



January 25, 2010

# HOUSE BILL No. 1076

DIGEST OF HB 1076 (Updated January 21, 2010 9:36 am - DI 44)

**Citations Affected:** IC 8-10.

**Synopsis:** Local port authorities. Eliminates the requirement that a local port authority contract be in the name of the political subdivision creating the authority. Specifies that a local port authority is an instrumentality of the state and may exercise certain powers independent of any political subdivision. Authorizes local port authorities to borrow money. Relocates bonding authority for local port authorities from the list of general powers to a separate section. Retains the requirement that a local port authority obtain the approval of the governing body that created the authority before entering contracts concerning royalties from natural or mineral resources of land owned by the authority and relocates the requirement from the list of general powers to a separate section.

**Effective:** July 1, 2010.

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## Stilwell, Cheatham

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January 5, 2010, read first time and referred to Committee on Interstate and International Cooperation.  
January 25, 2010, reported — Do Pass.

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January 25, 2010

Second Regular Session 116th General Assembly (2010)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2009 Regular and Special Sessions of the General Assembly.

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## HOUSE BILL No. 1076



A BILL FOR AN ACT to amend the Indiana Code concerning transportation.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 8-10-5-2 IS AMENDED TO READ AS FOLLOWS  
2 [EFFECTIVE JULY 1, 2010]: Sec. 2. (a) Any municipal corporation,  
3 county, or any combination of a municipal corporation, municipal  
4 corporations, county, or counties may create a port authority and there  
5 may be created a port authority in a county having a population of more  
6 than four hundred thousand (400,000) but less than seven hundred  
7 thousand (700,000). Such authority may operate in addition to any  
8 municipal authority that may be created under this chapter. A  
9 municipal corporation shall act by ordinance, and a county shall act by  
10 resolution of the county commissioners in authorizing the creation of  
11 a port authority. A port authority created hereunder shall be a body  
12 corporate and politic which may sue and be sued, plead and be  
13 impeached, and shall have the powers and jurisdiction enumerated in  
14 this chapter. The exercise by such port authority of the powers  
15 conferred upon it shall be deemed to be essential governmental  
16 functions of the state of Indiana, but no port authority shall be immune  
17 from liability by reason thereof.

HB 1076—LS 6512/DI 92+



(b) In the exercise of the powers and authorities herein granted said port authority shall have power to make and enter into any and all contracts in the name or names of the governmental unit or units creating such authority, and such contracts as that may be necessary to effectuate the purposes of this chapter. and which are not Except as otherwise expressly provided for shall be made without by this chapter, a contract made by a port authority is not subject to ratification thereof by any other board, body, or officer.

SECTION 2. IC 8-10-5-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 8. (a) A port authority is an instrumentality of the state and shall have full power and authority independent of any political subdivision to do the following:

(1) Purchase, construct, sell, lease, and operate docks, wharves, warehouses, piers, and other port, terminal, or transportation facilities within its jurisdiction consistent with the purposes of the port authority and make charges for the use thereof.

(2) Straighten, deepen, and improve any canal, channel, river, stream, or other water course or way which may be necessary or proper in the development of the facilities of such port.

(3) Establish dock lines, piers, and other facilities necessary to the conduct of pleasure boating within the territory under the jurisdiction of the port authority.

(4) Regulate and enforce the regulation of all uses and activities related to the port in the area under the jurisdiction of the port authority and determine the use of land adjacent to waters under the jurisdiction of the port authority within a reasonable distance from the shore lines of such waters. However, this subdivision does not:

(A) affect the requirement that special standards for the safe operation of watercraft on public waters must be adopted by rule by the department of natural resources under IC 14-15-7-3; or

(B) authorize the assessment by the port authority of a charge or fee for the passage of a watercraft through the navigable waters of the state.

(5) Acquire, own, hold, sell, lease, or operate real or personal property for the authorized purposes of the port authority.

(A) The board of directors may, by resolution, recommend to the governing body of the municipality or municipalities creating the port authority that they authorize general obligations, mortgage, or revenue bonds for any one (1) or more of the following purposes:

