

## **CHAPTER 11-36 PORT AUTHORITIES**

### **11-36-01. Definitions.**

As used in this chapter unless the context requires otherwise:

1. "Bonds" means any bonds, notes, interim certificates, debentures, or similar obligations issued by a port authority pursuant to this chapter.
2. "Governing body" means the official or officials authorized by law to exercise ordinance or other lawmaking powers of a municipality.
3. "Municipal port authority" means a port authority created pursuant to section 11-36-03.
4. "Municipality" means any political subdivision of this state.
5. "Port authority" means any regional port authority or municipal port authority created pursuant to this chapter, and the governing body of a municipality which has determined to exercise the powers of a municipal port authority, pursuant to section 11-36-03.
6. "Real property" means lands, structures, and interests in land, including lands under water and riparian rights, and any and all things and rights usually included within the term real property, including not only fee simple absolute but also any and all lesser interests, such as easements, rights of way, uses, leases, licenses, and all other incorporeal hereditaments and every estate, interest, or right, legal or equitable, pertaining to real property.
7. "Regional port authority" means a port authority created pursuant to section 11-36-04.

### **11-36-02. General powers.**

A port authority may operate a port that includes all real and personal property, structures, machinery, equipment, and appurtenances or facilities that are part of the port or used or useful in connection with the port either as facilities for the convenience of handling equipment, passengers, and freight or as part of port or port facilities operation. In the process of operating a port, a port authority may:

1. Promote, stimulate, develop, and advance the general welfare, commerce, economic development, and prosperity of its jurisdiction and of the state and its citizens;
2. Endeavor to increase the volume of commerce within the jurisdiction of the port authority and the state through planning, advertising, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, regulation, and protection of transportation, storage, or other facilities that promote the safe, efficient, and economical handling of commerce, and through having foreign trade zone authority;
3. Cooperate and act in conjunction with other organizations, public or private, in the development of commerce, industry, manufacturing, services, natural resources, agriculture, livestock, recreation, tourism, health care, and other economic activity in the state; and
4. Support the creation, expansion, modernization, retention, and relocation of new and existing businesses and industries in the state and otherwise stimulate, assist in, and support the growth of all kinds of economic activity that will tend to promote commerce and business development, maintain the economic stability and prosperity of its jurisdiction and of the state, and thus provide maximum opportunities for employment and improvement in the standard of living of citizens of the state.

### **11-36-03. Creation of municipal port authority.**

Any municipality located near the junction of two paved and divided multilane highways, where two competing railroad intermodal lines intersect, and where two class I railroads interchange freight cars, may create by resolution of its governing body a public body corporate and politic to be known as a municipal port authority, which is authorized to exercise its functions upon the appointment and qualification of the first commissioners of the authority. The governing body by resolution may determine to exercise any or all powers granted to the

authorities in this chapter until the powers have been conferred upon a municipal or regional port authority. Upon the adoption of a resolution creating a municipal port authority, the governing body of the municipality shall appoint, pursuant to the resolution, five persons as commissioners of the port authority. The commissioners who are first appointed are designated to serve for terms of one, two, three, four, and five years, respectively, but thereafter, each commissioner must be appointed for a term of five years, except that vacancies occurring otherwise than by expiration of the term must be filled for the unexpired term by the governing body.

