

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1292 Session of
1980

INTRODUCED BY GEKAS, MOORE, MANBECK AND GURZENDA, MARCH 11, 1980

REFERRED TO LOCAL GOVERNMENT, MARCH 11, 1980

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," providing
4 for joint acquisition or construction of an electric light
5 plant or project by a borough with another borough or another
6 entity empowered to supply electricity, and further providing
7 for the creation of municipal power agencies.

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

10 Section 1. The act of February 1, 1966 (1965 P.L.1656,
11 No.581), known as "The Borough Code," is amended by adding
12 sections to read:

13 Section 2471.1. Operation of Electric Plants.--(a) The
14 following words and phrases when used in this section shall
15 have, unless the context clearly indicates otherwise, the
16 meanings given to them in this subsection:

17 (1) "Project" means any electric plants, hydroelectric plant
18 works, system, facilities, or real or personal property,
19 together with all parts thereof and appurtenances thereto, used
20 or useful in connection with the generation, production,

1 transmission, purchase, sale, exchange or interchange of
2 electric power or energy, or any interest therein or right to
3 capacity thereof.

4 (2) "Revenue bond" means an instrument imposing an
5 obligation for the repayment of money borrowed, payable as to
6 both principal and interest exclusively from the income and
7 revenues derived from an interest in an electric light plant or
8 project.

9 (b) A borough may own, construct, acquire by lease, purchase
10 or otherwise gain an interest as co-owner or tenant in common
11 and operate and manage or cause to be operated and managed an
12 electric light plant or project located within or without this
13 Commonwealth jointly with any other borough, political
14 subdivision, subdivision of the Federal Government, State,
15 political subdivision of another state, private corporation
16 empowered to supply electricity, electric cooperative
17 corporation formed under the act of June 21, 1937 (P.L.1969,
18 No.389), known as the "Electric Cooperative Corporation Act," or
19 electric cooperative corporation in another state.

20 (c) A borough which jointly owns, constructs, leases,
21 purchases or otherwise gains an interest in an electric light
22 plant or project shall have the power to do and accomplish all
23 actions reasonably necessary and incident to the administration,
24 operation and management of the plant or project. This power
25 shall be vested in the corporate authorities. In addition to the
26 powers enjoyed by all boroughs, a borough which gains an
27 interest in an electric light plant or project under subsection
28 (b) shall have the following powers:

29 (1) to cooperate with private power companies, other
30 boroughs, electric cooperative corporations and other public or

private electric power entities, inside and outside of this Commonwealth, in the development of electric power and energy;

(2) to make such studies as may be necessary to determine the feasibility and cost of any additional sources and supplies of electric power and energy;

(3) to purchase, sell, exchange, interchange, wheel, pool or transmit electric power and energy or the right to the capacity thereof, inside and outside of this Commonwealth, to and from any public or private electric power entities, private power companies, other boroughs and electric cooperative corporations;

(4) to procure insurance against any losses in connection with its property, operations or assets in such amounts and from such insurers as the corporate authorities deem desirable;

(5) to contract for and to accept any gifts or grants or loans of funds or property or financial or other aid in any form from the United States of America or any agency or instrumentality thereof, or from any other source;

(6) to grant the use, by lease or otherwise, and to make charges for the use, of any property or facility owned or controlled by it;

(7) to procure from the United States of America or any agency or instrumentality thereof, or from any state or agency or instrumentality thereof, any consents, authorizations or approvals which may be requisite to enable ownership, operation, construction or repair;

(8) to borrow money and from time to time to issue revenue bonds, and to enter into agreements with the purchasers of such revenue bonds; and

(9) to mortgage any property acquired or owned under subsection (b) to secure the payment of its revenue bonds, or

1 other obligations issued to finance such acquisition, ownership
2 or repair.

3 (d) In the erection and extension of an electric light plant
4 or project under subsection (b) and for all other purposes
5 authorized by this act, a borough may enter upon, appropriate,
6 injure, or destroy private lands, property or material according
7 to the proceedings set forth in the law governing eminent
8 domain.

