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SB 494 (Printer's No. 528) Analysis

Date: March 29, 2019

**Amending Act 78 of 1979 ("No Bid" Law) –
Award of contract for services when no bids are received**

Prime Sponsor: Senator Martin

A. Synopsis of Bill

This legislation would amend Act 78 of 1979 to authorize political subdivisions and authorities to enter into contracts for *services* when two consecutive advertisements fail to induce bids. Act 78 of 1979 is titled, "An act authorizing political subdivisions, municipality authorities and transportation authorities to enter into contracts for the purchase of goods and the sale of real and personal property where no bids are received."

B. Summary and Analysis of Bill

Under the provisions of this legislation, when a political subdivision, municipality authority or transportation authority is required to advertise for bids in order to enter into a contract for services and no bids are received, the political subdivision or authority may advertise for bids a second time. In the event that no bids are received within 15 days of the second advertisement, the political subdivision or authority may initiate negotiations for a contract for services with any provider not otherwise disqualified by law or an enactment or policy of the governing body.

Prior to the execution of the contract, the political subdivision or authority will be required to disclose at a regular or special public meeting the identity of the parties, the proposed contract price and a summary of the other terms and conditions relating to the proposed contract in order to demonstrate that the services sought are consistent with those previously advertised.

The amendment would also specify that misuse of the provisions of the act to evade advertising requirements would subject a member of the governing body to the same penalties that exist in the applicable competitive bidding law.

For purposes of the legislation, "services" include the furnishing of labor, time or effort by a contractor not involving the delivery of a specific end product other than drawings, specifications or reports, which are merely

incidental to the required performance. The term includes the routine operation or maintenance of existing structures, buildings or real property, the repair or rehabilitation of existing infrastructure, and utility services or those services formerly provided by public utilities such as electrical, telephone, water and sewage service. The term does not include employment agreements or collective bargaining agreements.

The act would take effect in 60 days.

C. Relevant Current Law

Act 78 of 1979 authorizes political subdivisions, municipal authorities and transportation authorities to enter into contracts for the *purchase of goods* and *the sale of real and personal property* when no bids are received. The law's exclusion of services means that a political subdivision or authority has no recourse to complete a project for which a bid for *services*, including construction or repairs, has been sought and not received absent someone finally responding to additional bid requests or someone agreeing to do the project at a rate below the bidding threshold.

D. Background of Bill

The legislation originated from the County Commissioners Association of Pennsylvania (CCAP) in response to a situation in which a county owned an historic bridge that needed replacement, but the county was unable to secure an acceptable bid under the contracting procedure in the County Code and, therefore, was unable to replace the bridge.

E. Effect of Bill

The legislation provides an authorization for political subdivisions and authorities, *but* with qualifications and penalties. The only certain fiscal impact is the cost to the municipality of the second advertisement for bids, *if* the municipality chooses to utilize the provisions of the legislation.

F. Issues, Policy Questions and Stakeholder Feedback

The Pennsylvania State Association of Township Supervisors, Pennsylvania State Association of Township Commissioners, Pennsylvania State Association of Boroughs, Pennsylvania Municipal League and Pennsylvania Municipal Authorities Association, along with CCAP support the legislation.

G. Bill History

In the 2017-2018 Session, this legislation was introduced in the Senate as Senate Bill 693. The bill was given first consideration by the Senate on June 6, 2017, and was subsequently laid on the table where it remained upon sine die adjournment. The legislation was also introduced in the House during the 2017-2018 Session as House Bill 1364. House Bill 1364 was passed by the House on June 29, 2017 (196-0), and was given first consideration by the Senate on January 30, 2018. The bill was subsequently laid on the table where it remained upon sine die adjournment.

In the 2015-2016 Session, this legislation was introduced in the House as House Bill 902. House Bill 902 was passed the House on November 16, 2015 (201-0). The bill was given first consideration by the Senate on May

10, 2016, and was subsequently laid on the table where it remained upon sine die adjournment. The legislation was also introduced in the Senate during the 2015-2016 Session as Senate Bill 778. Senate Bill 778 was referred to the Senate Local Government Committee on May 15, 2015, where it remained upon sine die adjournment.