. Each commissioner may be removed or suspended from office as provided by the law of the state from which he shall be appointed. Any commissioner appointed to a term commencing on or after January 1, 2021 shall have experience in one or more of the following areas: transportation, public administration, business management, finance, accounting, law, engineering, land use, urban and regional planning, management of large capital projects, labor relations, or experience in some other area of activity central to the mission of the port authority. One of the six voting commissioners

EXPLANATION--Matter in italics (underscored) is new; matter in brackets ^[7] is old law to be omitted.

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1 chosen by the state of New York shall be appointed on the written recom-
2 mendation of the mayor of the city of New York. The voting commissioners
3 shall be appointed for a term of six years and shall serve no more than
4 two terms. The terms of the voting commissioners shall be staggered so
5 that three of the six voting commissioners appointed by the state of New
6 York will have their terms expire in alternating three year shifts and
7 three of the six voting commissioners appointed by the state of New
8 Jersey will have their terms expire in alternating three years shifts.

9 b. There shall be four non-voting commissioners of the port authority,
10 as established in paragraph a of this subdivision. The first non-voting
11 commissioner shall be a regular mass transit user of the state of New
12 York based facilities of the authority and be recommended to the gover-
13 nor of the state of New York by a rider advocacy group. The second non-
14 voting commissioner shall be a regular user of the state of New Jersey
15 based facilities of the authority and shall be recommended to the gover-
16 nor of the state of New Jersey by a rider advocacy group. The third
17 non-voting commissioner shall be recommended to the governor of the
18 state of New York by the labor organization representing the majority of
19 authority employees working in the state of New York. The fourth non-
20 voting commissioner shall be recommended to the governor of the state of
21 New Jersey by the labor organization representing the majority of
22 authority employees working in the state of New Jersey. The four non-
23 voting commissioners of the port authority shall be appointed for a term
24 of six years and shall serve no more than two terms.

25 2. Officers. a. The officers of the port authority shall be [~~a chair-~~
26 ~~person, a vice chairperson~~] two co-chairpersons, a chief executive offi-
27 cer, a general counsel, a chief financial officer, a chief ethics and
28 compliance officer, an inspector general, a treasurer, a comptroller,
29 and a secretary. Beginning upon the next hiring of a chief executive
30 officer [~~but no later than a year from the effective date of the chapter~~
31 ~~of the laws of 2015 that amended this article~~], the positions of [~~chair-~~
32 ~~person and vice chairperson~~] co-chairpersons shall [~~be rotated for a~~
33 ~~term of two years among commissioners appointed by New York and New~~
34 ~~Jersey, with a chairperson elected first from among those commissioners~~
35 ~~appointed by the governor of New York and a vice chairperson elected~~
36 ~~first from among those commissioners appointed by the governor of New~~
37 ~~Jersey, after which the next chairperson shall be elected from among~~
38 ~~those appointed by the governor of New Jersey and the next vice chair-~~
39 ~~person shall be elected from among those appointed by the governor of~~
40 ~~New York and thereafter the positions of chairperson and vice chair-~~
41 ~~person shall rotate every two years in the same order as established~~
42 ~~herein provided that the failure of the board of commissioners to elect~~
43 ~~a new chairperson and vice chairperson shall not prevent the rotation of~~
44 ~~the positions of chairperson and vice chairperson to the next succeeding~~
45 ~~state~~] commence with one co-chairperson to be elected by the board of
46 commissioners from among such commissioners upon the recommendation of
47 the governor of the state of New York and one co-chairperson to be
48 elected by the board of commissioners from among such commissioners upon
49 the recommendation of the governor of the state of New Jersey.

50 b. No commissioner, including [~~the chairperson~~] either co-chairperson,
51 shall serve as the port authority's chief executive officer, general
52 counsel, chief financial officer, chief ethics and compliance officer,
53 inspector general, or comptroller, or hold any other equivalent position
54 while serving as a commissioner.