9 (e) A borough which gains an interest in an electric light
10 plant or project under subsection (b) may fix, establish,
11 maintain and collect or authorize by contract or otherwise the
12 establishment, levying and collection of such rates, fees,
13 rental or other charges, including connection charges, for the
14 services afforded by or in connection with any properties which
15 it constructs, erects, owns, acquires, operates or manages, and
16 for the sale or transmission of electric energy and power as it
17 may deem necessary, proper, desirable and reasonable.

18 (f) A borough which gains an interest in an electric light
19 plant or project under subsection (b) may pay all or part of the
20 cost therefor from the revenues derived from the sale of revenue
21 bonds issued in the manner provided by the act of July 12, 1972
22 (P.L.781, No.185), known as the "Local Government Unit Debt
23 Act."

24 (g) Interest and principal paid on revenue bonds issued by a
25 borough under subsection (f) shall be exempt from all State
26 taxes of whatsoever kind or nature.

27 Section 2471.2. Municipal Power Agencies.--(a) The
28 following words and phrases when used in this section shall
29 have, unless the context clearly indicates otherwise, the
30 meanings given to them in this subsection:

1 (1) "Municipal power agency" means a separate body politic
2 and corporate under the Laws of the Commonwealth of Pennsylvania
3 created by agreement between or among two or more boroughs
4 pursuant to this section.

5 (2) "Project" means any electric plant or plants,
6 hydroelectric plant works, system, facilities or real or
7 personal property, together with all parts thereof and
8 appurtenances thereto, used or useful in connection with the
9 generation, production, transmission, purchase, sale, exchange
10 or interchange of electric power or energy, or any interest
11 therein or right to capacity thereof.

12 (3) "Revenue bond" means an instrument imposing an
13 obligation for the repayment of money borrowed, payable as to
14 both principal and interest exclusively from the income and
15 revenues derived from an interest in an electric light plant or
16 project.

17 (b) Any two or more boroughs may form a municipal power
18 agency by the execution of any agency agreement authorized by a
19 resolution of the corporate authorities of each borough. Such
20 agency agreement shall state:

21 (1) The name of the agency, which shall include the words
22 "municipal power agency."

23 (2) The names of the boroughs which have approved the agency
24 agreement and are initial members of the municipal power agency.

25 (3) That the municipal power agency is created pursuant to
26 the authority granted by this act.

27 (4) The names and addresses of the persons initially
28 appointed by the corporate authorities to act as representatives
29 to the municipal power agency from the member boroughs.

30 (5) The limitations, if any, placed on the powers or terms

of representatives appointed by the corporate authorities of the member boroughs.

(6) The names and addresses of the initial board of directors of the municipal power agency, if known by the time of filing, which shall be constituted by not less than five persons who are representatives of the member boroughs, selected by the vote of a majority of such representatives.

(c) The agency agreement referred to in subsection (b) and a certified copy of the resolution of the corporate authorities of each borough shall be filed for record with the Secretary of the Commonwealth. If the agency agreement meets the requirements of this subsection, the Secretary of the Commonwealth shall record it and issue and record a certificate of incorporation which shall be conclusive proof of a substantial compliance with the requirements of this subsection. The certificate shall state the name of the municipal power agency and the fact and date of incorporation. Upon the issuance of the certificate of incorporation the existence of the municipal power agency as a political instrumentality of the Commonwealth shall begin.

(d) The bylaws of the municipal power agency and any amendments thereto, shall be proposed by the board of directors and shall be adopted by a majority vote of the representatives of the member boroughs, unless the agency agreement requires a greater vote, at a meeting held after notice. Subject to the provisions of the agency agreement, the bylaws shall state:

(1) the qualifications of member boroughs, and limitations, if any, upon their number;

(2) conditions of membership, if any;

(3) manner and time of calling regular meeting of representatives of member boroughs;

1 (4) manner and conditions of termination of membership; and
2 (5) such other provisions for regulating the affairs of the
3 municipal power agency as the representatives of the member
4 boroughs shall determine to be necessary.

