

## MEMORANDUM IN SUPPORT

### **Purpose of the Bill:**

This bill would allow adjustments to the prices of copper products included in construction contracts let for bid by the State, state authorities and public benefit corporations prior to May 15, 2006, for which contracts the copper products were purchased on or after December 1, 2005, if the cost of purchasing those products increases more than five percent of the price of the same products at the time of the bid. The bill also permits local governments to enact substantially equivalent legislation, subject to a determination by the state comptroller that the provisions and procedures of the local legislation are substantially equivalent to those in this bill. The price of copper products has skyrocketed without precedent since December 1, 2005, and the unanticipated increases pose an inequity to contractors and jeopardize the fulfillment of public contracts.

### **Summary of Provisions:**

Section 1 of the bill declares its purpose, to allow for adjustment of contracts to account for unprecedented increases in copper prices.

Section 2 grants State agencies and public benefit corporations authority to adjust prices based on bids submitted before May 15, 2006, but only for those contracts for which copper materials were acquired after December 1, 2005, and only to the extent that the prices of copper materials have increased by more than five percent of the cost of those materials at the time of the award of the contract.

Section 3 gives authority to the Commissioner of General Services to terminate or suspend contracts, or to modify the prices in those contracts, which are for purchases of commodities containing copper materials where (1) the contract covers materials that were purchased or invoiced after December 1, 2005, (2) market conditions have caused increases in the cost of copper contained in the commodities or in component parts of the commodities which are more than five percent of the contractor's aggregate acquisition costs determined at the time of the award of the contract, and (3) the Commissioner has determined that, as a result of the increases in the cost of copper, the contractor will incur an actual net loss on the contract.

### **Statement in Support:**

There has been an unprecedented increase in copper prices in recent months. At the end of November 2005, the price of copper was two dollars (\$2.00) per pound. By May 15, 2006, the price of copper had nearly doubled, rising to \$3.90 per pound, as recorded on the government's Producer Price Index. The causes include the rapidly expanding world demand for copper particularly from China, increased fuel costs and weakness of the US dollar.

As a result, all contractors performing public works or selling commodities to public entities in this State have been adversely affected, particularly those with multi-year contracts. Contractors

who were awarded contracts only last year have found that the economic ground on which they submitted their bids has drastically shifted. Many are in danger of suffering fatal losses in the performance of these contracts as a result of the increases in copper prices.

If no adjustment is provided, contractors will be harmed and, of greater concern to the State, contracts will likely go uncompleted. Price volatility may cause contractors and their suppliers may well go bankrupt or leave the marketplace. A reduction of the number of contractors and suppliers is not in the interest of the People of the State, as it adversely affects competition.

This bill would permit the State, public benefit corporations, and local governments to make adjustments in these contracts to ensure equity and a continued competitive market place. The Legislature has enacted similar legislation in the past when the prices of steel and iron products shot up dramatically. *See* Laws 1974, c. 944 and c. 945.