

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 286 Session of  
2011

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, PICCOLA, WARD AND BROWNE,  
JANUARY 26, 2011

AS RE-REPORTED FROM COMMITTEE ON APPROPRIATIONS, HOUSE OF  
REPRESENTATIVES, AS AMENDED, OCTOBER 17, 2011

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 1. SECTION 2(A) AND (D) (2) OF THE ACT OF MAY 27, ←  
15 1953 (P.L.244, NO.34), ENTITLED "AN ACT RELATING TO AND  
16 REGULATING THE CONTRACTS OF INCORPORATED TOWNS AND PROVIDING  
17 PENALTIES," AMENDED JULY 10, 1990 (P.L.392, NO.93) AND DECEMBER  
18 18, 1996 (P.L.1140, NO.170), ARE AMENDED TO READ:

1 Section 2. Regulation of Contracts.--(a) All contracts or  
2 purchases of incorporated towns in excess of [ten thousand  
3 dollars] the base amount of eighteen thousand five hundred  
4 dollars subject to adjustment under section 2.1, except those  
5 hereinafter mentioned, shall not be made except with and from  
6 the lowest responsible bidder, after due notice in one newspaper  
7 of general circulation published or circulated in the county in  
8 which the town is situated at least three times at intervals of  
9 not less than three days where daily newspapers of general  
10 circulation are available for such publication, and in case of  
11 weekly newspapers shall be published once a week for two  
12 successive weeks. The first advertisement shall be published not  
13 less than ten days prior to the date fixed for the opening of  
14 bids. The amount of the contract shall in all cases, whether of  
15 straight sale price, conditional sale, bailment lease or  
16 otherwise, be the entire amount which the town pays to the  
17 successful bidder or his assigns in order to obtain the services  
18 or property or both, and shall not be construed to mean only the  
19 amount which is paid to acquire title or to receive any other  
20 particular benefit or benefits of the whole bargain.

21 \* \* \*

22 (D) THE CONTRACTS OR PURCHASES MADE BY COUNCIL, WHICH SHALL ←  
23 NOT REQUIRE ADVERTISING, BIDDING OR PRICE QUOTATIONS AS  
24 HEREINBEFORE PROVIDED, ARE AS FOLLOWS:

25 \* \* \*

26 (2) THOSE MADE FOR IMPROVEMENTS, REPAIRS AND MAINTENANCE OF  
27 ANY KIND MADE OR PROVIDED BY ANY INCORPORATED TOWN THROUGH ITS  
28 OWN EMPLOYEES: PROVIDED, THAT ALL MATERIALS USED FOR STREET  
29 IMPROVEMENT, MAINTENANCE AND/OR CONSTRUCTION IN EXCESS OF [FOUR]  
30 THE BASE AMOUNT OF TEN THOUSAND DOLLARS BE SUBJECT TO THE

1 RELEVANT PRICE QUOTATION OR ADVERTISING REQUIREMENTS CONTAINED  
2 HEREIN AND TO ADJUSTMENT UNDER SECTION 2.1.

3 \* \* \*

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

5 Section 2.1. Adjustment.--Adjustments to the base amounts  
6 specified under section 2 shall be made as follows:

7 (1) The Department of Labor and Industry shall determine the  
8 percentage change in the All Items Consumer Price Index for All  
9 Urban Consumers (CPI-U) for the United States City Average as  
10 published by the United States Department of Labor, Bureau of  
11 Labor Statistics for the twelve-month period ending September  
12 30, 2012, and for each successive twelve-month period  
13 thereafter.

14 (2) If the department determines that there is no positive  
15 percentage change, then no adjustment to the base amounts shall  
16 occur for the relevant time period provided for in this section.

17 (3) (i) If the department determines that there is a  
18 positive percentage change in the first year that the  
19 determination is made under ~~paragraph~~ CLAUSE (1), the positive ←  
20 percentage change shall be multiplied by each base amount and  
21 the products shall be added to the base amounts, respectively,  
22 and the sums shall be preliminary adjusted amounts.

23 (ii) The preliminary adjusted amounts shall be rounded to  
24 the nearest one hundred dollars, to determine the final adjusted  
25 base amounts for purposes of section 2.

26 (4) In each successive year in which there is a positive  
27 percentage change in the CPI-U for the United States City  
28 Average, the positive percentage change shall be multiplied by  
29 the most recent preliminary adjusted amounts and the products  
30 shall be added to the preliminary adjusted amount of the prior

1 year to calculate the preliminary adjusted amounts for the  
2 current year. The sums thereof shall be rounded to the nearest  
3 one hundred dollars to determine the new final adjusted base  
4 amounts for purposes of section 2.

5 (5) The determinations and adjustments required under this  
6 section shall be made in the period between October 1 and  
7 November 15 of the year following the effective date of this  
8 section, and annually between October 1 and November 15 of each  
9 year thereafter.

10 (6) The final adjusted base amounts and new final adjusted  
11 base amounts obtained under ~~paragraphs~~ CLAUSES (3) and (4) shall ←  
12 become effective January 1 for the calendar year following the  
13 year in which the determination required under ~~paragraph~~ CLAUSE ←  
14 (1) is made.

15 (7) The department shall publish notice in the Pennsylvania  
16 Bulletin prior to January 1 of each calendar year of the annual  
17 percentage change determined under ~~paragraph~~ CLAUSE (1) and the ←  
18 unadjusted or final adjusted base amounts determined under  
19 ~~paragraphs~~ CLAUSES (3) and (4) at which competitive bidding and ←  
20 written or telephonic price quotations are required under  
21 section 2, respectively, for the calendar year beginning the  
22 first day of January after publication of the notice. The notice  
23 shall include a written and illustrative explanation of the  
24 calculations performed by the department in establishing the  
25 unadjusted or final adjusted base amounts under this section for  
26 the ensuing calendar year.

27 (8) The annual increase in the preliminary adjusted base  
28 amounts obtained under ~~paragraphs~~ CLAUSES (3) and (4) shall not ←  
29 exceed three per centum.

30 Section 3. Section 3 of the act, amended July 10, 1990

1 (P.L.392, No.93), is amended to read:

2 Section 3. Evasion of Advertising Requirements.--(a) No  
3 member or members of council shall evade the provisions of  
4 [Section two hereof] section 2 by purchasing or contracting for  
5 services and personal properties piecemeal for the purpose of  
6 obtaining prices under [ten thousand dollars] the base amount of  
7 eighteen thousand five hundred dollars subject to adjustment  
8 under section 2.1 upon transactions which transaction should, in  
9 the exercise of reasonable discretion and prudence, be conducted  
10 as one transaction amounting to ~~a~~ THE base amount of more than ←  
11 [ten thousand dollars] eighteen thousand five hundred dollars  
12 subject to adjustment under section 2.1. This provision is  
13 intended to make unlawful the evading of advertising  
14 requirements by making a series of purchases or contracts each  
15 for less than the advertising requirement of price, or by making  
16 several simultaneous purchases or contracts each below said  
17 price, when, in either case, the transactions involved should  
18 have been made as one transaction for one price. Any members of  
19 council who so vote in violation of this provision and who know  
20 that the transaction upon which they so vote is or ought to be a  
21 part of a larger transaction and that it is being divided in  
22 order to evade the requirements as to advertising for bids shall  
23 be jointly and severally subject to surcharge for ten per centum  
24 of 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 Dollars; Written Bids.--] Written or Telephonic  
12 Price Quotations.--

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

29 Section 5. Section 5 of the act, amended July 10, 1990 (P.L.  
30 392, No.93), is amended to read:

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

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

18 Section 7. This act shall take effect immediately.