

No. 1992-133

AN ACT

SB 1715

Establishing the Port of Pittsburgh Commission; providing for its powers and duties; and making a repeal.

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

Section 1. Short title.

This act shall be known and may be cited as the Port of Pittsburgh Commission Act.

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Board.” The governing body of the commission.

“Commission.” The body corporate and politic created by this act.

“Port district.” The combined geographical territory of the Counties of Allegheny, Armstrong, Beaver, Butler, Clarion, Fayette, Greene, Lawrence, Washington and Westmoreland.

“Port facility.” All real and personal property used in the operation of a port terminal, including, but not limited to, wharves, piers, slips, ferries, docks, graving docks, dry docks, shipbuilding and/or repair yards, bulk-

heads, dock walls, basins, car floats, float-bridges, dredging equipment, radio receiving and sending stations, grain or other storage elevators, warehouses, cold storage, tracks, yards, sheds, switches, connections, overhead appliances, bunker coal, oil and fresh water stations, railroads, motor trucks, scows or harbor craft of any kind, markets in every kind of terminal storage or supply depot, now in use or hereafter designed for use to facilitate transportation and for the handling, storage, loading or unloading of freight or passengers at terminals and equipment, materials and supplies therefor.

“Port-related project.” Any real property, site, building, structure, equipment, furnishings and other facility or undertaking relating to industrial and commercial development activities within the port district.

“Port terminal.” Without limitation, motor truck, motorbus, railroad and air terminal, any coal, grain, bulk liquids and lumber terminal, and any union, freight, passenger and other terminals used or to be used in connection with the transportation or transfer of freight, persons, personnel and equipment.

Section 3. Commission and governing body.

(a) Creation of commission.—A body corporate and politic, to be known as the Port of Pittsburgh Commission, is hereby created as a public entity and instrumentality of the Commonwealth. This commission shall exercise the powers of the Commonwealth as an agency of the Commonwealth.

(b) Governing body.—

(1) The powers of the commission shall be exercised by a governing body having full authority to manage the properties and business of the commission and to prescribe, amend and repeal bylaws, rules and regulations governing the manner in which the business of the commission may be conducted and the powers granted to it may be exercised. All bylaws, rules and regulations and amendments thereto shall be filed with the secretary of the commission.

(2) The governing body shall be composed of 15 members who shall be appointed in the following manner and who shall be residents of this Commonwealth and serve at the pleasure of their respective appointing authority:

(i) One member shall be appointed by the President pro tempore of the Senate for a term concurrent with the term of such appointing authority.

(ii) One member shall be appointed by the Minority Leader of the Senate for a term concurrent with the term of such appointing authority.

(iii) One member shall be appointed by the Speaker of the House of Representatives for a term concurrent with the term of such appointing authority.

(iv) One member shall be appointed by the Minority Leader of the House of Representatives for a term concurrent with the term of such appointing authority.

(v) Four members initially appointed by the Governor for terms of one, two, three and four years, respectively, provided that their respective successors shall each be appointed for a term of four years. The initial term of each member shall be designated by the Governor at the time of appointment.

(vi) Seven members appointed by the Governor for a term of four years, provided that one member shall be appointed from each list of at least three nominees submitted to the Governor respectively by the Waterways Association of Pittsburgh, the River Terminal Operator's Association, the Association for the Development of Inland Navigation in America's Ohio Valley and the county commissioners jointly of those counties within the port district which are not members of the Southwestern Pennsylvania Regional Planning Commission; and three members shall be appointed from a list of at least five nominees submitted to the Governor by the Southwestern Pennsylvania Regional Planning Commission. Each list shall be submitted to the Governor within 30 days of the effective date of this act, and the Governor shall select a member from each list within 30 days of receipt of each list or else may request one substitute list of nominees from any entity who prepares a list. If each entity permitted to submit a list fails to submit a list of nominees within 30 days of the effective date of this act or fails to submit a substitute list within 30 days of receipt of a request to do so, the Governor may appoint at his discretion such member or members for which a list of nominees was¹ not submitted. Whenever a vacancy occurs prior to the completion of the term of office of a member appointed pursuant to this paragraph, the entity which prepared the list for the board member whose seat has become vacant shall submit a list of nominees to replace that member to the Governor who shall select a person to fill the vacancy in the manner provided for in this paragraph for the selection of original appointments.

(3) The terms of members shall begin on the date of appointment. Members may hold office until their successors have been appointed and may succeed themselves.

