



The Pennsylvania Municipal League

Richard P. Vilello, Jr., Mayor, Lock Haven, *President*  
John A. Garner, Jr., *Executive Director*



*A Century of Commitment*

September 14, 2012

Re: House Bill 2094 – Contracts to Promote Participation

Dear Chairman Creighton, Chairman Freeman and Members of the House Local Government Committee:

On behalf of the members of the PA Municipal League (PML) and in lieu of testimony, please accept the comments below regarding House Bill 2094 and the general concept of “contracts to promote participation.”

House Bill 2094 amends the third class city code to require each city by ordinance or resolution to develop and implement binding policies to ensure all persons are accorded equal opportunity in contracting and subcontracting for all public works projects and public purchasing. All contracts would be required to contain provisions to promote and increase opportunities for disadvantaged businesses.

While the goal of this legislation is honorable, from a practical standpoint, PML has several concerns and questions that are listed below.

- The current purchasing laws for local government require contracts over \$18,500 to be awarded to the lowest responsible bidder. It is difficult to envision how binding policies for equal opportunity will coincide with the current law. How is local government to include both price and equal opportunity in its evaluation of bids? Does one take precedence over the other? Will each local government be able to develop its own system for evaluation that complies with the law and stands up to court challenge by a vendor?
- The language of the bill appears to be inclusive of all contracts, even those under \$18,500 which are not required to be bid. This would place a new burden on local government in an area of the law that it has for years been trying to make less burdensome. If that is not the intent, the bill and its companion legislation would need to be amended for clarification.
- In evaluating bids, how will a municipality determine who fits into the dis-advantaged category? Will it be on the word of the business? Additionally, it is conceivable that a successful veteran-owned company could be competing against a new minority-owned business. How will a municipality rank dis-advantaged businesses if more than one bids on a contract? Is it up to the municipality to decide which business is more dis-advantaged?

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Official Publication – *Municipal Reporter*

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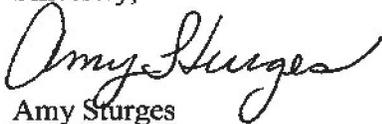
- These new requirements may decrease the number of companies bidding for contracts and subcontracts because of the costs associated with promoting equal opportunity. They could also have the effect of increasing the cost of contracts if a dis-advantaged business has precedence over the lowest responsible bidder.

In addition to these practical concerns of implementation, PML is also concerned about the costs associated with this unfunded mandate. Local governments will need to develop the required policy with the assistance of legal counsel. There will also be a greater possibility of legal action against municipalities which will result in legal costs to defend the equal opportunity policies. With the myriad of fiscal issues facing municipalities across the state, now is not the time to hand down additional unfunded mandates.

Finally, this has not been an issue raised by the PML membership for inclusion in the association's policies or legislative platform. Based on the above stated concerns and unanswered questions, PML opposes House Bill 2094 and its companion legislation. PML is available to discuss these concerns further and in more detail at the request of the sponsor or the committee members.

Thank you for the opportunity to comment on this legislation.

Sincerely,



Amy Sturges  
Director of Governmental Affairs  
PML

c: John A. Garner, Jr., Executive Director