

# TITLE 29

## State Government

### Departments of Government

#### CHAPTER 87. Department of State

##### Subchapter II. Diamond State Port Corporation

###### **§ 8780 Diamond State Port Corporation — Policy and purpose.**

The General Assembly declares the following to be the policy and purpose for creation of the Diamond State Port Corporation:

(1) That the continued economic viability of the Port of Wilmington and its related facilities, and improvements to these facilities and to the commerce involving these facilities, benefits the entire State;

(2) That it is in the best interest of the State to create a corporate entity which shall assume, by agreement, operation of the Port of Wilmington and its related facilities and to assume certain obligations of the City of Wilmington;

(3) That, in that regard, the General Assembly shall, in its discretion, appropriate an amount to fund the initial capital and operating responsibilities of such corporation and shall consider the future appropriations as appropriate;

(4) That this Corporation is intended to have all power and authority necessary to be exercised in accordance with the form of governance expressed herein, to operate the Port of Wilmington and related facilities so as to maintain and expand the business of these facilities.

70 Del. Laws, c. 210, § 25; 75 Del. Laws, c. 88, § 19.;

###### **§ 8781 Creation of Diamond State Port Corporation.**

(a) There shall be established within the Department of State a body corporate and politic, with corporate succession, constituting a public instrumentality of the State, and created for the purpose of exercising essential governmental functions which is to be known as the “Diamond State Port Corporation.” This Corporation shall exercise all such functions necessary in connection with the assumption, establishment, acquisition, construction, rehabilitation, improvement, operation and maintenance of the Port of Wilmington and related facilities, including without limitation marine terminal facilities, which shall be deemed and held to be essential governmental functions of this State. The Corporation shall be a membership corporation with the Department of State as sole member and shall have a certificate of incorporation and by-laws consistent with this subchapter. The certificate of incorporation of the Corporation shall provide for approval of the Delaware General Assembly in order to amend the certificate of incorporation, to effect a merger or dissolution of the Corporation or to effect a sale of all or substantially all of the assets of the Corporation.

(b) The Corporation shall be governed by a board of directors consisting of 15 members, all of whom shall be residents of this State. Eight of these directors shall be:

- (1) The Secretary of State;
- (2) The Secretary of Transportation;
- (3) [Repealed.]
- (4) The Secretary of Finance;
- (5) The Controller General;
- (6) The Co-Chairs of the General Assembly's Joint Legislative Committee on the Capital Improvement Program or their designee or designees; and
- (7) The Secretary of the Department of Safety and Homeland Security.

The Governor shall appoint the Chair from among the 5 cabinet directors and the Chair shall serve at the pleasure of the Governor. The Chair shall be subject to the advice and consent of the Senate; however, such consent shall be limited to the additional duties of the Chair of this Corporation and not impact the prior confirmation as Cabinet Secretary. The remaining 7 directors shall be appointed by the Governor with the advice and consent the Senate. These 7 directors shall consist of individuals from the private or public business sectors and organized labor familiar with port and economic development issues. There shall be at least 1 director from each of the 3 counties of the State, at least 1 director from the City of Wilmington and 3 directors who shall fill at-large positions on the Board. Of these 7 directors no more than 4 shall be registered in the same major political party. The terms of the original of these 7 such directors shall be as follows: 2 directors to serve for 1 year; 2 directors to serve for 2 years; and 2 directors to serve for 3 years. Each noncabinet director shall serve a term of 3 years.

(c) As to the 7 noncabinet directors, in the event of the death of a director, permanent disability of a director, resignation of a director or failure of a director to perform their duties, the Governor shall appoint an interim director to serve for a period not to exceed 6 months, unless such interim director shall be confirmed by the Senate, in which case the interim director shall complete the term of the replaced director.

(d) For purposes of conducting business of the Corporation, 6 directors shall constitute a quorum, except as otherwise provided. A vote of 6 members shall be required for action on any matter before the Corporation, except as otherwise provided herein.

(e) The Diamond State Port Corporation shall have an advisory board consisting of 9 members. The 9-member advisory board shall be individuals representing port businesses, labor organizations and individuals with expertise in business, trade, or economic development. The Governor, the President Pro Tempore of the Senate and the Speaker of the House shall each appoint 2 members. The Port of Wilmington Maritime Association and the State Chamber of Commerce shall each appoint 1 member from their respective organizations. The Chair of the Diamond State Port Corporation shall appoint a member from the Diamond State Port Corporation Board. The Chair of the advisory board shall be selected from among the advisory board members by a majority vote. The purpose of the advisory board shall be to advise the Diamond State Board of Directors on strategic planning, capital investment, business development opportunities, and on issues involving the maritime community. The advisory board shall meet at least quarterly. The governing board of the Diamond State Port Corporation shall meet with the advisory board twice a year. Four members of the advisory board will have 2-year terms at advisory board creation and 5 shall have 4-year terms. Every member thereafter shall serve 4 years, with 2 possible consecutive reappointments.

