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 THE GENERAL ASSEMBLY OF PENNSYLVANIA
 

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 HOUSE BILL
 

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 No. 289 Session of  
2011
 

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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

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

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## 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,~~

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

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

21       ~~(b) Written or telephonic price quotations from at least~~  
22 ~~three qualified and responsible contractors shall be requested~~  
23 ~~for all contracts that exceed [four thousand dollars (\$4,000)]~~  
24 ~~the base amount of ten thousand dollars (\$10,000), subject to~~  
25 ~~adjustment under subsection (b.1), but are less than the amount~~  
26 ~~requiring advertisement and competitive bidding or, in lieu of~~  
27 ~~price quotations, a memorandum shall be kept on file showing~~  
28 ~~that fewer than three qualified contractors exist in the market~~  
29 ~~area within which it is practicable to obtain quotations. A~~  
30 ~~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~~

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

~~8 (5) The determinations and adjustments required under this-  
9 subsection shall be made in the period between October 1 and-  
10 November 15 of the year following the effective date of this-  
11 subsection, and annually between October 1 and November 15 of-  
12 each year thereafter.~~

~~13 (6) The final adjusted base amounts and new final adjusted-  
14 base amounts obtained under paragraphs (3) and (4) shall become-  
15 effective January 1 for the calendar year following the year in-  
16 which the determination required under paragraph (1) is made.~~

~~17 (7) The department shall publish notice in the Pennsylvania-  
18 Bulletin prior to January 1 of each calendar year of the annual-  
19 percentage change determined under paragraph (1) and the-  
20 unadjusted or final adjusted base amounts determined under-  
21 paragraphs (3) and (4) at which competitive bidding is required-  
22 under subsection (a) and written or telephonic price quotations-  
23 are required under subsection (b), respectively, for the-  
24 calendar year beginning the first day of January after-  
25 publication of the notice. The notice shall include a written-  
26 and illustrative explanation of the calculations performed by-  
27 the department in establishing the unadjusted or final adjusted-  
28 base amounts under this subsection for the ensuing calendar-  
29 year.~~

~~30 (c) No municipality shall evade the provisions of this-~~

~~1 section as to advertising for bids or purchasing materials or  
2 contracting for services piecemeal for the purpose of obtaining  
3 prices under [ten thousand dollars (\$10,000)] the amount  
4 required by this section upon transactions which should, in the  
5 exercise of reasonable discretion and prudence, be conducted as  
6 one transaction amounting to more than [ten thousand dollars  
7 (\$10,000)] the amount required by this section. This provision  
8 is intended to make unlawful the practice of evading advertising  
9 requirements by making a series of purchases or contracts each  
10 for less than the advertising requirement price or by making  
11 several simultaneous purchases or contracts each below said  
12 price, when in either case the transaction involved should have  
13 been made as one transaction for one price.~~

~~14 (d) Any member of a governing body of a municipality who  
15 votes to unlawfully evade the provisions of this section and who  
16 knows that the transaction upon which he so votes is or ought to  
17 be a part of a larger transaction and that it is being divided  
18 in order to evade the requirements as to advertising for bids  
19 commits a misdemeanor of the third degree for each contract  
20 entered into as a direct result of that vote.~~

~~21 (e) Every contract for the construction, reconstruction,  
22 alteration, repair, improvement or maintenance of public works  
23 shall comply with the provisions of the act of March 3, 1978  
24 (P.L.6, No.3), known as the "Steel Products Procurement Act."~~

~~25 Section 2. The amendment of section 3 of the act shall apply  
26 to contracts and purchases advertised after December 31 of the  
27 year in which this section takes effect.~~

~~28 Section 3. This act shall take effect immediately.~~

29 SECTION 1. SECTION 3 OF THE ACT OF AUGUST 6, 1936 (SP.SESS.,  
30 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

1 MARKET AREA WITHIN WHICH IT IS PRACTICABLE TO OBTAIN QUOTATIONS.  
2 A WRITTEN RECORD OF TELEPHONIC PRICE QUOTATIONS SHALL BE MADE  
3 AND SHALL CONTAIN AT LEAST THE DATE OF THE QUOTATION, THE NAME  
4 OF THE CONTRACTOR AND THE CONTRACTOR'S REPRESENTATIVE, THE  
5 CONSTRUCTION, RECONSTRUCTION, REPAIR, MAINTENANCE OR WORK WHICH  
6 WAS THE SUBJECT OF THE QUOTATION AND THE PRICE. WRITTEN PRICE  
7 QUOTATIONS, WRITTEN RECORDS OF TELEPHONIC PRICE QUOTATIONS AND  
8 MEMORANDA SHALL BE RETAINED FOR A PERIOD OF THREE YEARS.

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

11 (1) THE DEPARTMENT OF LABOR AND INDUSTRY SHALL DETERMINE THE  
12 PERCENTAGE CHANGE IN THE ALL ITEMS CONSUMER PRICE INDEX FOR ALL  
13 URBAN CONSUMERS (CPI-U) FOR THE UNITED STATES CITY AVERAGE AS  
14 PUBLISHED BY THE UNITED STATES DEPARTMENT OF LABOR, BUREAU OF  
15 LABOR STATISTICS FOR THE TWELVE-MONTH PERIOD ENDING SEPTEMBER  
16 30, 2012, AND FOR EACH SUCCESSIVE TWELVE-MONTH PERIOD  
17 THEREAFTER.

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

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

28 (II) THE PRELIMINARY ADJUSTED AMOUNTS SHALL BE ROUNDED TO  
29 THE NEAREST ONE HUNDRED DOLLARS (\$100), TO DETERMINE THE FINAL  
30 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.