



HANDBOOK

Ohio County Commissioners

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Chapter 79

PORT AUTHORITIES

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STRUCTURE OF PORT AUTHORITY CHAPTER

The structure of the Port Authority Chapter of the *Handbook* is divided into three parts as follows:

- Part 1 - Introductory Material and General Information—see page 3
- Part 2 - “New” Port Authorities—see page 10
- Part 3 - “Old” Port Authorities—see page 27

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PART 1

INTRODUCTORY MATERIAL AND GENERAL INFORMATION

79.01 INTRODUCTION

This Chapter of the *Handbook* focuses on the establishment, operation and powers of port authorities as authorized under [ORC Chapter 4582](#). Ask most Ohioans about ports in our state and they may know about the Ports of Cleveland and Toledo and of Ohio River terminals and barge traffic, but will be surprised to learn that many Ohio Port Authorities are “inland ports” with no access to Ohio’s abundant maritime resources.

Ohio law provides for two types of port authorities, “new” and “old” ports as will be explained in this Chapter. Currently 58 port authorities have been established in Ohio by political subdivisions. This includes territory in 48 counties where they operate a variety of port and other transportation facilities like airports and railroads and promote and finance economic development in a myriad of ways within their jurisdictions.

Both types of port authorities are required to “...foster and encourage the participation of private enterprise in the development of port authority facilities to the fullest extent it considers practicable “...in an effort to limit the need for the construction and operation of facilities by the port authority ([ORC 4582.10](#) & [4582.35](#)).”

This Chapter is divided into three major parts. Part 1, *Introductory Material and General Information*, introduces the reader to the two statutory types of port authorities, includes general information on ports, and includes descriptions of certain provisions of law that apply to both types of ports. Part 2 summarizes the statutory law on “*New Port Authorities*.” Part 3 concentrates on the law relating to “*Old Port Authorities*.”

Table 79-1 at the end of this Chapter includes a listing of current port authorities in Ohio, whether they are organized as “new” or “old” ports, and selected other information.

79.02 TYPES OF PORT AUTHORITIES—“OLD” PORTS & “NEW” PORTS

Ohio law recognizes two types of port authorities. The first type of port authority is established pursuant to [ORC Section 4582.02](#) and operates exclusively under [ORC](#)

[Sections 4582.01 to 4582.21](#). These port authorities were in existence on July 9, 1982. These port authorities are commonly referred to as “old port authorities”.

The second type of port authority, which is commonly known as “new port authorities”, is established pursuant to [ORC Section 4582.22](#). “New port authorities”, essentially any port authority established after July 9, 1982, operate exclusively under [ORC Sections 4582.21-4582.59](#).

The law, however, does allow an “old port authority” to convert to a “new port authority” if the political subdivision or subdivisions that originally created the port takes action for it to become a “new port authority” as will be explained later in this Chapter.

Both types of port authorities are bodies corporate and politic and may sue and be sued and may plead and be impleaded. Their powers are considered essential governmental functions of the state; however, no port authority is immune from liability, as also will be explained later in this Chapter ([ORC 4582.01\(A\)](#), [4582.02](#), [4582.21\(A\)](#), [4582.22\(A\)](#)).

The law on “new port authorities” specifies that [ORC Sections 4582.22 to 4582.59](#) “...being necessary for the welfare of the state and its inhabitants shall be liberally construed to effect the purposes thereof.” On the other hand, liberal construction of the law related to “old port authorities” is specified only as it relates to Division C of [ORC Section 4582.06](#), dealing with those who violate rules adopted for the use and safeguarding of port authority property ([ORC 4582.29](#)). The exact difference of these differences in legal construction of the law is unclear.

As shown on Table 79-1 more port authorities are organized as “new” port authorities than “old” ports. The advantages and disadvantages of one type of port authority over another involve a relatively complex legal and technical analysis which is beyond the scope of this Chapter of the *Handbook*. The sections that follow and some of the tables at the end of this Chapter attempt to distinguish the two types of port authorities. Yet, following are some of selected differences between the two types:

1. Inclusion of Non-General Purpose Political Subdivisions Within a “New” Port Authority—A “new” port authority may include political subdivisions other than counties, townships and municipalities within the territory and jurisdiction of the port authority ([ORC 4582.22\(A\)](#)). It should be noted that these other political subdivisions, however, may not create a port authority unless a county, township or municipality is a part to the creation. An “old” port can only be created by and include the territory of a counties, townships and municipalities ([ORC 4582.02](#)).
2. Restrictions of Powers of a “New” Port Authority—When a “new” port authority is created by one or more political subdivisions, those establishing the port may, in the resolution creating the port, limit certain statutory powers of the port. For example, some new ports have not been given the right of eminent domain by the political subdivisions creating it ([ORC 4582.22\(B\)](#)). These restrictions on

powers are not authorized for “old” ports. Restricted powers withheld upon creation of a “new” port may be rescinded at a later date ([ORC 4582.22\(C\)](#)).

3. Expansion of Territory of a “New” Port Authority After Its Original Creation—In the case of a “new” port authority other political subdivisions may join and their territory annexed into the territory of the original port ([ORC 4582.26](#)). The law provides no similar ability in the case of an “old” port authority.
4. Membership on the Board of Directors—In the case of a “new” port authority the board of directors may include representatives of non-general purpose political subdivisions if such subdivisions are annexed to the port authority ([ORC 4582.27](#)).
5. Territory of a “New” Port Authority Owning or Leasing a Railroad Line—Generally, the area of jurisdiction of a port authority is all of the territory of the political subdivisions or subdivisions creating it or annexed to it. In the case of a “new” port authority that owns or leases a railroad line any territory on which the railroad line, its terminals and related facilities are within the area of jurisdiction even if they are located in a political subdivision that did not participate in the creation of the port or was later annexed to the port ([ORC 4582.30](#)). This provision only applies to “old” ports that convert to a “new” port. Also see this ORC Section for additional information on the ability to establish overlapping port authorities in certain limited circumstances.

Finally, there are significant differences in the general statutory powers of the two types of port authorities. These are detailed in Table 79-2 at the end of this Chapter. In addition, differences in the statutory definitions that apply to “new” and “old” port authorities are summarized in Table 79-3. Another table, Table 79-4 is a guide to ORC Sections dealing with “new” and “old” port authorities that can be used to compare differences between the two types of ports.

79.03 GENERAL POWERS OF COUNTIES AND MUNICIPALITIES BORDERING LAKE ERIE; RELATIONSHIP OF THESE POWERS TO THE CREATION OF PORT AUTHORITIES

Prior to the passage of law allowing for the establishment of port authorities both counties and municipalities had been granted certain powers related to harbors, water navigation and commerce on Lake Erie. Counties may construct, open, enlarge, excavate, improve, deepen, straighten or extend any harbor located in the county. A county may also make such improvements within the corporate limits of a municipality with a tax duplicate of less than \$500 million with the approval of the city or village. Counties may also issue debt for permanent improvements under [ORC Section 133.15 \(ORC 307.65\)](#).

A county also may appropriate money and issue voted bonds for certain canals and waterways if the construction is authorized under the authority, management and

control of the U.S. government, Ohio, in cooperation with another state, or by an adjoining state. Such projects must connect the Great Lakes or ocean with navigable waters of Ohio for use by steamships, barges or other vessels. The canal or waterway must be for the general public benefit of the community of the county and must be entirely a public enterprise and free from private enterprise. This authority also allows counties connected by railroads or other highways of commerce to appropriate money or issue voted bonds ([ORC 307.67](#), [307.68](#)). Finally, if surplus tolls, rates, and charges are realized from the operation of the canal or waterway the county is entitled to receive a proportionate share of any surplus.

Likewise, a city or village with a Lake Erie shoreline to aid in navigation and water commerce may construct, maintain, use and operate, piers, docks, wharves, tracks, water terminals and access roads or other ways to connect the facilities on land owned by the municipality pursuant to [ORC Sections 721.04-721.11](#). A municipality also may make improvements over and on submerged or artificially filled land owned by the state and within territory covered or formerly covered by Lake Erie waters in front of littoral land even if the littoral land is privately owned. Municipalities may also enact ordinances to establish harbor lines and other regulations which may prohibit unlawful encroachments, subject to federal legislation. The powers of municipalities generally may extend into Lake Erie for a distance of two miles from the natural shoreline.

All of these statutory powers granted to municipalities, however, are subject to the powers of the U.S. government and the public rights of navigation and fishing. In addition, all mineral rights or other natural resources in the soil or waters are reserved to the state ([ORC 721.04](#)).

Generally, the establishment of a port authority does not:

1. Impair the provisions of statutory law or municipal ordinances which direct the payment of revenue derived from public property into a sinking fund or dedicating the revenue to any specific purpose ([ORC 4582.11\(A\)](#), [4582.36\(A\)](#)).
2. Interfere with the exercise of any permit for the removal of sand and gravel, or other similar permits issue by the State of Ohio or the federal government ([ORC 4582.11\(D\)](#), [4582.36\(D\)](#)).
3. Impair or contravene any applicable federal regulations ([ORC 4582.11\(E\)](#), [4582.36\(E\)](#)).

However, a county or municipality that participated in the creation of either a “new” or “old” port authority forfeits the right to exercise these statutory powers during the time the port authority is in existence ([ORC 4582.11\(B\)](#), [4582.16](#), [4582.36\(B\)](#), [4582.42](#)). In the case where a county or municipality has exercised these powers prior to participating in the creation of a port, these actions, including any lease or land conveyance, is not affected by the creation of the port authority ([ORC 4582.11\(C\)](#), [4582.36\(C\)](#)).

79.04 SHORT HISTORY OF PORT AUTHORITIES IN OHIO

Historically, port authorities were created to conduct maritime activities. While Ohio is not thought of as a maritime state, Ohio has 716 miles of navigable waterways with 265 miles of Lake Erie coast and 451 miles of Ohio River shoreline.

Before the Ohio General Assembly enacted the port authority enabling statute, ports on Lake Erie and river terminals on the Ohio River were important drivers of Ohio's early industrial economy. As early as 1825, the City of Cleveland began maritime operations through its Department of Port Control.

But even before that the Northwest Ordinance recognized that access to navigable waters would play a vital role in the development of the "Ohio country" and of the American frontier when it provided that "the navigable waters leading into the Mississippi and St. Lawrence...shall be common highways, and forever free."¹ During the early years of settlement the influx of settlers that arrived by flatboat or keelboat spurred the establishment of Marietta and Cincinnati in 1788 and allowed for statehood in 1803.

The primary impetus for the enactment of Ohio's port authority enabling legislation was federal legislation allowing for the U.S. and Canada to cooperate in the development of the St. Lawrence Seaway. The first proposals for a deep waterway go back to the 1890's in conjunction with the development of hydropower. Significant opposition in both the U.S. and Canada from interests primarily representing Atlantic and Gulf coast ports, other internal waterways and railroads, delayed support until the election of Dwight D. Eisenhower as President in 1952.

With the support of President Eisenhower, legislation was drafted in 1953 which was approved by Congress the next year. The President signed the Wiley-Dondero Act on May, 13 1954. The Act authorized the U.S. to work jointly with Canada to create a deep-water 114-mile navigation channel in the St. Lawrence River between Montreal and Ogdensburg, New York. The seaway enabled large ships and tankers to sail directly from the Atlantic Ocean to Duluth, Minnesota. Still opponents of the Seaway would not give up, applying for an injunction. When "the U.S. Supreme Court rejected the application in early June"², groundbreaking ceremonies took place in Massena, New York in August of that year. Queen Elizabeth and President Eisenhower officially opened the Seaway on June 26, 1959.

In response to the development of the St. Lawrence Seaway, the Ohio General Assembly enacted emergency legislation establishing [Ohio Revised Code Chapter 4582](#) allowing for the establishment of port authorities as a governmental entity. Am. Sub. SB 193 established the basic framework for Port Authorities that still exists in the law today.

¹Ohio Department of Transportation, Division of Water Transportation. *Water Transportation Map of Ohio*, 1988

²Jenish, D'arcy. *The St. Lawrence Seaway: Fifty Years and Counting*. The St. Lawrence Seaway Management Corporation, 2009.

The new law required county established port authorities to "...compensate in full the municipal corporations included in the territory of such county, in the amount of money equal to the waterfront investment of such municipal corporations in the territory or adjoining lands...." The Act also required a port authority to "foster and encourage the participation of private enterprise in the development of the port facilities to the fullest extent it deems practicable in the interest of limiting the necessity of construction and operation of such facilities by the port authority." While allowing for voted property tax levies by the board of the port authority, the levy was limited to .55 mills for no more than five years. The levy had to be approved by 55% of the voters.

The Act was passed on June 21, 1955 as an emergency measure and "should become effective immediately in order to permit the prompt organization of port authorities to take advantage of the St. Lawrence Seaway project authorized by the National Congress, thereby advancing the interests and welfare of the State of Ohio and its citizens." The law became effective on June 30, 1955 when signed by Governor Frank J. Lausche after the legislation was certified to him by House Speaker Roger Cloud and Senate President John W. Brown.

The first port authority to be established under the new legislation was the Toledo-Lucas County Port Authority which was formed later in 1955. By 1989 it was reported that eight port authorities had been established including Ashtabula, Cleveland-Cuyahoga County, Conneaut, Fairport Harbor, Huron and Lorain, in addition to the Toledo-Lucas County Port. By 1993 two more port authorities had been established in Scioto and Belmont counties.³

Since the original enabling legislation was enacted, changes in Ohio law enabled port authorities to become more active in county and regional economic development programs. While the transportation and maritime focus of the original law remains an important element of the law, new provisions relating to comprehensive economic development and the financing of private, public and non-profit economic development related facilities have allowed ports to play a more vital role in overall economic and job promotion and retention programs.

In 1957, the law was changed (HB 249, effective 9-7-57) to allow port authorities to issue industrial development bonds under [ORC Chapter 165](#) as could Community Improvement Corporations (CIC's). Following a constitutional challenge to the issuance of such bonds in the mid 1960's, Ohioans approved an amendment to the Ohio Constitution to specifically authorize the lending of aid and credit to private entities under certain circumstances and legislation (SB 273, effective 6-26-67) followed to firm up this port authority power. In the 1970's airport activities were added to the list of authorized purposes.

Perhaps the most significant change since enactment of the port authority law took place in 1982. HB 439, effective July 9, 1982 authorized the creation of a new type of

³ Ohio Department of Transportation, Division of Water Transportation. *Ohio's Lake Erie Ports and Ohio River Terminals*, 1988-1989 and 1992-1993.

port authority that had additional powers in addition to the powers of the original law. In this Chapter of the *Handbook*, this is what is referred to as “new” and “old” port authorities. Under the Act, any port authority established after the effective date of the law would be organized and have the powers provided for in the “new” port authority law. In addition, an “old” port authority could make a decision locally that it would like to operate as a “new” port authority if the political subdivision or subdivisions that originally created the port authority adopted resolutions to allow the port to operate under the new law as a “new” port authority.

Finally, in 2000 the General Assembly enacted SB 137 (effective 5-17-2000); the general goal was to harmonize the law between “old” and “new” port authorities. Specifically, the purpose of the Act as set forth in the short title of the Act was “to comprehensively revise the powers and duties of port authorities, to enhance the ability of port authorities and other political subdivisions to cooperate in the accomplishment of mutual objectives, to establish more consistency between the statutes governing port authorities established on or before July 9, 1982, and those established after that date, and to make other changes in the laws governing port authorities.”

While the law provided more consistency between “old” and “new” port authorities, there are still important differences that are detailed in this Chapter and set forth in Tables 79-3 through 79-4. In addition, SB 137 modified the authority of ports concerning permissible practices relating to interests in real and personal property including provisions relating to its acquisition, control, and disposition. The new law also provided increased opportunities for contracts between the port and other political subdivisions to perform any function or render any service that the other contracting party was authorized by law to perform or render. In addition, changes in the law allowed for the protection of certain corporate trade secrets from the public records law. Finally, the Act enhanced the ability of port authorities for innovative economic development financing practices using modern credit enhancement and other techniques.

79.05 AN EXECUTIVE SUMMARY OF WHAT PORT AUTHORITIES DO IN OHIO

While much of the remainder of this Chapter will focus on the details of [ORC Chapter 4582](#) as it applies to both “old” and “new” port authorities, this section will describe representative activities that port authorities across Ohio are engaged in daily in both the transportation and maritime sector and in economic development and development finance sector.

In the transportation and maritime sector, port authorities operate ports and river terminals, operate railroads, manage airports and have constructed and operate inter-modal facilities funneling multiple forms of transportation in one place. Port authorities develop bulk storage areas and handling systems for cargo. Port authorities also manage and operate passenger and air freight facilities. Lake Erie ports provide access to Canada and Europe through the St. Lawrence Seaway. Ohio River terminals provide access to the Gulf of Mexico, markets in Central and South America, the Atlantic and

Pacific Oceans and Asian markets through the Panama Canal. Ohio is now the 8th largest maritime state on the basis of tonnage moved.

In the economic development and development finance sector, port authorities have become active in acquiring and improving property and leasing and selling it to private companies. Port authorities own industrial parks and lease property to private sector clients. Port authorities have become actively engaged in the assessment, remediation, and redevelopment of brownfield sites, turning them into dynamic sites for new investment and development by job creators.

Port authorities have been key players when communities were faced with a crisis resulting from the closure of major facilities. For example, the Newark Air Force Base was closed and the port was established to assume ownership upon base closure. Likewise the Clinton County Port Authority assumed control of the Wilmington Air Park after cargo giant DHL closed operations at the former Strategic Air Command facility and donated the property to the port authority for economic redevelopment in the region.

Port financing can provide small and medium sized borrower's with access to national credit markets through credit enhancement techniques, such as letters of credit, as if these companies were highly rated investment grade corporations.