(4) Vacancies shall be filled by the original appointing authority for the remainder of an unexpired term. All vacancies shall be filled within 30 days of occurrence. A vacancy shall occur upon the death, resignation, disqualification or removal of a member.

(5) Prior to July 1, 1993, the chairman of the board shall be the person who on the day immediately preceding the effective date of this act was serving as chairman of the Port of Pittsburgh Commission pursuant to the act of December 19, 1990 (P.L.827, No.197), known as the Port of Pittsburgh Commission Act. On and after July 1, 1993, one of the members of the board shall be designated by the Governor as chairman of the board for a term concurrent with such member's appointment as a board member. The members of the board shall elect from among themselves a vice chair, secretary, treasurer and such other officers as they may determine.

¹ "were" in enrolled bill.

(6) A majority of the board shall constitute a quorum for the purpose of conducting business of the board and for all other purposes. All actions of the board shall be taken by a majority of the board.

(7) Members of the board shall receive no compensation or remuneration, but shall be entitled to reimbursement for all reasonable and necessary expenses.

(8) No member of the board shall be liable personally on the bonds or other obligations of the commission, and the rights of creditors shall be solely against the commission.

(9) The board may appoint an executive director and delegate to such appointee such powers of the board as the board shall deem necessary to carry out the purposes of the commission, subject in every case to the supervision and control of the board.

(c) Sovereign immunity.—It is hereby declared to be the intent of the General Assembly that the commission created by this act and its members, officers and employees shall enjoy sovereign and official immunity, as provided in 1 Pa.C.S. § 2310 (relating to sovereign immunity reaffirmed; specific waiver) and shall remain immune from suit except as provided by and subject to the provisions of 42 Pa.C.S. Ch. 85 Subchs. A (relating to general provisions) and B (relating to actions against Commonwealth parties). Notwithstanding the provisions of 42 Pa.C.S. § 8525 (relating to legal assistance), the commission, through its legal counsel, shall defend actions brought against the commission or its members, officers, officials and employees when acting within the scope of their official duties.

(d) Public meetings and records.—The commission shall be subject to the act of June 21, 1957 (P.L.390, No.212), referred to as the Right-to-Know Law, and the act of July 3, 1986 (P.L.388, No.84), known as the Sunshine Act.

Section 4. Purpose.

(a) General purposes enumerated.—It shall be the purpose of the commission:

(1) To promote and encourage public and private capital investment in port facilities and port-related projects within the port district for fostering the creation of industrial and commercial facilities and parks.

(2) To promote and encourage adequate dry docks, railroad, truck, air freight and intermodal facilities open to all upon reasonable and equal terms for the handling, storage, care and shipment of freight and passengers to, from and through the port district with the purpose of increasing commerce and commercial interests.

(3) To promote, encourage and facilitate cooperation between and among and the common objectives of the Ports of Pittsburgh, Erie and Philadelphia, including, without limitation, integrated planning of regional and Commonwealth programs.

(4) To develop and promote recreational facilities in the port district which increase public access and development options.

(5) To develop port facilities and port-related projects within the port district and to promote the rivers within the port district as highways of

commerce for the purpose of increasing freight and passenger commerce and industry.

(6) To promote and facilitate the establishment of a foreign trade zone within the port district.

(7) To cooperate with other public agencies and with industry, business and labor in all matters relating to the port district.

(b) Specific purposes.—The commission is created for the purpose of acquiring, holding, developing, designing, constructing, improving, maintaining, financing, furnishing, fixturing, equipping, repairing, leasing or subleasing, as either lessor or lessee or sublessor or sublessee, and owning¹ port facilities, port-related projects and recreational facilities or parts thereof and equipment within the port district.

Section 5. Powers.

(a) General powers.—The commission is granted and shall have and may exercise all powers necessary or convenient for performing or carrying out the purposes set forth in this act.

(b) Specific powers.—In addition to the general powers described in subsection (a), the commission is granted and shall have and may exercise, without limiting the generality of the purposes of this act, the following specific rights and powers:

(1) To have perpetual existence and continuing succession.

(2) To make, enter into, award and execute contracts and amendments and modifications thereto.

(3) To sue and be sued, implead and be impleaded, interplead and otherwise join any proceeding in any court of competent jurisdiction or before any Federal, state or local commission or regulatory body.

(4) To adopt and use and alter at will a corporate seal and to make and, from time to time, amend and repeal bylaws, rules, regulations and resolutions for the management and regulation of the affairs of the commission and the performance of the functions and duties of the commission.

