

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL**No. 288** Session of
2011

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

AS REPORTED FROM COMMITTEE ON LOCAL GOVERNMENT, HOUSE OF REPRESENTATIVES, AS AMENDED, APRIL 5, 2011

AN ACT

1 Amending the act of July 29, 1953 (P.L.1034, No.270), entitled,
2 as amended, "An act creating as bodies corporate and politic
3 "Public Auditorium Authorities" in counties of the second
4 class and in cities of the second class and in cities of the
5 second class A and counties in which a city of the second
6 class A is located, singly or jointly; prescribing the
7 rights, powers and duties of such Authorities; authorizing
8 such Authorities to acquire, construct, improve, maintain and
9 operate public auditoriums; to borrow money and issue bonds
10 therefor; providing for the payment of such bonds and
11 prescribing the rights of the holders thereof; conferring the
12 right of eminent domain on such Authorities; empowering such
13 Authorities to enter into contracts, leases and licenses with
14 and to accept grants from private sources, the Federal
15 Government, State, political subdivisions of the State or any
16 agency thereof; authorizing the making of said grants from
17 bond funds or current revenues; authorizing Authorities to
18 collect rentals, admissions, license fees for the use of the
19 project; exempting the property and securities of such Public
20 Auditorium Authorities from taxation," increasing the dollar
21 amount of supplies and materials which may be purchased
22 without advertising.

1 The General Assembly of the Commonwealth of Pennsylvania
2 hereby enacts as follows:

3 Section 1. Section 11 of the act of July 29, 1953 (P.L.1034,
4 No.270), known as the Public Auditorium Authorities Law, amended
5 July 10, 1990 (P.L.376, No.88), is amended to read:

6 Section 11. Competition in Award of Contracts.

7 A. All construction, reconstruction, repairs or work of any
8 nature made by any Authority, where the entire cost, value or
9 amount of such construction, reconstruction, repairs or work,
10 including labor and materials, shall exceed [ten thousand
11 dollars (\$10,000)] THE BASE AMOUNT OF twenty-five thousand ←
12 dollars (\$25,000), subject to annual adjustment under subsection
13 I, except construction, reconstruction, repairs or work done by
14 employes of said Authority or by labor supplied under agreement
15 with any Federal or State agency with supplies and materials
16 purchased, as hereinafter provided, shall be done only under
17 contract or contracts to be entered into by the Authority with
18 the lowest responsible bidder upon proper terms, after due
19 public notice has been given asking for competitive bids
20 hereinafter provided. No contract shall be entered into for
21 construction or improvement or repair of any project or portion
22 thereof unless the contractor shall give an undertaking, with a
23 sufficient surety or sureties approved by the Authority and in
24 an amount fixed by the Authority, for the faithful performance
25 of the contract. All such contracts shall provide, among other
26 things, that the person or corporation entering into such
27 contract with the Authority will pay for all materials furnished
28 and services rendered for the performance of the contract and
29 that any person or corporation furnishing such materials or
30 rendering such services may maintain an action to recover for

1 the same against the obligor in the undertaking as though such
2 person or corporation was named therein, provided the action is
3 brought within one year after the time the cause of action
4 accrued. Nothing in this section shall be construed to limit the
5 power of the Authority to construct, repair or improve any
6 project or portion thereof or any addition, betterment or
7 extension thereto directly by the officers, agents and employes
8 of the Authority or otherwise than by contract.

9 B. All supplies and materials costing [ten thousand dollars
10 (\$10,000)], subject to annual adjustment under subsection I, THE ←
11 BASE AMOUNT OF twenty-five thousand dollars (\$25,000) or more
12 shall be purchased only after due advertisement as hereinafter
13 provided. The Authority shall accept the lowest bid or bids,
14 kinds, quality and material being equal, but the Authority shall
15 have the right to reject any or all bids or select a single item
16 from any bid. The provisions as to bidding shall not apply to
17 the purchase of patented and manufactured products offered for
18 sale in a non-competitive market or solely by a manufacturer's
19 authorized dealer.

20 B.1. Written or telephonic price quotations from at least
21 three (3) qualified and responsible contractors shall be
22 requested for all contracts that exceed [four thousand dollars
23 (\$4,000)] THE BASE AMOUNT OF ten thousand dollars (\$10,000), ←
24 subject to annual adjustment under subsection I, but are less
25 than the amount requiring advertisement and competitive bidding
26 or, in lieu of price quotations, a memorandum shall be kept on
27 file showing that fewer than three (3) qualified contractors
28 exist in the market area within which it is practicable to
29 obtain quotations. A written record of telephonic price
30 quotations shall be made and shall contain at least the date of

1 the quotation, the name of the contractor and the contractor's
2 representative, the construction, reconstruction, repair,
3 maintenance or work which was the subject of the quotation and
4 the price. Written price quotations, written records of
5 telephonic price quotations and memoranda shall be retained for
6 a period of three (3) years.

7 C. The terms, advertisement or due public notice, wherever
8 used in this section, shall mean a notice published at least ten
9 (10) days before the award on any contract in a newspaper of
10 general circulation published in the municipality where the
11 Authority has its principal office, and if no newspaper is
12 published therein then by publication in a newspaper in the
13 county where the Authority has its principal office: Provided,
14 That such notice may be waived where the Authority determines an
15 emergency exists and such supplies and materials must be
16 immediately purchased by the said Authority.

17 D. No member of the Authority or officer or employe thereof
18 shall, either directly or indirectly, be a party to or be in any
19 manner interested in any contract or agreement with the
20 Authority for any matter, cause or thing whatsoever, by reason
21 whereof any liability or indebtedness shall in any way be
22 created against such Authority. If any contract or agreement
23 shall be made in violation of the provision of this section, the
24 same shall be null and void and no action shall be maintained
25 thereon against such Authority.

