

The Federal Maritime Act governs the FMC and approved Discussion Agreements and occupies the entire field of maritime terminal operators entering pricing agreements. Federal Maritime Act (FMA) Regulations preclude information, meeting minutes and filings with the Federal Maritime Commission from being made public.

Washington State Open Public Meeting Act (Chapter 42.30 RCW “OPMA”) requires meetings of governing bodies to be made public unless a specific state law exemption applies.

Congress may preempt state law in three basic manners: express preemption, field preemption, and conflict preemption. *See Department of Ecology v. PUD 1*, 121 Wash.2d 179, 192-99, 849 P.2d 646 (1993), *aff'd*, 511 U.S. 700, 114 S.Ct. 1900, 128 L.Ed.2d 716 (1994).

Specific to the Ports of Seattle and Tacoma, the FMC agreement was approved by the FMC Commission to allow the ports to discuss topics together under what otherwise would run afoul of antitrust prohibitions. This is a recognized federal need to allow port alliances (and the considerable investment of public dollars) to stay competitive in the face of growing alliances of Shippers and terminal operators.

Both federal antitrust laws and the system of common carriage of goods by water in the foreign commerce are reserved for the United State Congress, satisfying field preemption. Congress has impliedly preempted state law regarding disclosure by stating that information, meeting minutes and documents of these foreign commerce records filed with the Federal Maritime Commission “may not be made public”.

Conflict preemption occurs where (1) it is impossible to comply with both state and federal law or (2) state law stands as an obstacle to the accomplishment of the full purposes and objectives of Congress. *Satomi Owners Ass'n v. Satomi, LLC*, 167 Wn.2d 781, 800, 225 P.3d 213 (2009).

Here, it is impossible that information, meeting minutes and documents filed with the FMC “not be made public” and at the same time require the Ports meet open public session when acting pursuant to the FMC approved Agreement.

Compliance with federal and state law would conflict. Because FMA meets the test for federal pre-emption over a conflicting state law, the FMA pre-empts Washington OPMA.