(5) To establish a principal office within the port district and such other office or offices as may be necessary for the carrying out of the duties of the commission.

(6) To acquire, purchase, hold, lease as lessee and use any franchise, license, property, whether real, personal or mixed, tangible or intangible, or any interest therein, necessary or desirable for carrying out the purposes of the commission and to sell, lease as lessor, transfer, convey and dispose of any property or interest therein at any time acquired by the commission.

(7) To acquire by purchase, lease or otherwise and to construct, improve, maintain and repair port facilities, port-related projects and recreational facilities.

(8) To appoint officers, agents, employees and servants and to prescribe their duties and fix their compensation.

(9) To borrow money, make and issue negotiable notes, bonds, refunding bonds and other evidences of indebtedness or obligations of the commission and to secure the payment of such bonds, or any part thereof,

¹ "owing" in enrolled bill.

by pledge or deed of trust of all or any of its revenues, rentals and receipts and to make such agreements with the purchasers or holders of such bonds or with others in connection with any such bonds, whether issued or to be issued, as the commission shall deem advisable and, in general, to provide for the security for the bonds and the rights of the holders thereof.

(10) To apply for and to accept gifts, grants, loans, appropriations, contributions or property of any nature or kind whatsoever from the United States of America, the Commonwealth of Pennsylvania, political subdivisions, municipalities, foundations, or public or private agencies, individuals, associations, partnerships or corporations.

(11) To pledge, hypothecate or otherwise encumber all or any of the revenues or receipts of the commission as security for all or any of its obligations.

(12) To do all acts and things necessary for the promotion of its business and general welfare to carry out the powers granted by this act or any other acts.

(13) To enter into contracts on such terms as the commission shall deem proper for the use of any port facility, port-related project, recreational facility or property of the commission and fixing the amount to be paid therefor.

(14) To enter into contracts for group insurance for the benefit of its employees and to set up a retirement or pension fund or any other employee benefit arrangement for such employees, including, without limitation, enrollment in the Commonwealth retirement system established pursuant to 71 Pa.C.S. Pt. XXV (relating to retirement for State employees and officers).

(15) To provide for membership in any official, industrial, commercial or trade association or any other organizations concerned with such purposes for receptions of officials or others as may contribute to the advancement of the port district and any industrial development therein and for such other public relations activities as will promote the same and such activities shall be considered a public purpose.

(16) To represent the port district before all Federal, State and local agencies.

(17) To improve navigable and nonnavigable areas as regulated by Federal or State statute.

(18) To self-insure or procure insurance for any property or operations against any risks or hazards and timely payment in full of principal of and interest on bonds of the commission.

(19) To enter into agreements with any public utility operating a railroad or any other transportation facility wholly or partially within the port district for the joint or exclusive use of any property of the commission or the public utility, or the establishment of routes over the rights-of-way of the public utility or the commission, or the establishment of joint rights.

(20) To disburse funds for its lawful activities.

(21) To initiate or support international trade and to utilize the advantages associated with foreign trade zone 33.

(22) To enter into agreements with other ports.

(23) To fix, alter, charge and collect fees, rates, rentals and other charges for port facilities and port-related projects of the commission at reasonable rates to be determined exclusively by the commission, subject to appeal, for the purpose of providing for the payment of the expenses of the commission, the acquisition, construction, improvement, repair and maintenance of the port facilities, port-related projects and properties of the commission¹ and the payment of the principal and interest on obligations of the commission and to comply fully with the terms and provisions of any agreements made with the purchasers or holders of any such obligations.

(24) To have and exercise the power of eminent domain within the port district in the manner prescribed by the act of June 22, 1964 (Sp.Sess., P.L.84, No.6), known as the Eminent Domain Code, including the taking of property of a utility not necessary or useful to the primary function of the utility, and pursue its purposes and exercise its powers and commission under this act to locate port facilities, port-related projects and recreational facilities within the port district, notwithstanding any zoning, land use planning or building ordinance, code or regulation adopted or enacted by a political subdivision under the authority of any statute or under the authority of any home rule charter authorized and adopted under any statute or the Commonwealth of Pennsylvania.

(25) To establish carrier routes and services between port facilities and port terminals, including water routes and water services, as it deems necessary for the efficient operation of port facilities, provided that the commission shall not engage in the transportation of property by motor vehicle from port facilities or port terminals to other points within this Commonwealth or the port district without the approval of the Pennsylvania Public Utility Commission or in violation of the regulations of the Pennsylvania Public Utility Commission.

