

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 749

Short Title: Modify State Ports Authority. (Public)

Sponsors: Representative McComas (Primary Sponsor).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Commerce and Job Development.

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO ENSURE THAT THE NORTH CAROLINA STATE PORTS AUTHORITY
DEVELOPS BUSINESSES RATHER THAN COMPETING WITH BUSINESSES; AND
TO STUDY A PROJECT TO FACILITATE SHIPPING UP THE CAPE FEAR RIVER.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143B-452(e) reads as rewritten:

"(e) The General Assembly shall appoint two persons to serve terms expiring June 30, 1983. The General Assembly shall appoint four persons to serve terms beginning July 1, 1983, to serve until June 30, 1985, and successors shall serve for two-year terms. Of the two appointments to be made in 1982, one shall be made upon the recommendation of the Speaker, and one shall be made upon the recommendation of the President of the Senate. Of the four appointments made in 1983 and biennially thereafter, two shall be made upon the recommendation of the President of the Senate, and two shall be made upon the recommendation of the Speaker. To stagger further the terms of members:

(1) Of the members appointed upon the recommendation of the Speaker to replace the members whose terms expire on June 30, 1991, one member shall be appointed to a term of one year, to expire on June 30, 1992; the other member shall be appointed to a term of two years, to expire on June 30, 1993;

(2) Of the members appointed upon the recommendation of the President of the Senate to replace the members whose terms expire on June 30, 1991, one member shall be appointed to a term of one year, to expire on June 30, 1992; the other member shall be appointed to a term of two years, to expire on June 30, 1993. Successors to these persons for terms beginning on or after January 1, 1997, shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate.

Thereafter, at the expiration of each stipulated term of office all appointments made by the General Assembly shall be for terms of ~~two years~~, two years, except for terms expiring on or after June 30, 2011, after which appointments shall be for terms of four years."

SECTION 2. G.S. 143B-453 reads as rewritten:

"§ 143B-453. Purposes of Authority.

Through the Authority hereinbefore created, the State of North Carolina may engage in promoting, developing, constructing, equipping, maintaining and operating the harbors and seaports within the State, or within the jurisdiction of the State, and works of internal improvements incident thereto, including the acquisition or construction, maintenance and



1 operation at such seaports or harbors of watercraft and highways and bridges thereon or
2 essential for the proper operation thereof. Said Authority is created as an instrumentality of the
3 State of North Carolina for the accomplishment of the following general purposes:

- 4 (1) To develop and improve the harbors or seaports at Wilmington, Morehead
5 City and Southport, North Carolina, and such other places, including inland
6 ports and facilities, as may be deemed feasible for a more expeditious and
7 efficient handling of waterborne commerce from and to any place or places
8 in the State of North Carolina and other states and foreign countries.
- 9 (2) To acquire, construct, equip, maintain, develop and improve the port
10 facilities at said ports and to improve such portions of the waterways thereat
11 as are within the jurisdiction of the federal government.
- 12 (3) To foster and stimulate the shipment of freight and commerce through said
13 ports, whether originating within or without the State of North Carolina,
14 including the investigation and handling of matters pertaining to all
15 transportation rates and rate structures affecting the same.
- 16 (4) To cooperate with the United States of America and any agency, department,
17 corporation or instrumentality thereof in the maintenance, development,
18 improvement and use of said harbors and seaports in connection with and in
19 furtherance of the war operations and needs of the United States.
- 20 (5) To accept funds from any of said counties or cities wherein said ports are
21 located and to use the same in such manner, within the purposes of said
22 Authority, as shall be stipulated by the said county or city, and to act as
23 agent or instrumentality, of any of said counties or cities in any matter
24 coming within the general purposes of said Authority.
- 25 (6) To act as agent for the United States of America, or any agency, department,
26 corporation or instrumentality thereof, in any matter coming within the
27 purposes or powers of the Authority.
- 28 (7) And in general to do and perform any act or function which may tend or be
29 useful toward the development and improvement of harbors, seaports and
30 inland ports of the State of North Carolina, and to increase the movement of
31 waterborne commerce, foreign and domestic, to, through, and from such
32 harbors and ports.

33 The enumeration of the above purposes shall not limit or circumscribe the broad objective
34 of developing to the utmost the port possibilities of the State of North Carolina. In carrying out
35 its purposes, the Authority shall foster and stimulate private industry rather than directly
36 compete with private industry."

