

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 289

Session of
2011

INTRODUCED BY M. K. KELLER, AUMENT, BAKER, BEAR, BENNINGHOFF, BLOOM, BOBACK, BOYD, BROOKS, CAUSER, CHRISTIANA, CLYMER, COX, CREIGHTON, CUTLER, DELOZIER, DENLINGER, ELLIS, EVERETT, FARRY, FLECK, GABLER, GEIST, GILLESPIE, GINGRICH, GRELL, GROVE, HALUSKA, HARHART, HARPER, HARRIS, HELM, HENNESSEY, HESS, HICKERNELL, KAUFFMAN, KILLION, KNOWLES, MAJOR, MARSHALL, MARSICO, MASSER, METCALFE, MILLARD, MILLER, MOUL, OBERLANDER, O'NEILL, PAYNE, PEIFER, PERRY, PICKETT, PYLE, QUIGLEY, QUINN, RAPP, REED, REICHLEY, ROAE, ROCK, ROSS, SAYLOR, SCAVELLO, CULVER, SCHRODER, SIMMONS, SONNEY, STERN, STEVENSON, SWANGER, TALLMAN, TOBASH, TRUITT, TURZAI, VEREB, VULAKOVICH, WATSON AND F. KELLER, JANUARY 27, 2011

SENATOR EICHELBERGER, LOCAL GOVERNMENT, IN SENATE, AS AMENDED,
SEPTEMBER 27, 2011

AN ACT

1 Amending the act of August 6, 1936 (Sp.Sess., P.L.95, No.38
2 1/2), entitled "An act to authorize and empower cities,
3 boroughs, towns, and townships, separately or jointly, to
4 provide for protection against floods by erecting and
5 constructing certain works and improvements, located within
6 or without their territorial limits, and within or without
7 the county in which situate; and to expend moneys and incur
8 indebtedness; to assess benefits against property benefited;
9 to issue improvement bonds imposing no municipal liability;
10 and to acquire, take, injure or destroy property for such
11 purposes," further providing for competitive bidding of
12 contracts.

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

15 ~~Section 1. Section 3 of the act of August 6, 1936 (Sp.Sess.,~~ ←
16 ~~P.L.95, No.38 1/2), entitled "An act to authorize and empower~~
17 ~~cities, boroughs, towns, and townships, separately or jointly,~~

~~to provide for protection against floods by erecting and constructing certain works and improvements, located within or without their territorial limits, and within or without the county in which situate; and to expend moneys and incur indebtedness; to assess benefits against property benefited; to issue improvement bonds imposing no municipal liability; and to acquire, take, injure or destroy property for such purposes,"~~
~~amended July 10, 1990 (P.L.402, No.97), is amended to read:~~

~~Section 3. (a) No such works or improvements, involving an expenditure by any municipality or municipalities of more than [ten thousand dollars (\$10,000)] the base amount of twenty five thousand dollars (\$25,000), subject to adjustment under subsection (b.1), shall be erected, constructed or provided, except by contract let to the lowest responsible bidder after due advertisement, once a week for two successive weeks in at least one newspaper of general circulation: Provided, however, That no contract shall be required to be let for the performance of the work on any such work or improvement where the cost of the labor shall be paid by the Federal Government, or any agency thereof, without cost to the municipality or municipalities.~~

~~(b) 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)] the base amount of ten thousand dollars (\$10,000), subject to adjustment under subsection (b.1), 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~~

1 ~~shall contain at least the date of the quotation, the name of~~
2 ~~the contractor and the contractor's representative, the~~
3 ~~construction, reconstruction, repair, maintenance or work which~~
4 ~~was the subject of the quotation and the price. Written price~~
5 ~~quotations, written records of telephonic price quotations and~~
6 ~~memoranda shall be retained for a period of three years.~~

7 ~~(b.1) Adjustments to the base amounts specified under~~
8 ~~subsections (a) and (b) shall be made as follows:~~

