

STATE OF NEW YORK

3600--B

Cal. No. 129

2021-2022 Regular Sessions

IN ASSEMBLY

January 28, 2021

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 -- ordered to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

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:

1 Section 1. Subdivisions 1, 5 and 6 of article 4 of section 1 of chap-
2 ter 154 of the laws of 1921 relating to the port authority of New York
3 and New Jersey, as amended by chapter 559 of the laws of 2015, paragraph
4 a of subdivision 6 as amended by chapter 104 of the laws of 2020, are
5 amended to read as follows:

6 1. Commissioners. a. The port authority shall consist of twelve voting
7 commissioners and four non-voting commissioners as described in para-
8 graph b of this subdivision. Of the twelve voting commissioners[-]
9 there shall be six resident voters from the state of New York, at least
10 four of whom shall be resident voters of the city of New York, and six
11 resident voters from the state of New Jersey, at least four of whom
12 shall be resident voters within the New Jersey portion of the district,
13 the New York members to be chosen by the state of New York and the New
14 Jersey members by the state of New Jersey in the manner and for the
15 terms fixed and determined from time to time by the legislature of each
16 state respectively, except as herein provided. The New York members
17 shall be appointed by the governor of New York with the advice and
18 consent of the New York state senate. The New Jersey members shall be
19 appointed by the governor of New Jersey with the advice and consent of
20 the New Jersey state senate. Each commissioner may be removed or

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

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1 suspended from office as provided by the law of the state from which he
2 shall be appointed. Any commissioner appointed to a term commencing on
3 or after January 1, 2023 shall have experience in one or more of the
4 following areas: transportation, public administration, business
5 management, finance, accounting, law, engineering, land use, urban and
6 regional planning, management of large capital projects, labor
7 relations, or experience in some other area of activity central to the
8 mission of the port authority. One of the six voting commissioners
9 chosen by the state of New York shall be appointed on the written recom-
10 mendation of the mayor of the city of New York. The voting commissioners
11 shall be appointed for a term of six years and shall serve no more than
12 two terms. The terms of the voting commissioners shall be staggered so
13 that three of the six voting commissioners appointed by the state of New
14 York will have their terms expire in alternating three year shifts and
15 three of the six voting commissioners appointed by the state of New
16 Jersey will have their terms expire in alternating three years shifts.

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

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

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

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

41 (3) offering an opportunity for employees to identify concerns regard-
42 ing any issue at the port authority. Any communication between an
43 employee and the inspector general pursuant to this section shall be
44 held strictly confidential by the inspector general, unless the employee
45 specifically waives in writing the right to confidentiality, except that
46 such confidentiality shall not exempt the inspector general from
47 disclosing such information, where appropriate, to the board of commis-
48 sioners and/or any law enforcement authority.

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

53 c. As used in this subdivision:

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

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

8 6. Inspector general. a. The inspector general shall be responsible
9 for receiving and investigating, where appropriate, all complaints
10 regarding fraud, waste, and abuse by commissioners, officers, and
11 employees of the port authority or third-parties doing business with the
12 port authority. The inspector general shall also receive and investi-
13 gate complaints from any source, or upon his or her own initiative,
14 concerning allegations of corruption, fraud, use of excessive force,
15 criminal activity, conflicts of interest or abuse by any police officer
16 under the jurisdiction of the Port Authority. The inspector general
17 shall also be responsible for conducting investigations upon the inspec-
18 tor general's own initiative, as the inspector general shall deem appro-
19 priate.

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

24 c. The inspector general shall determine with respect to allegations
25 received by the inspector general whether disciplinary action or civil
26 prosecution by the port authority is appropriate, and whether the matter
27 should be referred to an appropriate governmental agency for further
28 action;

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

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

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

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

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

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

53 (5) monitor the implementation by the port authority of any recommen-
54 dations made by the inspector general; and

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

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

5 1. Needs assessment. The port authority shall require that a needs
6 assessment be conducted by an independent entity prior to any increase
7 in tolls for the use of any port authority bridge or tunnel, or fares
8 for the use of the port authority trans-Hudson corporation rail system.
9 The assessment shall be made publicly available in a conspicuous
10 location on the port authority's website and presented by the independ-
11 ent entity to the board of commissioners at a public meeting to be held
12 at least ninety days prior to any meeting of the board of commissioners
13 to vote to any increase in the tolls for the use of any port authority
14 bridge or tunnel, or fares for the use of the port authority trans-Hud-
15 son corporation rail system.