55 5. Whistleblower access and assistance program. a. The chief ethics
56 and compliance officer shall recommend to the board of commissioners a

1 whistleblower access and assistance program to be administered by the
2 inspector general which shall include, but not be limited to:

3 (1) establishing an email address and toll-free telephone [~~and~~],
4 facsimile, and text messaging lines available to employees;

5 (2) offering advice regarding employee rights under applicable state
6 and federal laws and advice and options available to all persons; and

7 (3) offering an opportunity for employees to identify concerns regard-
8 ing any issue at the port authority. Any communication between an
9 employee and the inspector general pursuant to this section shall be
10 held strictly confidential by the inspector general, unless the employee
11 specifically waives in writing the right to confidentiality, except that
12 such confidentiality shall not exempt the inspector general from
13 disclosing such information, where appropriate, to the board of commis-
14 sioners and/or any law enforcement authority.

15 b. The port authority shall not fire, discharge, demote, suspend,
16 threaten, harass, or discriminate against an employee because of the
17 employee's role as a whistleblower, insofar as the actions taken by the
18 employee are legal.

19 c. As used in this subdivision:

20 (1) "Employees" means those persons employed at the port authority,
21 including but not limited to: full-time and part-time employees, those
22 employees on probation, and temporary employees.

23 (2) "Whistleblower" means any employee of the port authority who
24 discloses information concerning acts of wrongdoing, misconduct, malfea-
25 sance, or other inappropriate behavior by an employee or board member of
26 the port authority, including, but not limited to, concerning the port
27 authority's investments, travel, acquisition of real or personal proper-
28 ty, the disposition of real or personal property, or the procurement of
29 goods and services.

30 6. Inspector general. a. The inspector general shall be responsible
31 for receiving and investigating, where appropriate, all complaints
32 regarding fraud, waste, and abuse by commissioners, officers, and
33 employees of the port authority or third-parties doing business with the
34 port authority. The inspector general shall also be responsible for
35 conducting investigations upon the inspector general's own initiative,
36 as the inspector general shall deem appropriate.

37 b. The inspector general shall inform the board of commissioners and
38 the chief executive officer of allegations received by the inspector
39 general and the progress of investigations related thereto, unless
40 special circumstances require confidentiality;

41 c. The inspector general shall determine with respect to allegations
42 received by the inspector general whether disciplinary action or civil
43 prosecution by the port authority is appropriate, and whether the matter
44 should be referred to an appropriate governmental agency for further
45 action;

46 d. The inspector general shall prepare and make available to the
47 public written reports of completed investigations, as appropriate and
48 to the extent permitted by law, subject to redactions to protect a need
49 for confidentiality. The release of all or portions of reports may be
50 deferred to protect the confidentiality of ongoing investigations.

51 e. The inspector general shall have the power to:

52 (1) administer oaths or affirmations and examine witnesses under oath;

53 (2) require the production of any books and papers deemed relevant or
54 material to any investigation, examination or review;

(3) notwithstanding any law to the contrary, examine and copy or remove documents or records of any kind prepared, maintained or held by the port authority and its subsidiaries;

(4) interview any officer or employee of the port authority or its subsidiaries on any matter related to the performance of such officer or employee's official duties. To the extent that ~~[any portion of this paragraph is inconsistent with any current contractual obligations of the port authority, this paragraph shall not be applicable to those obligations until the earliest expiration of those terms under the contract]~~ the terms and conditions of employment of any employee are established by collective negotiations, any interview conducted pursuant to this paragraph must be in accordance with any applicable provisions of the current, or most recent, if expired, collective negotiations agreement covering the terms and conditions of employment of the employee;

(5) monitor the implementation by the port authority of any recommendations made by the inspector general; and

(6) perform any other functions that are necessary or appropriate to fulfill the duties and responsibilities of office.

§ 2. Subdivisions 1 and 3 of article 7-B of section 1 of chapter 154 of the laws of 1921 relating to the port authority of New York and New Jersey, as amended by chapter 559 of the laws of 2015, are amended to read as follows:

1. Needs assessment. The port authority shall require that a needs assessment be 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 rail system. The assessment shall be made publicly available in a conspicuous location on the port authority's website and presented by the independent entity to the board of commissioners at a public meeting to be held at least ninety days prior to any meeting of the board of commissioners to vote to any increase in the tolls for the use of any port authority bridge or tunnel, or fares for the use of the port authority trans-Hudson corporation rail system.