Using a number of taxable and tax exempt financing tools at their disposal, ports can finance or help finance facilities for private business, industry and commerce, non-profit corporations and other political subdivisions. Ports can also issue industrial development bonds, hospital revenue bonds, non-profit bonds and housing bonds. They also have the power to participate in recreational, educational, and cultural facilities, and engage in research projects. Ports have been involved in financing and property development for industry, business, warehousing, machinery and equipment, housing, health care, civic and recreational improvements and public infrastructure improvements.

By entering into capital lease transactions with companies needing major new facilities, the port may hold title to the new facility, lease it to the company for a number of years and, as the owner, the construction materials for the facility are exempt from the payment of sales and use taxes. This results in a significant savings to the company who buys the building for a nominal amount at the end of the lease period. Generally, port authority fees on such transactions and other fees from other financings will help fund port authority operations and develop cash reserves for operations and other economic development projects. Under a capital lease transaction, for example, the port may receive an administrative fee often equal to 10-15% of the sales and use tax savings.

Port financing is helping companies make energy efficiency retrofits to save money. The energy savings are used to finance the capital costs of energy enhancements, sometimes using special assessments levied by Energy Special Improvement Districts

to further secure the borrowing. And ports have been increasingly involved in projects relating to fiber optic networks, data centers and computer disaster recovery facilities in the new technology economy.

Some of the notable projects where a port authority was a financing partner include the Rock and Roll Hall of Fame and Museum in Cleveland, and the home of the Browns in the new Cleveland Stadium. Port authority financing also helped with the new Cleveland Cavaliers Player Development Center, the expansion of the Pro Football Hall of Fame in Canton, the Cleveland Museum of Art, the Columbus College of Art and Design, Cuyahoga County's new Administrative Center, Penn National's Hollywood Casino at the Mahoning Valley Racecourse, improvements to Children's Hospital in Columbus, Trinity Lutheran Seminary in Bexley, and the establishment of a Performing Arts Center in Findlay in the former middle school auditorium. Other financing initiatives include a new office building and parking facilities for Marathon Oil, student housing at the University of Findlay and at Cleveland State University and for Ballet Met and Franklin Park Conservatory in Columbus. In addition to a myriad of business, industry and multi-family housing projects across the state, other significant projects financed by port authorities include the Owens Corning corporate headquarters in Toledo and the Dana corporate headquarters in Maumee. One notable project was financing of equipment and software upgrades for the internationally known On-Line Computer Library Center (OCLC) headquarters in Dublin. Financing has also been arranged for community assets such as Goodwill Industries, YMCA's, community hospitals and health care facilities.

Most of the development financing involves an extensive knowledge of federal and state laws concerning taxable and tax-exempt debt, IRS regulations, the securing of "state volume cap" from the Ohio Development Services Agency (ODSA) and a comprehensive knowledge of investment banking practices and credit enhancement techniques.

Port authorities are engaged in economic development planning and target industries studies and market their areas through trade shows and other economic development promotion. They may also serve as the managers of enterprise zones for local governments; apply for and manage foreign trade zones under the U.S. Department of Commerce; and help in structuring tax increment financing projects for public infrastructure that can make private development happen. Other ports operate small business incubators. Ports have received a variety of grants including Local Government Innovation Fund grants, litter control grants, homeless grants and transitional housing grants. Ports also prepare shovel ready sites and operate rural transit systems. Ports are involved in providing assistance to minority and women-owned contractors through diversity and other economic inclusion initiatives. Public and private parking garages have become a new specialty of many ports. Other ports serve as the manager and administrator of county land banks.

Port authorities also are also involved in recreational activities such as Lorain's "Rockin' on the River" concerts, nature and lighthouse tours, and festivals like Conneaut's Dock

Festival. The Cleveland-Cuyahoga County Port Authority established and operates the Cleveland Lakefront Nature Preserve on land created by dredged sediment and has become involved in the management of sediment with the goal of turning it into a marketable resource and other initiatives to restore local waterways. Other ports have established a goal of enhancing access to waterways, provide marine patrols, and work on flood prevention and river dredging. One port has, by contract, established ferry service to Lake Erie's islands in Ottawa and Erie counties.

Finally, for a concise summary of port authorities as an economic development tool refer to [Port Authorities as an Economic Development Tool for Local Government](#) published by OSU Extension.⁴

79.06 ESTABLISHMENT OF PORT AUTHORITIES

Port authorities are created by resolution of a county or township or by ordinance of a municipality or any combination of these general purpose political subdivisions. Any county, township or municipality which was included in a port authority that was in existence on December 16, 1964, however, may not participate in the establishment of a port authority. Port authorities may thus be created by individual counties, townships or municipalities, or jointly. In addition, in the case of "new port authorities," any other political subdivision may participate in its creation, but only if a county, township or municipality is also a party to its establishment. Other political subdivisions act by resolution of its legislative authority.

79.07 CONVERTING AN "OLD PORT AUTHORITY" TO A "NEW PORT AUTHORITY"

An "old port authority" in existence on July 9, 1982 may be converted to a "new port authority" by legislative action of the political subdivision or subdivisions that created the "old port authority." The resolution or ordinance permits the "old port authority" to operate under [ORC Sections 4582.21-4582.59](#), instead of under [ORC Sections 4582.01-4582.20](#) ([ORC 4582.201\(A\) & \(B\)](#)).

An "old port authority" that is converted to a "new port authority" may revert to its former status by resolution or ordinance of the political subdivision or subdivisions that allowed the conversion and by the adoption of a corresponding resolution of the board of directors of the port authority. The resolution or ordinance states that the port authority will resume operating exclusively under [ORC Sections 4582.01-4582.20](#). If this action is taken, the port cannot at some later date again convert to a "new port authority" because the law allows a conversion to occur only one time ([ORC 4582.201\(C\)](#)).

⁴ Bowen-Ellzey, Nancy. Ohio State University Extension. Port Authorities as an Economic Development Tool For Local Government. Community Development Fact Sheet, CDFS-1567-10, 2010.

79.08 FINANCIAL CONTRIBUTIONS BY POLITICAL SUBDIVISIONS

As a general rule, political subdivisions creating, participating in the creation of or within the jurisdiction of a “new” or “old” port may appropriate and expend public monies to finance or subsidize the operation and any authorized purpose of the port. In the case of an “old port authority”, any political subdivision within the jurisdiction of the port has this right. In the case of a “new port authority”, on the other hand, only those counties, townships, municipalities and other political subdivisions that created or participated in the creation of the port are authorized to make such appropriations and expenditures ([ORC 4582.023](#) & [4582.25\(A\)](#)).

79.09 PORT AUTHORITY BUDGETS; USE OF FUNDS FROM RENTS AND CHARGES

As a political subdivision, the port authority board must comply with the requirements of [Ohio Revised Code Chapter 5705](#) relating to the adoption of a tax budget and an annual appropriation resolution as detailed in Chapter 22 of this *Handbook*. Both “new” and “old” port authority boards must prepare and adopt an annual budget for the port.

Rents and charges received by the port are used to pay for the general expenses of the port authority and to pay interest, amortization and debt retirement charges on any money borrowed. At the end of the year, if a surplus remains the surplus may be paid by the port authority board to political subdivisions creating or comprising the port authority. If such a surplus distribution is made it is paid into the general funds of the subdivisions in proportion to the taxable value of all property on the general tax lists within the territory of the port authority ([ORC 4582.13](#), [4582.39](#)).

79.10 PROPERTY TRANSACTIONS BETWEEN POLITICAL SUBDIVISIONS AND PORT AUTHORITIES

Any county, municipality, township, school district or other political subdivision or taxing district has the authority to convey, lease or exchange real or personal property, or interests in the property, not needed for its purposes to either a “new” or an “old” port authority without competitive bidding under mutually agreeable terms. In a similar vein, any “new” or “old” port can convey, lease or exchange real or personal property with the above named subdivisions without competitive bidding ([ORC 4582.121](#), [4582.38](#)).

79.11 PROPERTY TAX EXEMPTION FOR PORT AUTHORITY PROPERTY

Property owned by either a “new” or an “old” port authority is exempt from all real and personal property taxes if the property is used exclusively for any authorized purpose of the port authority ([ORC 4582.20](#) and [ORC 4582.46](#)). The exemption does not apply to any property occupied and used by a lessee as of the tax lien date where the written term of the lease is greater than one year. However, leased property would continue to be exempt if the property would be exempt from taxation under [ORC Chapter 5709](#) if the property were owned by the lessee. In order to obtain the exemption, the lessor or lessee must comply with other provisions of Ohio law to obtain the exemption.

79.12 PORT AUTHORITY OFFICIAL PLAN FOR MARITIME FACILITIES

Both “new” and “old” port authorities are required to prepare a plan for any future development, construction and improvement of the port’s maritime facilities. It should be noted that the requirement to prepare a plan only applies to maritime facilities and not to other facilities of the port. Maritime facilities are defined to include:

...docks, wharves, warehouses, piers, and other terminal and transportation buildings or structures used in connection with the transport, storage, or distribution of commercial goods on, over, or across the waterways or shorelines of this state, or buildings or structures for the construction, rehabilitation, maintenance, or repair of commercial vessels used for such purposes, which facilities are or are expected to be owned or leased by a port authority, operated by or on behalf of a port authority, or publicly owned and financed by a port authority.

The plan may contain maps, profiles and other data and descriptions to define the location and character of the work to be performed along with an estimate of the cost of the proposed maritime facilities. A maritime facilities plan must also include the proposed financing of the facilities which may include revenues, grants, subsidies, loans and financing. The plan does not affect the legality, validity or enforceability of any bonds, notes, leases, certificates or other financing instruments, any real estate, operating or management contracts or instruments or any taxes, tax abatements or exemptions, tax credits, tax increment financing, assessments or other financial participation related to the facilities in the plan.

After preparation of the plan, a public hearing must be conducted by the port authority board to receive comments on the plan. Notification of the hearing must be published once in a newspaper of general circulation in each county where a political subdivision participated in the creation of the port. The notice must also be published on the port authority web site. The public hearing takes place not less than 30 nor more than 60 days after the notice is published in a newspaper and on the web site.

The maritime facilities plan is available for public inspection at the port’s office. Interested persons may file written comments on the plan. The comments must be filed with the secretary of the port authority at least five days prior to the public hearing. After the hearing the port authority board may adopt the plan, with any modifications or amendments, as the official plan for the maritime facilities of the port ([ORC 4582.07](#) & [4582.32](#)). The official plan may be amended, modified or extended after its original adoption after a public hearing and notice is provided as specified above ([ORC 4582.08](#) & [4582.33](#)).

79.13 POWER OF PORT AUTHORITY TO ISSUE BONDS; ISSUANCE OF BONDS TO PROVIDE VENTURE CAPITAL FUNDING UNDER THIRD FRONTIER PROGRAM

Both “new” and “old” port authorities have the power to issue debt for the purpose of the acquisition or construction of port authority facilities and public improvements as will be explained in more detail in sections dealing with both types of ports. Ports also may

issue a variety of other types of bonds to help in financing private sector economic development initiatives, including industrial development bonds pursuant to [ORC Chapter 165](#) and as detailed in Chapter 80 of this *Handbook* dealing with Community Improvement Corporations (CIC's). In addition, both types of port authorities also may issue debt for research and development purposes, including capital formation, pursuant to Article VIII, Section 2p of the Ohio Constitution. The purpose of this initiative is "to increase the amount of private investment capital available in this state" ([ORC 150.01\(B\)](#)).

Under this authority a "new" or "old" port authority may be a conduit issuer of debt to generate funds to invest in the Ohio Venture Capital Program, commonly referred to as the Ohio Capital Fund. Funds raised by the issuance of port authority research and development bonds become part of the Ohio Capital Fund, a "fund-of-funds." Moneys in the Ohio Capital Fund are invested in private-capital venture funds. The private-capital venture funds then loan moneys to Ohio businesses in the seed or early stages of business development and to established Ohio companies developing innovative new methods and technologies.

This program is administered by the Ohio Venture Capital Authority and the issuance by a port authority is subject to a venture capital agreement. Under this agreement, a trustee engaged by the port would be authorized to claim tax credits issued by the Venture Capital Authority for the benefit of the port authority to cover any investment losses or to restore reserves that were used to cover investment losses. The provisions relating to tax credits are considered a credit enhancement from the state. For additional information refer to [ORC Chapter 150](#) and [ORC Section 4582.71](#).

79.14 PORT AUTHORITY INVOLVEMENT IN PROJECTS WHERE SPECIFIC AUTHORITY IS GRANTED TO INDIVIDUAL COUNTIES

While this Chapter of the *Handbook* deals primarily with the general powers of both "new" and "old" port authorities, there are a number of provisions of law which give the port authorities the power to be involved in the acquisition, construction, financing, ownership, management and leasing of special facilities that are unique for individual counties. Some of these powers relate to facilities and improvements including a stadium, sports facility, arena and convention center, educational and cultural facility, cultural performing arts center, port authority military use facility, Lake Erie shoreline improvement, fairground and sports park in particular counties. Some of these facilities are tied to special, often time-limited, lodging tax powers granted primarily in [ORC Section 5739.09](#). In the case of Cuyahoga County these facilities are also related to permissive local cigarette and liquor taxes that were authorized only for Cuyahoga County. These projects often involved the execution of a cooperative agreement between the county, city, port authority and non-profit corporation that sometimes manages the facility. These types of facilities are specific to individual counties and are too detailed for this Chapter. For additional information on these special facilities refer to [ORC Sections 307.671](#), [307.673](#), [307.674](#), [307.678](#), [307.679](#), [307.695](#), [307.697](#) and [4582.56](#).

79.15 APPLICATION OF PREVAILING WAGE LAW TO PORT AUTHORITY PUBLIC IMPROVEMENTS

Until September 29, 2011 both the “old” and the “new” port authority law required the payment of prevailing wages on port authority public improvements. Both ORC Section 4582.12(D), for “old” ports, and ORC Section 4582.37, for “new” ports required the payment of prevailing wages to laborers and mechanics employed on port projects. With the enactment of HB 153, the state budget bill enacted during that biennium, both of the specified provisions of law were repealed. According to the Ohio Legislative Service Commission, “the act exempts from the Prevailing Wage Law any public improvement undertaken by, or under a contract for, a port authority created by a municipal corporation, township, or county that was not included in a port authority in existence on December 16, 1964. Accordingly, the act repeals requirements under the law governing those port authorities....”⁵ In addition, [ORC 4115.04\(B\)\(6\)](#) provides a specific exemption from prevailing wages for port authorities.

79.16 SELECTED MISCELLANEOUS PORT AUTHORITY LAWS

This Chapter primarily deals with the powers of “new” and “old” port authorities under [Ohio Revised Code Chapter 4582](#), although certain other provisions of law are also summarized. There are, however, other provisions of Ohio law that include reference to both types of port authorities that are not summarized in this Chapter. Table 79-5 at the end of this Chapter includes a list of many of these statutes.

79.17 DISSOLUTION OF A PORT AUTHORITY

Either a “new” or an “old” port authority may be dissolved by the political subdivision or subdivisions that created the port authority, subject to making due provision for the payment of any obligations incurred by the port. In the event the port is dissolved, properties of the port authority are transferred to the subdivision or subdivisions that created the port. If the port authority was created by more than one political subdivision, the manner of transfer must be determined before the resolutions and ordinances dissolving the port authority are passed ([ORC 4582.023](#) & [4582.25\(B\)](#)).

79.18 PORT AUTHORITY ANNUAL REPORT TO DEVELOPMENT SERVICES AGENCY (DSA)

Both “new” and “old” port authorities must submit an annual report to the director of Ohio Development Services (ODSA) not later than April 1 each year. The report is to detail the projects and activities of the port authority during the previous calendar year. The contents of the report must include all aspects of the reported projects and activities, including the progress and status of the projects, cost data and other

⁵ Parker, Jennifer A., Cummiskey, Megan and other LSC Staff. Ohio Legislative Service Commission. Final Analysis of HB 153 of the 129th General Assembly, at page 115 at: <http://www.lsc.ohio.gov/analyses129/11-hb153-129.pdf>

information which ODSA determines should be included in the annual report ([ORC 4582.58](#)).

PART 2

“NEW” PORT AUTHORITIES

79.18 TERRITORIAL JURISDICTION OF A “NEW” PORT AUTHORITY

Generally, the territorial jurisdiction of a “new” port authority is required to include all of the territory of the political subdivision or subdivisions that create the port authority. One exception to this general rule is that a county may create a port authority which excludes any territory in the county which is included in the area of jurisdiction of an existing “old” or “new” port authority ([ORC 4582.30\(A\)\(3\)](#)).

In addition, if the port authority owns or leases a railroad line, the territory where the railroad lines, terminals and related facilities are located are automatically within the territorial jurisdiction of the port authority irrespective of whether such land is located in a subdivision that participated in the creation of the port authority.

While the law on “new port authorities” originally did not allow territory to be included in more than one port authority, the law has been amended to allow land to be located in more than one port authority in the following circumstances:

1. A city with a population of 100,000 or more may create its own port authority within a county created port authority if the city was not a party to the creation of the port or the port was later expanded to include the city. In this case, the newly created municipal port authority has concurrent jurisdiction with the previously established county port authority ([ORC 4582.30\(A\)\(2\)](#)).
2. A city with a population of less than 100,000 or any village, whose territory was added to an existing port authority, may establish its own port authority. The territory of the new municipal port authority is identical to that of the municipality. This provision of law, however, only applies in a county with a population of 500,000 or less ([ORC 4582.30\(B\)\(2\)](#)).
3. In the case where a municipality created a port authority after July 9, 1982 and the port authority operates an airport and the county joined the municipal port authority, then the municipality and county may create a new port authority that includes territory in another port authority

79.181 EXPANSION OF THE TERRITORIAL BOUNDARIES OF A “NEW” PORT AUTHORITY

After the creation of a “new” port authority, any county, municipality, township or other political subdivision which is contiguous to any municipality, county, township or other

political subdivision that created the port authority may make a request to join the port authority. Requests to join also may be made by any county, municipality, township or other political subdivisions which are contiguous to any political subdivision proposing to join at the same time. The request is by resolution or ordinance of the county, township, municipality or other political subdivision. If more than one political subdivision is to be added at the same time the resolutions and ordinances of all subdivisions proposed to be added to the existing port authority must specify all subdivisions proposed to be added to the port authority.