5 (e) Every municipal power agency shall maintain an office in
6 this Commonwealth to be known as its registered office. When a
7 municipal power agency desires to change the location of its
8 registered office, it shall file with the Secretary of the
9 Commonwealth a certificate of change of location of registered
10 office, stating the new location by city, town or other
11 community and effective date of change. When the certificate of
12 change of location has been duly filed, the board of directors
13 may make the change without any further action.

14 (f) Each of the directors shall hold office for the term for
15 which he has been selected and until a successor has been
16 selected and has qualified. Directors shall discharge their
17 duties in good faith, and with that diligence and care which an
18 ordinary prudent person in a like position would exercise under
19 similar circumstances. The agency agreement, or the bylaws may
20 prescribe the number, term of office, powers, authority and
21 duties of directors, the time and place of their meetings and
22 other regulations concerning directors. Except where the agency
23 agreement or bylaws prescribe otherwise, the term of office of a
24 director shall be for one year. Except where the agency
25 agreement or bylaws prescribe otherwise, a meeting of the board
26 of directors may be held at any place, within the Commonwealth,
27 designated by the board, after notice, and an act of the
28 majority of the directors present at a meeting at which a quorum
29 is present is the act of the board. Except where the agency
30 agreement or bylaws prescribe otherwise, any vacancy occurring

on the board shall be filled by a person nominated by the remaining members of the board and elected by a majority of representatives of the member boroughs.

(g) Except where the agency agreement or bylaws prescribe otherwise, the board of directors shall appoint a president from its membership, and a secretary and treasurer, and any other officers or agents deemed to be necessary, who may but need not be borough representatives or directors. An officer may be removed with or without cause by the board of directors.

Officers of the municipal power agency shall have the authority and duties in the management of the business of the municipal power agency that the agency agreement or bylaws prescribe, or, in the absence of such prescription, as the board of directors determines.

(h) Except as otherwise provided in the agency agreement or the bylaws, the duly authorized representatives of each member borough shall act as, and vote on behalf of, such borough. Except where the agency agreement or bylaws provide otherwise, representatives of the member boroughs shall hold at least one meeting each year for the election of directors and for the transaction of any other business. Except where the agency agreement or bylaws prescribe otherwise, special meetings of the representatives may be called for any purpose upon written request to the president or secretary to call the meeting. Such officer shall give notice of the meeting to be held between ten and sixty days after receipt of such request. Unless the agency agreement or bylaws provide for a different percentage, a quorum for a meeting of the representatives of the member boroughs is a majority of the total members and a quorum for meetings of the board of directors is a majority of the membership of such

1 board.

2 (i) The agency agreement may be amended as proposed at any
3 meeting of the representatives of the members for which notice,
4 stating the purpose, shall be given to each representative and,
5 unless the agency agreement or bylaws require otherwise, shall
6 become effective when ratified by resolutions of a majority of
7 the corporate authorities of the member boroughs. Each amendment
8 and the resolutions approving it shall be filed for record with
9 the Secretary of the Commonwealth.

10 (j) Each member borough shall have full power and authority,
11 within budgetary limits applicable to it, to appropriate money
12 for the payment of expenses of the formation of the municipal
13 power agency and of its representative in exercising its
14 functions as a member of the agency.

15 (k) A municipal power agency may own, construct, acquire by
16 lease, purchase or otherwise gain an interest by itself or as
17 co-owner or tenant in common and operate and manage or cause to
18 be operated and managed an electric light plant or project
19 located within or without this Commonwealth jointly with any
20 political subdivision, subdivision of the Federal Government,
21 State, political subdivision of another state, private
22 corporation empowered to supply electricity, electric
23 cooperative corporation formed under the act of June 21, 1937
24 (P.L.1969, No.389), known as the "Electric Cooperative
25 Corporation Act," or electric cooperative corporation in another
26 state.