**11-36-04. Creation of regional port authority.**

1. Two or more municipalities, one of which is in this state located near the junction of two paved and divided multilane highways, where two competing railroad intermodal lines intersect, and where two class I railroads interchange freight cars, may create by joint resolution a public body, corporate and politic, to be known as a regional port authority, which is authorized to exercise its functions upon the issuance by the secretary of state of a certificate of incorporation. The governing bodies of the municipalities participating in the creation of a regional port authority shall appoint, pursuant to the joint resolution, no fewer than five persons as commissioners of the regional port authority. The number to be appointed and representation must be provided for in the joint resolution. The term of office of each regional port authority commissioner must be in accordance with subsection 5. Each regional port authority, once created, shall organize, elect officers for terms of office to be fixed by agreement, and adopt and amend rules for its own procedure not inconsistent with section 11-36-07.
2. A regional port authority may be increased to serve one or more additional municipalities if each additional municipality and each of the municipalities then included in the regional port authority and the commissioners of the regional port authority, respectively, adopt a resolution consenting to the addition. If a municipal port authority for any municipality seeking to be included in the regional port authority is then in existence, the commissioners of the municipal port authority must consent to the inclusion of the municipality in the regional port authority, and if the municipal port authority has any bonds outstanding, all of the holders of the bonds must consent, in writing, to the inclusion of the municipality in the regional port authority. Upon the inclusion of any municipality in the regional port authority, all rights, contracts, obligations, and property of the municipal port authority must be in the name of and vest in the regional port authority.
3. A regional port authority may be decreased if each of the municipalities then included in the regional port authority and the commissioners of the regional port authority consent to the decrease and make provisions for the retention or disposition of its assets and liabilities. If the regional port authority has any bonds outstanding, no decrease may be effected unless all of the holders of the bonds consent to the decrease.
4. A municipality may not adopt any resolution authorized by this section without a public hearing. Notice must be given at least ten days before the hearing in a newspaper published in the municipality, or if there is no newspaper published in the municipality, then in a newspaper having general circulation in the municipality.
5. All commissioners of a regional port authority must be appointed for terms of five years each, except that a vacancy occurring otherwise than by expiration of the term must be filled for the unexpired term in the same manner as the original appointments.

**11-36-05. Certificate of incorporation of regional port authority.**

1. Upon the appointment and qualification of the commissioners first appointed to a regional port authority, the commissioners shall submit to the secretary of state a certified copy of each resolution adopted pursuant to section 11-36-03 by the municipalities included in the regional port authority. Upon receipt of the resolution, the secretary of state shall issue a certificate of incorporation to the regional port authority.

2. When a regional port authority is increased or decreased pursuant to section 11-36-04, it shall forward to the secretary of state a certified copy of each resolution adopted pursuant to that section, and upon receipt of the resolution, the secretary of state shall issue an amended certificate of incorporation.

**11-36-06. Proof of existence of authority.**

1. In any proceeding involving the validity or enforcement of, or relating to, any contract of a municipal port authority, created pursuant to section 11-36-03, the municipal port authority is deemed to have become established and authorized to transact its business and exercise its powers upon proof of the adoption by the municipality of the resolution creating the municipal port authority and of the appointment and qualification of the first commissioners. Duly certified copies of the resolution creating the authority and of the certificates of appointment of the commissioners are admissible in evidence in any proceeding.
2. In any proceeding involving the validity or enforcement of, or relating to, any contract of a regional port authority, the regional port authority is deemed to have become established and authorized to transact its business and exercise its powers upon proof of the issuance by the secretary of state of a certificate of incorporation of such regional port authority. A copy of such certificate of incorporation, duly certified by the secretary of state, is admissible in evidence in any suit, action, or proceeding.

**11-36-07. Commissioners - Compensation - Meetings - Officers.**

1. A commissioner of an authority may not receive compensation for services but is entitled to the reimbursement of necessary expenses incurred in the discharge of duties. Each commissioner shall hold office until a successor has been appointed and has qualified. The certificates of the appointment and reappointment of commissioners must be filed with the port authority.
2. The powers of each port authority are vested in the commissioners.
3. There must be elected a chairman and vice chairman from among the commissioners. A port authority may employ an executive director, secretary, technical experts, and such other officers, agents, and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties, and compensation. For legal services it may require, a port authority may call upon the chief law officer of the municipality or municipalities included in the port authority or may employ its own counsel and legal staff. A port authority may delegate to one or more of its agents or employees the powers or duties as it may deem proper.

