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 THE GENERAL ASSEMBLY OF PENNSYLVANIA
 

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# HOUSE BILL

No. 282 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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AS REPORTED FROM COMMITTEE ON LOCAL GOVERNMENT, HOUSE OF REPRESENTATIVES, AS AMENDED, APRIL 5, 2011

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## AN ACT

1 Amending the act of May 27, 1953 (P.L.244, No.34), entitled "An  
2 act relating to and regulating the contracts of incorporated  
3 towns and providing penalties," further providing for  
4 regulation of contracts; providing for annual adjustment;  
5 further providing for evasion of advertising requirements,  
6 for contracts between \$750 and \$10,000 and for separate bids  
7 for plumbing, heating, ventilating and electrical work.

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

10 ~~Section 1. Section 2(a) of the act of May 27, 1953 (P.L.244,~~ ←  
11 ~~No.34), entitled "An act relating to and regulating the~~  
12 ~~contracts of incorporated towns and providing penalties,"~~  
13 ~~amended July 10, 1990 (P.L.392, No.93), is amended to read:~~

14 SECTION 1. SECTION 2(A) AND (D) (2) OF THE ACT OF MAY 27, ←  
15 1953 (P.L.244, NO.34), ENTITLED "AN ACT RELATING TO AND

1 REGULATING THE CONTRACTS OF INCORPORATED TOWNS AND PROVIDING  
2 PENALTIES," AMENDED JULY 10, 1990 (P.L.392, NO.93) AND DECEMBER  
3 18, 1996 (P.L.1140, NO.17), ARE AMENDED TO READ:

4 Section 2. Regulation of Contracts.--(a) All contracts or  
5 purchases of incorporated towns in excess of [ten thousand  
6 dollars] THE BASE AMOUNT OF twenty-five thousand dollars subject ←  
7 to annual adjustment under section 2.1, except those hereinafter  
8 mentioned, shall not be made except with and from the lowest  
9 responsible bidder, after due notice in one newspaper of general  
10 circulation published or circulated in the county in which the  
11 town is situated at least three times at intervals of not less  
12 than three days where daily newspapers of general circulation  
13 are available for such publication, and in case of weekly  
14 newspapers shall be published once a week for two successive  
15 weeks. The first advertisement shall be published not less than  
16 ten days prior to the date fixed for the opening of bids. The  
17 amount of the contract shall in all cases, whether of straight  
18 sale price, conditional sale, bailment lease or otherwise, be  
19 the entire amount which the town pays to the successful bidder  
20 or his assigns in order to obtain the services or property or  
21 both, and shall not be construed to mean only the amount which  
22 is paid to acquire title or to receive any other particular  
23 benefit or benefits of the whole bargain.

24 \* \* \*

25 (D) THE CONTRACTS OR PURCHASES MADE BY COUNCIL, WHICH SHALL ←  
26 NOT REQUIRE ADVERTISING, BIDDING OR PRICE QUOTATIONS AS  
27 HEREINBEFORE PROVIDED, ARE AS FOLLOWS:

28 \* \* \*

29 (2) THOSE MADE FOR IMPROVEMENTS, REPAIRS AND MAINTENANCE OF  
30 ANY KIND MADE OR PROVIDED BY ANY INCORPORATED TOWN THROUGH ITS

1 OWN EMPLOYEES: PROVIDED, THAT ALL MATERIALS USED FOR STREET  
2 IMPROVEMENT, MAINTENANCE AND/OR CONSTRUCTION IN EXCESS OF [FOUR]  
3 TEN THOUSAND DOLLARS BE SUBJECT TO THE RELEVANT PRICE QUOTATION  
4 OR ADVERTISING REQUIREMENTS CONTAINED HEREIN AND TO ANNUAL  
5 ADJUSTMENT UNDER SECTION 2.1.

6 \* \* \*

7 Section 2. The act is amended by adding a section to read:

8 Section 2.1. Annual Adjustment.--(a) The Department of ←  
9 Labor and Industry shall determine the percentage change in the  
10 Consumer Price Index for All Urban Consumers for the twelve  
11 month period ending September 30 of the calendar year in which  
12 this section becomes effective, and for each successive twelve  
13 month period thereafter.

14 (b) The amount at which competitive bidding is required  
15 under section 2(a) and the amount at which written or telephonic  
16 price quotations are required under section 3.1 shall be  
17 adjusted annually as follows:

18 (1) In the case of competitive bidding, the positive  
19 percentage change, as determined in accordance with subsection  
20 (a), shall be multiplied by the amount applicable under section  
21 2 for the current year and the product thereof shall be added to  
22 the amount applicable under section 2 for the current year, with  
23 the result rounded to the nearest multiple of ten dollars.

