

BOROUGH CODE - REGULATION OF CONTRACTS AND ADDITIONAL CONTRACTING  
AUTHORITY FOR ELECTRIC POWER AND ENERGY

Act of Oct. 27, 2010, P.L. 862, No. 87

Cl. 08

Session of 2010

No. 2010-87

SB 168

AN ACT

Amending the act of February 1, 1966 (1965 P.L.1656, No.581), entitled "An act concerning boroughs, and revising, amending and consolidating the law relating to boroughs," further providing for regulation of contracts; and providing for additional contracting authority for electric power and energy. The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

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

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

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

\* \* \*

(6) Those made relating to the purchase of electricity and associated energy and related services by a borough owning or operating electric generation or distribution facilities on the effective date of this section with any of the following:

(i) A political subdivision.

(ii) Another state.

(iii) The Commonwealth or an agency thereof.

(iv) The Federal Government.

(v) A private corporation.

(vi) An electric cooperative corporation under 15 Pa.C.S. Ch. 73 (relating to electric cooperative corporations).

(vii) A non-profit membership corporation. As used in this subclause, the term "non-profit membership corporation" means an entity, the membership of which:

(A) consists solely of Pennsylvania boroughs, such as a consortium, buying group or municipal power agency under section 2471.2; or

(B) consists of Pennsylvania boroughs and political subdivisions of another state or states.

(viii) An electric cooperative of another state.

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

\* \* \*

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

Section 2471.3. Additional Contracting Authority for Electric Power and Energy.--(a) In addition to the authority provided under section 2471, a borough that, on the effective date of this section, owns or operates electric generation or distribution facilities and a borough that is a member of a non-profit membership corporation may contract with the non-profit membership corporation for the following:

(1) The development of electric power and associated energy, including the conduct of investigations or studies necessary to

determine the feasibility and cost of additional sources and supplies of electric power and associated energy.

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

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

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

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

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

(3) pay for electric power and energy only if utilized by the borough.

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

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

(i) the electric power and energy is available for delivery to the borough ; or

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

(e) 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.

(f) A non-profit membership corporation shall not:

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

(2) except as set forth in subsection (g), require take-or-pay or take-and-pay obligations in a contract with a borough unless the contract meets the criteria of subsection (c) (1) or (2).

(g) 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 under subsection (c) (3):

(1) with no take-or-pay or take-and-pay obligations as permitted by subsection (c) (1) and (2); and

(2) without prejudice or discrimination as compared to any other borough which chooses to enter into contracts permitted by subsection (c) (1) and (2) with the non-profit membership corporation.

(h) In order to carry out subsection (g) , a non-profit membership corporation which provides or offers electric power and associated energy to a member borough in this Commonwealth under subsection (a) (2) shall offer, to all of its member boroughs in this Commonwealth, future power supply contract terms, contract renewals or contract extensions under subsection (c) (3) on a comparable and nondiscriminatory basis and with similar terms and conditions to future power supply contract terms, contract renewals or contract extensions that would be appropriate under subsection

(c) (3) which the non-profit membership corporation contemporaneously offers to its members in other states.

(i) All obligations under a contract under subsection (a) (2) shall be paid from revenues derived from the operation of the borough's electric system, and payments shall be an operating expense of the borough's electric system.

(j) If explicitly set forth in a contract under subsection (a) (2), a borough may agree to assume, prorate or otherwise become liable for the obligations of another borough of this Commonwealth or of a political subdivision of another state that is a member of the non-profit membership corporation if the borough or other political subdivision defaults in the payment of its obligations for the purchase of the electric power and associated energy. The contract may include provisions to permit a borough to succeed to the rights and interests of the defaulting borough or political subdivision to purchase electric power and associated energy. A borough's liability for the obligations of a defaulting borough of this Commonwealth or a political subdivision of another state shall not exceed twenty-five percent of a borough's initial nominal entitlement to electric power and associated energy under the contract.

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

(l) The provisions of this section are intended to add to the powers and rights of a borough, and nothing in this section shall be construed to limit either the general or specific powers or rights of a borough set forth in this act.

(m) As used in this section, the term "non-profit membership corporation" means an entity the membership of which:

(1) consists solely of Pennsylvania boroughs, such as a consortium, buying group or municipal power agency under section 2471.2; or

(2) consists of Pennsylvania boroughs and political subdivisions of another state or states.

Section 3. This act shall take effect immediately.

APPROVED--The 27th day of October, A.D. 2010.

EDWARD G. RENDELL