

SB 814 -1 STAFF MEASURE SUMMARY

Senate Committee On Veterans, Emergency Management, Federal and World Affairs

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Meeting Dates: 3/9

WHAT THE MEASURE DOES:

Declares legislative intent to displace competition under state action doctrine for coordination, collaboration, and agreements between public ports in Oregon and other members of the Northwest Marine Terminal Association. Declares emergency, effect on passage.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-1 Replaces text limiting agreements to the Port of Astoria, Port of Columbia County, and Port of Coos Bay to include all public ports in Oregon. Removes the requirement that the State Land Board reviews and approves agreements between ports and changes delegation of these duties from the State Land Board to the Director of the Department of State Lands.

BACKGROUND:

The Shipping Act of 1937 grants marine terminal operators the ability to discuss rates and expenses regarding carriers providing services at their ports. Under the Shipping Act, ports who wish to act collectively may file a discussion agreement for approval by the Federal Maritime Commission (FMC). Once the agreement is approved by the FMC, the ports are immune from claims arising from federal antitrust laws.

The FMC recently alerted the Northwest Marine Terminal Association (a voluntary association of deep-water ports and marine terminal operators in Oregon and Washington) that certain domestic public ports in Oregon are not serving “common carriers”, defined as a commercial enterprise that moves passengers or goods for a fee. The FMC deemed some ports ineligible for antitrust immunity under the Shipping Act, including the Port of Astoria, Port of Columbia County, and the Port of Coos Bay.

Notwithstanding the applicability of state and Federal antitrust laws, Senate Bill 814 displaces competition under state action doctrine that public ports in Oregon and other members of the Northwest Marine Terminal Association, can coordinate, make agreements, and implement action that is within the public port’s authority. This includes discussions and agreements on rates, charges, rules, practices and procedures, management, marketing, operations, uses of public port facilities and other matters related to cargo and passenger service operations.