

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 289 Session of 2011

INTRODUCED BY FERLO, EICHELBERGER, KASUNIC, FOLMER, GORDNER, BOSCOLA, ORIE, RAFFERTY, YAW, M. WHITE, D. WHITE, ERICKSON, BAKER, ALLOWAY, BRUBAKER, GREENLEAF, SMUCKER, ROBBINS, VANCE, EARLL, SCARNATI, McILHINNEY AND PICCOLA, JANUARY 26, 2011

REFERRED TO LOCAL GOVERNMENT, JANUARY 26, 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,
 18 to provide for protection against floods by erecting and
 19 constructing certain works and improvements, located within or
 20 without their territorial limits, and within or without the
 21 county in which situate; and to expend moneys and incur
 22 indebtedness; to assess benefits against property benefited; to

1 issue improvement bonds imposing no municipal liability; and to
2 acquire, take, injure or destroy property for such purposes,"
3 amended July 10, 1990 (P.L.402, No.97), is amended to read:

4 Section 3. (a) No such works or improvements, involving an
5 expenditure by any municipality or municipalities of more than
6 [ten thousand dollars (\$10,000)] twenty-five thousand dollars
7 (\$25,000), subject to adjustment under subsection (b.1), shall
8 be erected, constructed or provided, except by contract let to
9 the lowest responsible bidder after due advertisement, once a
10 week for two successive weeks in at least one newspaper of
11 general circulation: Provided, however, That no contract shall
12 be required to be let for the performance of the work on any
13 such work or improvement where the cost of the labor shall be
14 paid by the Federal Government, or any agency thereof, without
15 cost to the municipality or municipalities.

16 (b) Written or telephonic price quotations from at least
17 three qualified and responsible contractors shall be requested
18 for all contracts that exceed [four thousand dollars (\$4,000)]
19 seven thousand dollars (\$7,000), subject to adjustment under
20 subsection (b.1), but are less than the amount requiring
21 advertisement and competitive bidding or, in lieu of price
22 quotations, a memorandum shall be kept on file showing that
23 fewer than three qualified contractors exist in the market area
24 within which it is practicable to obtain quotations. A written
25 record of telephonic price quotations shall be made and shall
26 contain at least the date of the quotation, the name of the
27 contractor and the contractor's representative, the
28 construction, reconstruction, repair, maintenance or work which
29 was the subject of the quotation and the price. Written price
30 quotations, written records of telephonic price quotations and

1 memoranda shall be retained for a period of three years.

2 (b.1) Adjustments shall be made as follows:

3 (1) Every five years, beginning with the year in which this
4 subsection becomes applicable to contracts and purchases, the
5 Department of Labor and Industry shall calculate the average
6 percentage change in the Consumer Price Index for All Urban
7 Consumers (CPI-U) for the United States city average for all
8 items as published by the United States Department of Labor,
9 Bureau of Labor Statistics, for the preceding five-year period.

10 (2) The amount at which competitive bidding is required
11 under subsection (a) and the amount at which written or
12 telephonic price quotations are required under subsection (b)
13 shall be adjusted every five years as follows:

14 (i) In the case of competitive bidding, the positive
15 percentage change, as determined in accordance with paragraph
16 (1), shall be multiplied by the amount applicable under
17 subsection (a) for the current five-year period and the product
18 thereof shall be added to the amount applicable under subsection
19 (a) for the current five-year period, with the result rounded to
20 the nearest multiple of one hundred dollars (\$100).

21 (ii) In the case of written or telephonic price quotations,
22 the positive percentage change, as determined in accordance with
23 paragraph (1), shall be multiplied by the amount applicable
24 under subsection (b) for the current five-year period and the
25 product thereof shall be added to the amount applicable under
26 subsection (b) for the current five-year period, with the result
27 rounded to the nearest multiple of one hundred dollars (\$100).

28 (3) The determination required under paragraph (1) and the
29 calculation of the adjustments required under paragraph (2)
30 shall be made in the period between October 1 and November 15 of

1 the year following the effective date of this subsection, and
2 between October 1 and November 15 of each successive year.

3 (4) The adjusted amounts obtained in accordance with
4 paragraph (2) shall become effective January 1 for the five-year
5 period following the year in which the determination required
6 under paragraph (1) is made.

7 (5) The department shall give notice in the Pennsylvania
8 Bulletin prior to January 1 of each calendar year in which the
9 percentage change determined in accordance with paragraph (1)
10 and the amounts, whether adjusted or unadjusted in accordance
11 with paragraph (2), at which competitive bidding is required
12 under subsection (a) and written or telephonic price quotations
13 are required under subsection (b) for the five-year period
14 beginning the first day of January after publication of the
15 notice.

16 (c) No municipality shall evade the provisions of this
17 section as to advertising for bids or purchasing materials or
18 contracting for services piecemeal for the purpose of obtaining
19 prices under [ten thousand dollars (\$10,000)] the amount
20 required by this section upon transactions which should, in the
21 exercise of reasonable discretion and prudence, be conducted as
22 one transaction amounting to more than [ten thousand dollars
23 (\$10,000)] the amount required by this section. This provision
24 is intended to make unlawful the practice of evading advertising
25 requirements by making a series of purchases or contracts each
26 for less than the advertising requirement price or by making
27 several simultaneous purchases or contracts each below said
28 price, when in either case the transaction involved should have
29 been made as one transaction for one price.

30 (d) Any member of a governing body of a municipality who

1 votes to unlawfully evade the provisions of this section and who
2 knows that the transaction upon which he so votes is or ought to
3 be a part of a larger transaction and that it is being divided
4 in order to evade the requirements as to advertising for bids
5 commits a misdemeanor of the third degree for each contract
6 entered into as a direct result of that vote.

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

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

14 Section 3. This act shall take effect immediately.