37 **SECTION 3.** G.S. 143B-454 reads as rewritten:

38 **"§ 143B-454. Powers of Authority.**

39 (a) In order to enable it to carry out the purposes of this Part, the said Authority ~~shall-~~
40 shall, subject to the other provisions of this Article, including G.S. 143B-465 and
41 G.S. 143B-465.1:

- 42 (1) Have the powers of a body corporate, including the power to sue and be
43 sued, to make contracts, and to adopt and use a common seal and to alter the
44 same as may be deemed expedient;
- 45 (2) Have the authority to make all necessary contracts and arrangements with
46 other port authorities of this and other states for the interchange of business,
47 and for such other purposes as will facilitate and increase the business of the
48 North Carolina State Ports Authority;
- 49 (3) Be authorized and empowered to rent, lease, buy, own, acquire, mortgage,
50 otherwise encumber, and dispose of such property, real or personal, as said

- 1 Authority may deem proper to carry out the purposes and provisions of this
2 Part, all or any of them;
- 3 (4) Be authorized and empowered to acquire, construct, maintain, equip and
4 operate any wharves, docks, piers, quays, elevators, compresses,
5 refrigeration storage plants, warehouses and other structures, and any and all
6 facilities needful for the convenient use of the same in the aid of commerce,
7 including the dredging of approaches thereto, and the construction of beltdline
8 roads and highways and bridges and causeways thereon, and other bridges
9 and causeways necessary or useful in connection therewith, and shipyards,
10 shipping facilities, and transportation facilities incident thereto and useful or
11 convenient for the use thereof, and to acquire, construct, and maintain, but
12 not operate, such rail facilities as may be necessary or useful in connection
13 with the operation of the State Ports, provided that nothing in this
14 subdivision shall be construed as requiring or allowing the North Carolina
15 State Ports Authority to become a carrier by rail subject to the federal laws
16 regulating those carriers;
- 17 (5) The Authority shall appoint an Executive Director, whose salary shall be
18 fixed by the Authority, to serve at its pleasure. The Executive Director or his
19 designee shall appoint, employ, dismiss and, within the limits of available
20 funding, fix the compensation of such other employees as he deems
21 necessary to carry out the purposes of this Part. There shall be an executive
22 committee consisting of the chairman of the Authority and two other
23 members elected annually by the Authority. The executive committee shall
24 be vested with authority to do all acts which are authorized by the bylaws of
25 the Authority. Members of the executive committee shall serve until their
26 successors are elected;
- 27 (6) Establish an office for the transaction of its business at such place or places
28 as, in the opinion of the Authority, shall be advisable or necessary in
29 carrying out the purposes of this Part;
- 30 (7) Be authorized and empowered to create and operate such agencies and
31 departments as said board may deem necessary or useful for the furtherance
32 of any of the purposes of this Part;
- 33 (8) Be authorized and empowered to pay all necessary costs and expenses
34 involved in and incident to the formation and organization of said Authority,
35 and incident to the administration and operation thereof, and to pay all other
36 costs and expenses reasonably necessary or expedient in carrying out and
37 accomplishing the purposes of this Part;
- 38 (9) Be authorized and empowered to apply for and accept loans and grants of
39 money from any federal agency or the State of North Carolina or any
40 political subdivision thereof or from any public or private sources available
41 for any and all of the purposes authorized in this Article, and to expend the
42 same in accordance with the directions and requirements attached thereto, or
43 imposed thereon by any such federal agency, the State of North Carolina, or
44 any political subdivision thereof, or any public or private lender or donor,
45 and to give such evidences of indebtedness as shall be required, provided,
46 however, that no indebtedness of any kind incurred or created by the
47 Authority shall constitute an indebtedness of the State of North Carolina, or
48 any political subdivision thereof, and no such indebtedness shall involve or
49 be secured by the faith, credit or taxing power of the State of North Carolina,
50 or any political subdivision thereof;

- 1 (10) Be authorized and empowered to act as agent for the United States of
2 America, or any agency, department, corporation, or instrumentality thereof,
3 in any matter coming within the purposes or powers of the Authority;
- 4 (11) Have power to adopt, alter or repeal its own bylaws, rules and regulations
5 governing the manner in which its business may be transacted and in which
6 the power granted to it may be enjoyed, and may provide for the
7 appointment of such committees, and the functions thereof, as the Authority
8 may deem necessary or expedient in facilitating its business. The Authority
9 may establish fees for its services. In establishing these fees, the Authority
10 shall consider the cost of providing service, revenue requirements, the cost
11 of similar services at other seaports in the South Atlantic region, and any
12 other factors it considers relevant. The Authority shall report the
13 establishment or increase of any fee to the Joint Legislative Commission on
14 Governmental Operations no later than 30 business days after it establishes
15 or increases the fee.
- 16 (12) Be authorized and empowered to do any and all other acts and things in this
17 Part authorized or required to be done, whether or not included in the general
18 powers in this section mentioned; and
- 19 (13) Be authorized and empowered to do any and all things necessary to
20 accomplish the purposes of this Part: Provided, that said Authority shall not
21 engage in shipbuilding.