3. Appearance. a. The port authority, at the request of the Assembly or Senate of the New York state legislature or the General Assembly or Senate of the New Jersey state legislature, shall be required to appear before a committee of the requesting state legislative house, upon request by the presiding officer of that state legislative house, to present testimony on any topic or subject requested by the committee or to respond to questions by members of the committee. The Assembly of the New York state legislature, the Senate of the New York state legislature, the General Assembly of the New Jersey state legislature, and the Senate of the New Jersey state legislature shall each be entitled to two such requests per calendar year.

b. Unless otherwise agreed to by the presiding officer of the state legislative house requesting the appearance of the port authority, the port authority shall, at a minimum, be represented by a co-chairperson of the board, chief executive officer, the chief financial officer, and any staff deemed necessary by such co-chairperson of the board, chief executive officer, or the chief financial officer to present testimony or respond to questions at any appearance required pursuant to this section. The presiding officer may request the appearance of any officer or employee of the port authority. For purposes of this section, as applicable to New York state "presiding officer" shall mean the speaker of the Assembly of the New York state legislature or temporary president

1 of the Senate of the New York state legislature. For purposes of this
2 section, as applicable to the state of New Jersey "presiding officer"
3 shall mean the president of the senate or the speaker of the general
4 assembly of the state of New Jersey.

5 4. Subsidiaries of the port authority. a. The port authority shall
6 provide notice to the governor of each state, the majority leader of
7 each house of the legislature of each state, the chair of the finance
8 committee of New York, the chair of the senate budget and appropriations
9 committee of New Jersey, the chair of assembly ways and means committee
10 of New York, and the chair of the budget committee of New Jersey that it
11 will be creating a subsidiary no less than 60 days prior to the forma-
12 tion of the subsidiary.

13 b. The creation of a subsidiary corporation shall be approved by the
14 board of commissioners.

15 c. ~~[On or before the first day of January, two thousand sixteen, and]~~
16 Within 60 days of the effective date of the chapter of the laws of 2020
17 that amended this subdivision, and on or before the first day of January
18 each year annually thereafter, any subsidiary corporation, in cooper-
19 ation with the port authority, shall provide to the governor and legis-
20 lature of each state a report on the subsidiary corporation. Such report
21 shall include for each subsidiary:

22 (1) The complete legal name, address and contact information of the
23 subsidiary;

24 (2) The structure of the organization of the subsidiary, including the
25 names and titles of each of its members, directors and officers, as well
26 as a chart of its organizational structure;

27 (3) The complete by-laws and legal organization papers of the subsid-
28 iary;

29 (4) A complete report of the purpose, operations, mission and projects
30 of the subsidiary; and

31 (5) Any other information the subsidiary corporation deems important
32 to include in such report.

33 d. 60 days prior to the issuance of any debt by the subsidiary corpo-
34 ration, or the port authority on behalf of the subsidiary corporation,
35 the port authority shall provide notice to the governor of each state,
36 the majority leader of each house of the legislature of each state, the
37 chair of the senate finance committee of New York, the chair of the
38 senate budget and appropriations committee of New Jersey, the chair of
39 the assembly ways and means committee of New York, and the chair of the
40 assembly budget committee of New Jersey. For purposes of this section,
41 as applicable to New York state "majority leader" shall mean the speaker
42 of the assembly of the New York state legislature or temporary president
43 of the senate of the New York state legislature. For purposes of this
44 section, as applicable to the state of New Jersey "majority leader"
45 shall mean the president of the senate or the speaker of the general
46 assembly of the state of New Jersey.

47 § 3. Paragraph b of subdivision 1 of article 7-C of section 1 of chap-
48 ter 154 of the laws of 1921 relating to the port authority of New York
49 and New Jersey, as added by chapter 559 of the laws of 2015, is amended
50 to read as follows:

51 b. a financial section including: (1) an independent auditor's report;
52 (2) management's discussion and analysis; (3) financial statements; (4)
53 its financial reports certified by the ~~[chair and vice-chair]~~ co-chairs
54 of the board, chief executive officer, and chief financial officer of
55 the port authority, including (a) audited financials in accordance with
56 generally accepted accounting principles, known as GAAP, and the

1 accounting standards issued by the governmental accounting standards
2 board, known as GASB, (b) grant and subsidy programs, (c) current
3 ratings, if any, of its bonds issued by recognized bond rating agencies
4 and notice of changes in such ratings, and (d) long-term liabilities,
5 including leases and employee benefit plans; (5) a schedule of its bonds
6 and notes outstanding at the end of its fiscal year, together with a
7 statement of the amounts redeemed and incurred during such fiscal year
8 as part of a schedule of debt issuance that includes the date of issu-
9 ance, term, amount, interest rate and means of repayment including all
10 refinancings, calls, refundings, defeasements and interest rate exchange
11 or other such agreements; and (6) at a minimum a four-year financial
12 plan, including (a) a current and projected capital budget, and (b) an
13 operating budget report, including an actual versus estimated budget,
14 with an analysis and measurement of financial and operating performance.