**11-36-08. Specific powers of a port authority.**

A port authority has all the powers necessary or convenient to carry out the purposes of this chapter, including the power to certify annually to the governing bodies creating it, the amount of tax to be levied by the governing bodies for port purposes, including the power:

1. To sue and be sued.
2. To execute such contracts and other instruments and take such other action as may be necessary or convenient to carry out the purposes of this chapter.
3. To plan, establish, acquire, develop, construct, purchase, enlarge, improve, maintain, equip, operate, regulate, and protect transportation, storage, or other facilities. For such purposes a port authority may by purchase, gift, devise, lease, or otherwise acquire property, including easements.
4. To establish comprehensive port zoning regulations in accordance with the laws of this state. For the purposes of this chapter, a regional port authority has the same powers as all other political subdivisions in the adoption and enforcement of comprehensive port zoning regulations as provided for by the laws of this state.
5. To acquire, by purchase, gift, devise, lease, or otherwise, existing transportation, storage, or other facilities that may be necessary or convenient to carry out this chapter. A port authority may not acquire or take over any transportation, storage, or

other facilities owned or controlled by another port authority, municipality, or public agency of this or any other state without the consent of that port authority, municipality, or public agency.

6. To provide financial and other support to organizations in its jurisdiction, including corporations whose purpose is to promote, stimulate, develop, and advance the general welfare, economic development, and prosperity of its jurisdiction and of the state and its citizens by stimulating, assisting in, and supporting the growth of all kinds of economic activity, including the creation, expansion, modernization, retention, and relocation of new and existing businesses and industries in the state, all of which will tend to promote business development, maintain the economic stability and prosperity of the state, and thus provide maximum opportunities for employment and improvement in the standard of living of citizens of the state.

#### **11-36-09. Disposal of port property.**

Except as may be limited by the terms and conditions of any grant, loan, or agreement authorized by section 11-36-13, an authority, by sale, lease, or otherwise, may dispose of any transportation, storage, or other facility or other property, or portion thereof or interest therein, acquired pursuant to this chapter. A disposal must be in accordance with the laws of this state governing the disposition of other public property, except that in the case of disposal to another port authority, a municipality, or an agency of the state or federal government for use and operation as a public port, the sale, lease, or other disposal may be effected in such manner and upon such terms as the commissioners of the port authority may deem in the best interest of transportation. Upon the termination of a port and controlling authority, remaining funds shall revert to the general fund of the political subdivision that levied a tax in support of the port.

#### **11-36-10. Bonds and other obligations.**

1. A port authority may borrow money for any of its corporate purposes and issue its bonds for that purpose, including refunding bonds, in the form and upon the terms as it may determine, payable out of any revenues of the port authority, including grants or contributions from the federal government or other sources, which bonds may be sold at not less than ninety-eight percent of par plus the interest accrued on the bonds to the date of the delivery of the bonds.
2. Bond issues sold at private sale must bear interest at a rate or rates and be sold at a price resulting in an average net interest cost not exceeding twelve percent per annum. There is no interest rate ceiling on those issues sold at public sale or to this state or any of its agencies or instrumentalities.
3. Any bonds issued pursuant to this chapter by a port authority, or by a governing body exercising the powers of a port authority, are payable, as to principal and interest, solely from revenues of a port or facilities, and must so state on the face of the bond, but if any issue of bonds constitutes an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, each bond of the issue is, subject to the requirements of subsection 9, an equally valid and binding special obligation of the authority or municipality, as the case may be, in accordance with its terms, in an amount proportionate to the total amount of the issue which is within the limitation or restriction. Neither the commissioners of a port authority nor the governing body of a municipality nor any person executing such bonds is liable personally thereon by reason of the issuance thereof, except to the extent that the bonds, if constituting an indebtedness, exceed any applicable limitation or restriction.
4. In case any of the commissioners or officers of a port authority or municipality whose signatures appear on any bonds or coupons cease to be such commissioners or officers after authorization but before the delivery of the bonds, the signature, nevertheless, is valid and sufficient for all purposes, the same as if the commissioners or officers had remained in office until delivery. Notwithstanding any other provision of any law, any bonds issued pursuant to this chapter are fully negotiable.
5. Any bond reciting in substance that it has been issued by the port authority or municipality pursuant to this chapter and for a purpose or purposes authorized by this

chapter is conclusively deemed, in any proceeding involving the validity or enforceability of the bond or the security therefor, to have been issued pursuant to this chapter and for such purpose or purposes.

