

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 328 Session of 2009

INTRODUCED BY EICHELBERGER, SCARNATI, PILEGGI, MUSTO, ROBBINS, STOUT, FOLMER, ORIE, SMUCKER, BROWNE, PICCOLA, BRUBAKER, CORMAN, FERLO, KASUNIC, BAKER, EARLL, GORDNER, RAFFERTY, ERICKSON, WONDERLING, M. WHITE, GREENLEAF, PIPPY, ALLOWAY, BOSCOLA AND O'PAKE, FEBRUARY 20, 2009

REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY, FEBRUARY 20, 2009

AN ACT

1 Amending the act of August 7, 1936 (1st Sp.Sess., P.L.106, No.
2 46), entitled, as reenacted and amended, "An act relating to
3 flood control; prescribing the powers and duties of the Water
4 and Power Resources Board of the Department of Forests and
5 Waters in relation to the creation of flood control
6 districts, adoption of plans for flood control works and
7 improvements, carrying into effect of such plans, assistance,
8 aid and cooperation with public and private agencies and the
9 Federal Government in Federal flood control works and
10 improvements, and entering into compacts and agreements with
11 other states for flood control works and improvements;
12 conferring the power of eminent domain; providing for the
13 setting off of benefits; imposing certain charges upon the
14 Commonwealth; providing for appeals; and conferring certain
15 powers on municipalities, counties, and townships, and the
16 Department of Highways," further providing for contracts and
17 acquisition of property; and providing for annual adjustment
18 and for evasion of advertising requirements.

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

21 Section 1. Section 10 of the act of August 7, 1936 (1st
22 Sp.Sess., P.L.106, No.46), referred to as the Flood Control Law,
23 reenacted and amended March 10, 1937 (P.L.43, No.18) and amended
24 December 22, 1981 (P.L.551, No.162), is amended to read:

1 Section 10. Contracts and Acquisition of Property.--All work
2 of any character whatever performed by the board under the
3 authority of this act, except as hereinafter provided, in
4 connection with any State public flood control works and
5 improvements, involving an expenditure of more than [four
6 thousand dollars] twenty-five thousand dollars subject to annual
7 adjustment under section 10.1, shall be performed under written
8 contract let by the board to the lowest responsible bidder after
9 due advertisement as prescribed by the board; except, however,
10 that the board may, with the approval of the Governor, enter
11 into contracts or agreements, without advertisement, with any
12 person, corporation or municipality, covering the removal or
13 relocation of gas, water, and telephone, telegraph, electric
14 light, and electric power lines, highways, railroads, or other
15 facilities, and providing therein for said removal or relocation
16 by the person, corporation or municipality owning such facility.
17 The board may, with the approval of the Governor, acquire any
18 necessary easements and rights-of-way and may pay all costs and
19 damages necessary, arising from and incidental to said removal
20 or relocation. Payment shall be made from the General Fund
21 Appropriations for Flood Control Projects.

22 The board may sell, lease, or otherwise dispose of all
23 property, real, personal or mixed, acquired under the provisions
24 of this act, not needed by the Commonwealth for reservoir or
25 flood control purposes, subject to the approval of the Governor.
26 The moneys received through such sale, lease or other
27 disposition shall accrue to the General Fund.

28 Every contract for the construction, reconstruction,
29 alteration, repair, improvement or maintenance of public works
30 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 act is amended by adding sections to read:

Section 10.1. Annual Adjustment.--(a) Annually, beginning with the year in which this subsection becomes applicable to contracts and purchases, the Department of Labor and Industry shall calculate the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U) for the United States city average for all items as published by the United States Department of Labor, Bureau of Labor Statistics, for the twelve-month average ending in September of the prior year.

(b) The amount at which competitive bidding is required under section 10 shall be adjusted annually. The positive percentage change, as determined in accordance with subsection (a), shall be multiplied by the amount applicable under section 10 for the current year and the product thereof shall be added to the amount applicable under section 10 for the current year, with the result rounded to the nearest multiple of ten dollars.

(c) The annual determination required under subsection (a) and the calculation of the adjustments required under subsection (b) shall be made in the period between October 1 and November 15 of the year following the effective date of this section, and annually between October 1 and November 15 of each successive year.

(d) The adjusted amounts obtained in accordance with subsection (b) shall become effective January 1 for the calendar year following the year in which the determination required under subsection (a) is made.

(e) The Department of Labor and Industry shall give notice in the Pennsylvania Bulletin prior to January 1 of each calendar year of the annual percentage change determined in accordance

1 with subsection (a) and the amounts, whether adjusted or
2 unadjusted in accordance with subsection (b), at which
3 competitive bidding is required under section 10 for the
4 calendar year beginning the first day of January after
5 publication of the notice.

6 Section 10.2. Evasion of Advertising Requirements.--No board
7 member shall evade the provisions of section 10 as to
8 advertising for bids, by purchasing or contracting for services
9 and personal properties piecemeal to obtain prices under the
10 required advertising price, subject to annual adjustment under
11 section 10.1. This provision is intended to make unlawful the
12 evading of advertising requirements by making a series of
13 purchases or contracts each for less than the advertising
14 requirement price, or by making several simultaneous purchases
15 or contracts, each below said price, when in either case, the
16 transactions involved should have been made as one transaction
17 for one price. Any board members who so vote in violation of
18 this provision, and who know that the transaction upon which
19 they so vote is or ought to be a part of a larger transaction,
20 and that it is being divided in order to evade the requirements
21 as to advertising for bids, shall be jointly and severally
22 subject to surcharge for ten percent of the full amount of the
23 contract or purchase. Whenever it shall appear that a board
24 member may have voted in violation of this section, but the
25 purchase or contract on which the member so voted was not
26 approved by the board, this section shall be inapplicable.

27 Section 3. This act shall apply to contracts and purchases
28 advertised on or after January 1 of the year following the
29 effective date of this section.

30 Section 4. This act shall take effect immediately.