22 The property of the Authority shall not be subject to any taxes or assessments thereon.

23 (b) In order to execute the powers enumerated in subsection (a), the Authority shall
24 determine the policies of the North Carolina State Ports Authority by majority vote of all
25 members of the Authority present and voting. Once a policy is determined, the Authority shall
26 communicate it to the Executive Director, who shall have the sole and exclusive authority to
27 execute the policy of the Authority. No member of the Authority shall have responsibility or
28 authority to give operational directives to any employee of the North Carolina State Ports
29 Authority other than the Executive Director."

30 **SECTION 4.** G.S. 143B-457 is repealed.

31 **SECTION 5.** G.S. 143B-465 reads as rewritten:

32 "**§ 143B-465. Purchase of services, supplies, material and equipment and building**
33 **contracts.**

34 (a) All of the provisions of Article 3 of Chapter 143 of the General Statutes relating to
35 the purchase of services, supplies, material and equipment by the State government are hereby
36 made applicable to the North Carolina State Ports Authority.

37 (b) All of the provisions of Chapter 143 of the General Statutes relating to public
38 building contracts are hereby made applicable to the North Carolina State Ports Authority for
39 those construction projects which may be funded, in whole or in part, by appropriations from
40 the General Assembly.

41 ~~(c) Notwithstanding subsections (a) and (b) of this section, if the North Carolina State~~
42 ~~Ports Authority finds that the delivery of a particular port facility must be expedited for good~~
43 ~~cause, the Authority shall be exempt from the following statutes, and rules implementing those~~
44 ~~statutes, to the extent necessary to expedite delivery: G.S. 133-1.1(g), G.S. 143-128(a) through~~
45 ~~(e), G.S. 143-132, and G.S. 143-135.26. Prior to exercising an exemption authorized under this~~
46 ~~subsection, the North Carolina State Ports Authority, through its Executive Director, shall give~~
47 ~~notice in writing of the Authority's intent to exercise the exemption to the Secretary of~~
48 ~~Administration. The notice shall contain, at a minimum, the following information: (i) the~~
49 ~~specific statutory requirement or requirements from which the Authority intends to exercise an~~
50 ~~exemption; (ii) the reason the exemption is necessary to expedite delivery of a port facility; and~~
51 ~~(iii) the way the Authority anticipates the exemption will expedite the delivery of a port facility.~~

1 ~~The Authority shall report quarterly to the Joint Legislative Commission on Governmental~~
2 ~~Operations on any building contracts exceeding two hundred fifty thousand dollars (\$250,000)~~
3 ~~to which an exemption authorized by this subsection is applied."~~

4 **SECTION 6.** Part 10 of Chapter 143B of the General Statutes is amended by
5 adding a new section to read:

6 "**§ 143B-468. Publication of requests and bids for contracts.**

7 (a) In order to foster competition with other service providers, the North Carolina State
8 Ports Authority shall publish all requests for contracts with the Authority and all contracts bid
9 by the Authority, including the name of the vendor requesting a contract or vendor for which
10 the Authority is bidding, the cost of services requested or bid, and the date the parties are to
11 enter into a contract.

12 (b) The requests and bids shall be published upon the Web site of the Authority within
13 48 hours of submission to the Authority. The Authority shall also publish an annual report of
14 contract activity that consists of all requests and bids within a given year.

15 (c) This section shall not apply to bids received by the Authority."

16 **SECTION 7.** Part 10 of Chapter 143B of the General Statutes is amended by
17 adding a new section to read:

18 "**§ 143B-468.1. Rental of Authority properties.**

19 Prior to leasing any of its properties, the North Carolina State Ports Authority shall publicly
20 publish the availability of any given property and shall allow members of the public to acquire
21 the lease. Unless the property is fungible property such as berths or storage areas, the lease of
22 Authority property shall be subject to a competitive bid process."

23 **SECTION 8.** Relocation of Power Lines Study. – The Legislative Research
24 Commission is authorized to study the cost and feasibility of burying or raising the power lines
25 that currently extend across the Cape Fear River from Progress Energy's Brunswick Nuclear
26 Plant toward Castle Hayne so as to allow ocean-going vessels to travel past the point that the
27 power lines cross the river. In conducting the study, the Commission shall consider methods to
28 help Progress Energy move the power lines in a manner that maximizes the use of the Cape
29 Fear River for commerce, including, but not limited to, grants to Progress Energy using the
30 proceeds from the sale of unused State Ports Authority land. In conducting the study, the
31 Commission shall compare the costs of moving the power lines to the economic benefit to the
32 State from increased shipping up the Cape Fear River. If the Legislative Research Commission
33 undertakes the study authorized under this section, the costs of the study shall be paid by the
34 North Carolina State Ports Authority.

35 **SECTION 9.** Sections 1 through 7 of this act becomes effective October 1, 2011.
36 The remainder of this act is effective when it becomes law.