

*Pennsylvania State Association of Boroughs*



Testimony on **House Bill 2089 (PN2914)**

*presented before*

*The House Local Government Committee*

*on*

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*by*

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PSAB on House Bill 2089  
Amendment to The Borough Code on procurement

Thank you and good morning Chairmen Creighton & Freeman and members of the Local Government Committee. I want to say thank you for the opportunity to share our comments on **House Bill 2089**, but first I would like to say welcome back to the close of the 2011-2012 legislative session. My name is Ed Troxell and I serve as the Director of Government Affairs for the Pennsylvania State Association of Boroughs. Our association represents the boroughs of the commonwealth and we have done so for over 100 years. We have over 900 active borough members at the PSAB and we support, educate and provide various services for these communities and their elected \appointed officials.

We are especially proud of the fact that this legislative session, PSAB with legislators such yourselves, worked collaboratively and reenacted Act 43 of 2012 a modernized Borough Code. Beginning in 2003 our borough code revision committee project had spent 8 years on the Borough Code which had not been revised comprehensively since January of 1967. During those 8 years the revision committee painstakingly went over each article of the code identifying where case law had affected the existing code, its text or any subsequent related law changes which made the removal or amendment of the code necessary. The language of the code was also brought up to date through the removal or replacement of various antiquated terms and phrases.

The borough code revision committee was comprised of several elected and appointed borough officials who served a defined period of time. This enabled PSAB to include appropriate language and text which dealt with issues familiar to a variety of borough officials. The diversity of officials on the committee resulted in a final product which addressed issues critical to our contemporaries. The final product (HB1702) as you may know was sponsored by Rep. Maureen Gingrich who herself was borough council president for Palmyra Borough in Lebanon County for over a decade.

Today as we consider amending the reenacted Borough Code to address contracts and procurements covered under Article XIV I would be remiss to overlook Act 92 of 2011 which revised the article of the code that HB2089 similarly attempts to do. Under Act 92 sections 1402 through 1405, contract language of The Borough Code was amended to adjust the contractbid limit thresholds to 2011 levels. This also included incorporating an indexing mechanism in order to keep limits current with inflation. This amendment itself took over 7 years of negotiating with interested parties.

All tolled, the current language of Article XIV of The Borough Code addressing contracts and procurements has undergone over 15 years of debate, discussion and dialogue. All during which the concepts which House Bill 2089 seeks to introduce were never once considered. The issue apparently does not rise to the level of interest to or for borough communities and therefore PSAB would oppose inserting such language into the code. We are undergoing a massive educational outreach to officials as well and questions even nearing the issues in the bill do not arise. Finally, the PSAB uses two primary documents to guide its policy agenda; the Municipal Policy Statement and Member Resolutions, both of which are void of the concepts as well.

Implications of Proposed Language in HB 2089 (PN2914)

As indicted PSAB opposes the language of HB2089 as it fails to be identified as a relevant initiative which may prove of benefit to borough communities. There are also several dynamics wherein the proposed language may result in costly unintended consequences. Examples of such are as follows:

- ~ Mandated and binding policies: page 1 lines 11 – 12; the mandate to develop *binding policy or guidelines* places the expense of attorney and expert assistance as well as compliance measures on the council. While the Department of General Services is cited later in the bill as adding assistance, we have not heard their position on the measure.

- ~ Contracting and Subcontracting associated with the construction: page 1 lines 13 – 14; places an intrusive administrative mandate on the number and variety of contractors as well as the sub contractors participating in a project. Seems to remove any competitiveness which leads to effective bidding
- ~ Performance of . . purchasing of any materials: page 1 lines 17 – 19; become very muddled in regards to enforcement guidelines not only during performance of project, but also in the “purchasing of materials, equipment or any other supplies for the use of the borough” This language raises the question if the sources or providers from which any materials, equipment or any supplies used for a project need to comply with the binding policies developed by council. Or does the borough need to expand their policies to cover these supplier enterprises as well?
- ~ Established Procurement standards in The Borough Code: page 2 lines 1 – 6; subsection (b) stands in conflict with current Art XIV Section 1402 sub (d) which delineates those procurements and contracts where, due to the nature of the item to be procured, the bidding process is unnecessary. This includes: professional services, borough owned utilities, intergovernmental and multi-municipal contracts.
- ~ Contractor Compliance mandate: page 2 lines 3 – 6; under proposed subsection (b) in these cited lines, a contractor will be stipulated to promote the governmental interest in submitting a bid. This will lessen those who seek to win a bid award by keeping administrative costs down. In addition, should the contractor agree to “promote, increase and sustain” only those who meet guidelines might the potential for insider abuse arise?
- ~ Definitions: page 2 lines 5 - 6 “*disadvantaged businesses*” page 3 lines 16; this term used in the subsection regarding all contracts for municipalities on page 2 of the bill and its definition on the following page 3 inserts language that is sure to result in unintended legal consequences. In the process of defining such a business verbiage on page 3 lines 11 – 16 which have been deprived of opportunity due to “social disadvantages”. Frankly, this begs the question of social deprivation and at what standard is that determination based?
- ~ Telephonic Quotes: page 2 lines 7 – 30; This separate carve out which develops an alternate administrative procedure for these contracts runs contrary to the normally established telephonic procedure in Section 1402 (a.1) of the code. This will lend to confusion on the administrative role of record keeping as well as procedure regarding quotes.

This is just a brief glance at some of the subjects and language of the bill that PSAB members would find difficulty supporting. As noted earlier, throughout our combined 15 years of focus on the procurement and contracting procedures currently used and/or sought by our commonwealth’s borough administrators the topics HB2089 addresses seem peripheral at best. The bill demonstrates an interest in assisting a limited sector of businesses, but at the same time places a mandate on taxpayers and their communities.

In closing, recent changes to procurement and contracting in The Borough Code have been sufficiently addressed with a variety of stakeholders and have resulted in Act 43/2012. Boroughs will have enough to incorporate into their governance practices in the near future without the addition of HB2089. Thank you for the opportunity to share with you today and I will be glad to address any questions the committee may have.