(c) Exclusion.—Notwithstanding any general or specific powers granted to the commission or board by this act or any other act, whether expressed or implied:

(1) The commission and board shall have no power, at any time or in any manner, to pledge the credit or taxing power of the Commonwealth or any political subdivision.

(2) No obligations of the commission shall be deemed to be obligations of the Commonwealth or of any of its political subdivisions.

(3) The Commonwealth or any political subdivision thereof shall not be liable for the payment of principal or interest on obligations of the commission, except payments for any leases between the Commonwealth or such political subdivisions and the commission relating to property owned or occupied by the commission.

(4) The commission and board shall have no² power, at any time or in any manner, to issue negotiable notes, bonds, refunding bonds and other evidences of indebtedness or obligations of the commission without the prior approval and written consent of the Governor.

¹ "commission," in enrolled bill.

² "not" in enrolled bill.

(5) A comptroller shall be appointed in accordance with the provisions of section 214 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

(6) The commission shall not use public funds to subsidize any marine freight terminal, including coal, grain, bulk liquid, lumber or any other marine freight terminals so as to create unfair competition with private marine freight terminals.

Section 6. Bonds.

(a) Bond issues authorized.—The bonds of the commission shall be authorized by resolution of the board and shall be of such series, bear such date or dates, mature at such time or times, bear interest at such rate or rates, be in such denominations, be in such form, either coupon or fully registered without coupons, carry such registration, exchangeability and interchangeable privileges, be payable in such medium of payment and at such place or places, be subject to such terms of redemption, purchase or tender by the commission or the holder thereof with or without premium and be entitled to such priorities in the revenues, rentals or receipts of the commission as such resolution or resolutions may provide. The bonds shall be signed by or shall bear the facsimile signatures of those officers as the commission shall determine, and coupon bonds shall have attached thereto interest coupons bearing the facsimile signature of the treasurer of the commission, and all bonds shall be authenticated by an authenticating agent, fiscal agent or trustee, all as may be prescribed in such resolution or resolutions. Any such bonds may be issued and delivered notwithstanding that one or more of the officers signing the bonds or the treasurer whose facsimile signature shall be upon the coupon or any officer of the commission shall have ceased to be such officer at the time when the bonds shall actually be delivered.

(b) Sale.—

(1) The bonds of the commission may be sold at public or private sale, by negotiation or upon invitation, for a price or prices and at a rate of interest as the board shall determine.

(2) Before making any private sale by negotiations of bonds or notes, the board shall adopt a resolution finding that a private sale by negotiation is in the best financial interest of the commission.

(3) Pending the preparation of the definitive bonds, interim receipts or temporary bonds may be issued to the purchaser or purchasers of the bonds and may contain such terms and conditions as the commission may determine.

(c) Negotiable instruments.—The bonds shall have all the qualities of negotiable instruments under 13 Pa. C.S. (relating to commercial code).

(d) Refunding.—Subject to the provisions of the outstanding bonds, notes or other obligations and subject to the provisions of this act, the commission shall have the right and power to refund any outstanding debt, in whole or in part, at any time and shall have the right and power to refund any outstanding notes with bonds or bonds with notes. The term "refund" and any of its variations shall mean the issues and sale of obligations the proceeds of which are used or are to be used for the payment or redemption of outstanding obligations upon or prior to maturity.

(e) Resolutions.—Any resolution or resolutions authorizing bonds may contain provisions which shall be part of the contract with the holders thereof relating, without limitations, to the following:

(1) Pledging all or any of the revenues, rentals or receipts of the commission from all or any port facilities, port-related projects, property or operations of the commission and providing for the obtaining of other security for the bonds such as letters of credit or bond insurance.

(2) The construction, improvement, extension, enlargement, maintenance and repair of the port facilities, port-related projects and property of the commission and the duties of the commission with reference thereto.

(3) The terms and provisions of the bonds.

(4) Limitations on the purposes to which the proceeds of the bonds, then and thereafter to be issued, or of any loan or grant of the Federal Government, the Commonwealth or a political subdivision may be applied and invested.

(5) The rate of fees, rates, rentals and other charges for the use of port facilities, port-related projects and property of the commission or for services rendered by the commission, including limitations upon the power of the commission to modify any lease or other agreement pursuant to which fees, rates, rentals and other charges are payable.

(6) Make covenants to create or authorize the creation of special funds or accounts to be held in trust or otherwise for the benefit of holders of the bonds or of reserves for other purposes and as to the use, investment and disposition of moneys held in those funds, accounts or reserves.

(7) The terms and provisions of any trust indenture securing the bonds or under which the same may be issued.