70 Del. Laws, c. 210, § 25; 73 Del. Laws, c. 95, §§ 50, 51; 74 Del. Laws, c. 308, § 101(d)-(f); 75 Del. Laws, c. 88, § 19; 75 Del. Laws, c. 124, §§ 1-12; 76 Del. Laws, c. 2, § 4; 79 Del. Laws, c. 432, § 1; 81 Del. Laws, c. 49, § 3; 81 Del. Laws, c. 374, § 29.;

## **§ 8782 Definitions.**

The following terms and phrases as used in this subchapter shall have the following meanings:

- (1) “Corporation” means the Diamond State Port Corporation.
- (2) “Facilities” means all works, buildings, structures, appliances and appurtenances necessary and convenient for the proper construction, equipment, operation and maintenance of such facility or facilities or any 1 or more of them.
- (3) “Marine terminal facility” means wharves, piers, slips, ferries, anchorages, docks, dry-docks, bulkheads, dock-walls, basins, car-floats, float-bridges, grain or other storage elevators, warehouses, cold or heated storage, tracks, yards, sheds, switches or other buildings, structures or facilities or improvements or appurtenances necessary or convenient to the accommodation of ships or vessels or their cargoes or passengers.
- (4) “Person” means any individual, partnership, corporation, association, institution, cooperative enterprise, municipality, commission, political subdivision or other duly established legal entity.
- (5) “Port of Wilmington” means all wharves, piers, slips, ferries, anchorages, docks, dry-docks, bulkheads, dock-walls, basins, car-floats, float-bridges, grain or other storage elevators, warehouses, cold or heated storage, tracks, yards, sheds, switches or other buildings, structures or facilities or improvements or appurtenances operated as of the date of creation of the Corporation by the Wilmington Department of Commerce as the Port of Wilmington and Wilmington Marine Terminal Wharf and such other facilities, structures, improvements or appurtenances as may be developed, constructed or operated on land contiguous to, adjacent to or proximate to the Port of Wilmington as may be acquired by the Corporation or the City of Wilmington for the purpose of port development.

70 Del. Laws, c. 210, § 25; 75 Del. Laws, c. 88, § 19.;

## **§ 8783 Appointment of Executive Director.**

The Chair of the Corporation shall, subject to the approval of the Governor, appoint an Executive Director of the Corporation. The Executive Director shall be experienced in port or transportation-related management and shall be the principal executive officer of the Corporation.

70 Del. Laws, c. 210, § 25; 75 Del. Laws, c. 88, § 19.;

## **§ 8784 General powers.**

The Corporation shall have upon enactment of this subchapter and upon its creation as provided for herein the powers listed in this section. The Corporation shall be empowered, without limitation and notwithstanding any other laws:

- (1) To adopt by-laws to govern the conduct of its affairs and to carry out and discharge its powers, duties and functions and to adopt rules and regulations as appropriate to carry out and discharge its power, duties, and function and to sue and be sued, to enter into contracts and agreements and to plan, finance, develop, construct, purchase, lease, maintain, improve, own, operate or control facilities and such real and personal property as it may deem necessary, convenient or desirable. However, the provisions of this section and any other laws notwithstanding, the Corporation shall not enter into any agreement or transaction to transfer, privatize, or lease all or substantially all of the Port of Wilmington to a single entity, or to a related group of entities unless:
  - a. The Chair of the Board of the Corporation makes a presentation to the Joint Committee of Capital Improvement discussing the terms of the proposed final agreement or transaction;
  - b. Following the presentation, the members of the Joint Committee on Capital Improvement explain the terms of the proposed final agreement or transaction to their respective caucuses; and

c. The General Assembly within 30 days of the presentation of the chairperson of the Board of the Corporation to the Joint Committee on Capital Improvement to the General Assembly approves by concurrent resolution the proposed final agreement or transaction in its entirety.

The Delaware General Assembly may reject by concurrent resolution the proposed final agreement or transaction in its entirety in which case the Corporation shall not enter into the proposed final agreement or transaction. Notwithstanding the foregoing, if the General Assembly does not approve or reject the proposed final agreement or transaction in its entirety by concurrent resolution within 30 days of the presentation of the proposed final agreement or transaction to the Joint Committee on Capital Improvement then the proposed final agreement or transaction shall be deemed rejected by the General Assembly and the Corporation shall not enter into the proposed final agreement or transaction. No assignment, of any agreement or transaction that has been approved in accordance with this subparagraph, shall be valid unless such assignment is itself approved in accordance with the procedures set forth herein.

(2) To employ such personal and provide such benefits as necessary to carry out its functions and to retain, by contract, engineers, advisors, legal counsel, and other providers of advice, counsel and services which it deems advisable or necessary in the exercise of its purposes and powers and upon such terms as it deems appropriate.

(3) To exercise all of the power and the authority with respect to operation and development of the Port of Wilmington granted to the City of Wilmington by statute enacted by the General Assembly including, without limitation, 22 Del. Laws, c. 118, § 1, 50 Del. Laws, c. 457, § 3, and 50 Del. Laws, c. 4, § 2, but shall not have the power to tax, to issue bonds or to exercise the power of eminent domain.