Prior to the addition of any political subdivision or subdivisions to the port authority, the current subdivisions that comprise the port must agree to the terms and conditions of entry. After each ordinance or resolution proposing entry into the port authority becomes effective, and the terms and conditions of entry are in place, the board of directors of the port authority must, by resolution, accept or reject entry into the port authority.

The expansion of the port authority is effective upon adoption of the resolution by the board of directors of the port authority, unless a property tax has been approved by the residents of the current port authority. In this case, the expansion of the port authority is contingent upon a majority vote of the electors. The ballot issue deals with both the approval of the territorial expansion and the current tax levy of the port authority. If more than one political subdivision is to be added to the port authority, then the majority vote applies to the combined vote of all the subdivisions to be added to the port, not to each individual subdivision.

If approved by the voters, the expansion is effective immediately and the port authority can extend the tax levy against all property in the subdivisions added to the port authority. If the vote occurred at a general election, the port authority may amend its tax budget and the levy can be placed on the current tax duplicate.

Political subdivisions which are added to a port authority are considered as having participated in the creation of the port authority for other purposes of the port authority statutes ([ORC 4582.26](#)).

79.182 STATUS OF ANNEXED PROPERTY ON TERRITORIAL JURISDICTION OF A “NEW” PORT AUTHORITY

If territory is in the unincorporated area of a township and neither the county nor township is a party to the creation of the port authority, then if annexation occurs to the municipality, the annexed land becomes a part of the territory of the port authority. This occurs automatically upon the effective date of the annexation and requires no notifications, hearings or other proceedings ([ORC 4582.26](#)).

79.19 BOARD OF DIRECTORS OF A “NEW” PORT AUTHORITY

The members of the board of directors of a “new” port authority are appointed differently depending on which political subdivisions created the port authority. If the port was

established exclusively by a county, a township or a municipality, then the number of members deemed necessary is appointed by the county commissioners, township trustees or mayor with approval of the municipal council, respectively.

If the port authority is created by two or more counties, townships or municipalities, the number of members of the board of directors is determined by agreement of the political subdivisions and is appointed as detailed above. This agreement may be amended at any time.

Members of the port authority board representing non-general purpose political subdivisions (counties, townships and municipalities) are not appointed by the legislative body of such a non-general purpose political subdivision. In the case of such entities, appointments are made by the elected legislative body associated with the non-general purpose subdivision or by the elected official or officials associated with the entity. In the case where such non-general purpose political subdivision is not associated with an elected body and non-elected officials appoint the legislative authority of the non-general purpose political subdivision, then the non-general political subdivision may not have a member appointed to the board.

A majority of board a members must be qualified electors of or have had a business or place of employment within the territory of the port for at least three years prior to appointment.

Initial board members serve staggered terms. After the completion of the initial staggered terms, subsequent terms are for a period of four years. If the territory of a port authority is expanded to include other political subdivisions, the terms of new members are not subject to the staggered term requirement and such members serve a term of four years. Vacancies are filled for the unexpired term, and members may be reappointed ([ORC 4582.27](#)).

79.191 ORGANIZATION OF THE BOARD OF A “NEW” PORT AUTHORITY; COMPENSATION; REMOVAL OF DIRECTORS

Members of the board of directors elect a chair and vice-chair and designate the length of the term of office. The board also appoints a secretary, but the secretary is not required to be a board member. The secretary must furnish bond in an amount determined necessary by the board of directors because the secretary has responsibility for receiving and depositing funds and other financial responsibilities ([ORC 4582.41](#)). A majority of board members constitute a quorum and a majority vote of a quorum is required to take any action, unless the board has established a rule requiring a greater number of votes for specific actions ([ORC 4582.27](#)).

The board of directors may provide for the compensation of members of the board and for the reimbursement of reasonable expenses. In addition, members of the board of directors may be removed in two ways:

1. By the county commissioners, township trustees or other appointing authorities for misfeasance, nonfeasance or malfeasance in office, or
2. For having missed three consecutive regular meetings of the board of directors if the board has adopted a rule to this effect.

79.20 “NEW” PORT AUTHORITY JOURNAL; PUBLIC RECORDS; SUNSHINE LAW; CONFIDENTIALITY OF CERTAIN INFORMATION

As a public entity a “new” port authority is generally subject to both Ohio’s public records and open meeting or “sunshine law.” In the case of a new port authority, it is required to journalize all final actions taken by the board of directors. The journal and records of the port authority must be open to public inspection at all reasonable times.

However, in the case of a port authority financial and proprietary information, including trade secrets, submitted by or on behalf of an employer to the port authority related to the relocation, location, expansion, improvement or preservation of the business of that employer is not a public record. This exemption also applies to any non-profit that the port authority may contract with for economic development services. Other types of information submitted by, or on behalf of, an employer under those circumstances is not a public record until the employer commits in writing to proceed with the relocation, location, expansion, improvement or preservation.

Likewise, when the board of directors or any committee or subcommittee of the board is considering information that is not a public record as specified above, the board may close the meeting during consideration of this information. To close the meeting a majority of the members present must vote to close the meeting. This also applies to meetings of a non-profit that the port authority contracts with for economic development services. During such a closed meeting no matters other than the information that is not a public record may be considered ([ORC 4582.58](#)).

79.21 LIABILITY OF “NEW” PORT AUTHORITIES

A “new” port authority and its board members, officers and employees are generally subject to the same rules concerning liability as are other political subdivisions because they are defined as political subdivisions under Ohio’s sovereign immunity law. [ORC Section 2744.01\(F\)](#) includes a “port authority created pursuant to section [4582.02](#) or [4582.26](#) of the Revised Code or in existence on December 16, 1964” as a political subdivision for the purposes of [ORC Chapter 2744](#).

In addition, [ORC Section 4582.271](#) specifically addresses liability of port authority board members and officers related to monetary damages of board members. These provisions are in addition to any immunity from civil liability that exists under any other provisions of Ohio law or federal or state court decisions.

Under this provision of law, no board member or officer of a port authority is personally liable for any monetary damages resulting from the performance of official duties,

“except for acts or omissions that are not in good faith or that involve intentional misconduct or a knowing violation of law, or any transaction from which the director (board member or officer) derived an improper personal benefit.”

79.22 POWERS OF “NEW” PORT AUTHORITIES

The powers of a “new port authority” are broad and extensive. The numerous powers are primarily detailed in [ORC Section 4582.31](#). These statutory powers are detailed in Table 79-2 at the end of this Chapter. This table also includes the powers of “old port authorities.” While the powers of both authorities are similar, there are significant differences as detailed in a side-by-side format in Table 79-2. In addition, some questions have been asked about the differences in the powers of port authorities and Community Improvement Corporations (CIC’s). Table 79-6 was prepared by the law firm of Bricker and Eckler who has given CCAO permission to use this information.

79.23 PROPERTY TAX LEVIES FOR “NEW” PORT AUTHORITIES

A “new” port authority may propose a property tax levy of up to one mill for a maximum period of five years by submitting the question to the board of elections to be submitted to the electors in the territory of the port authority at either a general or primary election. The port authority board, not the political subdivision or subdivisions creating it, are the taxing authority for the tax. The proceeds of the tax can be used for any purpose of the port authority, including debt charges and if used for debt purposes the length of the levy then corresponds to the term of the indebtedness.

If electors approve the levy, notes may be issued in anticipation of the collection of the levy for any portion of the proceeds of the levy that will not be used for bonds. The port authority may also borrow money in anticipation of the collection of current revenues. For additional information refer to [ORC Sections 133.10](#), [133.24](#) and [5705.193 \(ORC 4582.40\)](#).

In the case where a port authority has been created exclusively by a municipality that is located within a port authority previously created by a county, this type of port authority may levy this tax only if the port authority created by the county has not levied the property tax. If such tax is levied by a municipal port authority, 50% of the tax proceeds must be distributed to the county port authority, unless the two ports agree to a different percentage. This distribution to the county port authority is continued for as long as the levy is in effect unless the county port authority later levies its own property tax ([ORC Section 4582.401](#)).

79.24 “NEW” PORT AUTHORITY EMPLOYEES

Port authority employees are appointed by the port authority board who establishes the qualifications, responsibilities and compensation of the employees and professional services. The port authority may also appoint an advisory board, members of which serve without compensation. Employees may be suspended or dismissed and

professional service contracts may be terminated at any time by the port authority ([ORC 4582.28](#)).

79.241 “NEW” PORT AUTHORITY SPECIAL POLICE OFFICERS

A port authority may also provide for the administration and enforcement of the laws of the state by employing special police officers. The port authority special police officers may request assistance from other law enforcement agencies in the enforcement of regulations of the port authority to maintain order.

Port authority special police officers serve as police officers with respect to the property, grounds, buildings, equipment and facilities of the port authority. They also work to prevent the hijacking of aircraft or watercraft, protect port authority and other property, suppress nuisances and disturbances and breaches of the peace and enforce laws and the rules of the port authority for the preservation of good order. In performing their duties, special police officers have the same arrest powers of other police officers under [ORC Section 2935.03](#). For retirement purposes, port authority special police officers are members of the law enforcement division of the Ohio Public Employee Retirement System, not the Police and Fire Disability Fund ([ORC 4582.28](#)).

79.242 HEALTH INSURANCE BENEFITS FOR “NEW” PORT AUTHORITY EMPLOYEES

A “new” port authority may purchase and pay all or any part of the cost of the cost of group hospitalization, surgical, major medical, sickness and accident insurance or group life insurance for employees and dependents.

A port authority also may purchase all or any part of the cost of a plan of group hospitalization, surgical, major medical or sickness and accident insurance with an eligible health insuring corporation under [ORC Chapter 1751](#) as long as:

1. Each employee has the option to select between the two plans noted above. However, if the employee selects coverage from the health insuring corporation the employee must pay the increased cost, if any.
2. Each employee can change plans during an open enrollment period sometime during the year.

A port authority may purchase either type of insurance on its own or jointly as a group with other governmental entities. In addition, a port authority also may establish and maintain an individual or joint self-insurance program for hospitalization, surgical, major medical or sickness and accident insurance ([ORC 4582.29](#)).

79.25 “NEW” PORT AUTHORITY ASSETS; DEPOSIT AND DISBURSEMENT OF FUNDS BY SECRETARY OF A “NEW” PORT AUTHORITY; INVESTMENT OF FUNDS

All money, funds, properties and assets acquired by a “new” port authority are held in trust for the purposes of carrying out the powers and duties of the port and may not be a part of any other public funds. Port authority funds are maintained in depositories selected by the port authority board under the provisions of [ORC Chapter 135](#), the Uniform Investment Law, and must be secured as provided in this law unless a port authority revenue bond trust agreement provides otherwise and when funds are being invested under the investment law ([ORC 4582.53](#)).

The secretary of the port authority is responsible to deposit all funds into accounts in one or more depositories. These depositories must be eligible to receive county funds under [ORC Chapter 135](#) and the funds must be secured in the same manner as county funds are secured. Disbursements of port authority funds must be made pursuant to rules and regulations adopted by the port authority board ([ORC 4582.41](#)).

Money in excess of current needs, unless restricted in a resolution issuing port authority revenue bonds or in an associated trust agreement, may be invested as permitted under [ORC Sections 135.01-135.21](#), the political subdivision investment law. Funds may also be invested in a port authority linked deposit program which will be discussed in the next section. The income from the investment of funds is credited to the funds as determined by the port authority board unless otherwise restricted by a resolution authorizing the issuance of revenue bonds or an associated trust agreement. Investments may be sold at any time by the port ([ORC 4582.54](#)).

79.251 “NEW” PORT AUTHORITY LINKED DEPOSIT PROGRAM

The “new” port authority board may establish a linked deposit program in the same way a municipality or county may establish such a program. The board must adopt a resolution to establish the linked deposit program. The resolution authorizes the board to place CD’s with an eligible lending institution at up to three percent below market rates provided the lending institution agrees to lend the value of the deposit made by the port to eligible borrowers at up to three percent below the present borrowing rate. The port authority resolution must include provisions and requirements necessary to establish the program including the following:

1. Eligibility requirements for borrowers who may receive reduced rate loans under the program.
2. Application procedures for borrowers and institutions wishing to participate in the program.
3. Procedures for the review of applications and criteria for approval or disapproval of applications for reduced rate loans.

4. Necessary agreements between the lending institution and the port authority board to carry out the purposes of the linked deposit program.
5. Annual reports regarding the operation of the program to be made by the lending institution to the port authority board.

The port authority board is not liable to any lending institution for the payment of the principal or interest on reduced rate loans made under the program and any delay in payment or default by a borrower does not affect the deposit agreement between the lending institution and the port authority board ([ORC 135.80](#)). It should be noted that an “old” port authority has no statutory authority to establish a linked deposit program.

79.26 GENERAL CONTRACTUAL POWERS OF “NEW” PORT AUTHORITIES

A “new” port authority has the general power to contract and execute instruments necessary or incidental to the performance of its duties ([ORC 4582.31\(A\)\(18\)\(a\)](#)). A “new” port also has very broad powers to contract with a variety of entities as necessary or convenient to exercise its powers. This includes contracts to make surveys, investigations or reports. The contracts cannot violate Article VIII, Sections 13 or 16 of the Ohio Constitution which deals with public debt and financing. For additional information on these constitutional provisions refer to Chapter 80 of this *Handbook, Community Improvement Corporations and Industrial Development Bonds (IDB's)*. Contracts may be entered into with the following:

1. The U.S. government or any department of the U.S. In this regard, a port authority contract may hold and save harmless the U.S. from damages due to the construction and maintenance of works undertaken by the U.S.
2. The State of Ohio or other states.
3. Any government of a foreign country.
4. Any person, railroad, public utility or other corporation, including public corporations.
5. Any county, municipality, township or other governmental agency created under Ohio law or the law of any other state, including sewerage, drainage, conservation, conservancy or other improvement districts.

In addition, any political subdivision that participated in the creation of the port or is within or adjacent to its jurisdiction can enter into an agreement with the port to accomplish any authorized purpose of the port authority. The agreement may include provisions specifying the extent to which the port authority will act as the agent for the political subdivision.

Port authorities may also enter into other agreements with “contracting subdivisions” under which the port or the contracting subdivision is authorized to undertake and exercise any power, perform any function or render any service on behalf of the other entity that it is authorized to perform. Upon the execution of such an agreement, the port and the contracting subdivision have the same powers and may perform the same services as the other entity, unless limited by the terms of the agreement, provided procedures applicable to the other entity must be followed. In addition, such agreements do not suspend the authority of either the port or the contracting subdivision. Finally, no agreement may provide by contract for the levy of taxes or the power of eminent domain on behalf of the contracting subdivision, unless such power is approved by a majority of electors of the contracting subdivision ([ORC 4582.431](#)).

79.27 GENERAL AUTHORITY TO ACQUIRE LAND OR OTHER PROPERTY; CONSTRUCTION OF FACILITIES BY A “NEW” PORT AUTHORITY

A “new” port authority may purchase, lease or acquire land or other property in any county in Ohio or in an adjoining state for any authorized purpose of the port or to improve a harbor and port facilities if the port has jurisdiction over the facilities. The port authority may spend money and enter into contracts for these purposes which may include the development of port facilities in adjoining states ([ORC 4582.31\(A\)](#)).

Contracts relating to the purchase, exchange, sale, lease, lease with an option to purchase, conveyance of other property interests or a contract with a person or governmental entity pertaining to the acquisition, construction, maintenance, repair, furnishing, equipping or operation of any real or personal property related to, useful for or in furtherance of economic development activities specified in the Ohio Constitution, Sections 13 or 16 of Article VIII are made under terms and conditions determined by the port authority board ([ORC 4582.31\(A\)\(18\)\(e\)\(i\)](#)). This provision of law, giving broad discretion to the port authority board, applies to all such contracts even if other sections require public notice, competitive bidding or requirements to provide security ([ORC 4582.31\(A\)\(18\)\(e\)\(ii\)](#)). The exemption, however, does not apply to:

1. A contract secured by or paid with tax dollars or bond proceeds secured by tax monies.
2. A contract secured or paid exclusively from general revenues of the port authority. Port authority revenue from leases or other agreements that uses the revenue to pay for the improvement or debt obligations that is the subject of the contract are not considered general revenues ([ORC 4582.31\(A\)\(18\)\(e\)\(iii\)](#)).

Port authorities also may enter into agreements where port authority facilities may be leased, subleased or sold. They may also make loans for port authority facilities. These agreements must provide that the person the port enters into such an agreement with will make payments adequate to pay all principal and interest on port authority revenue bonds that are issued for the facility. In this regard, the port authority is authorized to:

1. Make loans to acquire or construct the facility to a person upon terms determined by the port, including secured or unsecured loans. The port may enter into loan agreements and accept notes in evidence of the debt and mortgages, liens, assignments and other security interests to secure the loan. The port authority may take any actions it determines is appropriate to protect the loan and safeguard against losses, including foreclosure and purchase of the property at a foreclosure or other sale.
2. Sell the facility under terms the port determines, including by a conditional or installment sale, where title may pass before or after completion of the facility or payment. The sale may include allowing for an option to purchase at a price which may be a nominal amount or less than true value at the time of purchase.
3. Grant a mortgage, lien or other security interest related to all or any part of the port authority facility including revenues, reserve funds or other funds that may be established when port authority revenue bonds are issued. Such a lien may also be granted with respect to any lease, sublease, sale, conditional sale, installment sale, loan agreement or insurance agreement. Such mortgages, liens or other security interests may be prior to or subordinate to other mortgages, liens and security interests.
4. Specify that interest on bonds may be at a variable rate or rates changing from time to time in accordance with a base or formula.
5. Contract for the acquisition or construction of the port authority facility and for the leasing, subleasing, sale or other disposition of the facility. Competitive bidding and performance bonds are not required.
6. Make appropriate provision for adequate maintenance of the facility.