16 3. Appearance. a. The port authority, at the request of the Assembly
17 or Senate of the New York state legislature or the General Assembly or
18 Senate of the New Jersey state legislature, shall be required to appear
19 before a committee of the requesting state legislative house, upon
20 request by the presiding officer of that state legislative house, to
21 present testimony on any topic or subject requested by the committee or
22 to respond to questions by members of the committee. The Assembly of
23 the New York state legislature, the Senate of the New York state legis-
24 lature, the General Assembly of the New Jersey state legislature, and
25 the Senate of the New Jersey state legislature shall each be entitled to
26 two such requests per calendar year.

27 b. Unless otherwise agreed to by the presiding officer of the state
28 legislative house requesting the appearance of the port authority, the
29 port authority shall, at a minimum, be represented by a chair or vice-
30 chair of the board, chief executive officer, the chief financial offi-
31 cer, and any staff deemed necessary by such chair or vice-chair of the
32 board, chief executive officer, or the chief financial officer to pres-
33 ent testimony or respond to questions at any appearance required pursu-
34 ant to this section. The presiding officer may request the appearance
35 of any officer or employee of the port authority. For purposes of this
36 section, as applicable to New York state "presiding officer" shall mean
37 the speaker of the Assembly of the New York state legislature or tempo-
38 rary president of the Senate of the New York state legislature. For
39 purposes of this section, as applicable to the state of New Jersey
40 "presiding officer" shall mean the president of the senate or the speak-
41 er of the general assembly of the state of New Jersey.

42 4. Subsidiaries of the port authority. a. The port authority shall
43 provide notice to the governor of each state, the majority leader of
44 each house of the legislature of each state, the chair of the finance
45 committee of New York, the chair of the senate budget and appropriations
46 committee of New Jersey, the chair of assembly ways and means committee
47 of New York, and the chair of the budget committee of New Jersey that it
48 will be creating a subsidiary no less than 60 days prior to the forma-
49 tion of the subsidiary.

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

52 c. [~~On or before the first day of January, two thousand sixteen, and~~]
53 Within 60 days of the effective date of the chapter of the laws of 2022
54 that amended this subdivision, and on or before the first day of January
55 each year annually thereafter, any subsidiary corporation, in cooper-
56 ation with the port authority, shall provide to the governor and legis-

1 lature of each state a report on the subsidiary corporation. Such report
2 shall include for each subsidiary:

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

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

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

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

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

14 d. 60 days prior to the issuance of any debt by the subsidiary corpo-
15 ration, or the port authority on behalf of the subsidiary corporation,
16 the port authority shall provide notice to the governor of each state,
17 the majority leader of each house of the legislature of each state, the
18 chair of the senate finance committee of New York, the chair of the
19 senate budget and appropriations committee of New Jersey, the chair of
20 the assembly ways and means committee of New York, and the chair of the
21 assembly budget committee of New Jersey. For purposes of this section,
22 as applicable to New York state "majority leader" shall mean the speaker
23 of the assembly of the New York state legislature or temporary president
24 of the senate of the New York state legislature. For purposes of this
25 section, as applicable to the state of New Jersey "majority leader"
26 shall mean the president of the senate or the speaker of the general
27 assembly of the state of New Jersey.

28 § 3. Subdivisions 3 and 4 of article 7-D of section 1 of chapter 154
29 of the laws of 1921 relating to the port authority of New York and New
30 Jersey, as added by chapter 559 of the laws of 2015, are amended and two
31 new subdivisions 5 and 6 are added to read as follows:

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

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

1 and target performance measures including, but not limited to, costs and
2 construction schedules, and a narrative explanation of any discrepancy
3 thereof. For the purposes of this section, "major capital project" means
4 an undertaking or program for the acquisition, creation, or development
5 of any crossing, transportation facility, or commerce facility or any
6 part thereof, with an estimated total project cost in excess of
7 \$500,000,000.

8 c. No less than 60 days prior to any board adoption of a capital plan
9 as described in paragraph a of this subdivision, or any major revision
10 of the last adopted capital plan, the port authority shall: (1) notify
11 the assembly and senate of the New York state legislature and the gener-
12 al assembly and senate of the New Jersey state legislature of its inten-
13 tion to adopt a capital plan, or any major revision of the last adopted
14 capital plan; (2) submit to the assembly and senate of the New York
15 state legislature and the general assembly and senate of the New Jersey
16 state legislature the proposed capital plan, or any proposal constitut-
17 ing a major revision of the last adopted capital plan, for review by
18 each state legislature; and (3) make the proposed capital plan, includ-
19 ing any proposal constituting a major revision of the last adopted capi-
20 tal plan, publicly available on the port authority website.