9 ~~(1) The Department of Labor and Industry shall determine the~~
10 ~~percentage change in the All Items Consumer Price Index for All~~
11 ~~Urban Consumers (CPI-U) for the United States City Average as~~
12 ~~published by the United States Department of Labor, Bureau of~~
13 ~~Labor Statistics for the twelve month period ending September 30~~
14 ~~of the calendar year in which this subsection becomes effective,~~
15 ~~and for each successive twelve month period thereafter.~~

16 ~~(2) If the department determines that there is no positive~~
17 ~~percentage change, then no adjustment to the base amounts shall~~
18 ~~occur for the relevant time period provided for in this~~
19 ~~subsection.~~

20 ~~(3) (i) If the department determines that there is a~~
21 ~~positive percentage change in the first year that the~~
22 ~~determination is made under paragraph (1), the positive~~
23 ~~percentage change shall be multiplied by each base amount and~~
24 ~~the products shall be added to the base amounts, respectively,~~
25 ~~and the sums shall be preliminary adjusted amounts.~~

26 ~~(ii) The preliminary adjusted amounts shall be rounded to~~
27 ~~the nearest one thousand dollars (\$1,000), to determine the~~
28 ~~final adjusted base amounts for purposes of subsections (a) and~~
29 ~~(b).~~

30 ~~(4) In each successive year in which there is a positive~~

~~percentage change in the CPI-U for the United States City-Average, the positive percentage change shall be multiplied by the most recent preliminary adjusted amounts and the products shall be added to the most recent preliminary adjusted amounts, respectively. The sums thereof shall be rounded to the nearest one thousand dollars (\$1,000) to determine the new final adjusted base amounts for purposes of subsections (a) and (b).~~

~~(5) The determinations and adjustments required under this subsection shall be made in the period between October 1 and November 15 of the year following the effective date of this subsection, and annually between October 1 and November 15 of each year thereafter.~~

~~(6) The final adjusted base amounts and new final adjusted base amounts obtained under paragraphs (3) and (4) shall become effective January 1 for the calendar year following the year in which the determination required under paragraph (1) is made.~~

~~(7) The department shall publish notice in the Pennsylvania Bulletin prior to January 1 of each calendar year of the annual percentage change determined under paragraph (1) and the unadjusted or final adjusted base amounts determined under paragraphs (3) and (4) at which competitive bidding is required under subsection (a) and written or telephonic price quotations are required under subsection (b), respectively, for the calendar year beginning the first day of January after publication of the notice. The notice shall include a written and illustrative explanation of the calculations performed by the department in establishing the unadjusted or final adjusted base amounts under this subsection for the ensuing calendar year.~~

~~(c) No municipality shall evade the provisions of this~~

~~section as to advertising for bids or purchasing materials or contracting for services piecemeal for the purpose of obtaining prices under [ten thousand dollars (\$10,000)] the amount required by this section 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)] the amount required by this section. This provision is intended to make unlawful the practice of evading advertising 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.~~

~~(d) Any member of a governing body of a municipality 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 a 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.~~

~~(e) Every contract for the construction, reconstruction, alteration, repair, improvement or maintenance of public works shall comply with the provisions of the act of March 3, 1978 (P.L.6, No.3), known as the "Steel Products Procurement Act."~~

~~Section 2. The amendment of section 3 of the act shall apply to contracts and purchases advertised after December 31 of the year in which this section takes effect.~~

~~Section 3. This act shall take effect immediately.~~

~~SECTION 1. SECTION 3 OF THE ACT OF AUGUST 6, 1936 (SP.SESS., P.L.95, NO.38 1/2), ENTITLED "AN ACT TO AUTHORIZE AND EMPOWER~~