It should be noted that these provisions are provided for in [ORC Section 4582.47](#) and are declared to be “cumulative and supplementary to all other authority granted in this chapter. The authority granted by this section does not alter or impair any similar authority granted elsewhere in this chapter for or with respect to other facilities.”

79.271 NEW” PORT AUTHORITY EMINENT DOMAIN AUTHORITY

A “new” port authority has the right of eminent domain to appropriate any land, rights, rights-of-way, franchises, easements, or other property, necessary or proper for any authorized purpose of the port, pursuant to [ORC Sections 163.01-163.22](#) if funds equal to the appraised value of the property are available. A port, however, cannot take or disturb property or facilities belonging to any state agency, political subdivision, public utility, cable operator or common carrier unless provision is made for the restoration, relocation or duplication of the property or facilities by the payment of compensation by the port, at the option of the other entity, under the following conditions:

1. If the restoration or duplication proposed to be made by the port involves a relocation of the property or facilities, the new facilities and location must have comparable utilitarian value and effectiveness. The restoration or duplication also cannot impair the ability of a public utility, cable operator or common carrier to compete in its original area of operation.
2. If any restoration or duplication involves a relocation of the property or facilities, the port generally cannot acquire any interest or right to the appropriated property or facilities until the relocated property or facilities are available for use and until title to the property has been transferred to the public utility, cable operator or common carrier.

As it relates to eminent domain for “new” port authorities, “cable operator” is defined to have the same meaning as in the “Cable Communications Policy Act of 1984,” Public Law No. 98-549, 98 Stat. 2780, 47 U.S.C. 522, as amended by the “Telecommunications Act of 1996,” Public Law No. 104-104, 110 Stat. 56.

79.28 “NEW” PORT AUTHORITY BIDDING AND NEGOTIATED CONTRACTS FOR IMPROVEMENTS

For “new” port authorities the law provides for competitive bidding when engaged in constructing buildings, structures or other improvements where the cost exceeds \$100,000 unless the improvement is one that is exempted or where the law provides for an alternative procedure. Recent legislation eliminated the requirement to use multiple prime contracting as the required project delivery method for the construction of improvements. Ohio law now authorizes the general contracting method, the design build (DB) method, and the construction manager at risk (CMR) method, in addition to multiple prime contracts. Neither the DB or CMR methods require competitive bidding, but must use the process specified for these alternatives as explained in Chapter 6 of this Handbook. This \$100,000 threshold may be adjusted every two years as will be explained later.

In cases where bidding is required a notice asking for bids must be published in a newspaper of general circulation in the jurisdiction of the port two times with at least seven days between the two publications. The contract is awarded to the bidder with the lowest responsible and responsive bid as specified in [ORC Section 9.312](#). The contract must be accompanied by or refer to the plans and specifications for the improvement as approved by the port and signed in triplicate by the authorized port authority representative and the contractor. The bid must be awarded following the relevant provisions of [ORC Chapter 153](#), the public construction contract law, specifically [ORC Sections 153.54](#), [153.57](#) and [153.571](#). The port authority may reject all bids ([ORC 4582.31\(A\)\(18\)](#)).

The port authority board may establish, by rule, criteria for the negotiation of permanent improvement contracts without competitive bidding if:

1. A real and present emergency exists that threatens damage or injury to persons or property of the port or to other persons. In this case, the nature of the emergency must be signed by the port authority's officer that signs the contract and the statement must be attached to the contract.
2. A commonly recognized industry or other standard or specification does not exist and cannot objectively be articulated for the improvement. In this case, the port authority must publish a notice calling for technical proposals at least twice with at least seven days between publications in a newspaper of general circulation in the area of the port authority. After receipt of the technical proposals, the port may negotiate and award a contract to the contractor making the proposal that is most advantageous to the port.
3. The contract is a performance contract for an energy conservation measure as defined in [ORC Section 307.041](#).
4. Only a single source or supplier exists for the material to be incorporated into the improvement. In this case any construction related to the incorporation of the material into the improvement also may be provided without competitive bidding.
5. Only a single bid is received by the port authority that has used competitive bidding.

In addition, a port authority may, as an alternative, construct improvements using a construction manager at risk or with a design build firm. If these are used then the port must comply with [ORC Sections 9.33 to 9.335](#) or [153.65 to 153.73](#), respectively. Also, a port authority educational and cultural facility, such as the Rock and Roll Hall of Fame, is not subject to this competitive bidding requirement unless the required cooperative agreement so requires as specified in [ORC Section 307.671](#).

Since 2012, the statutory \$100,000 bid threshold for a port authority has been indexed so that increases are possible on January 1 of every even numbered year. The Director of the Ohio Department of Commerce adjusts the threshold using the average increase for each of the two immediately preceding years. The index used is the producer price index for material and supply inputs for new nonresidential construction of the U.S. Bureau of Labor Statistics. Using this procedure, the current threshold was increased to \$114,779 on January 1, 2014 and another adjustment is possible in 2016.

79.29 AUTHORITY OF "NEW" PORT AUTHORITY TO ESTABLISH RENTS AND CHARGES

A "new" port authority may charge, modify and collect rent and other charges for the use of any port authority facility or for any service of a facility. The contract for the use or services of the facility may be with any person or governmental agency and specifies the terms and conditions and amount of rent or other charges.

In the event the services are furnished in the port authority's jurisdiction by either a public utility or a common carrier, port authority charges for services cannot be less than the charges established for the same services of the public utility or common carrier. Port authority rents or other charges, however, are not subject to supervision or regulation by any other entity or state agency ([ORC 4582.43](#)).

79.30 ACQUISITION AND CONSTRUCTION OF "NEW" PORT AUTHORITY FACILITIES; COOPERATIVE PROJECTS WITH GOVERNMENTAL AGENCIES

A port authority may enter into an agreement with any person or governmental agency providing for the acquisition of all or a part of a port authority facility as determined by the port, provided that if port authority revenue bonds have been issued the contract must reflect any conditions in the revenue bond resolution or trust agreement securing the bonds. If the contract is with a governmental agency, that agency must have the power to construct or lease, operate and maintain port authority facilities and to pay rents and other charges to the port.

Likewise, governmental agencies or a combination of agencies may participate in the cooperative acquisition or construction of port authority facilities. Contracts for such cooperative projects are executed reflecting effective cooperative action and the safeguarding of the interests of the parties to the agreement. These agreements must provide for contributions by the parties to the agreement; the designation of which party to the agreement will construct the facility as the agent for the other parties to the agreement; and, the terms and conditions of ownership and control of the facility by the port authority.

Any governmental agency that is a party to the agreement may pay for its contribution to the facility by levying taxes or assessments or by the issuance of bonds or notes in anticipation of the collection of taxes or assessments if the agency has legal authority for the type of facility specified in the agreement. The governmental agency that is a party to such an agreement may also pay for its contribution by the appropriation of money or by the issuance of bonds or notes if legally authorized. The agreement by an agency to contribute funds is not subject to [ORC Chapter 133](#), the uniform bond law, irrespective of whether the contributions are from appropriated money, the proceeds of taxes or assessments, or bonds or notes. If the contributions are from the collection to taxes or assessments the proceeds and any interest earned on the proceeds must be paid into a special fund by the agency for the purpose of making the contractual contributions to the port authority when required.

Any governmental agency whose electors approved the issuance of bonds either before or after July 9, 1982 to provide real estate for a port authority facility or to acquire, construct or equip the facility may issue bonds or notes in anticipation of the issuance of bonds and make payments to the port authority as required by the agreement irrespective of whether the agency had the authority at the time of the election to make such payments. In this case, however, the legislative authority of the agency must make

a determination that the cooperative port authority facility will serve the same public purpose and meet substantially the same public need as the facility otherwise proposed to be acquired or constructed ([ORC 4582.43](#)).

79.31 “NEW” PORT AUTHORITY ROLE IN FOREIGN TRADE ZONES (FTZ)

A new port authority may apply to the Foreign Trade Zone Board, a federal agency, to establish, operate and maintain a Foreign Trade Zone (FTZ). The port may acquire, exchange, sell, lease to or from, lease with the option to purchase or operate facilities, land or property for the FTZ in accordance with the “Foreign Trade Zones Act,” 48 Stat. 998 (1934), 19 U.S.C. 81 a to 81 u ([ORC 4582.31\(A\)\(9\)](#)).

The FTZ Board is composed of the Secretary of Commerce and the Secretary of the Treasury. If the FTZ request is approved the port is then referred to as a “grantee.” Ports generally charge an application fee and annual administrative fees to companies desiring a FTZ. After approval by the FTZ Board, the site must be activated through U.S. Customs and Border Protection procedures for security and inventory control.

Foreign Trade Zones began in 1934 with the purpose to encourage foreign commerce along with expediting the trade process, and keeping manufacturing and United States operations from locating overseas. There are two types of zones, “general purpose zones” and “sub-zones.” A “general purpose zone” is often one where multiple businesses are located in one location such as an industrial park. A “subzone” is often associated with a single company with a very large building.

After activation of the FTZ foreign or domestic merchandise may enter without the payment of custom duties on the product until formal arrival into the U.S. If the product is re-exported, no custom duty is collected. When the product formally enters into the United States then the custom duty must be paid. The utilization of FTZ’s provide cash flow advantages to companies by delaying payment of duties, and can also save the company money because exported products and damaged or scrapped products are duty exempt.

79.32 ISSUANCE OF PORT AUTHORITY REVENUE BONDS BY A “NEW” PORT AUTHORITY

As specified in Table 79-2 at the end of this Chapter, a new port authority has the power to issue port authority revenue bonds beyond the limit of bonded indebtedness payable solely from revenues ([ORC 4582.31\(A\)\(8\)](#)).

A “new” port authority has the authority to issue port authority revenue bonds to pay for the cost of port authority facilities. Port revenue bonds are special obligations of the port and are paid from revenues the port pledges and may constitute a lien on the pledged revenues. Port authority revenue bonds are not required to comply with any other law applicable to the issuance of bonds or notes ([ORC 4582.48](#)).

Port authority revenue bonds do not constitute a debt, or a pledge of the faith and credit, of the state or any political subdivision of the state. Bondholders have no right to have taxes levied by the General Assembly or any political subdivision for the payment of the principal or interest on the bonds as they are payable solely from the revenues and funds pledged when the bonds are issued. Port authority revenue bonds must include a statement that both principal and interest on the bonds are not debts of the state or any political subdivision, but are payable solely from pledged revenue ([ORC 4582.52](#)).

The bonds are authorized by resolution of the port authority board which may specify interest rates, maturity dates and the number of installments. Final maturity of any port authority revenue bond in the form of a note or note renewals cannot exceed five years. Final maturity of the bonds cannot be more than 45 years after the original issuance. Port authority revenue bonds may be sold at either public or private sale at a price determined by the port ([ORC 4582.48](#)).

The resolution authorizing the bonds also may specify the denominations of the bonds, whether they are coupon or registered bonds, when and where the bonds will be payable and any terms of redemption of the bonds. The resolution also may contain provisions concerning the pledge of all or a part of port authority revenue to secure the payment of the bonds and how the port will use the bond revenues. The resolution may include a covenant to fix, alter and collect rentals and other charges to insure the pledged revenues will be adequate to pay for the operation, maintenance and repair of the facility; pay principal of and interest on bonds; and provide reserves that may be required.

The resolution also may set aside money in reserve or sinking funds or in replacement and improvement funds and specify how the proceeds of the bond funds will be disbursed and credited to any such funds. The resolution also may include provisions on how port authority facilities or other assets will be used, leased or sold and may include limitations on how bond proceeds may be used. Other items that can be included in the bond resolution, including securing any bonds or notes by a trust agreement which will be explained in the next section, are detailed in [ORC Section 4582.48](#).

Finally, a port authority may issue renewal notes, issue bonds to retire its notes and refund any bonds by the issuance of port authority revenue refunding bonds. A port authority also may issue port authority revenue bonds a portion of which is to refund outstanding bonds and partly for any authorized purpose of the port. The port authority board and the person signing the bonds for the port are not liable personally in connection with the issuance of the bonds ([ORC 4582.48](#)).

79.321 “NEW” PORT AUTHORITY REVENUE BOND TRUST AGREEMENTS

Port authority revenue bonds can be secured by a trust agreement between the port and a trustee which can be a trust company or bank having the powers of a trust company inside or outside of Ohio.

The trust agreement may pledge or assign port authority revenues and may convey or mortgage a port authority facility. The trust agreement, or the revenue bond issuance resolution, can include provisions to protect and enforce the rights of bondholders such as covenants specifying the responsibilities of the port concerning the acquisition of property, construction, improvement, maintenance, repair, operation and insurance of the property or facility. It can also include provisions on rents or other charges to be imposed for the use of the facility or its services; the custody safeguarding, and application of moneys; and, provisions for the employment of consulting engineers in connection with the construction or operation of the facility.

The trust agreement can also set forth the rights and remedies of the bondholders and of the trustee; may restrict the right to action by individual bondholders; and, may contain other provisions determined by the port for the security of the bondholders. Expenses related to a trust agreement are treated as a part of the operation of the port authority facility ([ORC 4582.50](#)). Port authority revenue bondholders and a bond trustee may take legal actions to protect and enforce their rights to the extent they are not restricted by the bond issuance resolution or trust agreement, including the establishment and collection of rents and other charges ([ORC 4582.51](#)).

79.322 “NEW” PORT AUTHORITY BONDS AS LEGAL INVESTMENTS

“New” port authority bonds, including port authority revenue bonds, are legal investments for most financial institutions including banks, societies for savings, trust companies, savings and loan associations and deposit guaranty associations. They are also legal investments for trustees, fiduciaries, trustees or other officers having charge of the bond retirement or sinking funds of port authorities and political subdivisions, for all taxing districts and for the commissioners of the state sinking fund. Finally, they are also legal investments for the BWC and most state retirement systems including OPERS, STRS, SERS and PFDF along with insurance companies. The bonds are also acceptable for use by financial institutions as security for the deposit of public funds ([ORC 4582.44](#)).

79.33 CHANGE IN LOCATION OR VACATION OF ROADS, RAILROADS, AND PUBLIC UTILITIES BY POLITICAL SUBDIVISIONS OR BY A “NEW” PORT AUTHORITY

During the construction of port authority facilities it may be necessary to vacate or change the location of roads or change the location of railroads or public utilities. In cases where a change of location is needed, the port authority must reconstruct the road, railroad or public utility at the location the owner determines. The reconstruction must be substantially of the same type and same condition as the original road, railroad or public utility. The cost of reconstruction becomes part of the cost of the port authority facility.

In the case where a state highway vacation is necessary, the port requests the director of the Ohio Department of Transportation (ODOT) to vacate the highway pursuant to

[ORC Section 5511.07](#). If the road is a county road the port authority requests the ODOT director to petition the county commissioners for vacation pursuant to [ORC Section 5553.041](#). In the case of a highway or road vacation, the port authority must pay ODOT or the county any amounts required to be deposited with the probate court for the determination of compensation and damages and these costs also become part of the cost of the port authority facility.

A port authority has the power to adopt rules concerning the installation, construction, maintenance, repair, renewal, relocation and removal of railroad or public utility facilities in, on, over or under any port authority facility. If the port determines that any of these facilities need to be relocated, the public utility or railroad must relocate or remove them. The cost and expense of relocation must be paid by the port authority as a part of the cost of the port authority facility. In the case of relocation or removal, the railroad or public utility may maintain and operate the relocated facilities in the new location for as long a period and upon the same terms as it had the right to maintain and operate the facilities at the former location ([ORC 4582.57](#)).

Finally, in the case when the state, county, township or municipality is proposing to vacate, dedicate, narrow or widen any street, alley, road or highway notice of the proposed action must be provided to the port authority if the action proposed is within one-half mile of any navigable waters within the jurisdiction of the port. The notice must include the time and place of the public hearing on the proposed action and the port authority must be heard at the hearing ([ORC 4582.19](#)).

PART 3

“OLD” PORT AUTHORITIES

79.35 TERRITORIAL JURISDICTION OF AN “OLD” PORT AUTHORITY

The territorial jurisdiction of an “old port authority” generally includes all of the territory of the political subdivision or subdivisions that created the port authority, provided that the same territory may not be included in more than one port authority. There is one exception to this rule in the case when an “old port authority” converts to a “new port authority” and then reverts back to an “old port authority” pursuant to Division C of [ORC Section 4582.201](#). In this case, there may be a territorial overlap with the same territory included in more than one port authority ([ORC 4582.05](#)).

79.351 EXPANSION OF THE TERRITORIAL BOUNDARIES OF AN “OLD” PORT AUTHORITY

After the creation of an “old port authority”, any county, municipality or township which is contiguous to the port authority, or is contiguous to a municipality, county or township proposing to join the port at the same time, may make a request to join the port authority. The request is by resolution or ordinance of the county, township or municipality. If more than one political subdivision is to be added at the same time the

resolutions and ordinances of all subdivisions to be added to the existing port authority must specify all of the subdivisions proposed to be added to the port authority.

Prior to the addition of any political subdivision or subdivisions to the port authority the current subdivisions that comprise the port must agree to the terms and conditions of entry. After each ordinance or resolution proposing entry into the port authority becomes effective, and the terms and conditions of entry are in place, the board of directors of the port authority must, by resolution, accept or reject entry into the port authority.

The expansion of the port authority is effective upon the adoption of a resolution by the board of directors of the port authority, unless a property tax has been approved by the residents of the current port authority. In this case, the expansion of the territory of the port authority is contingent upon a majority vote of the electors. The ballot issue deals with both the approval of the territorial expansion and the current tax levy of the port authority. If more than one political subdivision is being added to the port authority, then the majority vote applies to the combined vote of all subdivisions to be added to the port, not to each individual subdivision.