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- (i) To acquire or improve port or harbor sites.
- (ii) To acquire, construct, extend, alter, or improve structures, ways, facilities, or equipment necessary for the proper operation of the port authority or the port or harbor within its jurisdiction.
- (iii) To refund outstanding bonds and matured interest coupons and issue and sell refunding bonds for that purpose.
- (B) Prior to a recommendation authorized by clause (A), the board shall give notice of a public hearing at which time the board shall disclose the purpose for which the bond issue is proposed; the amount of the proposed issue; and all other pertinent data. At least ten (10) days prior to the date set for hearing, the board shall publish in two (2) newspapers of general circulation in the city, county or counties, or such other municipalities involved; a notice of the time, place, and purpose of the hearing. If there is only one (1) paper one (1) notice shall be sufficient.
- (C) The governing body shall review the proposal of the board of directors of the port authority and if it approves shall provide for the advertisement and sale of the issue in compliance with IC 5-1-11. For purposes of this chapter, IC 5-1-11 shall apply as fully to mortgage bonds as to general obligation or revenue bonds.
- (D) Bonds issued under the authority of this chapter are not subject to limitations on interest rates.
- (E) The governing body shall fix the time and place of payment of principal and interest, but no issue shall have a maturity date in excess of forty (40) years from date of issue.
- (F) Bonds issued under the provisions of this chapter, together with the interest thereon, shall be tax exempt.
- (G) The governing body shall apply the proceeds from the sale of bonds exclusively to the purposes for which the bonds were issued and only to the extent necessary therefor. Any remaining balance shall be placed in a sinking fund for the payment of the bonds and the interest thereon.
- (H) Nothing in this chapter shall affect existing obligations on outstanding bonds. In case a board of directors or a port authority is discontinued as provided in section 4 of this chapter the primary obligations on its bonds shall remain unaffected. In addition, the city or county or municipalities involved in the issuance thereof shall assume liability for the payment of the bonds according to their terms and in relation

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to their interest or proportion therein.  
(6) With the approval of the governing body creating it, sell, lease, or enter into a royalty contract for the natural or mineral resources of land which it owns. Moneys received from these sources shall be deposited in the nonreverting capital fund of the port authority.  
(7) (6) Apply to the proper authorities of the United States pursuant to appropriate law for the right to establish, operate, and maintain foreign trade zones within the limits of the port authority and establish, operate, and maintain such foreign trade zones.  
(8) (7) Exercise the right of eminent domain to appropriate any land, rights, rights-of-way, franchises, easements, or other property necessary or proper for the construction or the efficient operation of any facility of the port authority, award damages to landowners for real estate and property rights appropriated and taken or injuriously affected, and in case the board of directors of the port authority cannot agree with the owners, lessees, or occupants of any real estate selected by them for the purposes herein set forth, proceed to procure the condemnation of the same as hereinafter provided, and in addition thereto, when not in conflict or inconsistent with the express provisions of this chapter, proceed under the general laws of the state of Indiana governing the condemnation of lands and the rights-of-way for other public purposes which may be in force at the time, and the provisions of such laws are hereby extended to ports and harbors and to the properties of port authorities as provided for herein so far as the same are not in conflict or inconsistent with the terms of this chapter. In any such proceeding prosecuted by the board of directors of a port authority to condemn or appropriate any land or the use thereof or any right therein for purposes permitted by this chapter, the board and all owners and holders of property or rights therein sought to be taken shall be governed by and have the same rights as to procedure, notices, hearings, assessments of benefits and awards, and payments thereof as are now or may hereafter be prescribed by law for the appropriation and condemnation of real estate, and such property owners shall have like powers and rights as to remonstrance and of appeals to the circuit or superior courts in the county in which such property sought to be appropriated is located. However, the payment of all damages awarded for all lands and property or interests or rights therein appropriated under the provisions of this chapter shall be paid entirely out of funds under the control of such port authority,

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except for the following:

(A) Upon written application of any property owner affected, any municipal corporation, or, as to areas outside the boundaries of a municipal corporation, any county, participating in the creation of a port authority, after ten (10) days written notice to the port authority and public hearing had thereon, may revoke the right of eminent domain to be exercised by the port authority as to any parcel or parcels of land inside its borders within sixty (60) days after the port authority has by resolution announced the lands, rights, rights-of-way, franchises, easements, or other property to be taken.

(B) Nothing herein contained shall authorize a port authority to take or disturb property or facilities belonging to any public corporation, public utility, or common carrier, which property or facilities are necessary and convenient in the operation of such public corporation, public utility, or common carrier, unless provision is made for the restoration, relocating, or duplication of such property or facilities, or upon the election of such public corporation, public utility, or common carrier, for the payment of compensation, if any at the sole cost of the port authority, subject to the following:

(i) If any restoration or duplication proposed to be made hereunder shall involve a relocation of such property or facilities, the new facilities and location shall be of at least comparable utilitarian value and effectiveness and such relocation shall not impair the ability of the public utility or common carrier to compete in its original area of operation.

(ii) Provisions for restoration or duplication shall be described in detail in the resolution for appropriation passed by the port authority.

~~(9)~~ (8) Accept, receive, and receipt for federal moneys, and other moneys, either public or private, for the acquisition, construction, enlargement, improvement, maintenance, equipment, or operation of a port or harbor or other navigation facilities, and sites therefor and comply with the provisions of the laws of the United States and any rules and regulations made thereunder for the expenditure of federal moneys upon such ports and other navigation facilities.