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

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

36 4. Operating budget. The port authority shall prepare a detailed annu-
37 al operating budget beginning with the fiscal year commencing after the
38 effective date of the chapter of the laws of [~~2015~~] 2022 which [~~added~~]
39 amended this article. A preliminary annual operating budget shall be
40 made publicly available on the port authority's website in July of every
41 fiscal year and a final annual operating budget shall be made publicly
42 available in February of each fiscal year.

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

49 (1) one individual appointed jointly by the chair and vice-chair of
50 the Port Authority;

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

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

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

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

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

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

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

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

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

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

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

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

19 b. The individual appointed jointly by the chair and vice-chair of the
20 port authority shall serve for a term of three years. The legislative
21 appointments shall serve for a term of two years each. The individuals
22 appointed from the executive branch of New Jersey and from the executive
23 branch of New York shall serve at the pleasure of each respective gover-
24 nor.

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

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

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

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

47 6. Minority and women-owned business enterprise programs. a. In the
48 performance of projects pursuant to this article, minority and women-
49 owned business enterprises shall be given the opportunity for meaningful
50 participation. The port authority shall establish quantifiable standards
51 and measures and procedures, in accordance with the findings of period-
52 ical disparity studies regarding the participation of minority and
53 women-owned business enterprises in port authority contracts, to be
54 prepared by an entity independent of the port authority and selected
55 through a request for proposal process, to secure meaningful partic-
56 ipation and identify those contracts and items of work for which minori-

1 ty and women-owned business enterprises may best bid to actively and
2 affirmatively promote and assist their participation in projects, so as
3 to facilitate the award of a fair share of contracts to such enter-
4 prises; provided, however, that nothing in this article shall be
5 construed to limit the ability of the port authority to assure that
6 qualified minority and women-owned business enterprises may participate
7 in the program. For purposes hereof, minority business enterprise shall
8 mean any business enterprise which is at least fifty-one per centum
9 owned by, or in the case of a publicly owned business, at least fifty-
10 one per centum of the stock or other voting interest is owned by citi-
11 zens or permanent resident aliens who are Black, Hispanic, Asian, Ameri-
12 can Indian, Pacific islander, or Alaskan native, and such ownership
13 interest is real, substantial and continuing and has the authority to
14 independently control the day-to-day business decisions of the entity
15 for at least one year; and women-owned business enterprise shall mean
16 any business enterprise which is at least fifty-one per centum owned by,
17 or in the case of a publicly owned business, at least fifty-one per
18 centum of the stock or other voting interests of which is owned by citi-
19 zens or permanent resident aliens who are women, and such ownership
20 interest is real, substantial and continuing and has the authority to
21 independently control the day-to-day business decisions of the entity
22 for at least one year. The provisions of this subdivision shall not be
23 construed to limit the ability of any minority business enterprise to
24 bid on any contract. The provisions of this subdivision shall not be
25 construed to require the port authority to engage in any unlawful
26 conduct in securing meaningful participation of minority and women-owned
27 business enterprises in port authority projects.

28 b. In order to implement the requirements and objectives of this
29 subdivision, the port authority shall establish procedures to monitor
30 compliance with provisions hereof, provide assistance in obtaining
31 competing qualified minority and women-owned business enterprises to
32 perform contracts proposed to be awarded, and take other appropriate
33 measures to improve the access of minority and women-owned business
34 enterprises to these contracts.

35 c. The port authority shall publish the standards, measures, and
36 procedures established pursuant to paragraphs a and b of this subdivi-
37 sion on its website, including any disparity study conducted pursuant to
38 this subdivision.

39 d. The port authority shall prepare an annual report on the number and
40 value of contracts awarded to minority and women-owned business enter-
41 prises, which shall be published on its website.

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

51 § 5. This act shall take effect upon the enactment into law by the
52 state of New Jersey of legislation having an identical effect with this
53 act, but if the state of New Jersey shall have already enacted such
54 legislation this act shall take effect immediately. The chair or vice-
55 chair of the port authority as recommended by the governor of the state
56 of New York shall notify the legislative bill drafting commission upon

1 the occurrence of the enactment of the legislation provided for in
2 sections one, two and three of this act in order that the commission may
3 maintain an accurate and timely effective data base of the official text
4 of the laws of the state of New York in furtherance of effectuating the
5 provisions of section 44 of the legislative law and section 70-b of the
6 public officers law.