

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1229 Session of 2009

INTRODUCED BY DENLINGER, BOYD, CALTAGIRONE, CLYMER, CUTLER, EVERETT, FAIRCHILD, FLECK, GEIST, GINGRICH, GOODMAN, HENNESSEY, HICKERNELL, HORNAMAN, HUTCHINSON, MOUL, PYLE, STERN, SWANGER AND TRUE, APRIL 7, 2009

REFERRED TO COMMITTEE ON LOCAL GOVERNMENT, APRIL 7, 2009

AN ACT

1 Amending the act of February 1, 1966 (1965 P.L.1656, No.581),  
2 entitled "An act concerning boroughs, and revising, amending  
3 and consolidating the law relating to boroughs," further  
4 providing for regulation of contracts; and providing for  
5 additional contracting authority for electric power and  
6 energy.

7 The General Assembly of the Commonwealth of Pennsylvania  
8 hereby enacts as follows:

9 Section 1. Section 1402(d) of the act of February 1, 1966  
10 (1965 P.L.1656, No.581), known as The Borough Code, is amended  
11 by adding a clause to read:

12 Section 1402. Regulation of Contracts.--\* \* \*

13 (d) The contracts or purchases made by council, which shall  
14 not require advertising, bidding or price quotations as  
15 hereinbefore provided, are as follows:

16 \* \* \*

17 (6) Those made relating to the purchase of electricity and  
18 associated energy and related services with any of the  
19 following:

- 1     (i) A political subdivision.  
2     (ii) Another state.  
3     (iii) The Commonwealth or an agency thereof.  
4     (iv) The Federal Government.  
5     (v) A private corporation.  
6     (vi) An electric cooperative corporation under 15 Pa.C.S.  
7 Ch. 73 (relating to electric cooperative corporations).

8     (vii) A non-profit membership corporation whose membership  
9 consists of Pennsylvania boroughs and municipalities of another  
10 state.

11     (viii) An electric cooperative of another state.

12 Nothing in this clause shall prohibit council from engaging in  
13 advertising, bidding or price quotations if the council  
14 determines that the advertising, bidding or price quotations are  
15 in the public interest.

16     \* \* \*

17     Section 2. The act is amended by adding a section to read:

18     Section 2471.3. Additional Contracting Authority for  
19 Electric Power and Energy.--(a) In addition to the authority  
20 provided under section 2471, a borough that is a member of a  
21 non-profit membership corporation may contract with the non-  
22 profit membership corporation for the following:

23     (1) The development of electric power and associated energy  
24 including the conduct of investigations or studies necessary to  
25 determine the feasibility and cost of additional sources and  
26 supplies of electric power and associated energy.

27     (2) The purchase, sale, exchange, interchange, wheeling,  
28 pooling or transmission of electric power and associated energy  
29 or the right to the capacity from sources and projects in this  
30 Commonwealth or another state for a period not to exceed fifty

1 years.

2 (b) A contract under subsection (a)(2) shall include the  
3 purpose of the contract, the duration of the contract and  
4 available procedures to terminate the contract subsequent to the  
5 repayment of all indebtedness secured under the contract.

6 (c) If a borough is a member of a non-profit membership  
7 corporation, a contract under subsection (a)(2) may, if  
8 specifically set forth in the contract, obligate the borough to:

9 (1) take and pay for a minimum quantity of electric power  
10 and associated energy if the power and energy is available for  
11 delivery; or

12 (2) in connection with a project owned by the non-profit  
13 membership corporation or in which the non-profit membership  
14 corporation obtains an undivided ownership interest, to take or  
15 pay for a minimum amount of electric power and energy.

16 (d) (1) The authority under subsection (c)(1) shall apply  
17 whether or not the borough accepts delivery of the power and  
18 energy.

19 (2) The authority under subsection (c)(2) shall apply  
20 notwithstanding the suspension, interruption, interference or  
21 reduction or curtailment of the output of the project or the  
22 electric power and energy contracted for, and whether or not:

23 (i) The electric power and energy is available for delivery  
24 to the borough.

25 (ii) The borough accepts delivery of the electric power and  
26 energy.

27 (e) A non-profit membership corporation shall not:

28 (1) condition membership in the non-profit membership  
29 corporation on the inclusion of any take-or-pay or take-and-pay  
30 obligations in a contract under subsection (a)(2); or

1     (2) require take-or-pay or take-and-pay obligations in a  
2 contract with a borough unless the contract meets the criteria  
3 of subsection (c)(1) or (2).

4     (f) All obligations under a contract under subsection (a)(2)  
5 shall be paid from revenues derived from the operation. Payments  
6 shall be an operating expense of the borough's electric system.

7     (g) If explicitly set forth in a contract under subsection  
8 (a)(2), a borough may agree to assume, prorate or otherwise, the  
9 obligations of another borough of this Commonwealth or of a  
10 municipality of another state that is a member of the non-profit  
11 membership corporation if the borough or other municipality  
12 defaults in the payment of its obligations for the purchase of  
13 the electric power and associated energy. The contract may  
14 include provisions to permit a borough to succeed to the rights  
15 and interests of the defaulting borough or municipality to  
16 purchase electric power and associated energy. A borough's  
17 liability for the obligations of a defaulting borough of this  
18 Commonwealth or a municipality of another state shall not exceed  
19 twenty-five percent of a borough's initial nominal entitlement  
20 to electric power and associated energy under the contract.

21     (h) None of the obligations under the contract shall  
22 constitute a legal or equitable pledge, charge, lien or  
23 encumbrance on any property of the borough or on any of its  
24 income, receipts or revenues, except revenues of its electric  
25 system. The full faith and credit and the taxing power of the  
26 borough shall not be pledged for the payment of an obligation  
27 under the contract.

28     Section 3. This act shall take effect in 60 days.