~~(10)~~ (9) Maintain such funds as it deems necessary.

~~(11)~~ (10) Direct its agents or employees, when properly identified in writing, and after at least five (5) days written notice, to enter upon lands within the confines of its jurisdiction in order to make

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1 surveys and examinations preliminary to location and  
2 construction of works for the purposes of the port authority,  
3 without liability of the port authority or its agents or employees  
4 except for actual damage done.

5 ~~(12)~~ **(11)** Sell or lease real and personal property not needed for  
6 the operation of the port authority and grant easements or  
7 rights-of-way over property of the port authority.

8 ~~(13)~~ **(12)** Promote, advertise, and publicize the port and its  
9 facilities, provide traffic information and rate information to  
10 shippers and shipping interests, and appear before rate making  
11 authorities to represent and promote the interests of the port.

12 **(13) Borrow money and secure the borrowing by a pledge of**  
13 **the following:**

- 14 **(A) Accounts receivable.**
- 15 **(B) A security interest in capital equipment for which the**  
16 **proceeds of the loan are used.**
- 17 **(C) Other security, including the excess of unobligated**  
18 **revenues over operating expenses.**

19 **(b) The term of a loan authorized by subsection (a)(13) may not**  
20 **exceed thirty-five (35) years.**

21 SECTION 3. IC 8-10-5-8.5 IS AMENDED TO READ AS  
22 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 8.5. Port authorities  
23 created in a county having a population of more than four hundred  
24 thousand (400,000) but less than seven hundred thousand (700,000),  
25 shall have all the powers of port authorities provided under section 8  
26 of this chapter except the power to exercise eminent domain as  
27 provided in section ~~8(8)~~ **8(7)** of this chapter in any city having a  
28 population of:

- 29 (1) more than seventy-five thousand (75,000) but less than ninety  
30 thousand (90,000); or
- 31 (2) more than thirty-two thousand (32,000) but less than  
32 thirty-two thousand eight hundred (32,800).

33 SECTION 4. IC 8-10-5-8.7 IS ADDED TO THE INDIANA CODE  
34 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
35 1, 2010]: **Sec. 8.7. (a) The board of directors may, by resolution,**  
36 **recommend to the governing body of the municipality or**  
37 **municipalities creating the port authority that they authorize**  
38 **general obligations, mortgage, or revenue bonds for any one (1) or**  
39 **more of the following purposes:**

- 40 **(1) To acquire or improve port or harbor sites.**
- 41 **(2) To acquire, construct, extend, alter, or improve structures,**  
42 **ways, facilities, or equipment necessary for the proper**

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operation of the port authority or the port or harbor within its jurisdiction.

(3) To refund outstanding bonds and matured interest coupons and issue and sell refunding bonds for that purpose.

(b) Before making a recommendation authorized by subsection (a), the board shall give notice of a public hearing at which time the board shall disclose the purpose for which the bond issue is proposed, the amount of the proposed issue, and all other pertinent data. At least ten (10) days before the date set for hearing, the board shall publish in two (2) newspapers of general circulation in the city, county, counties, or other municipalities involved, a notice of the date, time, place, and purpose of the hearing. If there is only one (1) newspaper, one (1) notice is sufficient.

(c) The governing body shall review the proposal of the board of directors of the port authority and if it approves shall provide for the advertisement and sale of the issue in compliance with IC 5-1-11. For purposes of this chapter, IC 5-1-11 applies as fully to mortgage bonds as to general obligation or revenue bonds.

(d) Bonds issued under the authority of this chapter are not subject to limitations on interest rates.

(e) The governing body shall fix the date, time, and place of payment of principal and interest, but no issue may have a maturity date later than forty (40) years after date of issue.

(f) Bonds issued under this chapter, together with the interest thereon, are tax exempt.

(g) The governing body shall apply the proceeds from the sale of bonds exclusively to the purposes for which the bonds were issued and only to the extent necessary therefor. Any remaining balance shall be placed in a sinking fund for the payment of the bonds and the interest on the bonds.

(h) This chapter does not affect obligations existing before July 1, 2010, on outstanding bonds. If a board of directors or a port authority is discontinued, as provided in section 4 of this chapter, the primary obligations on its bonds remain unaffected. In addition, the city or county or municipalities involved in the issuance of bonds shall assume liability for the payment of the bonds according to their terms and in relation to their interest or proportion in the bonds.

SECTION 5. IC 8-10-5-8.9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 8.9.** With the approval of the governing body creating it, a port authority may sell, lease, or enter into a royalty contract

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1     **for the natural or mineral resources of land that it owns. Money**  
2     **received from these sources shall be deposited in the nonreverting**  
3     **capital fund of the port authority.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Interstate and International Cooperation, to which was referred House Bill 1076, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

HARRIS, Chair

Committee Vote: yeas 11, nays 0.

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