24 (2) In the case of written or telephonic price quotations,  
25 the positive percentage change, as determined in accordance with  
26 subsection (a), shall be multiplied by the amount applicable  
27 under section 3.1 for the current year and the product thereof  
28 shall be added to the amount applicable under section 3.1 for  
29 the current year, with the result rounded to the nearest  
30 multiple of ten dollars.

1 ~~(c) The annual determination required under subsection (a)~~  
2 ~~and the calculation of the adjustments required under subsection~~  
3 ~~(b) shall be made in the period between October 1 and November~~  
4 ~~15 of the year following the effective date of this section, and~~  
5 ~~annually between October 1 and November 15 of each successive~~  
6 ~~year.~~

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

11 ~~(e) The Department of Labor and Industry shall give notice~~  
12 ~~in the Pennsylvania Bulletin prior to January 1 of each calendar~~  
13 ~~year of the annual percentage change determined in accordance~~  
14 ~~with subsection (a), and the amounts, whether adjusted or~~  
15 ~~unadjusted in accordance with subsection (b), at which~~  
16 ~~competitive bidding is required under section 2 and written or~~  
17 ~~telephonic price quotations are required under section 3.1 for~~  
18 ~~the calendar year beginning the first day of January after~~  
19 ~~publication of the notice. ADJUSTMENTS TO THE BASE AMOUNTS~~  
20 ~~SPECIFIED UNDER SECTIONS 2(A) AND (D)(2), 3(A), 3.1(B) AND 5~~  
21 ~~SHALL BE MADE AS FOLLOWS:~~

22 ~~(1) THE DEPARTMENT OF LABOR AND INDUSTRY SHALL DETERMINE THE~~  
23 ~~PERCENTAGE CHANGE IN THE ALL ITEMS CONSUMER PRICE INDEX FOR ALL~~  
24 ~~URBAN CONSUMERS (CPI-U) FOR THE UNITED STATES CITY AVERAGE AS~~  
25 ~~PUBLISHED BY THE UNITED STATES DEPARTMENT OF LABOR, BUREAU OF~~  
26 ~~LABOR STATISTICS FOR THE TWELVE-MONTH PERIOD ENDING SEPTEMBER 30~~  
27 ~~OF THE CALENDAR YEAR IN WHICH THIS SECTION BECOMES EFFECTIVE,~~  
28 ~~AND FOR EACH SUCCESSIVE TWELVE-MONTH PERIOD THEREAFTER.~~

29 ~~(2) IF THE DEPARTMENT DETERMINES THAT THERE IS NO POSITIVE~~  
30 ~~PERCENTAGE CHANGE, THEN NO ADJUSTMENT TO THE BASE AMOUNTS SHALL~~

1 OCCUR FOR THE RELEVANT TIME PERIOD PROVIDED FOR IN THIS SECTION.

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

8 (II) THE PRELIMINARY ADJUSTED AMOUNTS SHALL BE ROUNDED TO  
9 THE NEAREST ONE THOUSAND DOLLARS, TO DETERMINE THE FINAL  
10 ADJUSTED BASE AMOUNTS FOR PURPOSES OF SECTIONS 2(A) AND (D)(2),  
11 3(A), 3.1(B) AND 5.

12 (4) IN EACH SUCCESSIVE YEAR IN WHICH THERE IS A POSITIVE  
13 PERCENTAGE CHANGE IN THE CPI-U FOR THE UNITED STATES CITY  
14 AVERAGE, THE POSITIVE PERCENTAGE CHANGE SHALL BE MULTIPLIED BY  
15 THE MOST RECENT PRELIMINARY ADJUSTED AMOUNTS AND THE PRODUCTS  
16 SHALL BE ADDED TO THE MOST RECENT PRELIMINARY ADJUSTED AMOUNTS,  
17 RESPECTIVELY. THE SUMS THEREOF SHALL BE ROUNDED TO THE NEAREST  
18 ONE THOUSAND DOLLARS TO DETERMINE THE NEW FINAL ADJUSTED BASE  
19 AMOUNTS FOR PURPOSES OF SECTIONS 2(A) AND (D)(2), 3(A), 3.1(B)  
20 AND 5.

21 (5) THE DETERMINATIONS AND ADJUSTMENTS REQUIRED UNDER THIS  
22 SECTION SHALL BE MADE IN THE PERIOD BETWEEN OCTOBER 1 AND  
23 NOVEMBER 15 OF THE YEAR FOLLOWING THE EFFECTIVE DATE OF THIS  
24 SECTION, AND ANNUALLY BETWEEN OCTOBER 1 AND NOVEMBER 15 OF EACH  
25 YEAR THEREAFTER.