1 CITIES, BOROUGH, TOWNS, AND TOWNSHIPS, SEPARATELY OR JOINTLY,
2 TO PROVIDE FOR PROTECTION AGAINST FLOODS BY ERECTING AND
3 CONSTRUCTING CERTAIN WORKS AND IMPROVEMENTS, LOCATED WITHIN OR
4 WITHOUT THEIR TERRITORIAL LIMITS, AND WITHIN OR WITHOUT THE
5 COUNTY IN WHICH SITUATE; AND TO EXPEND MONEYS AND INCUR
6 INDEBTEDNESS; TO ASSESS BENEFITS AGAINST PROPERTY BENEFITED; TO
7 ISSUE IMPROVEMENT BONDS IMPOSING NO MUNICIPAL LIABILITY; AND TO
8 ACQUIRE, TAKE, INJURE OR DESTROY PROPERTY FOR SUCH PURPOSES,"
9 AMENDED JULY 10, 1990 (P.L.402, NO.97), IS AMENDED TO READ:

10 SECTION 3. (A) NO SUCH WORKS OR IMPROVEMENTS, INVOLVING
11 [AN] EXPENDITURE BY ANY MUNICIPALITY OR MUNICIPALITIES OF MORE
12 THAN [TEN THOUSAND DOLLARS (\$10,000)] THE BASE AMOUNT OF
13 EIGHTEEN THOUSAND FIVE HUNDRED DOLLARS (\$18,500), SUBJECT TO
14 ADJUSTMENT UNDER SUBSECTION (B.1), SHALL BE ERECTED, CONSTRUCTED
15 OR PROVIDED, EXCEPT BY CONTRACT LET TO THE LOWEST RESPONSIBLE
16 BIDDER AFTER DUE ADVERTISEMENT, ONCE A WEEK FOR TWO SUCCESSIVE
17 WEEKS IN AT LEAST ONE NEWSPAPER OF GENERAL CIRCULATION:
18 PROVIDED, HOWEVER, THAT NO CONTRACT SHALL BE REQUIRED TO BE LET
19 FOR THE PERFORMANCE OF THE WORK ON ANY SUCH WORK OR IMPROVEMENT
20 WHERE THE COST OF THE LABOR SHALL BE PAID BY THE FEDERAL
21 GOVERNMENT, OR ANY AGENCY THEREOF, WITHOUT COST TO THE
22 MUNICIPALITY OR MUNICIPALITIES.

23 (B) WRITTEN OR TELEPHONIC PRICE QUOTATIONS FROM AT LEAST
24 THREE QUALIFIED AND RESPONSIBLE CONTRACTORS SHALL BE REQUESTED
25 FOR ALL CONTRACTS [THAT EXCEED FOUR THOUSAND DOLLARS (\$4,000)]
26 IN EXCESS OF THE BASE AMOUNT OF TEN THOUSAND DOLLARS (\$10,000),
27 SUBJECT TO ADJUSTMENT UNDER SUBSECTION (B.1), BUT ARE LESS THAN
28 THE AMOUNT REQUIRING ADVERTISEMENT AND COMPETITIVE BIDDING OR,
29 IN LIEU OF PRICE QUOTATIONS, A MEMORANDUM SHALL BE KEPT ON FILE
30 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.

(B.1) ADJUSTMENTS TO THE BASE AMOUNTS SPECIFIED UNDER
SUBSECTIONS (A) AND (B) SHALL BE MADE AS FOLLOWS:

(1) THE DEPARTMENT OF LABOR AND INDUSTRY SHALL DETERMINE THE
PERCENTAGE CHANGE IN THE ALL ITEMS CONSUMER PRICE INDEX FOR ALL
URBAN CONSUMERS (CPI-U) FOR THE UNITED STATES CITY AVERAGE AS
PUBLISHED BY THE UNITED STATES DEPARTMENT OF LABOR, BUREAU OF
LABOR STATISTICS FOR THE TWELVE-MONTH PERIOD ENDING SEPTEMBER
30, 2012, AND FOR EACH SUCCESSIVE TWELVE-MONTH PERIOD
THEREAFTER.