If approved by the voters, the expansion is effective immediately and the port authority can extend the tax levy against all property in the subdivisions added to the port authority. If the vote occurred at a general election the port authority may amend its tax budget and the levy can be placed on the current tax duplicate.

Political subdivisions which are added to a port authority are considered as having participated in the creation of the port authority for other purposes of port authority statutes ([ORC 4582.024](#)).

79.352 STATUS OF ANNEXED PROPERTY ON TERRITORIAL JURISDICTION OF AN “OLD” PORT AUTHORITY

If territory is in the unincorporated area of a township and neither the county nor township was a party to the creation of the port authority, then if annexation occurs to the municipality, the annexed land becomes a part of the territory of the port authority. This occurs automatically upon the effective date of the annexation and requires no notifications, hearings or other proceedings ([ORC 4582.024](#)).

79.36 BOARD OF DIRECTORS OF AN “OLD” PORT AUTHORITY

The members of the board of directors of an “old” port authority are appointed differently depending on which political subdivisions created the port authority. If the port was established exclusively by a county, a township or a municipality then the number of members deemed necessary are appointed by the county commissioners, township trustees or mayor with approval of the municipal council, respectively.

If the port authority is created by two or more counties, townships or municipalities the number of members of the board of directors is determined by agreement of the political

subdivisions and are appointed as detailed above. This agreement may be amended at any time.

A majority of the board of directors must be qualified electors of or have had a business or place of employment within the territory of the port for at least three years prior to appointment.

Initial board members serve staggered terms. After the completion of the initial staggered terms, subsequent terms are for a period of four years. If the territory of a port authority is expanded to include other counties, townships or municipalities, the terms of new members are not subject to the staggered term requirement and such members serve a term of four years. Vacancies are filled for the unexpired term, and members may be reappointed ([ORC 4582.03](#)).

79.361 ORGANIZATION OF THE BOARD OF AN “OLD” PORT AUTHORITY; COMPENSATION; REMOVAL OF DIRECTORS

Members of the board of directors elect a chair and vice-chair and designate the length of the term of office. The board also appoints a secretary, but the secretary is not required to be a board member. The secretary must furnish bond in an amount determined necessary by the board of directors because the secretary has responsibility for receiving and depositing funds and other financial responsibilities ([ORC 4582.15](#)). A majority of board members constitute a quorum and a majority vote of a quorum is required to take any action, unless the board has established a rule requiring a greater number of votes for specific actions ([ORC 4582.03](#)).

The board of directors may provide for the compensation of members of the board and for the reimbursement of reasonable expenses. In addition, members of the board of directors may be removed in two ways:

1. By the county commissioners, township trustees or other appointing authorities for misfeasance, nonfeasance or malfeasance in office, or
2. For having missed three consecutive regular meetings of the board of directors if the board has adopted a rule to this effect.

79.362 DEPOSIT AND DISBURSEMENT OF FUNDS BY SECRETARY OF AN “OLD” PORT AUTHORITY

The secretary of the port authority is responsible to deposit all funds into accounts in one or more depositories. These depositories must be eligible to receive county funds under ORC Chapter 135 and the funds must be secured in the same manner as county funds are secured. Disbursements of port authority funds must be made pursuant to rules and regulations adopted by the port authority board ([ORC 4582.15](#)).

79.37 PUBLIC RECORDS; SUNSHINE LAW; CONFIDENTIALITY OF CERTAIN INFORMATION FOR “OLD” PORT AUTHORTIES

As a public entity an “old” port authority is generally subject to both Ohio’s public records and open meeting or “sunshine law.” However, in the case of an “old” port authority’s financial and proprietary information, including trade secrets, submitted by or on behalf of an employer to the port authority related to the relocation, location, expansion, improvement or preservation of the business of that employer is not a public record. This exemption also applies to any non-profit that the port authority may contract with for economic development services. Other types of information submitted by, or on behalf of, an employer under those circumstances is not a public record until the employer commits in writing to proceed with the relocation, location, expansion, improvement or preservation.

Likewise, when the board of directors or any committee or subcommittee of the board is considering information that is not a public record as specified above, the board may close the meeting during consideration of this information. To close the meeting a majority of the members present must vote to close the meeting. This also applies to meetings of a non-profit that the port authority contracts with for economic development services. During such a closed meeting no matters other than the information that is not a public record may be considered ([ORC 4582.091](#)).

79.38 LIABILITY OF “OLD” PORT AUTHORITIES

An “old” port authority and its board members, officers and employees are generally subject to the same rules concerning liability as are other political subdivisions because they are defined as political subdivisions under Ohio’s sovereign immunity law. [ORC Section 2744.01\(F\)](#) includes a “port authority created pursuant to section [4582.02](#) or [4582.26](#) of the Revised Code, or in existence on December 16, 1964” as a political subdivision for the purposes of [ORC Chapter 2744](#).

In addition, [ORC Section 4582.03\(B\)](#) specifically addresses liability of port authority board members, officers and employees of an “old port authority.” These provisions, however, do not eliminate, limit or reduce any immunity from civil immunity conferred by any other provision of Ohio law or by any case law. Likewise, they do not affect any defense available in any action that alleges personal liability of a board member, officer, or employee and the applicability of [ORC Section 9.83](#) dealing with liability relating to motor vehicles.

Liability of board members is also specifically addressed in [ORC Section 4582.031](#). This section provides that, in addition to any immunity conferred upon any board member by any other provision of law or court decisions, no board member is personally liable for monetary damages related to official duties unless the acts or omissions were not taken in good faith, involve intentional misconduct or when a board member derives improper personal benefit ([ORC 4582.031](#)).

In civil actions arising under state law, no board member, officer or employee is liable for damages or injury caused in the performance of official duties unless the actions are “manifestly outside the scope” of employment or official responsibilities, or were taken with a “malicious purpose, in bad faith, or in an wanton or reckless manner.” However, these provisions do not apply to actions arising out of the operation of a motor vehicle or in actions where the port authority is the plaintiff.

Likewise, a port authority must indemnify board members, officers and employees from liability incurred in the performance of official duties. The port authority must pay judgments in any civil action arising out of federal law, the law of another state or a foreign country. The port authority also must pay any amount that is part of a negotiated settlement of a civil action. The reasonableness of the amount awarded under any consent judgment or settlement is subject to review and approval of the board of directors. There is a statutory maximum aggregate amount of indemnification of \$1 million on behalf of any director, officer or employee per occurrence, regardless of the number of persons who suffer damage, injury or death as a result of the occurrence ([ORC 4582.03\(C\)\(1\)](#)).

The port authority, however, cannot provide indemnification under the following circumstances ([ORC 4582.03\(C\)\(2\)](#)):

1. To the extent the board member, officer or employee is covered by and insurance policy for civil liability purchased by the port authority.
2. When the director, officer or employee acts manifestly outside the scope of the director's, officer's or employee's employment or official responsibilities, with malicious purpose, in bad faith or in a wanton or reckless manner.
3. For any judgment that includes punitive or exemplary damages.
4. For any portion of a consent judgment or settlement that is unreasonable.

79.381 PURCHASE OF LIABILITY INSURANCE BY AN “OLD” PORT AUTHORITY

An “old” port authority may purchase liability insurance on behalf of board members, officers and employees ([ORC 4582.03\(C\)\(3\)](#)). The policy covers damages in connection with a civil action, demand or claim against a board member, officer or employee resulting from an act or omission in the performance of official duties and where the board member, officer or employee was not acting “manifestly outside the scope” of employment or official responsibilities, “with malicious purpose, in bad faith or in a wanton or reckless manner ([ORC 4582.03\(C\)\(3\) & 4582.03\(C\)\(2\)\(b\)](#)).”

79.39 POWERS OF “OLD” PORT AUTHORITIES

The powers of an “old” port authority are broad and extensive. The numerous powers are primarily detailed in [ORC Section 4582.06](#). These statutory powers are detailed in

Table 79-2 at the end of this Chapter. This table also includes the powers of “new” port authorities. While the powers of both authorities are similar, there are significant differences as detailed in a side-by-side format in Table 79-2. In addition, some questions have been asked about the differences in the powers of port authorities and Community Improvement Corporations (CIC’s). Table 79-6 was prepared by the law firm of Bricker and Eckler who has given CCAO permission to use this information.

79.40 PROPERTY TAX LEVIES FOR “OLD” PORT AUTHORITIES

An “old” port authority may propose a property tax levy of up to one mill for a maximum period of five years by submitting the question to the board of elections to be submitted to the electors in the territory of the port authority at either a general or primary election. The port authority board, not the political subdivision or subdivisions creating it, are the taxing authority for the tax. The proceeds of the tax can be used for any purpose of the port authority, including debt charges and if used for debt purposes the length of the levy then corresponds to the term of the indebtedness.

If electors approve the levy notes may be issued in anticipation of the collection of the levy for any portion of the proceeds of the levy that will not be used for bonds. The port authority may also borrow money in anticipation of the collection of current revenues. For additional information refer to [ORC Sections 133.10, 133.24 and 5705.193 \(ORC 4582.14\)](#).

79.41 “OLD” PORT AUTHORITY EMPLOYEES

Port authority employees are appointed by the port authority board who establishes the qualifications, responsibilities and compensation of the employees and professional help. The port authority may also appoint an advisory board, members of which serve without compensation. Employees may be suspended or dismissed and professional help terminated at any time by the port authority ([ORC 4582.04](#)).

79.411 “OLD” PORT AUTHORITY SPECIAL POLICE OFFICERS

A port authority may also provide for the administration and enforcement of the laws of the state by employing special police officers. The port authority special police officers may request assistance from other law enforcement agencies in the enforcement of regulations of the port authority and to maintain order.

Port authority special police officers serve as police officers with respect to the property, grounds, buildings, equipment and facilities of the port authority. They also work to prevent the hijacking of aircraft or watercraft, protect port authority and other property, suppress nuisances and disturbances and breaches of the peace, and enforce laws and the rules of the port authority for the preservation of good order. In performing their duties, special police officers have the same arrest powers of other police officers under [ORC Section 2935.03](#). For retirement purposes port authority special police officers are members of the law enforcement division of Ohio Public Employees Retirement System, not the Police and Fire Disability Fund ([ORC. 4582.04](#)).

79.412 HEALTH INSURANCE BENEFITS FOR “OLD” PORT AUTHORITY EMPLOYEES

An “old” port authority may purchase and pay all or any part of the cost of the cost of group hospitalization, surgical, major medical, sickness and accident insurance or group life insurance for employees and dependents.

A port authority also may purchase all or any part of the cost of a plan of group hospitalization, surgical, major medical or sickness and accident insurance with an eligible health insuring corporation under [ORC Chapter 1751](#) as long as:

1. Each employee has the option to select between the two plans noted above. However, if the employee selects coverage from the health insuring corporation, the employee must pay the increased cost, if any.
2. Each employee can change plans during an open enrollment period sometime during the year.

A port authority may purchase either type of insurance on its own or jointly as a group with other governmental entities. In addition, a port authority also may establish and maintain an individual or joint self-insurance program for hospitalization, surgical, major medical or sickness and accident insurance ([ORC 4582.041](#)).

79.42 GENERAL CONTRACTUAL POWERS OF “OLD” PORT AUTHORITIES

An “old” port authority has very broad powers to contract with a variety of entities as necessary or convenient to exercise its powers. This includes contracts to make surveys, investigations or reports. The contracts cannot violate Article VIII of the Ohio Constitution which deals with public debt and financing. For additional information on these constitutional provisions refer to Chapter 80 of this *Handbook*, Community Improvement Corporations and Industrial Development Bonds (IDB's). Contracts may be entered into with the following:

1. The U.S. government or any department of the U.S. In this regard, a port authority contract may hold and save harmless the U.S. from damages due to the construction and maintenance of works undertaken by the U.S.
2. The State of Ohio or other states.
3. Any government of a foreign country.
4. Any person, railroad, public utility or other corporation, including public corporations.

5. Any county, municipality, township, or other governmental agency created under Ohio law or the law of any other state, including sewerage, drainage, conservation, conservancy or other improvement districts ([ORC 4582.17\(A\)](#)).

In addition, any political subdivision that participated in the creation of the port or is within or adjacent to its jurisdiction can enter into an agreement with the port to accomplish any authorized purpose of the port authority. The agreement may include provisions specifying the extent to which the port authority will act as the agent for the political subdivision ([ORC 4582.17\(A\)](#)).

Port authorities may also enter into other agreements with “contracting subdivisions” under which the port or the contracting subdivision is authorized to undertake and exercise any power, perform any function or render any service on behalf the other entity that it is authorized to perform. Upon the execution of such an agreement, the port and the contracting subdivision have the same powers and may perform the same services as the other entity, unless limited by the terms of the agreement, provided procedures applicable to the other entity must be followed. In addition, such agreements do not suspend the authority of either the port or the contracting subdivision. Finally, no agreement may provide by contract for the levy of taxes or the power of eminent domain on behalf of the contracting subdivision, unless such power is approved by a majority of electors of the contracting subdivision ([ORC 4582.17\(B\)](#)).

79.43 GENERAL AUTHORITY TO ACQUIRE LAND OR OTHER PROPERTY, CONSTRUCTION OF FACILITIES BY AN “OLD” PORT AUTHORITY

An “old” port authority may purchase, lease or acquire land or other property in any county in Ohio or in an adjoining state for any authorized purpose of the port or to improve a harbor and port facilities if the port has jurisdiction over the facilities. The port authority may spend money and enter into contracts for these purposes which may include the development of port facilities in adjoining states ([ORC 4582.17\(A\)](#)).

The port also has the power to construct, maintain, repair, furnish, equip, sell, exchange, lease or lease with an option to purchase any property that it is authorized to acquire and operate any property in connection with transportation, recreational, governmental operations or cultural activities ([ORC 4582.06\(A\)\(6\)](#)).

Contracts relating to the purchase, exchange, sale, lease, lease with an option to purchase, conveyance of other property interests or a contract with a person or governmental entity that pertaining to the acquisition, construction, maintenance, repair, furnishing, equipping or operation of any real or personal property related to, useful for or in furtherance of economic development activities specified in the Ohio Constitution, Sections 13 or 16 of Article VIII are made under terms and conditions determined by the port authority board ([ORC 4582.06\(A\)\(6\)\(a\)](#)). This provision of law, giving broad discretion to the port authority board applies to all such contracts even if other sections require public notice, competitive bidding, or requirements to provide security ([ORC 4582.06 \(A\)\(6\)\(b\)](#)). The exemption, however, does not apply to:

1. A contract secured by or paid with tax dollars or bond proceeds secured by tax monies.
2. A contract secured or paid exclusively from general revenues of the port authority. Port authority revenue from leases or other agreements that uses the revenue to pay for the improvement or debt obligations that is the subject of the contract are not considered general revenues.

79.431 “OLD” PORT AUTHORITY EMINENT DOMAIN AUTHORITY

An “old” port authority has the right of eminent domain to appropriate any land, rights, rights-of-way, franchises, easements or other property, necessary or proper for any authorized purpose of the port, pursuant to [ORC Sections 163.01-163.22](#), if funds equal to the appraised value of the property are available. A port, however, cannot take or disturb property or facilities belonging to any state agency, political subdivision, public utility or common carrier unless provision is made for the restoration, relocation or duplication of the property or facilities by the payment of compensation by the port, at the option of the other entity, under the following conditions:

1. If the restoration or duplication proposed to be made by the port involves a relocation of the property or facilities, the new facilities and location must have comparable utilitarian value and effectiveness. The restoration or duplication also cannot impair the ability of a public utility or common carrier to compete in its original area of operation.
2. If any restoration or duplication involves a relocation of the property or facilities, the port generally cannot acquire any interest or right to the appropriated property or facilities until the relocated property or facilities are available for use and until title to the property has been transferred to the public utility or common carrier.

As it relates to eminent domain for “old” port authorities it should be noted that their authority does not include a “cable operator” as is the case for “new port authorities.

79.44 “OLD PORT AUTHORITY” BIDDING AND NEGOTIATED CONTRACTS FOR IMPROVEMENTS

For “old” port authorities, the law provides for competitive bidding when engaged in constructing buildings, structures or other improvements where the cost exceeds \$100,000 unless the improvement is one that is exempted or where the law provides for an alternative procedure. Recent legislation eliminated the requirement to use multiple prime contracting as the required project delivery method for the construction of improvements. Ohio Law now authorizes the general contracting method, in addition to multiple prime contracts. Neither the DB or CMR methods require competitive bidding but must use the process specified for these alternative as explained in Chapter 6 of this *Handbook*. The \$100,000 threshold may be adjusted every two years as will be explained later.

In cases where bidding is required, a notice asking for bids must be published in a newspaper of general circulation in the jurisdiction of the port two times with at least seven days between the two publications. The contract is awarded to the bidder with the lowest responsible and responsive bid as specified in [ORC Section 9.312](#). The contract must be accompanied by or refer to the plans and specifications for the improvement as approved by the port and signed in triplicate by the authorized port authority representative and the contractor. The bid must be awarded following the relevant provisions of [Ohio Revised Code Chapter 153](#), the public construction contract law, specifically [ORC Sections 153.54](#), [153.57](#) and [153.571](#). The port authority may reject all bids ([ORC 4582.12](#)).

The port authority board may establish, by rule, criteria for the negotiation of permanent improvement contracts without competitive bidding if:

1. A real and present emergency exists that threatens damage or injury to persons or property of the port or to other persons. In this case the nature of the emergency must be signed by the port authority's officer that signs the contract and the statement must be attached to the contract.
2. A commonly recognized industry or other standard or specification does not exist and cannot objectively be articulated for the improvement. In this case, the port authority must publish a notice calling for technical proposals at least twice, with at least seven days between publications, in a newspaper of general circulation in the area of the port authority. After receipt of the technical proposals, the port may negotiate and award a contract to the contractor making the proposal that is most advantageous to the port.
3. The contract is a performance contract for an energy conservation measure as defined in [ORC Section 307.041](#).
4. Only a single source or supplier exists for the material to be incorporated into the improvement. In this case any construction related to the incorporation of the material into the improvement also may be provided without competitive bidding.
5. Only a single bid is received by the port authority that has used competitive bidding.