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

30 (7) THE DEPARTMENT SHALL PUBLISH NOTICE IN THE PENNSYLVANIA

1 BULLETIN PRIOR TO JANUARY 1 OF EACH CALENDAR YEAR OF THE ANNUAL  
2 PERCENTAGE CHANGE DETERMINED UNDER PARAGRAPH (1) AND THE  
3 UNADJUSTED OR FINAL ADJUSTED BASE AMOUNTS DETERMINED UNDER  
4 PARAGRAPHS (3) AND (4) FOR PURPOSES OF SECTIONS 2(A) AND (D) (2),  
5 3(A), 3.1(B) AND 5 FOR THE CALENDAR YEAR BEGINNING THE FIRST DAY  
6 OF JANUARY AFTER PUBLICATION OF THE NOTICE. THE NOTICE SHALL  
7 INCLUDE A WRITTEN AND ILLUSTRATIVE EXPLANATION OF THE  
8 CALCULATIONS PERFORMED BY THE DEPARTMENT IN ESTABLISHING THE  
9 UNADJUSTED OR FINAL ADJUSTED BASE AMOUNTS UNDER THIS SECTION FOR  
10 THE ENSUING CALENDAR YEAR.

11 Section 3. Section 3 of the act, amended July 10, 1990  
12 (P.L.392, No.93), is amended to read:

13 Section 3. Evasion of Advertising Requirements.--(a) No  
14 member or members of council shall evade the provisions of  
15 Section two hereof by purchasing or contracting for services and  
16 personal properties piecemeal for the purpose of obtaining  
17 prices under [ten thousand dollars] THE BASE AMOUNT OF twenty- ←  
18 five thousand dollars subject to annual adjustment under section  
19 2.1 upon transactions which transaction should, in the exercise  
20 of reasonable discretion and prudence, be conducted as one  
21 transaction amounting to more than [ten thousand dollars] THE ←  
22 BASE AMOUNT OF twenty-five thousand dollars subject to annual  
23 adjustment under section 2.1. This provision is intended to make  
24 unlawful the evading of advertising requirements by making a  
25 series of purchases or contracts each for less than the  
26 advertising requirement of price, or by making several  
27 simultaneous purchases or contracts each below said price, when,  
28 in either case, the transactions involved should have been made  
29 as one transaction for one price. Any members of council who so  
30 vote in violation of this provision and who know that the

1 transaction upon which they so vote is or ought to be a part of  
2 a larger transaction and that it is being divided in order to  
3 evade the requirements as to advertising for bids shall be  
4 jointly and severally subject to surcharge for ten per centum of  
5 the full amount of the contract or purchase.

6 (b) Whenever it shall appear that a member of council may  
7 have voted in violation of this section but the purchase or  
8 contract on which he so voted was not approved by council, this  
9 section shall be inapplicable.

10 (c) Any council member who votes to unlawfully evade the  
11 provisions of section 2 and who knows that the transaction upon  
12 which he so votes is or ought to be a part of a larger  
13 transaction and that it is being divided in order to evade the  
14 requirements as to advertising for bids commits a misdemeanor of  
15 the third degree for each contract entered into as a direct  
16 result of that vote. This penalty shall be in addition to any  
17 surcharge which may be assessed pursuant to subsection (a).

18 Section 4. Section 3.1 of the act, amended July 10, 1990  
19 (P.L.392, No.93) and repealed in part December 18, 1996  
20 (P.L.1140, No.170), is amended to read:

21 Section 3.1. Contracts between Seven Hundred Fifty Dollars  
22 and [Ten thousand] Twenty-five Thousand Dollars; Written Bids.--

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~~] ARE IN ←  
26 EXCESS OF THE BASE AMOUNT OF ten thousand dollars subject to  
27 annual adjustment under section 2.1 but are less than the amount  
28 requiring advertisement and competitive bidding or, in lieu of  
29 price quotations, a memorandum shall be kept on file showing  
30 that fewer than three qualified contractors exist in the market

1 area within which it is practicable to obtain quotations. A  
2 written record of telephonic price quotations shall be made and  
3 shall contain at least the date of the quotation, the name of  
4 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 Section 5. Section 5 of the act, amended July 10, 1990  
10 (P.L.392, No.93), is amended to read:

11 Section 5. Separate Bids for Plumbing, Heating, Ventilating  
12 and Electrical Work.--In the preparation for the erection,  
13 construction and alteration of any public building of an  
14 incorporated town, when the entire cost of such work shall  
15 ~~[exceed ten thousand dollars]~~ BE IN EXCESS OF THE BASE AMOUNT ←  
16 OF twenty-five thousand dollars subject to annual adjustment  
17 under section 2.1, the architect, engineer or other person  
18 preparing such specifications shall prepare separate  
19 specifications for the plumbing, heating, ventilating and  
20 electrical work. The person or persons authorized to enter into  
21 contracts for the erection, construction or alteration of such  
22 public buildings shall receive separate bids upon each of the  
23 said branches of work and award the contract for the same to the  
24 lowest responsible bidder for each of said branches.

25 Section 6. This act shall apply to contracts and purchases  
26 advertised on or after January 1 of the year following the  
27 effective date of this section.

28 Section 7. This act shall take effect immediately.