6. Bonds issued by a port authority or municipality pursuant to this chapter are declared to be issued for an essential public and governmental purpose and, together with interest on the bonds, and income from the bonds are exempt from all taxes.
7. For the security of any such bonds, the port authority or municipality by resolution may make any covenant, agreement, or indenture authorized to be made as security for revenue bonds issued under chapter 40-35. The sums required from time to time to pay principal and interest and to create and maintain a reserve for the bonds may be made payable from any and all revenues referred to in this chapter, before the payment of current costs of operation and maintenance of the facilities.
8. Whenever bonds are issued under this chapter and made payable from revenues of a port involving municipalities with over ten thousand population, subject to requirements of subsection 9, the governing body of the municipality, if at any time all revenues, including taxes, appropriated and to that time collected for the bonds are insufficient to pay principal or interest then due, shall levy a general tax upon all of the taxable property in the municipality for the payment of the deficiency. If at any time a deficiency is likely to occur within one year for the payment of principal and interest due on the bonds, the governing body, in its discretion, may levy a general tax upon all the taxable property in the municipality for the payment of the deficiency. The taxes are not subject to any limitation of rate or amount applicable to other municipal taxes.
9. For bonds issued under this section to be an obligation of a municipality or port authority, the issuance of the bonds must be approved by a majority vote of the governing body of each municipality involved or, within thirty days after the port authority decides it wishes to issue the bonds, the municipality or port authority must put the question, specifying the amount of the bond at issue, to the people at an election. The question may be put at a general election, a primary election, a municipal election, or at an election called for the purpose. If a majority of the qualified electors voting on the issue vote in favor of issuing the bonds, the port authority or municipality, to the amount authorized in the election, may pledge the general obligation of the port authority or municipality to guarantee the repayment of the principal and interest on the bonds.

**11-36-11. Operation and use privileges.**

1. In connection with the operation of a port or port facility owned or controlled by a port authority, the port authority may enter a contract, lease, and other arrangement for terms not to exceed thirty years with any person:
  - a. Granting the privilege of using or improving the port or port facility or any portion or space in the port or port facility for commercial purposes;
  - b. Conferring the privilege of supplying goods, commodities, things, services, or facilities at the port or port facility; and
  - c. Making available services to be furnished by the authority or its agents at the port or port facility.
2. In each case the port authority may establish the terms and conditions and fix the charges, rentals, or fees for the privileges or services, which must be reasonable and uniform for the same class or privilege or service and must be established with due regard to the property and improvements used and the expenses of operation to the authority; provided that in no case may the public be deprived of its rightful, equal, and uniform use of the port, port facility, or portion of a port or port facility.
3. Except as may be limited by the terms and conditions of any grant, loan, or agreement authorized by section 11-36-13, a port authority by contract, lease, or other arrangements, upon a consideration fixed by it, may grant to any qualified person for a term not to exceed thirty years the privilege of operating, as agent of the port authority or otherwise, any port owned or controlled by the port authority; provided that no person may be granted any authority to operate a port other than as a public port or to

enter any contract, lease, or other arrangement in connection with the operation of the port which the port authority might not have undertaken under subsection 1.

**11-36-12. Regulations.**

A port authority may adopt, amend, and repeal such reasonable resolutions, regulations, and orders as it determines necessary for the management, government, and use of any port or port facility owned by it or under its control. No rule, regulation, order, or standard prescribed by the port authority may be inconsistent with, or contrary to, any Act of the Congress of the United States or any regulation promulgated or standard established pursuant to an Act of Congress. The port authority shall keep on file at the principal office of the port authority for public inspection a copy of all its regulations.

**11-36-13. Federal and state aid.**

A port authority may accept, receive, receipt for, disburse, and expend federal and state moneys and other moneys, public or private, made available by grant or loan or both, to accomplish, in whole or in part, any of the purposes of this chapter. All federal moneys accepted under this section must be accepted and expended by the port authority upon such terms and conditions as are prescribed by the United States and as are consistent with state law; and all state moneys accepted under this section must be accepted and expended by the port authority upon such terms and conditions as are prescribed by the state.

