S T A T E O F N E W Y O R K

8677--B

2011-2012 Regular Sessions

I N A S S E M B L Y

October 27, 2011

Introduced by M. of A. CUSICK, TOBACCO -- read once and referred to the Committee on Corporations, Authorities and Commissions -- recommitted to the Committee on Corporations, Authorities and Commissions in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Corporations, Authorities and Commissions in accordance with Assembly Rule 3, sec. 2 -- 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:

Section 1. Short title. This act shall be known and may be cited as the "Port Authority of New York and New Jersey Transparency and Accountability Act".

S 2. Subdivisions 2 and 3 of article XV-A of section 1 of chapter 154 of the laws of 1921, providing for the establishment of the Port of New York Authority, as added by chapter 275 of the laws of 1992, are amended to read as follows:

2. As used in this act:

[a.] "Board" means the board of commissioners of the Port Authority of New York and New Jersey.

[b.] "COMMITTEE" OR "COMMITTEES" MEANS THE AUDIT COMMITTEE, THE GOVERNANCE COMMITTEE, AND THE FINANCE COMMITTEE REQUIRED TO BE ESTABLISHED BY THE BOARD IN ACCORDANCE WITH SUBDIVISIONS 2, 3 AND 4 OF ARTICLE XV-B OF THIS SECTION.

"Meeting" means any gathering, whether corporeal or by means of communication equipment, which is attended by, or open to, the board, held

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

LBD09602-08-2

with the intent, on the part of the board members present, to discuss or act as a unit upon the specific public business of the authority. "Meeting" does not mean a gathering (1) attended by less than an effective 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 SUCH AUDITING PURPOSES. MEMBERS OF THE AUDIT COMMITTEE SHALL BE FAMILIAR WITH CORPORATE FINANCIAL AND ACCOUNTING PRACTICES AND SHALL BE OR BECOME FINANCIALLY LITERATE ABOUT APPLICABLE FINANCIAL LAWS, RULES, REGULATIONS, AND STANDARD INDUSTRY PRACTICES.

3. THE BOARD SHALL ESTABLISH A GOVERNANCE 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 GOVERNANCE COMMITTEE. IT SHALL BE THE RESPONSIBILITY OF THE MEMBERS OF THE GOVERNANCE COMMITTEE TO KEEP THE BOARD INFORMED OF CURRENT BEST GOVERNANCE PRACTICES; TO REVIEW CORPORATE GOVERNANCE TRENDS; TO UPDATE THE AUTHORITY'S CORPORATE GOVERNANCE PRINCIPLES; TO ADVISE APPOINTING AUTHORITIES ON THE SKILLS AND EXPERIENCE REQUIRED OF POTENTIAL BOARD MEMBERS; TO EXAMINE ETHICAL AND CONFLICT OF INTEREST ISSUES; TO PERFORM BOARD SELF-EVALUATIONS; TO INVESTIGATE TERM LIMITS, REAPPOINTMENTS AND BOARD RESPONSIBILITIES; TO DEVELOP BY-LAWS WHICH INCLUDE RULES AND PROCEDURES FOR CONDUCT OF BOARD BUSINESS; AND TO MAKE RECOMMENDATIONS FOR NEW COMMISSIONERS.

4. THE BOARD SHALL ESTABLISH A FINANCE 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 COMMITTEE. IT SHALL BE THE RESPONSIBILITY OF THE MEMBERS OF THE FINANCE COMMITTEE TO OVERSEE AND APPROVE THE ISSUANCE OF DEBT THAT THE AUTHORITY OR SUBSIDIARY COMMISSIONS ISSUE.

ARTICLE XV-C

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

1. THE AUTHORITY'S OPERATIONS AND ACCOMPLISHMENTS;

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

3. THE AUTHORITY'S MISSION STATEMENT;

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

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

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

7. THE AUTHORITY'S CODE OF ETHICS;

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

9. A DESCRIPTION OF THE AUTHORITY AND ITS BOARD STRUCTURE, INCLUDING (A) NAMES OF COMMITTEES AND COMMITTEE MEMBERS, (B) LISTS OF BOARD MEETINGS AND ATTENDANCE, (C) DESCRIPTIONS OF MAJOR AUTHORITY UNITS, AND SUBSIDIARIES, AND (D) NUMBER OF EMPLOYEES;

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

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

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

13. THE AUTHORITY'S BOARD PERFORMANCE EVALUATIONS; AND

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

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

ARTICLE XV-D

1. A. NOT LESS THAN 30 DAYS PRIOR TO ADOPTION BY THE AUTHORITY OF ANY INCREASE IN ANY FEE, TOLL, CHARGE, OR FARE FOR THE USE OF THE TRANSPORTATION FACILITIES OF THE AUTHORITY, OR NOT LESS THAN 15 DAYS PRIOR TO ADOPTION BY THE AUTHORITY OF AN AMENDMENT TO THE PROPOSED FEE, TOLL, CHARGE, OR FARE INCREASE, THE BOARD SHALL CONDUCT AT LEAST 10 PUBLIC HEARINGS.

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

2. EACH PUBLIC HEARING SHALL BE ATTENDED BY AT LEAST TWO-THIRDS OF THE COMMISSIONERS OF THE AUTHORITY THEN IN OFFICE AT THE TIME OF THE HEARING AND NO MORE THAN ONE PUBLIC HEARING SHALL BE HELD IN A SINGLE DAY.

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

ARTICLE XV-E

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

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

THE AUTHORITY SHALL MAKE AVAILABLE TO THE PUBLIC SUCH DOCUMENTS IN THE FOLLOWING MANNER: (A) THE AGENDA AND PUBLIC DOCUMENTS PERTAINING TO A

BOARD OR COMMITTEE MEETING SHALL BE AVAILABLE FOR PUBLIC INSPECTION AT AN OFFICE OF THE AUTHORITY; AND (B) THE AGENDA AND PUBLIC DOCUMENTS PERTAINING TO A BOARD OR COMMITTEE MEETING SHALL BE POSTED ON THE AUTHORITY'S OFFICIAL INTERNET WEBSITE. IN ADDITION, THE AUTHORITY SHALL SEND VIA ELECTRONIC MAIL, THE AGENDA AND PUBLIC DOCUMENTS PERTAINING TO A BOARD OR COMMITTEE MEETING TO EACH MEMBER OF THE NEW YORK LEGISLATURE AND THE NEW JERSEY LEGISLATURE.

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

ARTICLE XV-F

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

S 4. This act shall take effect upon the enactment into law by the state of New Jersey of legislation having an identical effect with this act, but if the state of New Jersey shall have already enacted such legislation, this act shall take effect immediately; provided that the board of commissioners of the port authority of New York and New Jersey shall notify the legislative bill drafting commission upon the occurrence of the enactment of the legislation provided for in sections two and three of this act in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law.