

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL**No. 292** Session of
2011

INTRODUCED BY EICHELBERGER, KASUNIC, FOLMER, GORDNER, BOSCOLA,
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ALLOWAY, BRUBAKER, GREENLEAF, SMUCKER, FERLO, ROBBINS, VANCE,
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JANUARY 26, 2011

SENATOR CORMAN, APPROPRIATIONS, IN SENATE, RE-REPORTED AS
AMENDED, SEPTEMBER 20, 2011

AN ACT

1 Amending the act of August 7, 1936 (1st Sp.Sess., P.L.106, No.
2 46), entitled, as reenacted and amended, "An act relating to
3 flood control; prescribing the powers and duties of the Water
4 and Power Resources Board of the Department of Forests and
5 Waters in relation to the creation of flood control
6 districts, adoption of plans for flood control works and
7 improvements, carrying into effect of such plans, assistance,
8 aid and cooperation with public and private agencies and the
9 Federal Government in Federal flood control works and
10 improvements, and entering into compacts and agreements with
11 other states for flood control works and improvements;
12 conferring the power of eminent domain; providing for the
13 setting off of benefits; imposing certain charges upon the
14 Commonwealth; providing for appeals; and conferring certain
15 powers on municipalities, counties, and townships, and the
16 Department of Highways," further providing for contracts and
17 acquisition of property; and providing for adjustment and for
18 evasion of advertising requirements.

19 The General Assembly of the Commonwealth of Pennsylvania
20 hereby enacts as follows:

21 Section 1. Section 10 of the act of August 7, 1936 (1st
22 Sp.Sess., P.L.106, No.46), referred to as the Flood Control Law,
23 reenacted and amended March 10, 1937 (P.L.43, No.18) and amended
24 December 22, 1981 (P.L.551, No.162), is amended to read:

1 Section 10. Contracts and Acquisition of Property.--All work
2 of any character whatever performed by the board under the
3 authority of this act, except as hereinafter provided, in
4 connection with any State public flood control works and
5 improvements, involving an expenditure of more than [four
6 thousand dollars] ~~twenty five thousand~~ A BASE AMOUNT OF EIGHTEEN ←
7 THOUSAND FIVE HUNDRED dollars subject to adjustment under
8 section 10.1, shall be performed under written contract let by
9 the board to the lowest responsible bidder after due
10 advertisement as prescribed by the board; except, however, that
11 the board may, with the approval of the Governor, enter into
12 contracts or agreements, without advertisement, with any person,
13 corporation or municipality, covering the removal or relocation
14 of gas, water, and telephone, telegraph, electric light, and
15 electric power lines, highways, railroads, or other facilities,
16 and providing therein for said removal or relocation by the
17 person, corporation or municipality owning such facility. The
18 board may, with the approval of the Governor, acquire any
19 necessary easements and rights-of-way and may pay all costs and
20 damages necessary, arising from and incidental to said removal
21 or relocation. Payment shall be made from the General Fund
22 Appropriations for Flood Control Projects.

23 The board may sell, lease, or otherwise dispose of all
24 property, real, personal or mixed, acquired under the provisions
25 of this act, not needed by the Commonwealth for reservoir or
26 flood control purposes, subject to the approval of the Governor.
27 The moneys received through such sale, lease or other
28 disposition shall accrue to the General Fund.

29 Every contract for the construction, reconstruction,
30 alteration, repair, improvement or maintenance of public works

1 shall comply with the provisions of the act of March 3, 1978
2 (P.L.6, No.3), known as the "Steel Products Procurement Act."