27 (l) All powers of a municipal power agency shall be
28 exercised by its board of directors, unless otherwise provided
29 by the agency agreement or bylaws. A municipal power agency
30 shall have the power to do and accomplish all actions reasonably

necessary and incident to the ownership, construction,
acquisition, administration, operation and management of an
electric light plant or project. Among the specific powers of a
municipal power agency shall be the following:

(1) to sue and be sued;

(2) to enter into contracts;

(3) to cooperate with private power companies, boroughs,
electric cooperative corporations and other public or private
electric power entities, inside and outside of this
Commonwealth, in the development of electric power and energy;

(4) to make such studies as may be necessary to determine
the feasibility and cost of any additional sources and supplies
of electric power and energy;

(5) to purchase, sell for resale, exchange, interchange,
wheel, pool or transmit electric power and energy or the right
to capacity thereof, inside and outside of this Commonwealth, to
and from any public or private electric power entities, private
power companies, boroughs and electric cooperative corporations;

(6) to procure insurance against any losses in connection
with its property, operations or assets in such amounts and from
such insurers as the board of directors deems desirable;

(7) to contract for and to accept any gifts or grants or
loans of funds or property or financial or other aid in any form
from the United States of America or any agency or
instrumentality thereof, or from any other source;

(8) to acquire, hold, use, operate and dispose of personal
property;

(9) to acquire, hold, use and dispose of its income,
revenues, funds and moneys;

(10) to acquire, own, use, lease, operate and dispose of

real property and interests in real property and to make
improvements thereon;

(11) to grant the use, by lease or otherwise, and to make
charges for the use, of any property or facility owned or
controlled by it;

(12) to procure from the United States of America or any
agency or instrumentality thereof, or from any state or agency
or instrumentality thereof, any consents, authorizations or
approvals which may be requisite to enable ownership, operation,
construction or repair;

(13) to borrow money and from time to time to issue revenue
bonds and to enter into agreements with the purchasers of such
revenue bonds;

(14) to invest funds not required for immediate use,
including but not limited to proceeds from the sale of revenue
bonds: Provided, however, That the power of a municipal power
agency to invest shall be the same as that of a borough, as
exercised by the borough council pursuant to clause (6) of
section 1005 and section 1316; and

(15) to mortgage any property acquired or owned to secure
the payment of its revenue bonds or other obligations issued to
finance such acquisition, ownership or repair.

(m) In the erection and extension of an electric light plant
or project, and for all other purposes authorized by this act, a
municipal power agency may enter upon, appropriate, injure or
destroy private lands, property or material according to the
proceedings set forth in the law governing eminent domain.

(n) A municipal power agency which gains an interest in an
electric light plant or project may pay all or part of the cost
therefor from the revenues derived from the sale of revenue

1 bonds issued in the manner provided by the act of July 12, 1972
2 (P.L.781, No.185), known as the "Local Government Unit Debt
3 Act."

4 (o) A municipal power agency may make and enforce bylaws or
5 rules which it deems necessary or desirable and may establish,
6 fix, levy and collect or may authorize, by contract, franchise,
7 lease or otherwise, the establishment, levying and collection
8 of, rents, rates and other charges for the services afforded by
9 the municipal power agency, including connection for the
10 services afforded by the municipal power agency, including
11 connection charges or by or in connection with any project or
12 properties which it may construct, erect, acquire, own, operate
13 or control, or with respect to which it may have any interest or
14 any right to capacity thereof and for the sale of electric
15 energy or of generation or transmission capacity or services as
16 it may deem necessary, proper, desirable and reasonable. Rents,
17 rates and other charges shall be at least sufficient to meet
18 expenses thereof, including reasonable reserves, interest and
19 principal payments.

20 (p) Interest and principal paid on revenue bonds, issued by
21 a municipal power agency shall be exempt from all State taxes of
22 whatsoever kind or nature.

23 Section 2. This act shall take effect in 90 days.