

SUMMARY OF PDA

1. Why Are the Ports Seeking Authority to Create a Public Development Authority (PDA)?

The Ports are creating a joint alliance (the Seaport Alliance) to be the exclusive manager and operator of the Ports' marine cargo business as authorized under the Interlocal Cooperation Act¹ and believe a PDA will best carry out those purposes and functions.

2. What is a PDA?

Under current law, PDAs are public corporations created by a city or county to perform a particular public purpose or public function specified in the ordinance or resolution creating the PDA and its charter;² the Ports are seeking a legislative amendment to also have the authority to create PDAs and specifically authority to jointly create the Seaport Alliance PDA. (The charter will be the Seaport Alliance's defining document, containing its name, scope, purpose, term, and governance details, including oversight by the Ports and, per state law, limitations on liability of the Ports.)

3. Why and How Are PDAs Formed?

PDAs are created to administer and execute federal grants or programs; to receive and administer private funds, goods or services for any lawful purpose; and to perform any lawful public purpose or public function.³ PDAs may be created for a general purpose or for a specific undertaking defined in the PDA's charter. PDAs may be formed by adoption of an ordinance or resolution approving the PDA's charter; the Ports expect to form the Seaport Alliance PDA by resolution.

4. What Powers Do PDAs Have? What Powers Would the Seaport Alliance PDA Have?

By statute, PDAs may perform any lawful public purpose or public function and engage in anything a natural person may do, including the following (though a PDA's charter could further limit such PDA's activities):

- Own and sell real and personal property;
- Contract with a city, town or county (and, if legislatively approved, Ports) for community renewal activities;
- Contract with individuals, associations, corporations, the State of Washington and the United States;
- Sue and be sued;
- Loan and borrow funds and issue bonds and other instruments evidencing indebtedness;
- Transfer funds, real or personal property, property interests or services;
- Enter into contracts, and
- Perform all types of community services.⁴

The Seaport Alliance PDA Charter would specify it is empowered to be the exclusive operator and manager of the two Ports' marine cargo functions, and has all powers and authority necessary to carry out that mission other than those functions that under state law are reserved to Ports. (PDAs do not have the hosting powers unique to Ports, so the Ports will continue to exercise that function on behalf of the Seaport Alliance. PDAs also do not have the power of eminent domain or the authority to levy taxes.⁵)

5. What Authority Will the Ports Have as to the PDA?

The Ports will retain the following types of authority over the Seaport Alliance:

- Appointment of, and delegation of authority to, its CEO;
- Appointment of its board members;
- Approval of annual operating and capital budgets in accordance with regional strategies;⁶
- Ability to declare property surplus;⁷ and
- Approval of each Port's Comprehensive Scheme of Harbor Improvements,⁸ which will also guide the Seaport Alliance.

6. What Legal Requirements Apply to PDAs?

PDAs are subject to all "general laws regulating local governments, multimember governing bodies, and local government officials,"⁹ including compliance with the following laws: to be audited by the State auditor and to be subject to various accounting requirements;¹⁰ open public record requirements¹¹ and open public meetings and other public process laws¹²; public works requirements;¹³ competitive bidding and prevailing wage laws;¹⁴ local government whistleblower laws;¹⁵ prohibition on using PDA facilities for campaign purposes;¹⁶ and the Code of Ethics for municipal officers.¹⁷ PDAs are also subject to constitutional constraints imposed on local governments, primarily limiting the use of public funds.¹⁸

¹ RCW 39.34.030

² RCW 35.21.730

³ RCW 35.21.730(5)

⁴ RCW 35.21.7

⁵ RCW 35.21.745

⁶ RCW 53.35.030

⁷ RCW 53.08.090

⁸ RCW 53.20.010

⁹ RCW 35.21.759

¹⁰ RCW 43.09

¹¹ RCW 42.56

¹² RCW 42.30

¹³ RCW 39.04

¹⁴ RCW 39.04

¹⁵ RCW 42.41

¹⁶ RCW 42.17.130

¹⁷ RCW 42.23

¹⁸ Article VIII, Sections 5, 7 of the Washington Constitution prohibit the lending of public credit or gift of public funds to private entities, with limited exceptions; Article VII, Section 1 and Article VIII, Section 6, require that public debt be incurred and taxes levied exclusively for public purposes