DIGEST

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Crowe SB No. 780

Proposed law creates the LA International Deep Water Gulf Transfer Terminal Authority as a political subdivision of the state, possessing full corporate powers to promote, plan, finance, develop, construct, control, license, regulate, supervise, operate, manage, maintain and/or modify offshore or onshore terminal facilities to be constructed within the jurisdiction of said authority after July 1, 2008, providing a port with "terminal and intermodal facilities" for the handling of containerized cargo of deeper draft container vessels. The port is to accommodate and to plan for the technological innovations occurring in the worldwide and domestic shipping industry, including shipment by containers, to increase efficiency and the flow of commerce through the offshore or onshore "terminal facilities". Also, the purpose is to create a state agency to serve as an agency to assist "licensees" in the financing of offshore or onshore "terminal facilities".

"Terminal facilities" or "facilities" is defined as a structure, a series of structures, or a facility of any type constructed after July 1, 2008 within the coastal waters of Louisiana or seaward thereof, or within any area of the territorial jurisdiction of the authority, and designed to accommodate deep draft container vessels and their cargoes, including all intermodal structures, property and equipment used for transportation, and facilities directly related thereto and necessary or useful to the operation thereof, whether landward, onshore, or seaward of the main structures or facilities themselves, including any facility which is part of a container terminal port.

Proposed law provides "exclusive jurisdiction" to the authority over the "authority development program" (defined as a plan for anything necessary for the development, construction, and operation of deep draft container vessel and intermodal terminal facilities) within those coastal waters of the state and over such other waters, waterbottoms, wetlands, and lands within the state necessary to effectuate the purposes of the proposed law. Specifies, however, that such jurisdiction does not extend over existing, proposed, or future facilities of existing ports or the offshore facilities authority except by mutual written agreement. The authority has the right to acquire waterbottoms, wetlands, and lands inside and outside the state for such facilities. However, such activities, acquisitions, and facilities within the jurisdiction of existing port, and port, harbor, and terminal authorities, and the offshore terminal authority, require the mutual written agreement of the appropriate authority.

"Authority development program" is defined as a plan for the development, construction, and operation of offshore or onshore terminal facilities not in existence on July 1, 2008, including but not limited to research and experimentation; promotion; financing; technical development and refinement; construction; operation and maintenance, including renovation, retirement, and reconstruction; regulation of any aspect of such a plan; and any other action the authority deems necessary to the fulfillment of the plan.

Proposed law recognizes the authority of all other existing ports, the offshore terminal authority, and other ports, harbors, and related authorities established by specific constitutional provision are not to be diminished by the jurisdiction and powers exercised by the authority except as provided in the proposed law.

Proposed law authorizes the authority to enter into intergovernmental contract agreements with existing port authorities, individually, with the offshore terminal authority, or with any other parish, city, municipality or subdivision of the state, and to engage jointly in the exercise of any power, the making of any improvements which each of the participating authorities may exercise or undertake individually under any provision of general or special law.

Proposed law provides that the authority, in establishing or enacting its rates and charges for cargo must consider the overall economic impact on the economy of the six deepwater ports and the offshore terminal authority, and its charges and rates are required to be "compensatory."

Proposed law confers "exclusive power" on the authority to own, operate, license or otherwise regulate all terminal facilities within its jurisdiction constructed after July 1, 2008 and property and equipment related to those facilities. In addition, specifically authorizes the authority to own, construct, operate, lease and maintain any railroad belt or connecting lines constructed after July 1, 2008 which is necessary for the program.

Proposed law creates a board of commissioners to be appointed by the governor to serve for no more than two 7 year terms of office, the secretaries of the departments of DOTD and LED as two ex-officio non-voting members and the chairmen of the House and Senate committees on transportation, highways and public works or their designees. Maritime appointees are allowed notwithstanding the prohibitions in the ethics code. However, a commissioner cannot be a commissioner or board member of another port.

Proposed law requires the commissioners to elect a president from among themselves to serve for a term of 2 years. They choose an executive director for a term of not less than 1 nor more than 3 years, and fix his compensation. He may be removed by the board for cause.

Proposed law provides for the commissioners to serve without compensation, but be reimbursed for travel expenses incurred in attending meetings, at rates and standards as promulgated by the division of administration.

Proposed law authorizes the board of commissioners to promulgate rules and regulations for the maintenance and operation of the authority, and adopts rules for its own operation.