15 § 4. Subdivisions 3 and 4 of article 7-D of section 1 of chapter 154
16 of the laws of 1921 relating to the port authority of New York and New
17 Jersey, as added by chapter 559 of the laws of 2015, are amended and a
18 new subdivision 5 is added to read as follows:

19 3. Capital plan. a. The port authority shall adopt a ten-year capital
20 plan that is developed using a comprehensive planning process and risk-
21 based prioritization that considers asset condition, operational and
22 revenue impact, threat assessment, customer service, regional benefit,
23 and regulatory or statutory requirements. The capital plan shall be
24 dependent upon the availability of sufficient funding and other
25 resources to pursue the capital projects proposed for the ten-year peri-
26 od. Performance progress and revisions to reflect changes in programs,
27 policies and projects and the environment in which the port authority
28 operates shall be reviewed regularly by a committee designated by the
29 board of commissioners, and the capital plan shall be revised period-
30 ically as necessary and appropriate, and shall be reviewed with the
31 board of commissioners annually. The port authority shall publish an
32 annual report on the status of the capital program and such report shall
33 be made publicly available on the port authority's website. Prior to
34 adoption of a capital plan, the port authority shall make such proposed
35 plan available for public review and comments on its public website for
36 at least ~~two~~ four weeks prior to approval, and all comments received
37 are to be distributed to the board of commissioners for review prior to
38 consideration of the capital plan.

39 b. The port authority shall also provide that major capital projects
40 are monitored by independent engineering consultants. The independent
41 consultants shall prepare annual reports to be provided to the board and
42 made available to the public. The annual reports prepared by independent
43 consultants shall include, but not be limited to, a comparison of actual
44 and target performance measures including, but not limited to, costs and
45 construction schedules, and a narrative explanation of any discrepancy
46 thereof. For the purposes of this section, "major capital project" means
47 an undertaking or program for the acquisition, creation, or development
48 of any crossing, transportation facility, or commerce facility or any
49 part thereof, with an estimated total project cost in excess of
50 \$500,000,000.

51 c. No less than 60 days prior to any board adoption of a capital plan
52 as described in paragraph a of this subdivision, or any major revision
53 of the last adopted capital plan, the port authority shall: (1) notify
54 the assembly and senate of the New York state legislature and the gener-
55 al assembly and senate of the New Jersey state legislature of its inten-
56 tion to adopt a capital plan, or any major revision of the last adopted

1 capital plan; (2) submit to the assembly and senate of the New York
2 state legislature and the general assembly and senate of the New Jersey
3 state legislature the proposed capital plan, or any proposal constitut-
4 ing a major revision of the last adopted capital plan, for review by
5 each state legislature; and (3) make the proposed capital plan, includ-
6 ing any proposal constituting a major revision of the last adopted capi-
7 tal plan, publicly available on the port authority website.

8 d. Within 60 days of the notice provided in paragraph c of this subdi-
9 vision, the port authority shall conduct a public hearing about the
10 capital plan or any major revision thereof in New York state and in the
11 state of New Jersey.

12 e. The port authority shall conduct a status update public hearing in
13 New York state and in the state of New Jersey at least once every three
14 years after the adoption of the capital plan by the port authority. Such
15 public hearing shall be known as "capital status update hearing" and at
16 such hearing the port authority shall provide in detail a written
17 description of the status of all capital plan projects and the costs and
18 the expected costs of those projects. At such public hearing, the port
19 authority shall provide a financing plan that identifies the source of
20 funding for each project. The port authority shall provide an analysis
21 that compares actual and target performance measures, and a detailed
22 written explanation of any discrepancy thereof at the public hearing.

23 4. Operating budget. The port authority shall prepare a detailed annu-
24 al operating budget beginning with the fiscal year commencing after the
25 effective date of the chapter of the laws of [2015] 2020 which [added]
26 amended this article. A preliminary annual operating budget shall be
27 made publicly available on the port authority's website in July of every
28 fiscal year and a final annual operating budget shall be made publicly
29 available in February of each fiscal year.