**11-36-14. Tax levy may be certified by port authority or municipality.**

The port authority may certify annually to the governing bodies the amount of tax to be levied by each municipality participating in the creation of the port authority, and the municipality shall levy the amount certified, pursuant to provisions of law authorizing political subdivisions of this state to levy taxes for port purposes. The levy made may not exceed the maximum levy permitted by the laws of this state for port purposes. The municipality shall collect the taxes certified by a port authority in the same manner as other taxes are levied and collected. The proceeds of such taxes must be deposited in a special account or accounts in which other revenues of the port authority are deposited and may be expended by the port authority as provided in this chapter. Before issuance of bonds under section 11-36-10, the port authority or the municipality by resolution may covenant and agree that the total amount of the taxes then authorized by law, or such portion of the taxes as may be specified by the resolution, will be certified, levied, and deposited annually until the bonds and interest are fully paid.

**11-36-15. County tax levy for port purposes.**

In counties supporting ports or port authorities, a levy not exceeding the limitation in subsection 37 of section 57-15-06.7 may be made but this levy may not apply to any municipality that has a port levy.

**11-36-16. Joint operations.**

1. For the purposes of this section, unless otherwise qualified, the term "public agency" includes municipality and port authority, any agency of the state government and of the United States, and any political subdivision and agency of an adjoining state; and the term "governing body" includes commissioners of a port authority, the governing body of a municipality, and the head of an agency of a state or the United States if the public agency is other than a port authority or municipality. All powers, privileges, and authority granted by this chapter may be exercised and enjoyed by an authority jointly with any public agency of this state, and jointly with any public agency of any adjoining state or of the United States to the extent that the laws of such other state or of the United States permit such joint exercise of enjoyment. Any agency of the state government, when acting jointly with any authority, may exercise and enjoy all the powers, privileges, and authority conferred by this chapter upon an authority.
2. Any two or more public agencies may enter agreements with each other for joint action pursuant to the provisions of this section. Each agreement must specify its duration,

the proportionate interest which each public agency must have in the property, facilities, and privileges involved in the joint undertaking, the proportion of costs of operation, and other items to be borne by each public agency, and such other terms as are deemed necessary or required by law. The agreement may also provide for amendments and termination; disposal of all or any of the property, facilities, and privileges jointly owned, prior to, or at such times as said property, facilities, and privileges, or any part thereof, cease to be used for the purposes provided in this chapter, or upon termination of the agreement; the distribution of the proceeds received upon any disposal, and of any funds or other property jointly owned and undisposed of; the assumption of payment of any indebtedness arising from the joint undertaking which remains unpaid upon the disposal of all assets or upon a termination of the agreement; and such other provisions as may be necessary or convenient.

3. Public agencies acting jointly under this section shall create a joint board to consist of members appointed by the governing body of each participating public agency. The number to be appointed, the term, and any compensation must be provided in the joint agreement. Each joint board shall organize, select officers for such terms as are fixed by the agreement, and adopt and amend rules for its own procedure. The joint board has power, as agent of the participating public agencies, to plan, acquire, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate, protect, and police any port or port facility to be jointly acquired, controlled, and operated, and the board may be authorized by the participating public agencies to exercise on behalf of its constituent public agencies all the powers of each with respect to the port or port facility, subject to the limitations of subsection 4.
4.
  - a. The total expenditures to be made by the joint board for any purpose in any calendar year must be as determined by a budget approved by the constituent public agencies on or before the preceding December first, or as otherwise specifically authorized by the constituent public agencies.
  - b. A port, port facility, or real property, the cost of which is in excess of sums fixed by the joint agreement or allotted in the annual budget, may not be acquired, established, or developed by the joint board without the approval of the governing bodies of its constituent public agencies.
  - c. The joint board may not dispose of any port, port facility, or real property under its jurisdiction except with the consent of the governing bodies of its constituent public agencies, provided that the joint board, without such consent, may enter contracts, leases, or other arrangements contemplated by section 11-36-11.
  - d. Any resolutions, regulations, or orders of the joint board dealing with subjects authorized by section 11-36-11 become effective only upon approval of the governing bodies of the constituent public agencies, provided that upon such approval, the resolutions, regulations, or orders of the joint board have the same force and effect in the territories or jurisdictions involved as the ordinances, resolutions, regulations, or orders of each public agency would have in its own territory or jurisdiction.
5. For the purpose of providing the joint board with moneys for the necessary expenditures in carrying out this section, a joint fund must be created and maintained, into which must be deposited the share of each of the constituent public agencies as provided by the joint agreement. Any federal, state, or other grants, contributions, or loans, and the revenues obtained from the joint ownership, control, and operation of any port or port facility under the jurisdiction of the joint board must be paid into the joint fund. Disbursements from such fund must be made by order of the board, subject to the limitations prescribed in subsection 4.