In addition, a port authority may, as an alternative, construct improvements using a construction manager at risk or with a design build firm. If these are used then the port must comply with [ORC Sections 9.33 to 9.335](#) or [153.65 to 153.73](#), respectively. Also, a port authority educational and cultural facility, such as the Rock and Roll Hall of Fame, is not subject to this competitive bidding requirement unless the required cooperative agreement so requires as specified in [ORC Section 307.671](#).

Since 2012 the statutory \$100,000 bid threshold for a port authority has been indexed so that increases are possible on January 1 of every even numbered year. The director

of the Ohio Department of Commerce adjusts the threshold using the average increase for each of the two immediately preceding years. The index used is the producer price index for material and supply inputs for new nonresidential construction of the U.S. Bureau of Labor Statistics. Using this procedure, the current threshold was increased to \$114,779 on January 1, 2014 and another adjustment is possible in 2016.

79.45 AUTHORITY OF “OLD” PORT AUTHORITY TO ESTABLISH RENTS AND CHARGES

A “new” port authority may charge, modify, and collect rent and other charges for the use of any port authority facility or for any service of a facility. The contract for the use or services of the facility may be with any person or governmental agency and specifies the terms and conditions and amount of rent or other charges.

In the event the services are furnished in the port authority’s jurisdiction by either a public utility or a common carrier, port authority charges for services cannot be less than the charges established for the same services of the public utility or common carrier. Port authority rents or other charges, however, are not subject to supervision or regulation by any other entity or state agency ([ORC 4582.171](#)).

79.46 ACQUISITION AND CONSTRUCTION OF “OLD” PORT AUTHORITY FACILITIES; COOPERATIVE PROJECTS WITH GOVERNMENTAL AGENCIES

A port authority may enter into an agreement with any person or governmental agency providing for the acquisition of all or a part of a port authority facility as determined by the port, provided that if port authority revenue bonds have been issued the contract must reflect any conditions in the revenue bond resolution or trust agreement securing the bonds. If the contract is with a governmental agency, that agency must have the power to construct or lease, operate and maintain port authority facilities and to pay rents and other charges to the port.

Likewise governmental agencies, or a combination of agencies, may participate in the cooperative acquisition or construction of port authority facilities. Contracts for such cooperative projects are executed reflecting effective cooperative action and the safeguarding of the interests of the parties to the agreement. These agreements must provide for contributions by the parties to the agreement; the designation of which party to the agreement will construct the facility as the agent for the other parties to the agreement; and, the terms and conditions of ownership and control of the facility by the port authority.

Any governmental agency that is a party to the agreement may pay for its contribution to the facility by levying of taxes or assessments or by the issuance of bonds or notes in anticipation of the collection of taxes or assessments if the agency has legal authority for the type of facility specified in the agreement. The governmental agency that is a party to such an agreement may also pay for its contribution by the appropriation of

money or by the issuance of bonds or notes if legally authorized. The agreement by an agency to contribute funds is not subject to [ORC Chapter 133](#), the uniform bond law, irrespective of whether the contributions are from appropriated money, the proceeds of taxes or assessments, or bonds or notes. If the contributions are from the collection of taxes or assessments, the proceeds and any interest earned on the proceeds must be paid into a special fund by the agency for the purpose of making the contractual contributions to the port authority when required ([ORC 4582.171](#)).

79.47 “OLD” PORT AUTHORITY ROLE IN FOREIGN TRADE ZONES (FTZ)

An old new port authority may apply to the Foreign Trade Zone Board, a federal agency, to establish, operate, and maintain a Foreign Trade Zone (FTZ) ([ORC 4582.06\(A\)\(7\)](#)). The port may acquire land and property for the FTZ.

The FTZ Board is composed of the Secretary of Commerce and the Secretary of the Treasury. If the FTZ request is approved the port is then referred to as a “grantee.” Ports generally charge an application fee and annual administrative fees to companies desiring a FTZ. After approval by the FTZ Board the site must be activated through U.S. Customs and Border Protection procedures for security and inventory control.

Foreign Trade Zones began in 1934 with the purpose to encourage foreign commerce along with expediting the trade process, and keeping manufacturing and United States operations from locating overseas. There are two types of zones, “general purpose zones” and “sub-zones.” A “general purpose zone” is often one where multiple businesses are located in one location such as an industrial park. A “subzone” is often associated with a single company with a very large building.

After activation of the FTZ foreign or domestic merchandise may enter without the payment of custom duties on the product until formal arrival into the U.S. If the product is re-exported no custom duty collected. When the product formally enters into the United States the custom duty must then be paid. The utilization of FTZ’s provide cash flow advantages to companies by delaying payment of duties, and can also save the company money because exported products and damaged or scrapped products are duty exempt.

79.48 “OLD” PORT AUTHORITY REVENUE BONDS

The board of an old port authority may issue revenue bonds beyond the limit of bonded indebtedness for the acquisition, construction, furnishing or equipping of real or personal property related to, useful for or in furtherance of any authorized purpose of the port ([ORC 4582.06\(A\)\(4\)](#)). Port authority revenue bonds are secured entirely by a pledge and a lien on port authority revenues received from loan payments, rentals, fees, charges or other revenue such as real or personal property to be acquired. However, provisions must first be made for the cost of operating, maintaining and repairing the designated property. The port also may provide additional security for the bonds by a

covenant to maintain rates or charges so that the property may be maintained, debt serviced, and reserves for such purposes may be established.

Port authority revenue bonds may also be secured by a trust agreement between the port authority board and a corporate trustee such as a trust company or a bank. A trust agreement can pledge or assign the revenues to be received to the trustee, however, it cannot pledge the general credit and taxing power of the port authority. A trust agreement also can secure the revenue bonds by a mortgage or by real or personal property of plants, offices, factories and other structures or facilities, as an additional security for the bonds.

The trust agreement or the port authority board resolution authorizing the issuance of the bonds also can establish the rights and remedies of bondholders and the trustee. The trust agreement or bond resolution can provide for the custody, deposit, investment and disbursement of bond proceeds or from port authority revenues, except for tax levies. The revenue bonds must be negotiable; subject to any provisions for registration; and, may be issued in coupon form or be fully registered. The bonds must mature within 45 years from issuance, specify number and date of installments, and bear interest rates as specified in the bond resolution. The bond resolution also must provide for the execution of the bonds, the manner of sale of the bonds, and other conditions concerning issuance, sale, or retirement of the bonds as determined by the port authority board.

After original issuance of revenue bonds, the port authority board may issue additional bonds subject to any provisions of a trust agreement and may pledge additional property or revenue to secure the bonds. A port also may issue renewal notes and refund previously issued bonds irrespective of whether the bonds have matured. Renewal notes must mature within five years from the date of issue of the original notes. Refunding bonds must mature within 45 years. Port authority revenue bonds and notes are free from state taxation.

79.481 “OLD” PORT AUTHORITY BONDS AS LEGAL INVESTMENTS

“Old” port authority bonds are lawful investments for banks and trust companies with approval of the superintendent of banks, for savings and loan associations, and for bond retirement or the sinking funds of municipalities, school districts, port authorities and for counties. They are also legal investments for BWC and most state retirement systems including OPERS, STRS and SERS. Finally they are also legal investments for domestic insurance companies and may be used as an acceptable security by financial institutions for the deposit of public funds.

79.49 NOTICE BY POLITICAL SUBDIVISIONS TO “OLD” PORT AUTHORITIES CONCERNING CHANGES IN ROADS, HIGHWAYS, AND STREETS

If the state or any county, township or municipality is proposing to vacate, dedicate narrow or widen any street, alley, road or highway notice of the proposed action must

be provided to the port authority if the action proposed is within one-half mile of any navigable waters within the jurisdiction of the port. The notice must include the time and place of the public hearing on the proposed action and the port authority must be heard at the hearing ([ORC 4582.19](#)).

79.50 ACKNOWLEDGEMENT

The County Commissioners Association of Ohio expresses its gratitude to the Ohio Council of Port Authorities for its assistance in preparing this Chapter of the *Handbook*. Their website includes valuable information which may be accessed at: <http://ohioportauthorities.com/> . Thanks are especially extended to Harry A. Eadon, Jr., Executive Director of the Economic Development and Finance Alliance of Tuscarawas County, and current President of the Council; Rick Platt, President & CEO of the Heath-Newark-Licking County Port Authority; and Larry Merry, Director of the Belmont County Port Authority for their help and assistance.

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**TABLE 79-1
OHIO PORT AUTHORITY GUIDE**

Type, Year Created, Creating Political Subdivision(s), Tax Levy Status, and Websites
(Data Cells in Light Blue Means That Data Cannot Be Confirmed)

County	Name/ Website	Type		Date Created	Created by	Tax Levy Status
		New	Old			
Allen	Port Authority of Allen County	X		1982	Allen County	No
Ashtabula	Ashtabula County Port Authority http://acpaohio.org/	X		1988	Ashtabula County	No
	Ashtabula City Port Authority http://cityofashtabula.com/port-authority/					
	Conneaut Port Authority http://conneautportauthority.com/					
Athens	Athens County Port Authority and Economic Development Council http://www.businessremixed.com/athens					No
Auglaize	Western Ohio Rail Authority http://www.minsteroh.com/government/elected-officials/western-ohio-rail-authority-wora	X		1990	City of St. Mary's and the Villages of Minister and New Bremen	No

County	Name/ Website	Type		Date Created	Created by	Tax Levy Status
		New	Old			
Belmont	Belmont County Port Authority http://www.belmontcountyporthauth.com/					No
Butler	Butler County Port Authority http://development.butlercountyohio.org/content/txtcontent/PA/	X		2004	Butler County	No
Champaign	West Central Ohio Port Authority http://www.westcopa.org/ (Also includes Clark & Fayette Counties)	X		1989	Champaign, Clark & Fayette Counties	No
Clark	West Central Ohio Port Authority http://www.westcopa.org/ (Also includes Clark & Fayette Counties)	X		1989	Clark, Champaign & Fayette Counties	No
	Port Authority of Springfield, Ohio					
Clermont	Clermont County Port Authority http://www.clermontcountyohio.biz/portauthority.aspx	X		2012	Clermont County	No
Clinton	Clinton County Port Authority http://co.clinton.oh.us/business/clinton-county-port-authority/	X		2004	Clinton County	No
Columbiana	Columbiana County Port Authority http://www.ccpa-ohioriver.com/			1977	Columbiana County	No

County	Name/ Website	Type		Date Created	Created by	Tax Levy Status
		New	Old			
Coshocton	Coshocton Port Authority http://www.coshoctonportauthority.net/	X		2012	Coshocton County & City of Coshocton	No
Cuyahoga	Cleveland-Cuyahoga County Port Authority http://www.portofcleveland.com/		X	1968	Cuyahoga County & City of Cleveland	Yes
Delaware	Delaware County Finance Authority http://www.dcf-a-web.com/home.html	X		2006	Delaware County	No
Erie	Erie County Port Authority	X		2002	Erie County	No
	Huron Joint Port Authority http://www.huronoh.org/huron/boardscommissionscommittees.html				City of Huron & Huron Township	
	Vermillion Port Authority (note Vermillion is also located in Lorain County) https://sites.google.com/site/vermillionohiocitywebsite/port-authority				City of Vermillion	

County	Name/ Website	Type		Date Created	Created by	Tax Levy Status
		New	Old			
Fairfield	Fairfield County Port Authority http://fairfield33.com/fairfield-county-port-authority/					No
	Lancaster Port Authority https://www.ci.lancaster.oh.us/362/Lancaster-Port-Authority					
	Violet Township Port Authority					
Fayette	West Central Oho Port Authority http://www.westcopa.org/ (Also includes Champaign & Clark Counties)	X		1989	Fayette, Champaign & Clark Counties	No
Franklin	Columbus-Franklin County Finance Authority http://www.columbusfinance.org/	X		2006	Franklin County & City of Columbus	No
	Columbus Regional Airport Authority http://columbusairports.com/	X		1992	Franklin County and City of Columbus	No
Greene	Greene County Port Authority http://www.co.greene.oh.us/index.aspx?NID=158					No
Guernsey	Guernsey County Port Authority http://www.cgccic.org/	X		2000	Guernsey County	No

County	Name/ Website	Type		Date Created	Created by	Tax Levy Status
		New	Old			
Hamilton	Port of Greater Cincinnati Development Authority http://www.cincinnatiport.org/	X		2000	Hamilton County & City of Cincinnati	??
Hancock	Blanchard Valley Port Authority http://blanchardvalleyportauthority.org/	X		2008	Hancock County & City of Findlay	No
Jefferson	Jefferson County Port Authority http://www.jcport.com/					No
Lake	Lake County Port and Economic Development Authority http://lcport.org/	X		2007	Lake County	No
	Port Authority of Eastlake Ohio http://eastlakeohio.com/index.php/10-single-page/34-port-authority	X		1989	City of Eastlake	
	Fairport Harbor Port Authority http://fairportharbor.org/village-government/port-authority/			1956	Village of Fairport Harbor	
	Greater Mentor Port Authority http://cityofmentor.com/live/city-council-commissions/	X		2003	City of Mentor	

County	Name/ Website	Type		Date Created	Created by	Tax Levy Status
		New	Old			
Lawrence	Lawrence County Port Authority http://www.lawrencecountyohio.org/	X		2000	Lawrence	No
	Ironton City Port Authority http://www.lawrencecountyohio.org/ledc/south_ironon.php					
Licking	Heath-Newark-Licking County Port Authority http://hnlcpa.com/	X		1995	Licking County, Cities of Newark and Heath	No
Lorain	Lorain County Port Authority http://lcportauthority.org/					No
	Lorain Port Authority (City) http://www.lorainportauthority.com/overview/			1964	City of Lorain	Yes
	Vermillion Port Authority (note Vermillion is also located in Erie County) https://sites.google.com/site/vermillionohiocitywebsite/port-authority					
Lucas	Toledo-Lucas County Port Authority http://www.toledoportauthority.org/		X	1955	Lucas County & City of Toledo	Yes
Mahoning	Western Reserve Port Authority http://www.westernreserveportauthority.com/ (Also includes Trumbull County)	X		1992	Mahoning & Trumbull Counties	No

County	Name/ Website	Type		Date Created	Created by	Tax Levy Status
		New	Old			
Marion	Marion Port Authority http://marionportauthority.com/	X		2003	Marion County and City of Marion	No
Medina	Medina County Port Authority http://www.medinacountyportauthority.org/	X		2003	Medina County	No
Montgomery	Dayton-Montgomery County Port Authority http://www.daytonport.com/about.html				Montgomery County and City of Dayton	No
Muskingum	Zanesville-Muskingum County Port Authority http://www.zmcport.com/	X		1987	Muskingum County & City of Zanesville	No
Ottawa	Put-In-Bay Township Port Authority http://www.putinbayportauthority.com/	X		2013	Put-In-Bay Township	Yes
Portage	Portage County Port Authority http://www.portagedevbd.org/portauthority.aspx				Portage County	No
Sandusky	Sandusky County-Seneca County-City of Tiffin Port Authority (Also in Seneca County)				Sandusky & Seneca Counties & City of Tiffin	
Scioto	Southern Ohio Port Authority https://www.facebook.com/SouthernOhioPortAuthority	X		1983		No

County	Name/ Website	Type		Date Created	Created by	Tax Levy Status
		New	Old			
Seneca	Sandusky County-Seneca County-City of Tiffin Port Authority (Also in Seneca County)				Seneca & Sandusky Counties & City of Tiffin	No
Stark	Stark County Port Authority http://www.starkcoohio.com/html/scpa.html	X		1995	Stark County	No
Summit	Development Finance Authority of Summit County http://www.developmentfinanceauthority.org/	X		1999	Summit County	No
Trumbull	Western Reserve Port Authority http://www.westernreserveportauthority.com/ (Also includes Mahoning County)	X		1997	Trumbull & Mahoning Counties	No
Tuscarawas	Economic Development and Finance Alliance of Tuscarawas County http://tuscport.com/	X		2000	Tuscarawas County	No
Union	Marysville-Union County Port Authority http://www.unioncounty.org/economic-development/organization/				Union County	No
Van Wert	Van Wert County Port Authority	X		2001	Van Wert County	No

County	Name/ Website	Type		Date Created	Created by	Tax Levy Status
		New	Old			
Warren	Warren County Port Authority http://www.warrencountyport.org/	X		2007	Warren County	No
	Mason Port Authority http://www.imaginemason.org/				City of Mason	
Washington	Southeastern Ohio Port Authority http://seohioport.com/	X		2002	Washington County	No
Williams	Williams County Port Authority				Williams County	No
Wood	Wood County Port Authority http://www.woodcounty.com/	X		1999 2010	City of Rossford & Perrysburg Township (1999) Wood County Joined in 2010	No

Source: Ohio Port Authorities Council Survey, 2013 and other sources obtained by CCAO. Any errors are the sole responsibility of CCAO.

