

No. 1990-132

AN ACT

SB 750

Amending the act of May 2, 1945 (P.L.382, No.164), entitled "An act providing for the incorporation as bodies corporate and politic of 'Authorities' for municipalities, counties and townships; prescribing the rights, powers and duties of such Authorities heretofore or hereafter incorporated; authorizing such Authorities to acquire, construct, improve, maintain and operate projects, and to borrow money and issue bonds therefor; providing for the payment of such bonds, and prescribing the rights of the holders thereof; conferring the right of eminent domain on such Authorities; authorizing such Authorities to enter into contracts with and to accept grants from the Federal Government or any agency thereof; and conferring exclusive jurisdiction on certain courts over rates," further defining "project"; adding a definition for "working capital"; further providing for the general powers and duties of an authority; further providing for contract procedures, purchases and advertising for bids; and providing a penalty.

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

Section 1. Section 2(j) of the act of May 2, 1945 (P.L.382, No.164), known as the Municipality Authorities Act of 1945, amended June 22, 1990 (P.L.236, No.54), is amended and the section is amended by adding a clause to read:

Section 2. Definitions.—The following terms whenever used or referred to in this act shall have the following meanings, except in those instances where the context clearly indicates otherwise:

* * *

(j) The term "project" shall mean equipment to be leased by an Authority to the municipality or municipalities that organized it or to any municipality or school district located wholly or partially within the boundaries of the municipality or municipalities that organized it, or any structure, facility or undertaking which an Authority is authorized to acquire, construct, finance, improve, maintain or operate, or provide financing for insurance reserves under the provisions of this act, *or any working capital which an authority is authorized to finance under the provisions of this act.*

* * *

(r) *The term "working capital" shall mean and include, but shall not be limited to, funds for supplies, materials, services, salaries, pensions and any other proper operating expenses, provided that "working capital" shall be limited solely to hospitals and health centers, and private, nonprofit, nonsectarian colleges and universities, State-related universities and community colleges, which are determined by the Authority to be eligible educational institutions. Nothing herein shall prohibit the borrowing of working capital as may be necessary or incidental to the undertaking or placing in operation of any project undertaken in whole or in part pursuant to this act.*

Section 2. The introductory paragraph of clause (a) and clause (b)(2)(v) of subsection A of section 4 of the act, amended June 22, 1990 (P.L.236, No.54), are amended and clause (b)(2) is amended by adding a subclause to read:

Section 4. *Purposes and Powers; General.*—A. Every Authority incorporated under this act shall be a body corporate and politic, and shall be for the purpose of acquiring, holding, constructing, improving, maintaining, and operating, owning, leasing, either in the capacity of lessor or lessee, projects of the following kind and character and providing financing for insurance reserves.

(a) The Authority shall be for the purpose of *financing working capital and of* acquiring, holding, constructing, financing, improving, maintaining and operating, owning, leasing, either in the capacity of lessor or lessee, projects of the kind and character described in the following subclauses and for the purpose of providing financing for insurance reserves:

* * *

(b) This section is subject to the following limitations:

* * *

(2) The purpose and intent of this act being to benefit the people of the Commonwealth by, among other things, increasing their commerce, health, safety and prosperity, and not to unnecessarily burden or interfere with existing business by the establishment of competitive enterprises, none of the powers granted by this act shall be exercised in the construction, financing, improvement, maintenance, extension or operation of any project or projects or providing financing for insurance reserves which in whole or in part shall duplicate or compete with existing enterprises serving substantially the same purposes. This limitation shall not apply to the exercise of the powers granted hereunder:

* * *

(v) to provide financing for insurance reserves, if each municipality or Authority intending to use any proceeds thereof shall declare by resolution or ordinance that it is desirable for the health, safety and welfare of the people in such local government unit or served by such Authority[.]; *nor*

(vi) *to projects for financing working capital.*

* * *

Section 3. Section 10 of the act, amended or added June 28, 1979 (P.L.53, No.22) and February 18, 1982 (P.L.86, No.31), is amended to read:

Section 10. *Competition in Award of Contracts.*—A. All construction, reconstruction, repairs or work of any nature made by any Authority, where the entire cost, value or amount of such construction, reconstruction, repairs or work, including labor and materials, shall exceed **[four thousand dollars (\$4,000)] ten thousand dollars (\$10,000)**, except construction, reconstruction, repairs or work done by employes of said Authority, or by labor supplied under agreement with any Federal or State agency, with supplies and materials purchased as hereinafter provided, shall be done only under contract or contracts to be entered into by the Authority with the lowest responsible bidder upon proper terms, after due public notice has been given asking

for competitive bids as hereinafter provided. No contract shall be entered into for construction or improvement or repair of any project or portion thereof, unless the contractor shall give an undertaking with a sufficient surety or sureties approved by the Authority, and in an amount fixed by the Authority, for the faithful performance of the contract. All such contracts shall provide among other things that the person or corporation entering into such contract with the Authority will pay for all materials furnished and services rendered for the performance of the contract, and that any person or corporation furnishing such materials or rendering such services may maintain an action to recover for the same against the obligor in the undertaking, as though such person or corporation was named therein, provided the action is brought within one year after the time the cause of action accrued. Nothing in this section shall be construed to limit the power of the Authority to construct, repair or improve any project or portion thereof, or any addition, betterment or extension thereto, directly by the officers, agents and employes of the Authority, or otherwise than by contract.

B. All supplies and materials costing **[four thousand dollars (\$4,000)] ten thousand dollars (\$10,000), or more**, shall be purchased only after due advertisement as hereinafter provided. Authority shall accept the lowest bid or bids, kind, quality and material being equal, but the Authority shall have the right to reject any or all bids or select a single item from any bid. The provisions as to bidding shall not apply to the purchase of patented and manufactured products offered for sale in a noncompetitive market or solely by a manufacturer's authorized dealer.

B.1. Written or telephonic price quotations from at least three qualified and responsible contractors shall be requested for all contracts that exceed four thousand dollars (\$4,000) but are less than the amount requiring advertisement and competitive bidding or, in lieu of price quotations, a memorandum shall be kept on file showing that fewer than three qualified contractors exist in the market area within which it is practicable to obtain quotations. A written record of telephonic price quotations shall be made and shall contain at least the date of the quotation, the name of the contractor and the contractor's representative, the construction, reconstruction, repair, maintenance or work which was the subject of the quotation and the price. Written price quotations, written records of telephonic price quotations and memoranda shall be retained for a period of three years.

C. The terms advertisement or due public notice wherever used in this section, shall mean a notice published at least ten (10) days before the award of any contract, in a newspaper of general circulation published in the municipality where the Authority has its principal office, and if no newspaper is published therein then by publication in a newspaper in the county where the Authority has its principal office: Provided, That such notice may be waived where the Authority determines an emergency exists, and such supplies and materials must be immediately purchased by the said Authority.

D. No member of the Authority or officer or employe thereof shall either directly or indirectly be a party to or be in any manner interested in any contract or agreement with the Authority for any matter, cause or thing

whatsoever by reason whereof any liability or indebtedness shall in any way be created against such Authority. If any contract or agreement shall be made in violation of the provisions of this section the same shall be null and void and no action shall be maintained thereon against such Authority.

E. Subject to the aforesaid any Authority may (but without intending by this provision to limit any powers of such Authority) enter into and carry out such contracts, or establish or comply with such rules and regulations concerning labor and materials and other related matters in connection with any project or portion thereof, as the Authority may deem desirable, or as may be requested by any Federal agency that may assist in the financing of such project or any part thereof: Provided, however, That the provisions of this section shall not apply to any case in which the Authority has taken over by transfer or assignment any contract authorized to be assigned to it under the provisions of section nine of this act, nor to any contract in connection with the construction of any project which the Authority may have had transferred to it by any person or private corporation.

F. Every contract for the construction, reconstruction, repair, improvement or maintenance of public works shall contain a provision that any steel products used or supplied in the performance of the contract or any subcontracts thereunder shall be from steel made in the United States.

G. An Authority shall not evade the provisions of this section as to bids or purchasing materials or contracting for services piecemeal for the purpose of obtaining prices under ten thousand dollars (\$10,000) upon transactions which should, in the exercise of reasonable discretion and prudence, be conducted as one transaction amounting to more than ten thousand dollars (\$10,000). This provision is intended to make unlawful the practice of evading contracting requirements by making a series of purchases or contracts each for less than the advertising requirement price, or by making several simultaneous purchases or contracts each below said price, when in either case the transaction involved should have been made as one transaction for one price.

H. Any Authority member who votes to unlawfully evade the provisions of this section and who knows that the transaction upon which he so votes is or ought to be part of a larger transaction and that it is being divided in order to evade the requirements as to advertising for bids commits a misdemeanor of the third degree for each contract entered into as a direct result of that vote.

Section 4. This act shall take effect in 60 days.

APPROVED—The 21st day of November, A. D. 1990.

ROBERT P. CASEY