

# SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

**BILL NO.** Senate Bill 168

**PRINTER'S NO.** 1354

**AMOUNT**

No cost to the Commonwealth

**FUND**

General

**DATE INTRODUCED**

Feb. 2, 2009

**PRIME SPONSOR**

Senator Brubaker

**HISTORY OF BILL**

Referred to LOCAL GOVERNMENT, Feb. 2, 2009  
Reported as committed, March 25, 2009  
First consideration, March 25, 2009  
Re-referred to APPROPRIATIONS, March 30, 2009  
Re-reported as amended, July 28, 2009

**DESCRIPTION AND PURPOSE OF BILL**

Senate Bill 168, as amended by amendment A03132, amends The Borough Code by providing that contracts or purchases made by council relating to the purchase of electricity and associated energy and related services are exempt from advertising, bidding or price quotation requirements. However, a borough may advertise and accept bids or price quotations if council determines that it would be in the public interest to do so.

Amendment A03132 defines a non-profit membership corporation as an entity, the membership of which, consists solely of Pennsylvania boroughs, such as a consortium, buying group or municipal power agency, or consists of Pennsylvania boroughs and political subdivisions of another state or states.

A borough that is a member of a non-profit membership corporation may contract with the non-profit membership corporation for the development of electric power and associated energy; the purchase, sale, exchange, interchange, wheeling, pooling or transmission of

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electric power and associated energy or the right to the capacity from sources and projects in this Commonwealth or another state for up to fifty years.

A borough is authorized to enter into "take and pay" contracts for a minimum quantity of electric power if the power is available for delivery, whether or not the borough accepts delivery of the power. The legislation also authorizes "take or pay" provisions, which would obligate a borough to pay for its share of power received from a facility and the debt service in connection with the construction of a facility. Furthermore, according to amendment A03132, a contract may authorize a borough to pay for electric power and energy only if utilized by the borough.

Amendment A031332 provides that no borough may be obligated under a take-or-pay or take-and-pay arrangement entered into with a non-profit membership corporation in which the borough maintains membership unless that obligation is expressly authorized by an act of the borough council.

The amendment further provides in new section (g) that a borough which is a member of a non-profit membership corporation may enter into future power supply contracts, contract renewals or contract extensions with the non-profit membership corporation to the extent that they require payment for electric power and energy only if utilized by the borough. The future power supply contracts, contract renewals or contract extensions are not subject to take-or-pay or take-and-pay obligations as permitted elsewhere in the legislation. In order to facilitate the aforementioned provisions, a non-profit membership corporation shall offer, to all of its member boroughs in this Commonwealth, future power supply contract terms, contract renewals or contract extensions on a comparable and nondiscriminatory basis and with similar terms and conditions which the non-profit membership corporation contemporaneously offers to its members in other states.

A borough may agree to assume the obligations of another borough or municipality if it defaults in the payment of its obligations for electric power, and the acquiring borough's exposure is limited to twenty-five percent of the defaulting borough's contractual obligation for power.

None of the obligations under contract shall constitute a legal or equitable pledge on any property or income of the borough, except revenues of its electric system, and the full faith and credit and taxing

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power of the borough shall not be pledged for the payment of an obligation under the contract.

The amendment declares that the provisions are intended to add to the powers and rights of a borough, and the legislation shall not be construed to limit either the general or specific powers or rights of a borough set forth in The Borough Code.

The act shall take effect in 60 days.

## **FISCAL IMPACT:**

The legislation will have no adverse fiscal impact on the Commonwealth.