**11-36-17. Public purpose.**

Subject to chapter 32-15, the acquisition of any land, or interest therein, pursuant to this chapter, the planning, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, regulation, and protection of ports and port facilities and the

exercise of any other powers granted to port authorities and other public agencies, to be severally or jointly exercised, are to be public and governmental functions, exercised for a public purpose, and matters of public necessity. All land and other property and privileges acquired and used by or on behalf of any authority or other public agency in the manner and for the purposes enumerated in this chapter must be acquired and used for public and governmental purposes and as a matter of public necessity.

**11-36-18. Port property and income exempt from taxation.**

Any property in this state acquired by a port authority for port purposes pursuant to this chapter, and any income derived by the port authority from the ownership, operation, or control of this property, is exempt from taxation to the same extent as other property used for public purposes.

**11-36-19. Municipal cooperation.**

For the purpose of aiding and cooperating in the planning, undertaking, construction, or operation of ports and port facilities pursuant to this chapter, any municipality for which an authority has been created, upon such terms, with or without consideration, may:

1. Lend or donate money to the authority.
2. Provide that all revenues received by the municipality for port purposes be transferred, paid, or credited to a port authority fund. The city auditor or county treasurer may establish and maintain the fund to account for port authority revenues and shall make payments from the fund for invoices that have been submitted and approved by the governing body of the port authority. On request of the city auditor or county treasurer and during an audit, the governing board of the port authority shall supply its records. The records must be provided on a timely basis. The fund may not revert to the governing body of the municipality at the end of any fiscal year. The fund must be used exclusively for the establishment and maintenance of port facilities.
3. Cause water, sewer, or drainage facilities, or any other facilities which it is empowered to provide, to be furnished adjacent to or in connection with the port or port facilities.
4. Dedicate, sell, convey, or lease any of its interest in any property, or grant easements, licenses, or any other rights or privileges therein to the port authority.
5. Furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways, and walks from established streets or roads to ports or port facilities.
6. Take any action, whether or not specifically authorized in this section and not otherwise prohibited by law, that is necessary or convenient to aid and cooperate with the authority in the planning, undertaking, construction, or operation of ports and port facilities.
7. Enter agreements with the port authority respecting action to be taken by the municipality pursuant to this section.

**11-36-20. Out-of-state port jurisdiction authorized - Reciprocity with adjoining states and governmental agencies.**

1. This state or any public entity within this state having any powers with respect to planning, establishing, acquiring, developing, constructing, enlarging, improving, maintaining, equipping, operating, regulating, or protecting ports or port facilities within this state may exercise those powers within any state or jurisdiction adjoining this state, subject to the laws of that state or jurisdiction.
2. Any state adjoining this state or any public entity of that state may plan, establish, acquire, develop, construct, enlarge, improve, maintain, equip, operate, regulate, and protect ports and port facilities with this state, subject to the laws of this state applicable to ports and port facilities.
3. The powers granted in this section may be exercised jointly by two or more states or public entities, including this state and its governmental agencies, in any agreed-upon combination.



**11-36-21. Supplemental authority.**

In addition to the general and special powers conferred by this chapter, every port authority may exercise any power necessary incidental to the exercise of general and special powers.

**11-36-22. Debt service fund.**

A port authority may create a debt service fund and accumulate in the fund a sum determined by the governing body, together with interest on that sum, for the use, repairs, maintenance, and capital outlays of a port.