Proposed law provides that the executive director is secretary to the board and is authorized to employ "on a contract basis" such other agents, employees, professional employees, permanent and temporary, as he requires and he determines their qualifications, duties, and compensation. Proposed law authorizes the authority itself to employ such engineers, accountants, attorneys, other professionals, employees and agents as may be necessary and advisable, and fix their compensation on a contract "or other appropriate basis."

Proposed law specifically prohibits anyone from constructing or operating terminal facilities constructed after July 1, 2008 "within the jurisdiction of the authority" without first obtaining a license from the authority or other authorization. Requires the authority to establish a procedure for application and issuance of licenses, including filing fees and reimbursement of expenses. The authority must find the licensee qualified under its rules and regulations and must determine the length of the license and conditions for its suspension, revocation, annulment, or withdrawals. The authority is specifically required to promulgate these regulations pursuant to the APA.

Proposed law specifically authorizes the authority to purchase machinery and equipment related to the operation of deep draft container vessel and/or intermodal terminal facilities, including but not limited to container cranes.

Proposed law excepts these purchases from the provisions of the public bid law.

Proposed law authorizes the board to:

1. Make investigations and hold adjudicatory hearings, including entering upon any private or public property and inspecting records and facilities to ascertain compliance, and issue orders and take such actions necessary to enforce compliance with, the proposed law and the authority's rules and regulations, which it is given specific permission to promulgate.

2. Issue licenses, certificates, and permits for the construction and maintenance of its facilities or for use of services or facilities subject to the authority's jurisdiction, pursuant to its regulations. They are not transferable without the permission of the authority.

3. Transfer rights under any license, certificate, permit, or other authorization granted to the authority.

4. Fix reasonable and just rates, fares, tolls or charges for the services and facilities within the authority's jurisdiction.

5. To make loans only from funds obtained from the sale of revenue bonds for the purpose of financing or refinancing a revenue bond project or projects; to collect interest and pledge the proceeds as security.

6. Negotiate with and enter into contracts, compacts or other agreements with the federal government concerning the authority development program, including jurisdictional aspects of the location of any terminal facilities, sharing of revenues derived from the operation, in order to "assert the state's interest" in any terminal facility developed after July 1, 2008.

7. To acquire by permit, lease, sublease, license, grant, purchase, or otherwise, water bottoms, wetlands, and lands, inside and outside of the territorial limits of the state of Louisiana, for the construction, operation and maintenance of facilities "functionally required," related, necessary or useful to the "authority development program."

8. To adopt an environmental protection plan which conforms to the proposed law and applicable state, federal, and local laws and regulations.

Proposed law authorizes the board to:

1. Own, construct, operate, maintain, and lease docks, wharves, sheds, elevators, pipelines, pumping stations and related facilities, storage facilities, housing and food facilities, heliports, locks, slips, laterals, basins, warehouses, and all other property, structures, equipment, and facilities except elevators, and including belt and connecting lines of railroads, and vessels and other transportation devices and equipment.

2 To dredge and maintain shipways, channels, slips, basins, and turning basins.

3. To establish, operate, and maintain navigable waterway systems in cooperation with the federal government, the state and its subdivisions.

4. To borrow from any person using or renting any facility of the authority such sums as are necessary to improve or construct the borrowed property, and to agree that the loan will be liquidated by deducting from charges for the borrowed property, a certain percentage.

5. To collect tolls and fees for the use of the terminal facility.

6. To mortgage its properties and the revenues and other advantages arising therefrom.

7. To enter into agreements with licensees in which licensees agree to acquire, construct, operate, and maintain terminal facilities; and to use revenue bond proceeds to reimburse them for costs.

8. To contract with any agency, public or private, to provide for necessary public utilities in and through the development.

9. To lease or sublease lands leased from the state and to lease, sublease, or otherwise agree with any person to facilitate the acquisition of offshore or onshore terminal facilities acquired after July 1, 2008, for unloading, temporarily storing, and/or transporting after unloading containerized cargo in accordance with a license or licenses granted by the authority. Proposed law excepts these agreements from the provisions of the public bid law.

Proposed law contains provisions authorizing the authority to incur debt and issue bonds and/or other debt instruments with the approval of and sold by the state bond commission

and with "specific authorizations" granted by the legislature for each issue. The bonds are limited to revenue bonds which pledge for their payment the income and revenues derived or to be derived from the properties and facilities maintained and operated by the authority or received from other sources. The bonds are specifically tax exempt, except estate or gift taxes and taxes on transfers.