26 E. Subject to the aforesaid, any Authority may (but without
27 intending by this provision to limit any powers of such
28 Authority) enter into and carry out such contracts or establish
29 or comply with such rules and regulations concerning labor and
30 materials and other related matters, in connection with any

1 project or portion thereof, as the Authority may deem desirable,
2 or as may be requested by any Federal agency that may assist in
3 the financing of such project or any part thereof: Provided,
4 however, That the provisions of this section shall not apply to
5 any case in which the Authority has taken over by transfer or
6 assignment any contract authorized to be assigned to it under
7 the provisions of section ten of this act, nor to any contract
8 in connection with the construction of any project which the
9 Authority may have had transferred to it by any person or
10 private corporation.

11 F. Every contract for the construction, reconstruction,
12 alteration, repair, improvement or maintenance of public works
13 shall comply with the provisions of the act of March 3, 1978
14 (P.L.6, No.3), known as the "Steel Products Procurement Act."

15 G. An Authority shall not evade the provisions of this
16 section as to advertising for bids or purchasing materials or
17 contracting for services piecemeal for the purpose of obtaining
18 prices under [ten thousand dollars (\$10,000)] THE BASE AMOUNT OF ←
19 twenty-five thousand dollars (\$25,000), subject to annual
20 adjustment under subsection I, upon transactions which should,
21 in the exercise of reasonable discretion and prudence, be
22 conducted as one transaction amounting to more than [ten
23 thousand dollars (\$10,000)] THE BASE AMOUNT OF twenty-five ←
24 thousand dollars (\$25,000), subject to annual adjustment under
25 subsection I. This provision is intended to make unlawful the
26 practice of evading advertising requirements by making a series
27 of purchases or contracts each for less than the advertising
28 requirement price or by making several simultaneous purchases or
29 contracts each below said price, when in either case the
30 transaction involved should have been made as one transaction

1 for one price.

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

9 ~~I. (1) The Department of Labor and Industry shall determine~~ ←
10 ~~the percentage change in the Consumer Price Index for All Urban~~
11 ~~Consumers for the twelve month period ending September 30 of the~~
12 ~~calendar year in which this subsection becomes effective, and~~
13 ~~for each successive twelve month period thereafter.~~

14 ~~(2) The amounts at which competitive bidding and written or~~
15 ~~telephonic price quotations are required under this section~~
16 ~~shall be adjusted annually as follows:~~

17 ~~(i) In the case of competitive bidding, the positive~~
18 ~~percentage change, as determined in accordance with clause (1),~~
19 ~~shall be multiplied by the amount applicable under subsection A,~~
20 ~~B or G for the current year and the product thereof shall be~~
21 ~~added to the amount applicable under subsection A, B or G for~~
22 ~~the current year, with the result rounded to the nearest~~
23 ~~multiple of ten dollars (\$10).~~

24 ~~(ii) In the case of written or telephonic price quotations,~~
25 ~~the positive percentage change, as determined in accordance with~~
26 ~~clause (1), shall be multiplied by the amount applicable under~~
27 ~~subsection B.1 for the current year and the product thereof~~
28 ~~shall be added to the amount applicable under subsection B.1 for~~
29 ~~the current year, with the result rounded to the nearest~~
30 ~~multiple of ten dollars (\$10).~~

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

~~7 (4) The adjusted amounts obtained in accordance with clause
8 (2) shall become effective January 1 for the calendar year
9 following the year in which the determination required under
10 clause (1) is made.~~

~~11 (5) 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 clause (1) and the amounts, whether adjusted or unadjusted
15 in accordance with clause (2), at which competitive bidding is
16 required and written or telephonic price quotations are required
17 for the calendar year beginning the first day of January after
18 publication of the notice.~~

19 I. ADJUSTMENTS TO THE BASE AMOUNTS SPECIFIED UNDER ←
20 SUBSECTIONS A, B, B.1 AND G SHALL BE MADE AS FOLLOWS:

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

28 (2) IF THE DEPARTMENT DETERMINES THAT THERE IS NO POSITIVE
29 PERCENTAGE CHANGE, THEN NO ADJUSTMENT TO THE BASE AMOUNTS SHALL
30 OCCUR FOR THE RELEVANT TIME PERIOD PROVIDED FOR IN THIS

1 SUBSECTION.

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 (\$1,000), TO DETERMINE THE
10 FINAL ADJUSTED BASE AMOUNTS FOR PURPOSES OF SUBSECTIONS A, B,
11 B.1 AND G.

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 (\$1,000) TO DETERMINE THE NEW FINAL
19 ADJUSTED BASE AMOUNTS FOR PURPOSES OF SUBSECTIONS A, B, B.1 AND
20 G.

21 (5) THE DETERMINATIONS AND ADJUSTMENTS REQUIRED UNDER THIS
22 SUBSECTION SHALL BE MADE IN THE PERIOD BETWEEN OCTOBER 1 AND
23 NOVEMBER 15 OF THE YEAR FOLLOWING THE EFFECTIVE DATE OF THIS
24 SUBSECTION, AND ANNUALLY BETWEEN OCTOBER 1 AND NOVEMBER 15 OF
25 EACH 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 SUBSECTIONS A, B, B.1 AND
5 G, RESPECTIVELY, 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 SUBSECTION
10 FOR THE ENSUING CALENDAR YEAR.

11 Section 2. This act shall apply to contracts and purchases
12 advertised on or after January 1 of the year following the
13 effective date of this section.

14 Section 3. This act shall take effect in 60 days.