

No. 2000-140

AN ACT

HB 2149

Amending the act of December 14, 1992 (P.L.818, No.133), entitled "An act establishing the Port of Pittsburgh Commission; providing for its powers and duties; and making a repeal," further providing for specific powers of the commission; providing for economic development projects; and further providing for rights of obligees and for contracts and purchases.

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

Section 1. Section 5(b)(23) of the act of December 14, 1992 (P.L.818, No.133), known as the Port of Pittsburgh Commission Act, is amended to read:

Section 5. Powers.

* * *

(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:

* * *

(23) **[To] Subject to the provisions of section 5.1, 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 commission 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.**

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Section 2. The act is amended by adding a section to read:
Section 5.1. Economic development projects.

When the commission undertakes the development of a port facility, port-related project or recreation project and the commission agrees to lease, lease with option or contract to purchase, sell or otherwise make available to a third party the port facility, port-related project or recreation project, the third party shall pay the commission an amount that is sufficient to pay all of the principal and interest on any bonds, notes or other evidence of indebtedness issued by the commission to finance the port facility, port-related project or recreation project, an amount which the board finds to be reasonable in light of the economic benefits that will result from the project or an amount which is

reasonable and proper under the circumstances. Bonds, notes or other evidence of indebtedness issued by the commission with respect to a port facility, port-related project or recreation project under this section shall be limited obligations of the commission payable solely out of any revenues received by the commission with respect to the port facility, port-related project or recreation project, including, but not limited to, the payments received from the third party under this section, and the interest of the commission in the port facility, port-related project or recreation project, if any. The provisions of sections 5(b)(23), 7(c) and 11(a) shall not apply to a port facility, port-related project or recreation project developed under this section.

Section 3. Sections 7(c) and 11 of the act are amended to read:

Section 7. Rights and remedies of obligees.

* * *

(c) Restrictions.—[Nothing] *Except as otherwise provided in section 5.1, 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.

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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. *Nothing in this section or in any other law of this Commonwealth with respect to construction, reconstruction, repairs or work of any nature done by a Commonwealth or government agency shall apply to a port facility, port-related project or recreation project developed under section 5.1. However, a port facility, port-related project or recreation project undertaken under section 5.1 shall be subject to all laws governing private construction activities.*

(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] *according to the provisions of 62 Pa.C.S. (relating to procurement)*. 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. *Nothing in this section or in any other law of this Commonwealth with respect to the purchase of supplies and materials shall apply to a port facility, port-related project or recreation project developed under section 5.1.*

(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[.] *or whenever the contract involves a port facility, port-related project or recreational project under section 5.1.*

(d) Professional services.—Nothing in this section or any other law shall require the commission to competitively bid legal, accounting, architectural design, engineering, concession, construction management or other professional services required by the commission, provided that no contract, *other than a contract relating to a port facility, port-related project or recreation project developed under section 5.1,* 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] *according to the provisions of 62 Pa.C.S.*

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

APPROVED—The 20th day of December, A.D. 2000.

THOMAS J. RIDGE