(8) Any other or additional agreements with the holders of the bonds.

(f) Indentures and agreements.—The commission may enter into any trust indentures or other agreements with any bank or trust company or any person in the United States having power to enter into the same, including the Federal Government, as security for such bonds and may assign and pledge any or all of the revenues, rentals or receipts of the commission thereunder. The trust indenture or other agreement may contain such provisions as may be customary in such instruments or as the commission may authorize, including, with limitation, provisions relating to the following:

(1) The construction, improvement, maintenance and repair of port facilities, port-related projects and property and the duties of the commission with reference thereto.

(2) The application, disposition and investment of proceeds of bonds and other funds held under or pursuant to such trust indenture or agreement.

(3) The rights and remedies of the trustees and the holders of the bonds, including, without limitation, restrictions upon the individual right of action upon such bondholders.

(4) The terms and provisions of the bonds or the resolutions authorizing the issuance of the same.

Section 7. Rights and remedies of obligees.

(a) **General rule.**—Subject to any contractual provisions or restrictions, an obligee shall have the following rights, in addition to any rights and remedies lawfully granted to such obligee:

(1) The right, by mandamus, suit, action or proceeding at law or in equity, to compel the commission and the members, officers, agents or employees thereof to perform each and every term, provision and covenant contained in any bond or contract of the commission with or for the benefit of such obligee and to require the carrying out of any or all such covenants and agreements of the commission and the fulfillment of all duties imposed upon the commission by this act.

(2) The right, by proceeding in equity, to obtain an injunction against any acts or things which may be unlawful or in violation of the rights of such obligee of the commission.

(b) **Receivers.**—The commission shall have the power by its resolution, trust indenture or mortgage to confer upon any obligees holding or representing a specified percentage of bonds the right, in addition to all rights that may otherwise be conferred, upon the happening of an event of default as defined in such resolution or instrument, by suit, action or proceeding in any court of competent jurisdiction, to appoint a receiver of any real property or leasehold interest of the commission and of the rents, profits and receipts therefrom who shall have the authority as the court shall direct:

(1) To enter and take possession of such real property or any leasehold interest.

(2) To maintain such real property or leasehold interests.

(3) To collect and receive all revenues or other income thereafter arising from such real property or leasehold interest and the operation thereof.

(4) To keep and maintain any moneys received under this commission in a separate account and apply the same in accordance with the obligations of the commission as the court shall direct.

(c) **Restrictions.**—Nothing in this section or any other section of this act shall authorize any receiver appointed pursuant to this act for the purpose of operating and maintaining any port facilities, port-related projects or property of the commission to sell, assign, mortgage or otherwise dispose of any of the assets of whatever kind or character belonging to the commission. It is the intention of this act to limit the powers of such receiver to the operation and maintenance of the port facilities, port-related projects and property of the commission as the court shall direct, and no holder or holders of bonds of the commission nor any trustee or other obligee shall ever have the right in any suit, action or proceeding, at law or in equity, to compel a receiver nor shall any receiver ever be authorized or any court be empowered to direct the receiver to sell, assign, mortgage or otherwise dispose of any assets of whatever kind or character belonging to the commission.

(d) **Accounting.**—The resolution, trust indenture or mortgage of the commission may confer upon any obligees holding or representing a specified percentage of bonds the right, in addition to all rights that may other-

wise be conferred, to institute a suit, action or proceeding in any court of competent jurisdiction, upon the happening of an event of default as defined in such resolution or instrument, to require the commission and the members thereof to account as if the commission and such members were the trustees of an express trust.

Section 8. Pledge by Commonwealth.

The Commonwealth does hereby pledge to and agree with any person or the Federal Government subscribing to or acquiring the bonds to be issued by the commission for the construction, extension, improvement or enlargement of any port facility, port-related project or property of the commission, or part thereof, that the Commonwealth will not limit or alter the rights hereby vested in the commission, until all bonds, at any time issued, together with the interest thereon, are fully met and discharged. The Commonwealth does further pledge to and agrees with the Federal Government that in the event that the Federal Government shall construct or contribute any funds for the construction, extension, improvement or enlargement of any port facility, port-related project or property of the commission, or portion thereof, the Commonwealth will not alter or limit the rights and powers of the commission in any manner which would be inconsistent with the continued maintenance and operation of the port facility, port-related project or property of the commission, or the improvement thereof, or which would be inconsistent with the due performance of any agreements between the commission and the Federal Government, and the commission shall continue to have and may exercise all powers herein granted, so long as the same may be necessary or desirable for the carrying out of the purposes of this act and the purposes of the Federal Government and the construction or improvement or enlargement of the port facility, port-related project or property of the commission or such portion thereof.