3 Section 2. The act is amended by adding sections to read:

4 ~~Section 10.1. Adjustment. (a) Every five years, beginning~~ ←
5 ~~with the year in which this subsection becomes applicable to~~
6 ~~contracts and purchases, the Department of Labor and Industry~~
7 ~~shall calculate the average percentage change in the Consumer~~
8 ~~Price Index for All Urban Consumers (CPI U) for the United~~
9 ~~States city average for all items as published by the United~~
10 ~~States Department of Labor, Bureau of Labor Statistics, for the~~
11 ~~preceding five year period.~~

12 ~~(b) The amount at which competitive bidding is required~~
13 ~~under section 10 shall be adjusted every five years. The~~
14 ~~positive percentage change, as determined in accordance with~~
15 ~~subsection (a), shall be multiplied by the amount applicable~~
16 ~~under section 10 for the current five year period and the~~
17 ~~product thereof shall be added to the amount applicable under~~
18 ~~section 10 for the current five year period, with the result~~
19 ~~rounded to the nearest multiple of one hundred dollars.~~

20 ~~(c) The determination required under subsection (a) and the~~
21 ~~calculation of the adjustments required under subsection (b)~~
22 ~~shall be made in the period between October 1 and November 15 of~~
23 ~~the year following the effective date of this section, and~~
24 ~~between October 1 and November 15 of each successive year.~~

25 ~~(d) The adjusted amounts obtained in accordance with~~
26 ~~subsection (b) shall become effective January 1 for the five~~
27 ~~year period following the year in which the determination~~
28 ~~required under subsection (a) is made.~~

29 ~~(e) The Department of Labor and Industry shall give notice~~
30 ~~in the Pennsylvania Bulletin prior to January 1 of each calendar~~

~~1 year in which the percentage change determined in accordance
2 with subsection (a) and the amounts, whether adjusted or
3 unadjusted in accordance with subsection (b), at which
4 competitive bidding is required under section 10 for the five
5 year period beginning the first day of January after publication
6 of the notice.~~

~~7 Section 10.2. Evasion of Advertising Requirements. No board
8 member shall evade the provisions of section 10 as to
9 advertising for bids, by purchasing or contracting for services
10 and personal properties piecemeal to obtain prices under the
11 required advertising price, subject to adjustment under section
12 10.1. This provision is intended to make unlawful the evading of
13 advertising requirements by making a series of purchases or
14 contracts each for less than the advertising requirement price,
15 or by making several simultaneous purchases or contracts, each
16 below said price, when in either case, the transactions involved
17 should have been made as one transaction for one price. Any
18 board members who so vote in violation of this provision, and
19 who know that the transaction upon which they so vote is or
20 ought to be a part of a larger transaction, and that it is being
21 divided in order to evade the requirements as to advertising for
22 bids, shall be jointly and severally subject to surcharge for
23 ten percent of the full amount of the contract or purchase.
24 Whenever it shall appear that a board member may have voted in
25 violation of this section, but the purchase or contract on which
26 the member so voted was not approved by the board, this section
27 shall be inapplicable. ADJUSTMENTS.-- (A) ADJUSTMENTS TO THE
28 BASE AMOUNTS SPECIFIED UNDER SECTION 10 SHALL BE MADE AS
29 FOLLOWS:~~

30 (1) THE DEPARTMENT OF LABOR AND INDUSTRY SHALL DETERMINE THE



1 PERCENTAGE CHANGE IN THE ALL ITEMS CONSUMER PRICE INDEX FOR ALL
2 URBAN CONSUMERS (CPI-U) FOR THE UNITED STATES CITY AVERAGE AS
3 PUBLISHED BY THE UNITED STATES DEPARTMENT OF LABOR, BUREAU OF
4 LABOR STATISTICS FOR THE TWELVE-MONTH PERIOD ENDING SEPTEMBER
5 30, 2012, AND FOR EACH SUCCESSIVE TWELVE-MONTH PERIOD
6 THEREAFTER.

7 (2) IF THE DEPARTMENT DETERMINES THAT THERE IS NO POSITIVE
8 PERCENTAGE CHANGE, THEN NO ADJUSTMENT TO THE BASE AMOUNTS SHALL
9 OCCUR FOR THE RELEVANT TIME PERIOD PROVIDED FOR IN THIS
10 SUBSECTION.

11 (3) (I) IF THE DEPARTMENT DETERMINES THAT THERE IS A
12 POSITIVE PERCENTAGE CHANGE IN THE FIRST YEAR THAT THE
13 DETERMINATION IS MADE UNDER PARAGRAPH (1), THE POSITIVE
14 PERCENTAGE CHANGE SHALL BE MULTIPLIED BY EACH BASE AMOUNT AND
15 THE PRODUCTS SHALL BE ADDED TO THE BASE AMOUNTS, RESPECTIVELY,
16 AND THE SUMS SHALL BE PRELIMINARY ADJUSTED AMOUNTS.