(4) To have and exercise any and all powers available to a corporation organized pursuant to Chapter 1 of Title 8, the Delaware General Corporation Law.

(5) To do all acts and things necessary or convenient to carry out its functions of operating and developing the Port of Wilmington and related marine terminal facilities.

70 Del. Laws, c. 210, § 25; 75 Del. Laws, c. 88, § 19; 79 Del. Laws, c. 4, § 1.;

#### **§ 8785 No pledge of state credit; no assumption of liability by State.**

The Corporation shall have no power, except where expressly granted by separate act of the General Assembly, to pledge the credit or to create any debt or liability of the State or of any other agency or of any political subdivision of the State, and the State shall not assume or be deemed to have assumed any debt or liability of the Corporation as the result of any exercise of power by the Corporation.

70 Del. Laws, c. 210, § 25; 75 Del. Laws, c. 88, § 19.;

#### **§ 8786 Reports and audits.**

The Corporation shall make annual reports to the Governor and the General Assembly setting forth in detail its operations and transactions, which shall include annual audits of the books and accounts of the Corporation made by a firm of independent certified public accountants (CPAs) mutually agreed to by the Auditor of Accounts and the Secretary of State, and may make such additional reports from time to time as it desires.

70 Del. Laws, c. 210, § 25; 75 Del. Laws, c. 88, § 19.;

#### **§ 8787 Tax status.**

The powers and functions exercised by the Corporation are and will be in all respects for the benefit of the people of the State, and to this end, the Corporation will be exercising essential governmental functions. To this end, the Corporation shall not be required to pay any taxes or assessments or charges of any character,

including, without limitation, real property taxes or head taxes levied upon employers, upon any of the property used by it or leased to third parties in connection with the exercise of its powers, or any income or revenue therefrom, including, without limitation, any profit from any sale or exchange.

70 Del. Laws, c. 210, § 25; 75 Del. Laws, c. 88, § 19.;

#### **§ 8788 Appropriated funds.**

(a) If the Corporation's final budget for any fiscal year includes a proposal for an appropriation from the General Assembly for operating or capital funds, the budget shall be approved by the Chair of the Corporation before its submission to the General Assembly as part of the Governor's proposed capital or operating budget. Any such appropriation shall be designated for and allocated to the Port Account.

(b) Any capital expenditures of any such further appropriated moneys or of moneys derived from any other source, but not including Twenty-First Century Fund moneys, which expenditures within any 1 fiscal year in the aggregate exceed \$2 million, shall be made pursuant to a request by a resolution passed by 7 of 9 directors of the Corporation and delivered to the State Budget Director which resolution certifies that the request is in compliance with the Corporation's legislative purpose and function.

70 Del. Laws, c. 210, § 25; 75 Del. Laws, c. 88, § 19.;

#### **§ 8789 Employees of the Corporation.**

(a) All employees of the Corporation shall be exempt from the provisions of Chapter 59 of this title, as amended. Except as otherwise provided herein, such employees shall not be considered state employees for purposes of wages, salaries, fringe benefits or for purposes of any other benefits which may accrue to state employees whether exempt or merit employees, including benefits that may accrue under Executive Order No. 36 dated November 23, 1977. Such employees shall be considered state employees for the purposes of participating in the same group medical risk pool, Workers' Compensation Insurance Fund and the same deferred compensation plans available to state employees, although the terms of the group medical insurance, including benefits and coverage options provided to such employees, shall be determined by the Corporation and need not be the same as the terms available to state employees. The Corporation shall remit the full cost of such insurance to the State no later than the first day of each calendar month for which such insurance is being provided. The cost of such insurance shall be redetermined annually. The terms of medical insurance and deferred compensation programs available through the state shall not be a subject of collective bargaining. The Corporation shall establish pension plans for its employees who shall, for purposes of participation in any such plans, be governmental employees. Contributions by the Corporation and/or its employees pursuant to such plans shall be deposited into a fund established for these purposes. Benefits, fees and expenses authorized to be paid pursuant to such plans shall be paid from said fund. The assets of such fund may be commingled for investment purposes with the assets of the fund created by § 5541 of this title, referred to as the State Employees' Retirement Fund. The fund established by the Corporation shall at all times be maintained separately for purposes of accounting and expenses. No assets of the State Employees' Retirement Fund shall be used to pay benefits owed to employees of the Corporation. The Corporation's pension plans shall be administered by the Board of Pension Trustees established by § 8308 of this title, upon such terms and conditions as the Corporation may negotiate with the Board of Pension Trustees.

(b) The Corporation shall be a public employer, as provided in § 1302(n) of Title 19, and the Corporation shall be subject to the Public Employment Relations Act, Chapter 13 of Title 19.

70 Del. Laws, c. 210, § 25; 70 Del. Laws, c. 290, § 12; 71 Del. Laws, c. 150, § 29; 75 Del. Laws, c. 88, § 19.;