Section 9. Deposits.

(a) **Payment.**—All moneys of the commission, from whatever source derived, shall be paid to the treasurer of the commission.

(b) **Investments.**—The board shall invest the funds of the commission in a manner consistent with sound business practice. The board shall establish an investment program subject to restrictions contained in this act and in any other applicable statute.

(c) **Authorized investments.**—The funds of the commission may be deposited or invested in the following manner:

(1) Direct obligations of or obligations guaranteed by the United States or the Commonwealth of Pennsylvania.

(2) Any bond, debenture, note, participation certificate or other similar obligation issued by any one or combination of the following agencies: Government National Mortgage Corporation, Federal Land Banks, Federal Home Loan Banks, Federal Intermediate Credit Banks, Banks for Cooperatives, Tennessee Valley Authority, United States Postal Service, Farmers Home Association, the Student Loan Marketing Association and Export-Import Bank of the United States.

(3) Any bond, debenture, note, participation certificate or other similar obligation issued by the Federal National Mortgage Corporation to the extent such obligations are guaranteed by the Government National Mortgage Corporation or issued by any other Federal agency and backed by the full faith and credit of the United States.

(4) Deposits in interest-bearing time or demand deposits or certificates of deposit, fully insured by the Federal Deposit Insurance Corporation, or its successors, or the Federal Savings and Loan Insurance Corporation, or its successors, or fully secured to the extent not so insured by any of the obligations described in paragraphs (1), (2) and (3) which have at all times an aggregate market value exclusive of accrued interest at least equal to the balance on deposit.

(5) Repurchase agreements relating to or investment agreements secured by or providing for the acquisition of and, if applicable, resale of obligations described in paragraphs (1) through (4) or obligations of the Federal Home Loan Mortgage Corporation or Federal National Mortgage Association with:

(i) banks or trust companies (which may include any banking entity or depository);

(ii) brokers or broker-dealers registered under the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. § 78a et seq.) acceptable to the commission; or

(iii) insurance companies rated A+ or better by Best's and having a net capital and surplus of at least \$25,000,000 or certificates of deposit with such banks or trust companies fully secured as to principal and accrued interest by obligations described in paragraphs (1) through (4) deposited with or subject to the control of the commission.

(6) Money market deposit accounts of banks or trust companies having a net capital and surplus of at least \$25,000,000 (which may include any banking entity or depository).

(d) Procedure.—The description of authorized investments in subsection (c)(5) and (6) shall only be met if the agreements referenced therein provide for the repayment of the principal amount invested at an amount not less than that so invested. Whenever security is required as set forth in subsection (c)(4) through (6), such security shall be deposited with the treasurer of the commission or be held by a trustee or agent satisfactory to the commission. Moneys of the commission shall be paid out on the warrant or other order of the chairman of the commission or of such other person or persons as the commission may authorize to execute such warrants or orders.

Section 10. Audits and financial reports.

The books, accounts, records, operations and assets and liabilities of the commission shall be audited annually in accordance with generally accepted auditing standards and principles by an independent certified public accountant. As soon after the end of each fiscal year and the completion of the audit as may be expedient, the commission shall file an annual report and financial statement, which shall include a certified copy of the audit report of the independent certified public accountant, with the Department of Commerce. A

condensed and concise version of the annual financial report shall be published once in the Pennsylvania Bulletin and once a week for two consecutive weeks in at least one newspaper of general circulation within the port district. The Secretary of the Budget, the Auditor General, the Majority Chairman and the Minority Chairman of the Appropriations Committee of the Senate and the Majority Chairman and the Minority Chairman of the Appropriations Committee of the House of Representatives shall have the right to examine, from time to time and at any time, the books, accounts and records of the commission, including, but not limited to, its receipts, disbursements, contracts, leases, sinking funds, investments and other matters relating to the finances, operations and affairs of the commission.

Section 11. Contracts and purchases.