30 5. Port Authority Transportation Advisory Committee. a. There is here-
31 by established a port authority transportation advisory committee. The
32 purpose of the committee shall be to facilitate coordination between and
33 among the transportation agencies and officials in each state that
34 provide service or conduct business within the port district. The
35 committee shall consist of 13 members, to be appointed as follows:

36 (1) one individual appointed jointly by the co-chairs of the Port
37 Authority;

38 (2) the executive director of the New Jersey transit corporation, ex
39 officio, or the executive director's designee;

40 (3) the chair of the metropolitan transportation authority, ex offi-
41 cio, or the chair's designee;

42 (4) the commissioner of the New York city department of transporta-
43 tion, ex officio, or the commissioner's designee;

44 (5) the chairperson of the National Railroad Passenger Corporation
45 Board of Directors, ex officio, or the chairperson's designee;

46 (6) the commissioner of the New Jersey department of transportation,
47 ex officio, or the commissioner's designee;

48 (7) the commissioner of the New York state department of transporta-
49 tion, ex officio, or the commissioner's designee;

50 (8) one individual from the New Jersey executive branch, appointed by
51 the governor of New Jersey;

52 (9) one individual from the New York state executive branch, appointed
53 by the governor of New York;

54 (10) one individual appointed by the president of the New Jersey state
55 senate;

1 (11) one individual appointed by the speaker of the New Jersey state
2 general assembly;

3 (12) one individual appointed by the temporary president of the New
4 York state senate; and

5 (13) one individual appointed by the speaker of the New York state
6 assembly.

7 b. The individual appointed jointly by the co-chairs of the port
8 authority shall serve for a term of three years. The legislative
9 appointments shall serve for a term of two years each. The individuals
10 appointed from the executive branch of New Jersey and from the executive
11 branch of New York shall serve at the pleasure of each respective gover-
12 nor.

13 c. Vacancies in the membership of the committee shall be filled in the
14 same manner as the original appointments are made and a member may be
15 eligible for reappointment. Vacancies occurring other than by expiration
16 of a term shall be filled for the unexpired term.

17 d. The members of the committee shall serve without compensation but
18 shall be reimbursed for reasonable expenses necessarily incurred in the
19 performance of their duties within the limits of funds appropriated or
20 otherwise made available to the committee for its purposes.

21 e. The individual appointed jointly by the co-chairs of the port
22 authority shall serve as the chair of the committee. The committee may
23 appoint a secretary who need not be a member of the committee. The
24 committee shall meet quarterly, at a minimum, to discuss the region's
25 transportation needs and to facilitate coordination between and among
26 the transportation agencies and officials in each state and the port
27 district in furtherance of the region's transportation needs.

28 f. The committee and each meeting of the committee shall serve as a
29 vehicle for each committee member to share information about that
30 member's agency and the agency's upcoming plans and objectives. Prior to
31 the commencement by an agency represented on the committee of any major
32 capital project with an estimated cost in excess of \$50 million, the
33 individual representing that agency shall notify all members of the
34 committee.

35 § 5. Severability clause. If any clause, sentence, paragraph, subdivi-
36 sion, section or part of this act shall be adjudged by any court of
37 competent jurisdiction to be invalid, such judgment shall not affect,
38 impair, or invalidate the remainder thereof, but shall be confined in
39 its operation to the clause, sentence, paragraph, subdivision, section
40 or part thereof directly involved in the controversy in which such judg-
41 ment shall have been rendered. It is hereby declared to be the intent of
42 the legislature that this act would have been enacted even if such
43 invalid provisions had not been included herein.

44 § 6. This act shall take effect upon the enactment into law by the
45 state of New Jersey of legislation having an identical effect with this
46 act, but if the state of New Jersey shall have already enacted such
47 legislation this act shall take effect immediately. The co-chairperson
48 of the port authority as recommended by the governor of the state of New
49 York shall notify the legislative bill drafting commission upon the
50 occurrence of the enactment of the legislation provided for in sections
51 one, two, three and four of this act in order that the commission may
52 maintain an accurate and timely effective data base of the official text
53 of the laws of the state of New York in furtherance of effectuating the
54 provisions of section 44 of the legislative law and section 70-b of the
55 public officers law.