TABLE 79-2

POWERS OF OHIO “OLD” AND “NEW” PORT AUTHORITIES

As Specified in Ohio Revised Code Sections 4582.06 & 4582.31

“New” Port Authority		“Old” Port Authority	
Power or Authority	ORC 4582.06	Power or Authority	ORC4582.31
To adopt bylaws for conduct of business and for regulation of its affairs	(A)(1)		
To adopt official seal	(A)(2)		
To maintain principal building within its jurisdiction and maintain branch offices	(A)(3)		
To acquire, construct, furnish, equip, maintain, repair, sell, exchange, lease to or from, or lease with an option to buy, and convey other interests in real and personal property related to, useful for, or in furtherance of any authorized purpose. When acquiring property the instrument must identify the designate the agency of the state that has the use and benefit of the property as specified in ORC Section 5301.012 (ORC 4582.31(B)). Also to operate any property in connection with transportation, recreational, governmental operations, or cultural activities.	(A)(4)	To acquire, construct, furnish, equip, maintain, repair, sell, exchange, lease to or from, or lease with an option to buy, and convey other interests in real and personal property related to, useful for, or in furtherance of any authorized purpose. When acquiring property the instrument must identify the designate the agency of the state that has the use and benefit of the property as specified in ORC Section 5301.012 (ORC 4582.31(B)). Also to make charges for the use of any port authority facility, however, these charges may not be less than charges established for the service by a public utility or common carrier in the jurisdiction of the port.	(A)(1)

“New” Port Authority		“Old” Port Authority	
Power or Authority	ORC 4582.06	Power or Authority	ORC4582.31
To straighten, deepen, and improve a canal, channel, river, stream or other water course necessary or proper for the development of port authority facilities.	(A)(5)	Same	(A)(2)
To make the use or services of any port authority facility available to any person or governmental agency.	(A)(6)		
To issue bonds or notes to acquire, construct, furnish, or equip <u>authorized port authority facilities or other permanent improvements</u> . Issuance must comply with Uniform Bond Law, except debt can only be issued with a vote of electors within <u>area of jurisdiction</u> of the port authority. Net indebtedness cannot exceed 2% of assessed value of property.	(A)(7)	To issue bonds or notes to acquire, construct, furnish, or equip <u>any real or personal property relating to, useful for, or in furtherance of any authorized purpose</u> . Issuance must comply with Uniform Bond Law, except debt can only be issued with a vote of electors within <u>territory</u> of the port authority. Net indebtedness cannot exceed 2% of assessed value of property.	(A)(3)
To issue port authority revenue bonds beyond the bonded indebtedness limit and payable from revenues provided in ORC 4582.48 to pay for the costs of any port authority facility. Also may issue renewal notes and refund issues. See Section 79.32 for more information.	(A)(8)	To issue revenue bonds beyond the bonded indebtedness limit to acquire, construct, furnish, or equip any real or personal property related to, useful for, or in furtherance of any port authority purpose. This includes all costs in connection with, or incidental to the project. Also may issue renewal notes and refund issues. See Section 79.48 for more information.	(A)(4)
To establish, operate, and maintain Foreign Trade Zones, upon application to the federal government, and to acquire, exchange, sell, lease to or from, lease with an option to purchase, or operate land or property in conformance with the “Foreign Trade Zones Act,”	(A)(9)	To establish, operate, and maintain Foreign Trade Zones, upon application to the federal government, and to acquire land and property pursuant to ORC Section 4582.17 . See Section 79.47 for additional information.	(A)(7)

“New” Port Authority		“Old” Port Authority	
Power or Authority	ORC 4582.06	Power or Authority	ORC4582.31
48 Stat. 998 (1934), 19 USC 81a to 81u. See Section 79.31 for additional information.			
To possess the same rights, privileges, and powers as municipalities under ORC Sections 721.04 to 724.11 relating to municipalities that have Lake Erie shorelines.	(A)(10)	Same	(A)(9)
To maintain such funds as the port considers necessary.	(A)(11)	Same	(A)(10)
To direct its agents or employees, when properly identified in writing, and after at least five days' written notice, to enter upon lands to make surveys and examinations prior to the location and construction work. Agents and employees of the port must identify themselves in writing and give at least five days written notice to property owners.	(A)(12)	Same	(A)(11)
To promote, advertise and publicize the port and its facilities. To provide information to shippers and other commercial interests. To appear before rate-making authorities to represent	(A)(13)	To promote, advertise, and publicize port authority facilities and its authorized purposes. To provide information to persons interested in transportation and other port activities. To appear before rate-making authorities to represent	(A)(13)

“New” Port Authority		“Old” Port Authority	
Power or Authority	ORC 4582.06	Power or Authority	ORC4582.31
and promote the interests of the port.		and promote the interests of the port and its authorized purposes.	
<p>To adopt rules necessary or incidental to its powers and duties. The rules cannot conflict with general law and must be posted at not fewer than five public places for a period of not fewer than 15 days.</p> <p>The rules also must be available for public inspection at the port’s principal office during regular business hours. Anyone violating the rules is guilty of a minor misdemeanor.</p>	(A)(14)	<p>To adopt rules on the use and safeguarding of its property, grounds, buildings, equipment, and facilities; safeguarding persons and their property on or in port authority property; and, governing the conduct of employees and the public.</p> <p>The purpose of the rules is to promote the public safety and convenience in and about its terminals and grounds, and to maintain order.</p> <p>The rules cannot conflict with general law and must be posted at not fewer than five places. For not less than 15 days. The rules also must be available for public inspection at the port’s principal office during regular business hours. Anyone violating the rules is guilty of a minor misdemeanor.</p>	(A)(14)
<p>To do any of the following related to any interests in real or personal property which is useful for, or in furtherance of any port authority authorized purpose:</p> <ul style="list-style-type: none"> To make loans to any person or governmental entity to acquire, construct, furnish or equip the property. To acquire, construct, maintain, repair, furnish, and equip the property. To sell, exchange, lease, convey other interests in, or lease with an option to 	(A)(15)	Same	(A)(5)

“New” Port Authority		“Old” Port Authority	
Power or Authority	ORC 4582.06	Power or Authority	ORC4582.31
<p>purchase the property to any other person or governmental entity.</p> <ul style="list-style-type: none"> To guarantee the obligations of any person or governmental entity. <p>These activities must be performed in ways that are consistent with Article VIII of the Ohio Constitution relating to the lending of aid and credit to private enterprise.</p> <p>The port may accept and hold as consideration for the conveyance of property, or any interest in property such property or interests as determined by the board. In such cases, other provisions of state law relating to the investment of port authority funds, does not apply.</p>			
<p>To sell, lease, or convey other interests in real and personal property, and to grant easements or rights-of-way. The port authority board must specify the consideration and terms for the sale, lease, or conveyance of other interests in real and personal property. Any sale, lease, or conveyance exempt from any public notice or bidding requirements.</p>	(A)(16)	Same	(A)(12)
<p>To exercise eminent domain for any land, rights, rights-of-way, franchises, easements, or other property determined to be necessary or proper for any authorized port purpose if funds equal to the</p>	(A)(17)	Same, except, the “old” port authority law does not specifically address “cable operators.” See Section 79.431 for further details.	(A)(8)

“New” Port Authority		“Old” Port Authority	
Power or Authority	ORC 4582.06	Power or Authority	ORC4582.31
appraised value of the property are available. This right is conditioned on certain restrictions where eminent domain is used against any agency or political subdivision, public utility, cable operator, or common carrier as is explained in Section 79.271.			
To enter into all contracts and agreements necessary to perform its duties and execute of its powers. Requires buildings, structures and other improvements in excess of 100,000 must follow competitive bidding, except for certain exceptions. Requires awards of such bids to follow certain provisions of ORC Chapter 153. Provides that the Director of Commerce will adjust the bidding threshold every two years to reflect inflation. Also allows the port authority board to establish rules establishing criteria for the negotiation and award of certain contracts without competitive bidding. See Section 79.278 for additional details.	(A)(18)	To construct, maintain, repair, furnish, equip, sell, exchange, lease or lease with an option to purchase, property it is authorized to acquire. A port authority that is subject to this section also may operate any property in connection with transportation, recreational, governmental operations, or cultural activities. Contracts related to the purchase, exchange, sale, lease, lease with an option to purchase, or conveyance of other interests must be made in such manner and subject to the terms and conditions of the port authority board. Also provides for certain exemptions to these procurement processes. For additional information see Sections 79.43 & 79.44.	(A)(6)
To employ managers, superintendents, and other employees and to contract with consulting engineers, financial consultants, accounting experts, architects, attorneys, and any other consultants and independent contractors, and fix their compensation. All expenses are payable from any available funds of the port authority or from funds appropriated for that purpose by a political subdivision that created or participated in the creation of the port authority.	(A)(19)		

“New” Port Authority		“Old” Port Authority	
Power or Authority	ORC 4582.06	Power or Authority	ORC4582.31
To accept state or federal grants and loans for the construction of any port authority facility or for research and development with respect to port authority facilities. Also to accept aid or contributions from any source of money, property, labor, or other things of value, to be used only for the purposes for which the grants and contributions are made.	(A)(20)		
To engage in research and development with respect to port authority facilities.	(A)(21)		
To purchase a variety of types of insurance including (1) fire and extended coverage and liability insurance for any port authority facility and for the principal office and branch offices of the port authority (2) liability insurance protecting the port authority and its officers and employees against liability for damage to property or injury to or death of persons arising from its operations, and (3) any other insurance the port authority agrees to provide relating to the issuance of revenue bonds or in any trust agreement securing the bonds.	(A)(22)		
To charge, alter, and collect rentals and other charges for the use or services of any port authority facility. For additional information see Section 79.29.	(A)(23)		
To provide coverage for its employees under OPERS, workers compensation and unemployment compensation laws.	(A)(24)		

"New" Port Authority		"Old" Port Authority	
Power or Authority	ORC 4582.06	Power or Authority	ORC4582.31
To do all acts necessary or proper to carry out the powers expressly granted in ORC Sections 4582.21-4592.59.	(A)(25)		

TABLE 79-3

STATUTORY DEFINITIONS FOR “NEW” & “OLD” PORT AUTHORITIES

“NEW” PORT AUTHORITIES		“OLD” PORT AUTHORITIES	
Definition	ORC Section 4582.21	Definition	ORC Section 4582.01
<p>"Port authority" means a body corporate and politic created pursuant to the authority of section 4582.22 of the Revised Code.</p>	(A)	<p>"Port authority" means a body corporate and politic created pursuant to the authority of section 4582.02 of the Revised Code.</p>	(A)
<p>"Authorized purposes" or "purpose" means either of the following:</p> <p>(1) Activities that enhance, foster, aid, provide, or promote transportation, economic development, housing, recreation, education, governmental operations, culture, or research within the jurisdiction of the port authority;</p> <p>(2) Activities authorized by Sections 13 and 16 of Article VIII, Ohio Constitution.</p>	(B)	Same	(B)
<p>"Governmental agency" means a department, division, or other unit of state government of this state or any other state, a municipal corporation, county, township, or other political subdivision, or any other public corporation or agency created under the laws of this state, any other state, the United States, or any department or agency thereof, and any agency, commission, or authority established pursuant to an interstate compact or agreement.</p>	(C)		

"NEW" PORT AUTHORITIES		"OLD" PORT AUTHORITIES	
Definition	ORC Section 4582.21	Definition	ORC Section 4582.01
"Person" means any individual, firm, partnership, association, or corporation, or any combination thereof.	(D)	Same	(G)
"Port authority facility" or "facility" means real or personal property, or any combination thereof owned, leased, or otherwise controlled or financed by a port authority and related to, useful for, or in furtherance of, one or more authorized purposes.	(E)	Same	(D)
"Cost" as applied to a port authority facility means the cost of acquisition or construction of the facility, and the cost of acquisition of all land, rights-of-way, property rights, easements, franchise rights, and interests required for that acquisition or construction, the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which those buildings or structures may be moved, the cost of acquiring or constructing and equipping a principal office of the port authority, the cost of diverting highways, interchange of highways, and access roads to private property, including the cost of land or easements for the access roads, the cost of public utility and common carrier relocation or duplication, the cost of all machinery, furnishings, and equipment, financing charges, interest prior to and during construction and for no more than eighteen months after completion of construction, engineering, expenses of research and development with respect to port authority facilities, legal expenses, plans, specifications, surveys, studies, estimates of cost and revenues, other expenses necessary or incident to determining the	(F)	Same	(C)

“NEW” PORT AUTHORITIES		“OLD” PORT AUTHORITIES	
Definition	ORC Section 4582.21	Definition	ORC Section 4582.01
feasibility or practicability of acquiring or constructing the facility, administrative expense, and other expenses as may be necessary or incident to the acquisition or construction of the facility, the financing of the acquisition or construction, including the amount authorized in the resolution of the port authority providing for the issuance of port authority revenue bonds to be paid into any special funds from the proceeds of such bonds and the financing of the placing of the facility in operation. Any obligation, cost, or expense incurred by any governmental agency or person for surveys, borings, preparation of plans and specifications, and other engineering services, or any other cost described above, in connection with the acquisition or construction of a facility may be regarded as part of the cost of the facility and may be reimbursed out of the proceeds of port authority revenue bonds as authorized by this chapter.			
"Revenues" means all rentals and other charges received by the port authority for the use or services of any port authority facility, any gift or grant received with respect to any port authority facility, any moneys received with respect to the lease, sublease, sale, including installment sale or conditional sale, or other disposition of a port authority facility, moneys received in repayment of and for interest on any loans made by the port authority to a person or governmental agency, whether from the United States or any department, administration, or agency thereof, or otherwise, proceeds of port authority revenue bonds to the extent the use thereof for payment of principal or of premium, if any, or interest on the bonds is authorized by the port authority,	(G)		

“NEW” PORT AUTHORITIES		“OLD” PORT AUTHORITIES	
Definition	ORC Section 4582.21	Definition	ORC Section 4582.01
proceeds from any insurance, condemnation, or guaranty pertaining to a facility or property mortgaged to secure bonds or pertaining to the financing of the facility, and income and profit from the investment of the proceeds of port authority revenue bonds or of any revenues.			
"Public roads" includes all public highways, roads, and streets in the state, whether maintained by the state or by a county, township, municipal corporation, or other political subdivision.	(H)		
"Construction," unless the context indicates a different meaning or intent, includes alteration, construction, creation, development, enlargement, improvement, installation, reconstruction, remodeling, and renovation.	(I)	Same	(F)
"Port authority revenue bonds," unless the context indicates a different meaning or intent, includes revenue notes, revenue renewal notes, and revenue refunding bonds.	(J)	"Bonds" means bonds, notes, or other forms or evidences of obligation issued in temporary or definitive form, including notes issued in anticipation of the issuance of bonds and renewal notes.	(E)
"Contracting subdivision" means any governmental subdivision or taxing district of the state that, by action of its legislative authority, enters into an agreement with a port authority or a port authority and one or more other governmental subdivisions or taxing districts of the state. "Contracting subdivision" does not mean a transportation improvement district.	(K)	Same	(H)

"NEW" PORT AUTHORITIES		"OLD" PORT AUTHORITIES	
Definition	ORC Section 4582.21	Definition	ORC Section 4582.01
<p>"Governmental subdivision" includes, but is not limited to, any county, municipal corporation, township, port authority, water or sewer district, solid waste management district, school district, health district, park district, soil and water conservation district, water conservancy district, regional transit authority, airport authority, or other district, authority, or commission created pursuant to the laws of this state. "Governmental subdivision" does not include a transportation improvement district.</p>	(L)	Same	(I)

TABLE 79-4

“NEW” & “OLD” PORT AUTHORITIES: A GUIDE TO ORC SECTIONS
 Showing Similarities & Differences Between “New” & “Old” Ports Under Ohio Law

Subject/Topic	ORC Sections	
	“New Port”	“Old Port”
GENERAL		
Definitions	<u>4582.21</u>	<u>4582.01</u>
Encouragement of Private Enterprise	<u>4582.35</u>	<u>4582.10</u>
Liberal Construction	<u>4582.59</u>	<u>4582.06(C)</u>
Conflict with Other Laws	<u>4582.36</u>	<u>4582.11</u>
Pre-emption of Certain County and Municipal Rights	<u>4582.42</u>	<u>4582.16</u>
General Powers (see also Table 79-2)	<u>4582.31</u>	<u>4582.06</u>
Transfer of Powers Between Ports & Political Subdivisions	<u>4582.431(B)</u>	<u>4582.17(B)</u>
Port Authority Liability	<u>4582.271</u>	<u>4582.03(B)</u>
Liability Insurance	<u>4582.31(A)(22)</u>	<u>4582.03(C)(3)</u>
Public Records & Open Meetings	<u>4582.58(B)(C)</u>	<u>4582.091</u>
ORGANIZATION & STRUCTURE		
Creation	<u>4582.22</u> <u>4582.30</u>	<u>4582.02</u>

Subject/Topic	ORC Sections	
	“New Port”	“Old Port”
Joining/ Expansion After Original Creation	4582.26	4582.024
Territory & Jurisdiction	4582.30	4582.05
Converting an “Old” Port to a “New” Port & reverting back		4582.201
Dissolution of Port Authority	4582.25(B)	4582.023
Membership of Board of Directors	4582.27	4582.03
Bond of Board Secretary	4582.41	4582.15
Advisory Board	4582.28(A)	4582.04(A)
Port Authority Journal	4582.58	
Annual Report to Development Services Agency	4582.58	4582.58
STAFFING & OPERATIONS		
Port Authority Employees	4582.28(A)	4582.04(A)
Special Police Officers	4582.28(B)(C)	4582.04(B)(C)
Health & Life Insurance	4582.29	4582.041
Plan for Future Development	4582.32	4582.07
Amendments to Plan for Future Development	4582.33	4582.08
Validity of Plan for Future Development	4582.34	4582.09
BUDGET & INTERNAL FINANCES		