(2) IF THE DEPARTMENT DETERMINES THAT THERE IS NO POSITIVE
PERCENTAGE CHANGE, THEN NO ADJUSTMENT TO THE BASE AMOUNTS SHALL
OCCUR FOR THE RELEVANT TIME PERIOD PROVIDED FOR IN THIS
SUBSECTION.

(3) (I) IF THE DEPARTMENT DETERMINES THAT THERE IS A
POSITIVE PERCENTAGE CHANGE IN THE FIRST YEAR THAT THE
DETERMINATION IS MADE UNDER PARAGRAPH (1), THE POSITIVE
PERCENTAGE CHANGE SHALL BE MULTIPLIED BY EACH BASE AMOUNT AND
THE PRODUCTS SHALL BE ADDED TO THE BASE AMOUNTS, RESPECTIVELY,
AND THE SUMS SHALL BE PRELIMINARY ADJUSTED AMOUNTS.

(II) THE PRELIMINARY ADJUSTED AMOUNTS SHALL BE ROUNDED TO
THE NEAREST ONE HUNDRED DOLLARS (\$100), TO DETERMINE THE FINAL
ADJUSTED BASE AMOUNTS FOR PURPOSES OF SUBSECTIONS (A) AND (B).

1 (4) IN EACH SUCCESSIVE YEAR IN WHICH THERE IS A POSITIVE
2 PERCENTAGE CHANGE IN THE CPI-U FOR THE UNITED STATES CITY
3 AVERAGE, THE POSITIVE PERCENTAGE CHANGE SHALL BE MULTIPLIED BY
4 THE MOST RECENT PRELIMINARY ADJUSTED AMOUNTS AND THE PRODUCTS
5 SHALL BE ADDED TO THE PRELIMINARY ADJUSTED AMOUNT OF THE PRIOR
6 YEAR TO CALCULATE THE PRELIMINARY ADJUSTED AMOUNTS FOR THE
7 CURRENT YEAR. THE SUMS THEREOF SHALL BE ROUNDED TO THE NEAREST
8 ONE HUNDRED DOLLARS (\$100) TO DETERMINE THE NEW FINAL ADJUSTED
9 BASE AMOUNTS FOR PURPOSES OF SUBSECTIONS (A) AND (B).

10 (5) THE DETERMINATIONS AND ADJUSTMENTS REQUIRED UNDER THIS
11 SUBSECTION SHALL BE MADE IN THE PERIOD BETWEEN OCTOBER 1 AND
12 NOVEMBER 15 OF THE YEAR FOLLOWING THE EFFECTIVE DATE OF THIS
13 SUBSECTION, AND ANNUALLY BETWEEN OCTOBER 1 AND NOVEMBER 15 OF
14 EACH YEAR THEREAFTER.

15 (6) THE FINAL ADJUSTED BASE AMOUNTS AND NEW FINAL ADJUSTED
16 BASE AMOUNTS OBTAINED UNDER PARAGRAPHS (3) AND (4) SHALL BECOME
17 EFFECTIVE JANUARY 1 FOR THE CALENDAR YEAR FOLLOWING THE YEAR IN
18 WHICH THE DETERMINATION REQUIRED UNDER PARAGRAPH (1) IS MADE.

19 (7) THE DEPARTMENT SHALL PUBLISH NOTICE IN THE PENNSYLVANIA
20 BULLETIN PRIOR TO JANUARY 1 OF EACH CALENDAR YEAR OF THE ANNUAL
21 PERCENTAGE CHANGE DETERMINED UNDER PARAGRAPH (1) AND THE
22 UNADJUSTED OR FINAL ADJUSTED BASE AMOUNTS DETERMINED UNDER
23 PARAGRAPHS (3) AND (4) AT WHICH COMPETITIVE BIDDING IS REQUIRED
24 UNDER SUBSECTION (A) AND WRITTEN OR TELEPHONIC PRICE QUOTATIONS
25 ARE REQUIRED UNDER SUBSECTION (B), RESPECTIVELY, FOR THE
26 CALENDAR YEAR BEGINNING THE FIRST DAY OF JANUARY AFTER
27 PUBLICATION OF THE NOTICE. THE NOTICE SHALL INCLUDE A WRITTEN
28 AND ILLUSTRATIVE EXPLANATION OF THE CALCULATIONS PERFORMED BY
29 THE DEPARTMENT IN ESTABLISHING THE UNADJUSTED OR FINAL ADJUSTED
30 BASE AMOUNTS UNDER THIS SUBSECTION FOR THE ENSUING CALENDAR

