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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 286 Session of  
2011

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

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REFERRED TO LOCAL GOVERNMENT, JANUARY 26, 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 adjustment; further  
5 providing for evasion of advertising requirements, for  
6 contracts between \$750 and \$10,000 and for separate bids for  
7 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 2. Regulation of Contracts.--(a) All contracts or  
15 purchases of incorporated towns in excess of [ten thousand  
16 dollars] twenty-five thousand dollars subject to adjustment  
17 under section 2.1, except those hereinafter mentioned, shall not  
18 be made except with and from the lowest responsible bidder,  
19 after due notice in one newspaper of general circulation

1 published or circulated in the county in which the town is  
2 situated at least three times at intervals of not less than  
3 three days where daily newspapers of general circulation are  
4 available for such publication, and in case of weekly newspapers  
5 shall be published once a week for two successive weeks. The  
6 first advertisement shall be published not less than ten days  
7 prior to the date fixed for the opening of bids. The amount of  
8 the contract shall in all cases, whether of straight sale price,  
9 conditional sale, bailment lease or otherwise, be the entire  
10 amount which the town pays to the successful bidder or his  
11 assigns in order to obtain the services or property or both, and  
12 shall not be construed to mean only the amount which is paid to  
13 acquire title or to receive any other particular benefit or  
14 benefits of the whole bargain.

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

17 Section 2.1. Adjustment.--(a) Every five years, beginning  
18 with the year in which this subsection becomes applicable to  
19 contracts and purchases, the Department of Labor and Industry  
20 shall calculate the average percentage change in the Consumer  
21 Price Index for All Urban Consumers (CPI-U) for the United  
22 States city average for all items as published by the United  
23 States Department of Labor, Bureau of Labor Statistics, for the  
24 preceding five-year period.

25 (b) The amount at which competitive bidding is required  
26 under section 2(a) and the amount at which written or telephonic  
27 price quotations are required under section 3.1 shall be  
28 adjusted every five years as follows:

29 (1) In the case of competitive bidding, the positive  
30 percentage change, as determined in accordance with subsection

1 (a), shall be multiplied by the amount applicable under  
2 section 2 for the current five-year period and the product  
3 thereof shall be added to the amount applicable under section 2  
4 for the current five-year period, with the result rounded to the  
5 nearest multiple of one hundred dollars.

6 (2) In the case of written or telephonic price quotations,  
7 the positive percentage change, as determined in accordance with  
8 subsection (a), shall be multiplied by the amount applicable  
9 under section 3.1 for the current five-year period and the  
10 product thereof shall be added to the amount applicable under  
11 section 3.1 for the current five-year period, with the result  
12 rounded to the nearest multiple of one hundred dollars.

13 (c) The determination required under subsection (a) and the  
14 calculation of the adjustments required under subsection (b)  
15 shall be made in the period between October 1 and November 15 of  
16 the year following the effective date of this section, and  
17 between October 1 and November 15 of each successive year.

18 (d) The adjusted amounts obtained in accordance with  
19 subsection (b) shall become effective January 1 for the five-  
20 year period following the year in which the determination  
21 required under subsection (a) is made.

22 (e) The Department of Labor and Industry shall give notice  
23 in the Pennsylvania Bulletin prior to January 1 of each calendar  
24 year in which the percentage change determined in accordance  
25 with subsection (a), and the amounts, whether adjusted or  
26 unadjusted in accordance with subsection (b), at which  
27 competitive bidding is required under section 2 and written or  
28 telephonic price quotations are required under section 3.1 for  
29 the five-year period beginning the first day of January after  
30 publication of the notice.

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

3 Section 3. Evasion of Advertising Requirements.--(a) No  
4 member or members of council shall evade the provisions of  
5 Section two hereof by purchasing or contracting for services and  
6 personal properties piecemeal for the purpose of obtaining  
7 prices under [ten thousand dollars] twenty-five thousand dollars  
8 subject to adjustment under section 2.1 upon transactions which  
9 transaction should, in the exercise of reasonable discretion and  
10 prudence, be conducted as one transaction amounting to more than  
11 [ten thousand dollars] twenty-five thousand dollars subject to  
12 adjustment under section 2.1. This provision is intended to make  
13 unlawful the evading of advertising requirements by making a  
14 series of purchases or contracts each for less than the  
15 advertising requirement of price, or by making several  
16 simultaneous purchases or contracts each below said price, when,  
17 in either case, the transactions involved should have been made  
18 as one transaction for one price. Any members of council who so  
19 vote in violation of this provision and who know that the  
20 transaction upon which they so vote is or ought to be a part of  
21 a larger transaction and that it is being divided in order to  
22 evade the requirements as to advertising for bids shall be  
23 jointly and severally subject to surcharge for ten per centum of  
24 the full amount of the contract or purchase.

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

29 (c) Any council member who votes to unlawfully evade the  
30 provisions of section 2 and who knows that the transaction upon

1 which he so votes is or ought to be a part of a larger  
2 transaction and that it is being divided in order to evade the  
3 requirements as to advertising for bids commits a misdemeanor of  
4 the third degree for each contract entered into as a direct  
5 result of that vote. This penalty shall be in addition to any  
6 surcharge which may be assessed pursuant to subsection (a).

7 Section 4. Section 3.1 of the act, amended July 10, 1990  
8 (P.L.392, No.93) and repealed in part December 18, 1996 (P.L.  
9 1140, No.170), is amended to read:

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

12 (b) Written or telephonic price quotations from at least  
13 three qualified and responsible contractors shall be requested  
14 for all contracts that exceed [four thousand dollars] seven  
15 thousand dollars subject to adjustment under section 2.1 but are  
16 less than the amount requiring advertisement and competitive  
17 bidding or, in lieu of price quotations, a memorandum shall be  
18 kept on file showing that fewer than three qualified contractors  
19 exist in the market area within which it is practicable to  
20 obtain quotations. A written record of telephonic price  
21 quotations shall be made and shall contain at least the date of  
22 the quotation, the name of the contractor and the contractor's  
23 representative, the construction, reconstruction, repair,  
24 maintenance or work which was the subject of the quotation and  
25 the price. Written price quotations, written records of  
26 telephonic price quotations and memoranda shall be retained for  
27 a period of three years.

28 Section 5. Section 5 of the act, amended July 10, 1990 (P.L.  
29 392, No.93), is amended to read:

30 Section 5. Separate Bids for Plumbing, Heating, Ventilating

1 and Electrical Work.--In the preparation for the erection,  
2 construction and alteration of any public building of an  
3 incorporated town, when the entire cost of such work shall  
4 exceed [ten thousand dollars] twenty-five thousand dollars  
5 subject to adjustment under section 2.1, the architect, engineer  
6 or other person preparing such specifications shall prepare  
7 separate specifications for the plumbing, heating, ventilating  
8 and electrical work. The person or persons authorized to enter  
9 into contracts for the erection, construction or alteration of  
10 such public buildings shall receive separate bids upon each of  
11 the said branches of work and award the contract for the same to  
12 the lowest responsible bidder for each of said branches.

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

16 Section 7. This act shall take effect immediately.