(a) *Building and construction contracts.*—All construction, reconstruction, repairs or work of any nature made by the commission, where the entire cost, value or amount of such construction, reconstruction, repairs or work, including labor and materials, exceeds \$10,000, except construction, reconstruction, repairs or work done by employees of the commission or by labor supplied under agreement with the Federal Government, the Commonwealth or political subdivisions, with supplies and material purchased as provided in this section, shall be done only under contract or contracts to be entered into by the commission with the lowest responsible bidder upon proper terms after due public notice has been given asking for competitive bids as provided in this section. The commission shall have the right to reject any or all bids or select a single item from any bid notwithstanding the provisions of this section. No contract shall be entered into for construction or improvement or repair of any project or portion thereof, unless the contractor provides sufficient surety or sureties approved by the commission, and in an amount fixed by the commission, for the performance of the contract, and has complied with the provisions of the act of December 20, 1967 (P.L. 869, No. 385), known as the Public Works Contractors' Bond Law of 1967. All such contracts shall provide that the person or corporation entering into such contract with the commission 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 that the action is brought within one year after the time the cause of action accrued and without prejudice to any other rights or remedies available pursuant to statute or law. Nothing in this section shall be construed to limit the power of the commission to construct, repair or improve any port facility, port-related project, property or project, or portion thereof, of the commission, or any addition, betterment or extension thereto, directly by the officers and employees of the commission.

(b) *Supplies and materials.*—All supplies and materials costing \$10,000 or more which are to be acquired directly by the commission shall not be purchased unless the commission has published notice, at least ten days before the award of any contract or the making of any purchase, in a newspaper of

general circulation within the port district and in the Pennsylvania Bulletin. The commission shall accept the lowest bid or bids from a responsible bidder, provided that the kind and quality of materials are equal. The commission shall have the right to reject any or all bids or select a single item from any bid. The provisions of this subsection shall not apply to the purchase of any supplies and materials which are unique and which cannot be obtained in the open market.

(c) Exception.—Nothing in this section or in any other law of this Commonwealth shall preclude the negotiation and execution of contracts for management, licensing or leasing of port facilities, port-related projects or any part thereof by the commission upon the approval of a majority of the members of the board. Notice and public advertisement provisions of this section for the purchase of supplies and materials may be waived whenever the commission determines that an emergency exists and that such supplies and materials must be purchased by the commission immediately.

(d) Professional services.—Nothing in this section or any other law shall require the commission to competitively bid legal, accounting, architectural design, engineering, concession¹, construction management or other professional services required by the commission, provided that no contract shall be executed by or on behalf of the commission for such services without first having advertised in a newspaper of general circulation and in the Pennsylvania Bulletin a request for proposals for such services.

Section 12. Exemption from taxes and assessments.

The effectuation of the authorized purposes of the commission created under this act shall and will be in all respects for the benefit of the people of this Commonwealth, for the increase of their commerce and prosperity and for the improvement of their health and living conditions; and since the commission will be performing essential government functions in effectuating such purposes, the commission shall not be required to pay any taxes or assessments upon any property acquired or used by it for such purposes or fees, bridge tolls or other charges imposed or authorized to be imposed by virtue of any law of this Commonwealth, except vehicle registration fees, liquid fuels taxes, fuel use taxes, gross receipts taxes imposed as an excise on the use of public highways and tolls imposed by the Pennsylvania Turnpike Commission. The commission shall have the power to make payments in lieu of taxes or special assessments. The bonds issued by the commission and their transfer and the income therefrom, including any profits made on the sale thereof, shall be free from State and local taxation within this Commonwealth, other than gift, estate, succession or inheritance taxes.

Section 13. Interest of officers and employees.

(a) Criminal conviction.—No person convicted of an infamous crime shall be employed as a management-level employee by the commission.

(b) Restricted activities and financial interests.—The provisions of the act of July 19, 1957 (P.L.1017, No.451), known as the State Adverse Interest Act, and the act of October 4, 1978 (P.L.883, No.170), referred to as the Public Official and Employee Ethics Law, are hereby made specifically applicable to members and officers and employees of the commission. For

¹ "concession services" in enrolled bill.

the purposes of application of such acts, employees of the commission shall be regarded as public employees of the Commonwealth, and members and officers of the commission shall be regarded as public officials of the Commonwealth, whether or not they receive compensation.

(c) Enforcement and penalties.—The employment of any person who violates the provisions of this section shall be terminated immediately by the appropriate person having the power to terminate employment. A person whose employment has been terminated under this provision shall be liable to the commission to reimburse the commission for all compensation received from the commission while employed in violation of this section.