1 YEAR.

2 (8) THE ANNUAL INCREASE IN THE PRELIMINARY ADJUSTED BASE
3 AMOUNTS OBTAINED UNDER PARAGRAPHS (3) AND (4) SHALL NOT EXCEED
4 THREE PER CENTUM.

5 (C) NO MUNICIPALITY SHALL EVADE THE PROVISIONS OF THIS
6 SECTION AS TO ADVERTISING FOR BIDS OR PURCHASING MATERIALS OR
7 CONTRACTING FOR SERVICES PIECEMEAL FOR THE PURPOSE OF OBTAINING
8 PRICES UNDER [TEN THOUSAND DOLLARS (\$10,000)] THE AMOUNT
9 REQUIRED BY THIS SECTION UPON TRANSACTIONS WHICH SHOULD, IN THE
10 EXERCISE OF REASONABLE DISCRETION AND PRUDENCE, BE CONDUCTED AS
11 ONE TRANSACTION AMOUNTING TO MORE THAN [TEN THOUSAND DOLLARS
12 (\$10,000)] THE AMOUNT REQUIRED BY THIS SECTION. THIS PROVISION
13 IS INTENDED TO MAKE UNLAWFUL THE PRACTICE OF EVADING ADVERTISING
14 REQUIREMENTS BY MAKING A SERIES OF PURCHASES OR CONTRACTS EACH
15 FOR LESS THAN THE ADVERTISING REQUIREMENT PRICE OR BY MAKING
16 SEVERAL SIMULTANEOUS PURCHASES OR CONTRACTS EACH BELOW SAID
17 PRICE, WHEN IN EITHER CASE THE TRANSACTION INVOLVED SHOULD HAVE
18 BEEN MADE AS ONE TRANSACTION FOR ONE PRICE.

19 (D) ANY MEMBER OF A GOVERNING BODY OF A MUNICIPALITY WHO
20 VOTES TO UNLAWFULLY EVADE THE PROVISIONS OF THIS SECTION AND WHO
21 KNOWS THAT THE TRANSACTION UPON WHICH HE SO VOTES IS OR OUGHT TO
22 BE A PART OF A LARGER TRANSACTION AND THAT IT IS BEING DIVIDED
23 IN ORDER TO EVADE THE REQUIREMENTS AS TO ADVERTISING FOR BIDS
24 COMMITS A MISDEMEANOR OF THE THIRD DEGREE FOR EACH CONTRACT
25 ENTERED INTO AS A DIRECT RESULT OF THAT VOTE.

26 (E) EVERY CONTRACT FOR THE CONSTRUCTION, RECONSTRUCTION,
27 ALTERATION, REPAIR, IMPROVEMENT OR MAINTENANCE OF PUBLIC WORKS
28 SHALL COMPLY WITH THE PROVISIONS OF THE ACT OF MARCH 3, 1978
29 (P.L.6, NO.3), KNOWN AS THE "STEEL PRODUCTS PROCUREMENT ACT."

30 SECTION 2. THE AMENDMENT OF SECTION 3 OF THE ACT SHALL APPLY

1 TO CONTRACTS AND PURCHASES ADVERTISED AFTER DECEMBER 31 OF THE
2 YEAR IN WHICH THIS SECTION TAKES EFFECT.

3 SECTION 3. THIS ACT SHALL TAKE EFFECT IMMEDIATELY.