STATE OF NEW YORK

9838--B

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 -- 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, paragraph a of subdivision 6 as amended by chapter 104 of the laws of 2020, 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[~~,~~] **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**

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

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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 chosen by the state of New York shall be appointed on the written recommendation of the mayor of the city of New York. The voting commissioners shall be appointed for a term of six years and shall serve no more than two terms. The terms of the voting commissioners shall be staggered so that three of the six voting commissioners appointed by the state of New York will have their terms expire in alternating three year shifts and three of the six voting commissioners appointed by the state of New Jersey will have their terms expire in alternating three years shifts.

b. There shall be four non-voting commissioners of the port authority, as established in paragraph a of this subdivision. The first non-voting commissioner shall be a regular mass transit user of the state of New York based facilities of the authority and be recommended to the governor of the state of New York by a rider advocacy group. The second non-voting commissioner shall be a regular user of the state of New Jersey based facilities of the authority and shall be recommended to the governor of the state of New Jersey by a rider advocacy group. The third non-voting commissioner shall be recommended to the governor of the state of New York by the labor organization representing the majority of authority employees working in the state of New York. The fourth non-voting commissioner shall be recommended to the governor of the state of New Jersey by the labor organization representing the majority of authority employees working in the state of New Jersey. The four non-voting commissioners of the port authority shall be appointed for a term of six years and shall serve no more than two terms.

2. Officers. a. The officers of the port authority shall be [~~a chairperson, a vice chairperson~~] two co-chairpersons, a chief executive officer, a general counsel, a chief financial officer, a chief ethics and compliance officer, an inspector general, a treasurer, a comptroller, and a secretary. Beginning upon the next hiring of a chief executive officer [~~but no later than a year from the effective date of the chapter of the laws of 2015 that amended this article~~], the positions of [~~chairperson and vice chairperson~~] co-chairpersons shall [~~be rotated for a term of two years among commissioners appointed by New York and New Jersey, with a chairperson elected first from among those commissioners appointed by the governor of New York and a vice chairperson elected first from among those commissioners appointed by the governor of New Jersey, after which the next chairperson shall be elected from among those appointed by the governor of New Jersey and the next vice chairperson shall be elected from among those appointed by the governor of New York and thereafter the positions of chairperson and vice chairperson shall rotate every two years in the same order as established herein provided that the failure of the board of commissioners to elect a new chairperson and vice chairperson shall not prevent the rotation of the positions of chairperson and vice chairperson to the next succeeding state~~] commence with one co-chairperson to be elected by the board of commissioners from among such commissioners upon the recommendation of the governor of the state of New York and one co-chairperson to be elected by the board of commissioners from among such commissioners upon the recommendation of the governor of the state of New Jersey. The co-chairpersons shall jointly determine items to be included on board agendas by the affirmative approval of each co-chairperson, jointly

preside over meetings of the board, and jointly fulfill all other duties of a board chairperson.

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

5. Whistleblower access and assistance program. a. The chief ethics and compliance officer shall recommend to the board of commissioners a whistleblower access and assistance program to be administered by the inspector general which shall include, but not be limited to:

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

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

(3) offering an opportunity for employees to identify concerns regarding any issue at the port authority. Any communication between an employee and the inspector general pursuant to this section shall be held strictly confidential by the inspector general, unless the employee specifically waives in writing the right to confidentiality, except that such confidentiality shall not exempt the inspector general from disclosing such information, where appropriate, to the board of commissioners and/or any law enforcement authority.

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

c. As used in this subdivision:

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

(2) "Whistleblower" means any employee of the port authority who discloses information concerning acts of wrongdoing, misconduct, malfeasance, or other inappropriate behavior by an employee or board member of the port authority, **including, but not limited to,** concerning the port authority's investments, travel, acquisition of real or personal property, the disposition of real or personal property, or the procurement of goods and services.

6. Inspector general. a. The inspector general shall be responsible for receiving and investigating, where appropriate, all complaints regarding fraud, waste, and abuse by commissioners, officers, and employees of the port authority or third-parties doing business with the port authority. The inspector general shall also receive and investigate complaints from any source, or upon his or her own initiative, concerning allegations of corruption, fraud, use of excessive force, criminal activity, conflicts of interest or abuse by any police officer under the jurisdiction of the Port Authority. The inspector general shall also be responsible for conducting investigations upon the inspector general's own initiative, as the inspector general shall deem appropriate.