17 (II) THE PRELIMINARY ADJUSTED AMOUNTS SHALL BE ROUNDED TO
18 THE NEAREST ONE THOUSAND DOLLARS, TO DETERMINE THE FINAL
19 ADJUSTED BASE AMOUNTS FOR PURPOSES OF SECTION 10.

20 (4) IN EACH SUCCESSIVE YEAR IN WHICH THERE IS A POSITIVE
21 PERCENTAGE CHANGE IN THE CPI-U FOR THE UNITED STATES CITY
22 AVERAGE, THE POSITIVE PERCENTAGE CHANGE SHALL BE MULTIPLIED BY
23 THE MOST RECENT PRELIMINARY ADJUSTED AMOUNTS AND THE PRODUCTS
24 SHALL BE ADDED TO THE PRELIMINARY ADJUSTED AMOUNT OF THE PRIOR
25 YEAR TO CALCULATE THE PRELIMINARY ADJUSTED AMOUNTS FOR THE
26 CURRENT YEAR. THE SUMS THEREOF SHALL BE ROUNDED TO THE NEAREST
27 ONE THOUSAND DOLLARS TO DETERMINE THE NEW FINAL ADJUSTED BASE
28 AMOUNTS FOR PURPOSES OF SECTION 10.

29 (5) THE DETERMINATIONS AND ADJUSTMENTS REQUIRED UNDER THIS
30 SUBSECTION SHALL BE MADE IN THE PERIOD BETWEEN OCTOBER 1 AND

1 NOVEMBER 15 OF THE YEAR FOLLOWING THE EFFECTIVE DATE OF THIS
2 SUBSECTION, AND ANNUALLY BETWEEN OCTOBER 1 AND NOVEMBER 15 OF
3 EACH YEAR THEREAFTER.

4 (6) THE FINAL ADJUSTED BASE AMOUNTS AND NEW FINAL ADJUSTED
5 BASE AMOUNTS OBTAINED UNDER PARAGRAPHS (3) AND (4) SHALL BECOME
6 EFFECTIVE JANUARY 1 FOR THE CALENDAR YEAR FOLLOWING THE YEAR IN
7 WHICH THE DETERMINATION REQUIRED UNDER PARAGRAPH (1) IS MADE.

8 (7) THE DEPARTMENT SHALL PUBLISH NOTICE IN THE PENNSYLVANIA
9 BULLETIN PRIOR TO JANUARY 1 OF EACH CALENDAR YEAR OF THE ANNUAL
10 PERCENTAGE CHANGE DETERMINED UNDER PARAGRAPH (1) AND THE
11 UNADJUSTED OR FINAL ADJUSTED BASE AMOUNTS DETERMINED UNDER
12 PARAGRAPHS (3) AND (4) AT WHICH COMPETITIVE BIDDING IS REQUIRED
13 UNDER THIS SUBSECTION FOR THE CALENDAR YEAR BEGINNING THE FIRST
14 DAY OF JANUARY AFTER PUBLICATION OF THE NOTICE. THE NOTICE SHALL
15 INCLUDE A WRITTEN AND ILLUSTRATIVE EXPLANATION OF THE
16 CALCULATIONS PERFORMED BY THE DEPARTMENT IN ESTABLISHING THE
17 UNADJUSTED OR FINAL ADJUSTED BASE AMOUNTS UNDER THIS SUBSECTION
18 FOR THE ENSUING CALENDAR YEAR.

19 (8) NO ADJUSTMENT TO THE BASE AMOUNTS SPECIFIED UNDER
20 SECTION 10 SHALL EXCEED THREE PERCENT OF THE MOST RECENTLY
21 ADJUSTED BASE AMOUNT.

22 Section 3. This act shall apply to contracts and purchases
23 advertised on or after January 1 of the year following the
24 effective date of this section.

25 Section 4. This act shall take effect immediately.