(d) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Infamous crime.” Any violation and conviction for an offense which would disqualify an individual from holding public office pursuant to section 6 of Article II of the Constitution of Pennsylvania or any conviction for a violation of this section or 18 Pa.C.S. § 4113 (relating to misapplication of entrusted property and property of government or financial institutions), 18 Pa.C.S. Ch. 47 (relating to bribery and corrupt influence), 49 (relating to falsification and intimidation), 51 (relating to obstructing governmental operations) or 53 (relating to abuse of office) or any other violation of the laws of this Commonwealth for which an individual has been convicted within the preceding ten years and which is classified as a felony and any similar violations of the laws of the Federal Government or any other state.

“Management-level commission employee.” The chairman of the commission, members, legal counsel employed by the commission, the executive director of the commission and any commission employee with discretionary powers which may affect the outcome of a decision of the commission in relation to a private corporation or business or any employee who by virtue of job function could influence the outcome of such a decision.

“Person.” An individual, union, committee, club, corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint-stock company, receivership, trust or any legal entity organized for profit or as a not-for-profit corporation or organization or other organization or group of persons.

Section 14. Nondiscrimination.

The commission shall comply in all regards with the nondiscrimination and contract compliance plans used by the Department of General Services to assure that all persons are accorded equality of opportunity in employment and contracting by the commission and its contractors, subcontractors, assignees, lessees, agents, vendors and suppliers.

Section 15. Political subdivision cooperation.

In addition and as a supplement to the powers conferred by any other law upon a political subdivision, a political subdivision may, upon such terms, with or without consideration, as it may determine, for the purpose of aiding and cooperating with the commission in the planning, acquisition, clearance,

relocation, development, design, construction, rehabilitation, leasing, sub-leasing, alteration, expansion, financing, improvement, management of a port facility, port-related project or parts thereof:

(1) Dedicate, sell, convey, lease or otherwise transfer any of its property or any interest therein, real, personal or mixed, tangible or intangible, to the commission.

(2) Cause parking, recreational or community facilities, or any other works which it is otherwise empowered to undertake, to be furnished to a port facility, port-related project or part thereof or in or adjacent to any area adjacent to a port facility, port-related project or parts thereof.

(3) Furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roadways, roads, alleys, sidewalks or other places which it is otherwise empowered to do and which are located adjacent to a port facility, port-related project or parts thereof or adjacent to any area adjacent to a port facility, port-related project or parts thereof.

(4) Enter into agreements, extending over any period of time, with the commission or with the Federal Government with respect to any action taken or to be taken by the commission.

(5) Do any and all things necessary or convenient to aid and cooperate in the development, acquisition, design, construction, improvement, maintenance, management, furnishing, fixturing, equipping, repairing, financing, owning, leasing and subleasing of a port facility, port-related project or parts thereof.

(6) Incur the entire expense of any public improvements made by the commission in the exercise of the powers granted to the commission by this act.

(7) Contract with the commission for the improvements, services and facilities to be provided for the benefit of the commission, port facilities, port-related projects or parts thereof or persons occupying such areas, provided that this provision shall not release the political subdivision from the duty to furnish, for the benefit of the commission, port facilities, port-related projects or parts thereof or the persons occupying such areas, customary improvements and such services and facilities as the political subdivision usually furnishes without a service fee.

Section 16. Interim governing body.

The persons who on the day immediately preceding the effective date of this act were members of the governing body of the Port of Pittsburgh Commission established by the act of December 19, 1990 (P.L.827, No.197), known as the Port of Pittsburgh Commission Act, shall collectively be deemed to be the governing body of the Port of Pittsburgh Commission for all purposes of this act and shall have full legal capacity to act as such and exercise all of the powers, duties and functions of the commission pursuant to and in conformance with this act until such time as a quorum of the initial appointments authorized to be made to the governing body of the Port of Pittsburgh Commission occurs¹.

¹ "occurs" omitted in enrolled bill.

Section 17. Transfers.

All allocations, appropriations, equipment, files, records, contracts, agreements, obligations and other materials which are used, employed or expended in connection with the powers, duties or functions of the Port of Pittsburgh Commission under the act of December 19, 1990 (P.L.827, No.197), known as the Port of Pittsburgh Commission Act, are hereby transferred to the Port of Pittsburgh Commission created by this act with the same force and effect as if the allocations and appropriations had been made to and said items had been the property of the Port of Pittsburgh Commission in the first instance and as if the contracts, agreements and obligations had been incurred or entered into by the Port of Pittsburgh Commission.

Section 18. Repeals.

The act of December 19, 1990 (P.L.827, No.197), known as the Port of Pittsburgh Commission Act, is repealed.

Section 19. Effective date.

This act shall take effect immediately.

APPROVED—The 14th day of December, A. D. 1992.

ROBERT P. CASEY