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

c. The inspector general shall determine with respect to allegations received by the inspector general whether disciplinary action or civil

prosecution by the port authority is appropriate, and whether the matter should be referred to an appropriate governmental agency for further action;

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

e. The inspector general shall have the power to:

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

(2) require the production of any books and papers deemed relevant or 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 added 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 of the Senate of the New York state legislature. For purposes of this section, as applicable to the state of New Jersey "presiding officer" shall mean the president of the senate or the speaker of the general assembly of the state of New Jersey.

4. Subsidiaries of the port authority. a. The port authority shall provide notice to the governor of each state, the majority leader of each house of the legislature of each state, the chair of the finance committee of New York, the chair of the senate budget and appropriations committee of New Jersey, the chair of assembly ways and means committee of New York, and the chair of the budget committee of New Jersey that it will be creating a subsidiary no less than 60 days prior to the formation of the subsidiary.

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

c. [~~On or before the first day of January, two thousand sixteen, and~~] Within 60 days of the effective date of the chapter of the laws of 2020 that amended this subdivision, and on or before the first day of January each year annually thereafter, any subsidiary corporation, in cooperation with the port authority, shall provide to the governor and legislature of each state a report on the subsidiary corporation. Such report shall include for each subsidiary:

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

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

(3) The complete by-laws and legal organization papers of the subsidiary;

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

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

d. 60 days prior to the issuance of any debt by the subsidiary corporation, or the port authority on behalf of the subsidiary corporation, the port authority shall provide notice to the governor of each state, the majority leader of each house of the legislature of each state, the chair of the senate finance committee of New York, the chair of the senate budget and appropriations committee of New Jersey, the chair of the assembly ways and means committee of New York, and the chair of the assembly budget committee of New Jersey. For purposes of this section, as applicable to New York state "majority leader" shall mean the speaker of the assembly of the New York state legislature or temporary president of the senate of the New York state legislature. For purposes of this

section, as applicable to the state of New Jersey "majority leader" shall mean the president of the senate or the speaker of the general assembly of the state of New Jersey.

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

b. a financial section including: (1) an independent auditor's report; (2) management's discussion and analysis; (3) financial statements; (4) its financial reports certified by the [~~chair and vice-chair~~] co-chairs of the board, chief executive officer, and chief financial officer of the port authority, including (a) audited financials in accordance with generally accepted accounting principles, known as GAAP, and the accounting standards issued by the governmental accounting standards board, known as GASB, (b) grant and subsidy programs, (c) current ratings, if any, of its bonds issued by recognized bond rating agencies and notice of changes in such ratings, and (d) long-term liabilities, including leases and employee benefit plans; (5) a schedule of its bonds and notes outstanding at the end of its 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 including all refinancings, calls, refundings, defeasements and interest rate exchange or other such agreements; and (6) 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.

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

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

b. The port authority shall also provide that major capital projects are monitored by independent engineering consultants. The independent consultants shall prepare annual reports to be provided to the board and made available to the public. The annual reports prepared by independent consultants shall include, but not be limited to, a comparison of actual

and target performance measures including, but not limited to, costs and construction schedules, and a narrative explanation of any discrepancy thereof. For the purposes of this section, "major capital project" means an undertaking or program for the acquisition, creation, or development of any crossing, transportation facility, or commerce facility or any part thereof, with an estimated total project cost in excess of $500,000,000.

c. No less than 60 days prior to any board adoption of a capital plan as described in paragraph a of this subdivision, or any major revision of the last adopted capital plan, the port authority shall: (1) notify the assembly and senate of the New York state legislature and the general assembly and senate of the New Jersey state legislature of its intention to adopt a capital plan, or any major revision of the last adopted capital plan; (2) submit to the assembly and senate of the New York state legislature and the general assembly and senate of the New Jersey state legislature the proposed capital plan, or any proposal constituting a major revision of the last adopted capital plan, for review by each state legislature; and (3) make the proposed capital plan, including any proposal constituting a major revision of the last adopted capital plan, publicly available on the port authority website.

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

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

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

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

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

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

(3) the chair of the metropolitan transportation authority, ex officio, or the chair's designee;

(4) the commissioner of the New York city department of transportation, ex officio, or the commissioner's designee;

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

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

(7) the commissioner of the New York state department of transportation, ex officio, or the commissioner's designee;

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

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

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

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

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

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

b. The individual appointed jointly by the co-chairs of the port authority shall serve for a term of three years. The legislative appointments shall serve for a term of two years each. The individuals appointed from the executive branch of New Jersey and from the executive branch of New York shall serve at the pleasure of each respective governor.

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

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

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

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

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

§ 6. 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. The co-chairperson of the port authority as recommended by the governor of the state of New York shall notify the legislative bill drafting commission upon the occurrence of the enactment of the legislation provided for in sections one, two, three and four 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.