

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 749
Committee Substitute Favorable 6/3/11

Short Title: Modify State Ports Authority.

(Public)

Sponsors:

Referred to:

April 7, 2011

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

5 The General Assembly of North Carolina enacts:

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

7 "(e) The General Assembly shall appoint two persons to serve terms expiring June 30,
8 1983. The General Assembly shall appoint four persons to serve terms beginning July 1, 1983,
9 to serve until June 30, 1985, and successors shall serve for two-year terms. Of the two
10 appointments to be made in 1982, one shall be made upon the recommendation of the Speaker,
11 and one shall be made upon the recommendation of the President of the Senate. Of the four
12 appointments made in 1983 and biennially thereafter, two shall be made upon the
13 recommendation of the President of the Senate, and two shall be made upon the
14 recommendation of the Speaker. To stagger further the terms of members:

15 (1) Of the members appointed upon the recommendation of the Speaker to
16 replace the members whose terms expire on June 30, 1991, one member
17 shall be appointed to a term of one year, to expire on June 30, 1992; the
18 other member shall be appointed to a term of two years, to expire on June
19 30, 1993;

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

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

30 **SECTION 2.** G.S. 143B-452 is amended by adding a new subsection to read as
31 follows:

32 "(i) No member of the Authority shall serve more than 12 consecutive years."

33 **SECTION 3.** G.S. 143B-453 reads as rewritten:

34 **"§ 143B-453. Purposes of Authority.**

35 Through the Authority hereinbefore created, the State of North Carolina may engage in
36 promoting, developing, constructing, equipping, maintaining and operating the harbors and



1 seaports within the State, or within the jurisdiction of the State, and works of internal
2 improvements incident thereto, including the acquisition or construction, maintenance and
3 operation at such seaports or harbors of watercraft and highways and bridges thereon or
4 essential for the proper operation thereof. Said Authority is created as an instrumentality of the
5 State of North Carolina for the accomplishment of the following general purposes:

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

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

39 **SECTION 4.** G.S. 143B-455 reads as rewritten:

40 **"§ 143B-455. Approval of acquisition and disposition of real property.**

41 Any transactions relating to the acquisition or disposition of real property or any estate or
42 interest in real property, by the North Carolina State Ports Authority, shall be subject to prior
43 review by the Governor and Council of State, and shall become effective only after the same
44 has been approved by the Governor and Council of State. Upon the acquisition of real property
45 or other estate therein, by the North Carolina State Ports Authority, the fee title or other estate
46 shall vest in and the instrument of conveyance shall name the "North Carolina State Ports
47 Authority" as grantee, lessee, or transferee. Upon the disposition of real property or any interest
48 or estate therein, the instrument of conveyance or transfer shall be executed by the North
49 Carolina State Ports Authority. The approval of any transaction by the Governor and Council of
50 State may be evidenced by a duly certified copy of excerpt of minutes of the meeting of the
51 Governor and Council of State, attested by the private secretary to the Governor or the

1 Governor, reciting such approval, affixed to the instrument of acquisition or transfer, and said
2 certificate may be recorded as a part thereof, and the same shall be conclusive evidence of
3 review and approval of the subject transaction by the Governor and Council of State. The
4 Governor, acting with the approval of the Council of State, may delegate the review and
5 approval of such classes of lease, rental, easement, or right-of-way transactions as he or she
6 deems advisable, and he may likewise delegate the review and approval of the severance of
7 buildings and timber from the land. Additionally, the North Carolina State Ports Authority is
8 subject to G.S. 146-29.1 and shall report in detail all transactions relating to the acquisition or
9 disposition of real property or any estate or interest in real property to the Joint Legislative
10 Commission on Governmental Operations."

11 **SECTION 5.** G.S. 143B-457 is repealed.

12 **SECTION 6.** G.S. 143B-465 reads as rewritten:

13 **"§ 143B-465. Purchase of services, supplies, material and equipment and building**
14 **contracts.**

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

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

22 (c) Notwithstanding subsections (a) and (b) of this section, if the North Carolina State
23 Ports Authority finds that the delivery of a particular port facility must be expedited for good
24 cause, the Authority shall be exempt from the following statutes, and rules implementing those
25 statutes, to the extent necessary to expedite delivery: G.S. 133-1.1(g), G.S. 143-128(a) through
26 (e), G.S. 143-132, and G.S. 143-135.26. Prior to exercising an exemption authorized under this
27 subsection, the North Carolina State Ports Authority, through its Executive Director, shall give
28 notice in writing of the Authority's intent to exercise the exemption to the Secretary of
29 ~~Administration~~. Administration and to the individual members of the Authority's board. The
30 notice shall contain, at a minimum, the following information: (i) the specific statutory
31 requirement or requirements from which the Authority intends to exercise an exemption; (ii)
32 the reason the exemption is necessary to expedite delivery of a port facility; and (iii) the way
33 the Authority anticipates the exemption will expedite the delivery of a port facility. The
34 Executive Director shall report to the Authority's board at each meeting of the board on any
35 contracts to which an exemption authorized by this section was applied since the last meeting
36 of the Authority's board. The Authority shall report quarterly to the Joint Legislative
37 Commission on Governmental Operations on any building contracts exceeding two hundred
38 fifty thousand dollars (\$250,000) to which an exemption authorized by this subsection is
39 applied."

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

42 **"§ 143B-468. Publication of information related to contracts not covered in Authority's**
43 **published tariff.**

44 (a) In order to foster competition with other service providers, the North Carolina State
45 Ports Authority shall publish, for any services not otherwise provided by the Authority's latest
46 published tariff, requests for contracts with the Authority and contracts bid by the Authority,
47 including the name of the vendor requesting a contract or vendor for which the Authority is
48 bidding, the cost of services requested or bid, and the date the parties are to enter into a
49 contract.

50 (b) The requests and bids covered by this section shall be published upon the Web site
51 of the Authority within 48 hours of submission to the Authority. The Authority shall also

1 publish an annual report of contract activity that consists of all requests and bids covered by
2 this section within a given year.

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

4 **SECTION 8.** Part 10 of Chapter 143B of the General Statutes is amended by
5 adding a new section to read:

6 "**§ 143B-468.1. Approval of certain service contracts.**

7 Any contract for services published in the Authority's tariff for which the price deviates
8 more than twenty percent (20%) from the published tariff rate must be approved by the Council
9 of State prior to the Authority entering into the contract. The Authority shall report quarterly to
10 the Joint Legislative Commission on Governmental Operations on any contracts required to be
11 approved by the Council of State under this section."

12 **SECTION 9.** Relocation of Power Lines Study. – The Legislative Research
13 Commission shall study the cost and feasibility of burying or raising the power lines that
14 currently extend across the Cape Fear River from Progress Energy's Brunswick Nuclear Plant
15 toward Castle Hayne so as to allow ocean-going vessels to travel past the point that the power
16 lines cross the river. In conducting the study, the Commission shall consider methods to help
17 Progress Energy move the power lines in a manner that maximizes the use of the Cape Fear
18 River for commerce, including, but not limited to, grants to Progress Energy using the proceeds
19 from the sale of unused State Ports Authority land. In conducting the study, the Commission
20 shall compare the costs of moving the power lines to the economic benefit to the State from
21 increased shipping up the Cape Fear River. The costs of the study shall be paid by the North
22 Carolina State Ports Authority.

23 **SECTION 10.** Sections 1 through 8 of this act become effective October 1, 2011.
24 The remainder of this act is effective when it becomes law.