Proposed law provides that the revenue bonds are to be limited obligations of the authority. They can not be payable from the general funds of the authority, but only revenues, agreements, and funds pledged under the resolution or trust agreement authorizing the revenue bonds. Neither the credit nor the taxing power of the state is pledged for their payment, and there is a prohibition of the state pledging its full faith and credit to the payment of "any obligations under the terms of any lease entered into by the authority." The bond authority in proposed law is in addition to and supplemental to the authority conferred by any other general or special law. The secretary of DOTD is authorized to perform, and exercise for and on behalf of the authority and the board, all acts required to be done in connection with the authorization and issuance of revenue bonds.

Proposed law authorizes the board of commissioners or executive director to petition a court of competent jurisdiction, for appropriate mandatory, injunctive or other relief pending final adjudication, or to enforce its orders. Authorizes the authority to issue such orders as the public interest and equities of the case may require, and as may be necessary to effectuate the proposed law's purposes, including but not limited to: cease and desist orders; revocation of, or other appropriate action affecting, licenses issued by the authority; and such affirmative action as may be appropriate.

Proposed law requires "full coordination and cooperation" between agencies and groups that have complementing or overlapping interests.

Proposed law requires that authority is required to "take affirmative steps" to insure that the program develops programs for, or is coordinated into the planning programs of, modes of transportation, to include rail, road, waterway, air and pipeline, so that there is a long-term and orderly pursuit of transportation services in the coastal zone so as to achieve the most efficient and economical transportation program that is feasible and that will be least destructive of other values in the state. Federal agencies must be consulted regularly and must be fully involved.

Proposed law authorizes the commissioner of administration as register of state lands to grant to the authority a lease on state-owned lands and water bottoms which are selected by the authority as sites for terminal facilities if approved by the senate and house committees on transportation, highways, and public works; provided that the mineral rights are reserved to the state. They must be leased for 1 dollar per acre per annum for a term of 99 years. However, the legislature may reevaluate the rental payments upward or downward to reflect changing economic conditions. All proceeds are paid into the general fund.

Proposed law specifically prohibits the authority from leasing state-owned lands and water bottoms for mineral exploration and production or for the cultivation or production of marine resources. Specifies that nothing in the proposed law is to detract from the authority of the State Mineral Board and/or LWFC to lease for such purposes.

Proposed law requires the board of commissioners to make an annual report to the governor concerning the expenses and operation of the program and the terminal. The authority is to be a budget unit of the state and is subject to all provisions of law applicable to budget units and all other provisions of law applicable to state agencies unless the proposed law provides to the contrary.

Proposed law makes the authority and its projects ineligible for Port Priority Program funds.

Effective on July 1, 2008.

(Adds R.S. 34:3491 - 3506)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Transportation, Highways, and Public Works to the original bill.

1. Removes the board's expropriation authority.

2. Requires that rules and regulations for the maintenance and operation of the authority be approved by the Senate and House committees on transportation, highways, and public works prior to adoption.

3. Requires all other rules and regulations be approved by the Senate and House committees on transportation, highways, and public works prior to promulgation.

4. Restricts the board to two seven year terms of office.

5. Requires approval of the House and Senate committees on transportation, highways, and public works prior to the commissioner of administration, acting as register of state lands, granting the authority a lease on state-owned lands and water bottoms.

Senate Floor Amendments to engrossed bill.

1. Designates the boundaries of the authority by latitude and longitude.

2. Excludes mineral leases from the authority's power to acquire water bottoms, wetlands, and lands.

3. Changes two of the members of the board of commissioners of the authority from a member selected from a list submitted by the North American Export Grain Association and the Louisiana Mid-Continent Oil and Gas Association to one member chosen at large and one appointed by the AFL-CIO.

4. Deletes the prohibition on the State Mineral Board and the Wildlife and Fisheries Commission from leasing lands once leased to the authority unless they can show by clear and convincing evidence that the lease will not adversely affect authority operations.

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Transportation, Highways and Public Works to the engrossed bill.

1. Requires the authority to enter into cooperative endeavor agreements with the local governing authority, appropriate existing port commission, port, harbor and terminal district, or offshore terminal authority prior to acquiring certain lands.

2. Adds the chairmen of the House and Senate committees on transportation, highways and public works or their designees as commissioners of the authority.