Subject/Topic	ORC Sections	
	“New Port”	“Old Port”
Port Authority Budgets	<u>4582.39</u>	<u>4582.13</u>
Political Subdivision Appropriations to Ports	<u>4582.25(A)</u>	<u>4582.023</u>
Rents & Charges	<u>4582.39</u> <u>4582.43</u>	<u>4582.13</u> <u>4582.171</u>
Port Authority Voted Property Tax Levy	<u>4582.40</u> <u>4582.401</u>	<u>4582.14</u>
Depositories for Port Authority Funds	<u>4582.41</u> <u>4582.53</u>	<u>4582.15</u>
Port Authority Funds Held in Trust & Not With Other Funds	<u>4582.53</u>	
Investment of Port Authority Funds	<u>4582.54</u>	
Port Authority Linked Deposit Programs	<u>4582.54</u>	
PROPERTY ACQUISITION, SALE & SECURITY		
Acquisition of Property	<u>4582.431(A)</u>	<u>4582.17(A)</u>
Cooperative Acquisition & Construction of Port Facilities	<u>4582.43</u>	<u>4582.171</u>
Conveying Property To or From Other Political Subdivisions	<u>4582.38</u>	<u>4582.121</u>
Real & Personal Property Tax Exemption	<u>4582.46</u>	<u>4582.20</u>
Loans for Acquisition or Construction of Port Facilities	<u>4582.47(A)(1)</u>	<u>4582.06(A)(5) & (6)</u>
Sale, Lease & Mortgage of Port Facilities	<u>4582.47(A)(2) & (3)</u>	<u>4582.06(A)(5),(6), & (12)</u>

Subject/Topic	ORC Sections	
	“New Port”	“Old Port”
Bidding & Contracting	4582.31(A)(18)	4582.12
Other Contract Powers	4582.431(A)	4582.17(A)
PORT AUTHORITY BONDS		
Port Authority Revenue Bonds; Refunding Bonds	4582.48	4582.06(A)(4)
Port Authority Revenue Bonds Exempt From Other Applicable Laws	4582.49	
Trust Agreements	4582.50	4582.06(A)(4)
Right of Bondholders	4582.51	
Nature of Port Authority Revenue Debt	4582.52	4582.06(A)(4)
Investment Eligibility of Port Authority Bonds	4582.44	4582.18
Bonds for Research & Development; Venture Capital	4582.71	4582.71
MISCELLANEOUS PROVISIONS		
Notice of Street Name Changes		4582.19
Changes in Location of Streets, Railroads & Public Utilities	4582.57	

TABLE 79-5**SELECTED MISCELLANEOUS PROVISIONS OF OHIO LAW RELATED TO PORT AUTHORITIES**

ORC Section	General Description of Port Authority Topic
122.19	Port authority as eligible applicant for Urban & Rural Initiative Program
122.23	Port authority as eligible applicant for Industrial Park Loan Program
122.65	Port authority as eligible applicant for Brownfield Revitalization Program
122.951	County Commissioners may designate a port authority to apply for Industrial Site Improvement Fund Grant
123.151	Port authority to file Minority Business Enterprise (MBE) reports with Ohio Department of Administrative Services (DAS)
123.28	Port authority defined as government entity by Ohio Cultural Facilities Commission
125.04	Port authority eligible to purchase from state cooperative purchasing program
128.01	Port authority role in 9-1-1 emergency telephone systems
135.80	Port authority Economic Development Linked Deposit Program
135.81	Port authority Housing Linked Deposit Program
150.01	Port authority as issue of financing for Ohio Venture Capital Authority
163.01	Defines port authority transportation facility for purposes of eminent domain law
163.03	Port authority role in issuance of certain bonds by State
307.15	Authority for port authority and county commissioners to contract
307.671, 307.673, 307.674, 307.678,	Includes a variety of powers and potential involvement of port authorities relating to the acquisition, construction, and operation of facilities that have been authorized by the Legislature, often with special time limited new tax options.

ORC Section	General Description of Port Authority Topic
307.679 , 307.695 , 4582.56	
307.806	Authority for port authority to contract with county microfilm board
307.846 307.847	Contracts with County Automatic Data Processing Board or combined Board
311.29	Contracts for Sheriff to provide law enforcement assistance to port authority
349.01 349.02	Port authority as developer in New Community District
505.432	Contracts with Township Trustee for police protection
737.022	Provision relating to applicability of municipal traffic regulations to a port authority
737.041	Concerning the provision of police protection to a port authority by a municipality
921.06	Requirement for port authority staff to obtain a Pesticide Applicator License from the Ohio Department of Agriculture
1506.02	Port authority as eligible applicant for Coastal Zone Assistance Grant
1506.11	Port Authority powers in development and improvement of Lake Erie lakefront land
1701.66	Port authority recordation of certain railroad and public utility mortgages
2744.01	Port authority defined as political subdivision for the purpose of Ohio's sovereign immunity law
2901.01	Port authority special police officer defined as law enforcement officer
2921.51 2935.01	Port authority special police officer defined as peace officer
	Port authority special police officer arrest authority outside of the jurisdiction of the

ORC Section	General Description of Port Authority Topic
2935.03	port authority
3317.0211	Adjustments in state school aide to school districts in circumstances where port authority taxes are not collected
4115.04	Exempts port authorities from the prevailing wage
4303.181	Port authority issues related to (D) (5) (d) liquor permits
4561.01	Port authority issues relating to aeronautics
5513.01	Ability for port authority to participate in cooperative purchasing contract of the Ohio Department of Transportation
5540.01	Relationship of port authorities to Transportation Improvement Districts (TID's)
5705.55	Prohibits a port authority from levying a property tax in certain circumstances if a Lake Facilities Authority property tax has been enacted
5709.09	Permissive lodging tax for a Port Authority Military Use Facility

TABLE 79-6

COMPARISON OF PORT AUTHORITIES TO COMMUNITY IMPROVEMENT CORPORATIONS

Prepared and provided as a courtesy by Bricker & Eckler LLP

	Port Authority	Community Improvement Corp (CIC)
PURPOSES		
	A Port Authority’s authorized purposes are (1) activities that enhance, foster, aid, provide, or promote transportation, economic development, housing, recreation, education, governmental operations, culture, or research within the jurisdiction of the port authority; and (2) activities that promote economic development or the development of housing.	A CIC may be formed for the purposes of (1) advancing, encouraging, and promoting the industrial, economic, commercial, and civic development of a community or area (an “economic development corporation”); or (2) (a) facilitating the reclamation, rehabilitation, and reutilization of vacant, abandoned, tax-foreclosed, or other real property within the county for whose benefit the corporation is being organized, (b) efficiently holding and managing vacant, abandoned, or tax-foreclosed real property pending its reclamation, rehabilitation, and reutilization, (c) assisting governmental entities and other nonprofit or for-profit entities to assemble, clear, and clear the title of certain real property in a coordinated manner, or (d) promoting economic and housing development in the county or region (a “county land reutilization corporation”).
FORMATION		
Procedure	A municipality, county, or township, or any combination of those may create a Port Authority by enacting legislation through the applicable governing bodies.	Any person can create a CIC by filing Articles of Incorporation with Secretary of State of Ohio, who in turn gets approval of the Articles from the Attorney General of Ohio.
Composition	A Port Authority is governed by a board of directors appointed by political subdivisions that created it. Only political subdivisions with elected leadership, however, may appoint members to the board of directors. The size of the board is determined by the creating entities.	A CIC formed as an economic development corporation can have a board of directors in any composition determined appropriate, but if the CIC is to conduct real property transfers without competitive bidding, as described below, at least 40% of the board must be comprised of mayors, members of municipal legislative authorities, members of boards of township trustees, members of boards of county commissioners, or any other appointed or elected officers of such political subdivisions, and every entity designating the CIC

		<p>as its agency for economic development.</p> <p>A CIC formed as a county land reutilization corporation must have a governing board with five, seven or nine members including the county treasurer, at least two members of the board of county commissioners, one representative of the largest municipal corporation in the county, one representative of a township having at least 10,000 residents if there are at least two townships of that size in the county, and any other appointees of the county treasurer and commissioners, provided that at least one board member must have experience in rehabilitation or real estate acquisitions.</p>
POWERS		
General	A Port Authority has the specific powers granted to it in Chapter 4582 , Ohio Revised Code.	A CIC has all of the powers of a non-profit corporation under Ohio law, plus additional power expressly granted by Chapter 1724 , Ohio Revised Code.
Acquire Property	Acquire Property A Port Authority may acquire property useful for, or in furtherance of, any authorized purpose.	A CIC may acquire property for any purpose consistent with its Articles and Bylaws.
<ul style="list-style-type: none"> • Through Eminent Domain 	Port Authorities have the power of eminent domain for any authorized purpose, but subject to the limitations that apply to eminent domain generally (cannot be exclusively for economic development purposes).	A CIC does not have the power of eminent domain, but it could acquire property from another governmental entity with which it has a relationship following the authorized exercise of eminent domain by that governmental entity.
<ul style="list-style-type: none"> • From City/ County/ Township 	The legislative authority of any political subdivision or taxing district may convey to (or exchange with) any Port Authority real property, without competitive bidding and on mutually agreeable terms, that is not needed for the purposes of such entity.	A CIC that has entered into an agreement with a political subdivision whereby the CIC is designated as the “agency for economic development” of that subdivision may acquire real property and interests in real property owned by the political subdivision provided that the legislative authority of the political subdivision determines (1) that such property is not required by the political subdivision for its purposes, and (2) that such conveyance of such real property or interests in real property will promote the welfare of the people of the political subdivision, stabilize the economy, provide employment, assist in the development of industrial, commercial, distribution, and research activities to the benefit of the people of the political subdivision, provide additional opportunities for their gainful employment or will promote the reclamation, rehabilitation, and reutilization of vacant, abandoned, tax-foreclosed,

		or other real property in the subdivision. Any conveyance by the political subdivision to the CIC shall be made without advertising and receipt of bids and upon such terms established between the parties.
<ul style="list-style-type: none"> Sell Property 	A Port Authority may sell, lease, or convey other interests in real and personal property, and grant easements or rights-of-way over property of the port authority upon such terms as shall be set by the board of directors, and such sale, lease, or conveyance may be made without advertising and the receipt of bids	A CIC may sell property in the same manner as any other non-profit corporation, consistent with its purposes, except that, if the CIC is disposing of property acquired from a political subdivision as described above, the CIC must pay to such subdivision any excess amount received by the CIC over the amount paid to such subdivision, after deducting, to the extent and in the manner provided in the agreement, the costs of such acquisition and sale, taxes, assessments, costs of maintenance, costs of improvements to the real property by the community improvement corporation, service fees, and any debt service charges of the CIC attributable to such real property or interests.
<ul style="list-style-type: none"> On Behalf of City/ County / Township 	There is no express authority for a Port Authority to sell property on behalf of a political subdivision.	A CIC may sell, on behalf of a political subdivision, property determined by the legislative authority of such subdivision not to be required for its purposes, but only for uses determined by the legislative authority (1) to promote the welfare of the people of the political subdivision, stabilize the economy, provide employment, assist in the development of industrial, commercial, distribution, and research activities to the benefit of the people of the political subdivision, (2) to provide additional opportunities for their gainful employment, or (3) to promote the reclamation, rehabilitation, and reutilization of vacant, abandoned, tax-foreclosed, or other real property within the subdivision.
<ul style="list-style-type: none"> At or Below Fair Market Value 	A Port Authority may sell property at below fair market value so long as the sale is consistent with the Port Authority's authorized purposes.	When a CIC is selling property on behalf of a political subdivision, the legislative authority of the subdivision shall specify the consideration for such sale and any other terms thereof, which may be below fair market value. Such conveyance or lease shall be made without advertising and receipt of bids.
Lease Property	A Port Authority may lease property useful for, or in furtherance of, any authorized purpose.	A CIC may lease property for any purpose consistent with its Articles and Bylaws.
Levy Taxes	The voters within the jurisdiction of a Port Authority may approve a property tax levy, not in excess of one mill annually, for a	A CIC is not a governmental entity and may not levy any taxes or assessments.

	period of up to five years (unless the levy is for the payment of debt service on bonds, in which case the levy shall extend for the life of the bond issue).	
Incur Debt	A Port Authority (1) may borrow in anticipation of the voted levy referenced above, (2) may issue voted securities (not in excess of 2% of its assessed valuation), and (3) may issue unvoted revenue bonds secured by a pledge of and a lien on the revenues generated by a property or project, and the revenue bonds need not comply with any other Ohio law applicable to issuing bonds or notes.	A CIC (1) may borrow money as any non-profit corporation would, and (2) may grant a mortgage on property it owns or is acquiring with the proceeds of the debt.
Loan Money	A Port Authority may loan moneys to any person or governmental entity for the acquisition, construction, furnishing, and equipping of any real or personal property, or any combination thereof related to, useful for, or in furtherance of any authorized purpose, for such consideration and in such manner as its board of directors in its sole discretion may determine.	A CIC may make loans to any person, firm, partnership, corporation, joint stock company, association, or trust; provided that an economic development corporation shall not approve any application for a loan unless and until the person applying for said loan shows that it has applied and been denied a loan by at least one bank or other financial institution. A county land reutilization corporation may make revolving loans to community development corporations, private entities, or any person for the purposes contained in such corporation's plan.
Issue Tax-Exempt Securities	A Port Authority may issue tax-exempt securities, as permitted by the Internal Revenue Code, for any authorized purpose.	Because a CIC is not a governmental entity, it may not issue tax-exempt securities. However, a CIC does play an approving role with respect to the issuance of industrial development bonds by a governmental entity.
Grant Property Tax Abatements	A Port Authority may not grant tax abatements.	A CIC may not grant tax abatements.
COMPLIANCE REQUIREMENTS		
Competitive Bidding Laws	A Port Authority is required to competitively bid contracts for any contract exceeding \$100,000 except: (1) a construction contract involving a construction manager at risk or a design-build firm, or (2) a construction contract entered into after the board of directors by rule has provided criteria for the negotiation and award without competitive bidding of any contract as to which the Port Authority is the contracting entity in which (a)	A CIC is not required to use competitive bidding to enter into contracts, but this exception to the general rule cannot be employed by political subdivision that is working with the CIC to avoid competitive bidding.

	<p>there exists a real and present emergency that threatens damage or injury to persons or property of the Port Authority or other persons, (b) a commonly recognized industry or other standard or specification does not exist and cannot objectively be articulated for the improvement, (c) the contract is for any energy conservation measure, (d) with respect to material to be incorporated into the improvement, only a single source or supplier exists for the material, or (e) a single bid is received by the Port Authority after complying with the competitive bidding requirements.</p>	
<p>Prevailing Wage Laws</p>	<p>Public improvements undertaken by, or under contract for, a Port Authority are exempt from prevailing wage requirements.</p>	<p>A private construction contract undertaken by a CIC is exempt from Ohio's prevailing wage laws, but if a CIC were to construct an improvement to be owned or leased by a political subdivision (other than an entity, such as a school district or port authority, that is itself exempt from prevailing wage requirements), those improvements would be subject to prevailing wage requirements.</p>
<p>Public Record Laws</p>	<p>Port Authorities are subject to Ohio's public records laws, except that any financial and proprietary information, including trade secrets, submitted by or on behalf of an entity to the port authority (or to a nonprofit corporation providing economic development services to the port authority) in connection with the relocation, location, expansion, improvement, or preservation of the business of that entity is confidential information and is not a public record. Any other information submitted by or on behalf of an entity to the port authority in this context is confidential information and is not a public record until the entity commits in writing to proceed with the relocation, location, expansion, improvement, or preservation of its business.</p>	<p>CICs are subject to Ohio's public record laws, except that any financial or proprietary information, including trade secrets, submitted by or on behalf of an entity to the CIC (or by any political subdivision for which the CIC is acting as its agent) in connection with the relocation, location, expansion, improvement, or preservation of the business of that entity is confidential information and is not a public record. Any other information submitted by or on behalf of an entity to the CIC (or by any political subdivision for which the CIC is acting as its agent) in this context is confidential information and is not a public record until the entity commits in writing to proceed with the relocation, location, expansion, improvement, or preservation of its business.</p>
<p>Open Meeting (Sunshine) Laws</p>	<p>Port Authorities are subject to Ohio's open meeting laws, except when the board of directors of a port authority or any committee or subcommittee of such a board meets to consider information that is not a public record (as described above), the board,</p>	<p>CICs are subject to Ohio's open meeting laws, except when the board of trustees of a CIC or any committee or subcommittee of such a board meets to consider information that is not a public record (as described above), the board, committee, or subcommittee, by unanimous vote of all members</p>

	committee, or subcommittee, by majority vote of all members present, may close the meeting during consideration of the confidential information. In addition, the board may meet in executive session to discuss negotiations with other political subdivisions relating to economic development assistance. The board, committee, or subcommittee shall consider no other information during the closed session.	present, may close the meeting during consideration of the confidential information. In addition, the board may meet in executive session to discuss negotiations with other political subdivisions relating to economic development assistance. The board, committee, or subcommittee shall consider no other information during the closed session.
PROGRAM ELIGIBILITY		
Local Govt. Improvement Fund	A Port Authority cannot be the direct recipient of Local Government Funds.	A CIC cannot be the direct recipient of Local Government Funds.
Benefit From Tax Increment Financing	TIF funds can be used to finance projects undertaken by a Port Authority (or to secure bonds issued by a Port Authority). A Port Authority could construct public infrastructure improvements financed with TIF funds, and a Port Authority could utilize TIF funds to finance commercial redevelopment projects under certain circumstances.	A CIC could utilize TIF funds to finance commercial redevelopment projects under certain circumstances.
Receive Real Property Tax Abatement	All real property owned by a Port Authority is exempt from all taxes, except that exemption does not apply if such property is leased for more than a one-year term to an entity not exempt from tax. Certain political subdivisions may also grant property tax abatements to overlap these provisions. Port Authorities may provide sales tax abatements in connection with certain economic development projects serving port authority purposes. (Note: For a Port Authority in existence prior to July 9, 1982, all property owned by a Port Authority may be exempt from sales tax, even if leased to a private person.)	A CIC that owns commercial property can be the recipient of a property tax abatement, just like any other owner of real property.
Community Development Block Grant	A Port Authority cannot be the direct recipient of CDBG moneys, but it could be the beneficiary of projects created using CDBG moneys paid to a county or city.	A CIC cannot be the direct recipient of CDBG moneys, but it could be the beneficiary of projects created using CDBG moneys paid to a county or city.