

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 296 Session of 2011

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

REFERRED TO EDUCATION, JANUARY 26, 2011

AN ACT

1 Amending the act of March 10, 1949 (P.L.30, No.14), entitled "An
 2 act relating to the public school system, including certain
 3 provisions applicable as well to private and parochial
 4 schools; amending, revising, consolidating and changing the
 5 laws relating thereto," providing for adjustments based on
 6 Consumer Price Index; and further providing for work to be
 7 done under contract let on bids and exception, for purchase
 8 of supplies, for contracts for construction, repair,
 9 renovation or maintenance, for project contracts and for
 10 powers and duties of institution presidents.

11 The General Assembly of the Commonwealth of Pennsylvania
 12 hereby enacts as follows:

13 Section 1. The act of March 10, 1949 (P.L.30, No.14), known
 14 as the Public School Code of 1949, is amended by adding a
 15 section to read:

16 Section 118. Adjustments Based on Consumer Price Index.--(a)
 17 (1) Every five years, beginning with the year in which this
 18 subsection becomes applicable to contracts and purchases, the
 19 Department of Labor and Industry shall calculate the average
 20 percentage change in the Consumer Price Index for All Urban
 21 Consumers (CPI-U) for the United States city average for all

1 items as published by the United States Department of Labor,
2 Bureau of Labor Statistics, for the preceding five-year period.

3 (2) The amounts at which competitive bidding or written or
4 telephonic price quotations are required under this act shall be
5 adjusted every five years as follows:

6 (i) In the case of competitive bidding, the positive
7 percentage change, as determined in accordance with clause (1),
8 shall be multiplied by the amount applicable under the provision
9 requiring competitive bidding for the current five-year period
10 and the product thereof shall be added to the amount applicable
11 under the provision requiring competitive bidding for the
12 current five-year period, with the result rounded to the nearest
13 multiple of one hundred dollars (\$100).

14 (ii) In the case of written or telephonic price quotations,
15 the positive percentage change, as determined in accordance with
16 clause (1), shall be multiplied by the amount applicable under
17 the provision requiring written or telephonic price quotations
18 for the current five-year period and the product thereof shall
19 be added to the amount applicable under the provision requiring
20 written or telephonic price quotations for the current five-year
21 period, with the result rounded to the nearest multiple of one
22 hundred dollars (\$100).

23 (3) The determination required under clause (1) and the
24 calculation of the adjustments required under clause (2) shall
25 be made in the period between October 1 and November 15 of the
26 year following the effective date of this subsection, and
27 between October 1 and November 15 of each successive year.

28 (4) The adjusted amounts obtained in accordance with clause
29 (2) shall become effective January 1 for the five-year period
30 following the year in which the determination required under

1 clause (1) is made.

2 (5) The Department of Labor and Industry shall give notice
3 in the Pennsylvania Bulletin prior to January 1 of each calendar
4 year in which the percentage change determined in accordance
5 with clause (1) and the amounts, whether adjusted or unadjusted
6 in accordance with clause (2), at which competitive bidding or
7 written or telephonic price quotations are required for the
8 five-year period beginning the first day of January after
9 publication of the notice.

10 Section 2. Sections 751(a), (a.1), (b) and (f) and 807.1 of
11 the act, amended or added May 4, 1990 (P.L.164, No.38), are
12 amended to read:

13 Section 751. Work to be Done Under Contract Let on Bids;
14 Exception.--(a) All construction, reconstruction, repairs,
15 maintenance or work of any nature, including the introduction of
16 plumbing, heating and ventilating, or lighting systems, upon any
17 school building or upon any school property, or upon any
18 building or portion of a building leased under the provisions of
19 section 703.1, made by any school district, where the entire
20 cost, value, or amount of such construction, reconstruction,
21 repairs, maintenance or work, including labor and material,
22 shall exceed [ten thousand dollars (\$10,000)] twenty-five
23 thousand dollars (\$25,000), subject to adjustment under section
24 118, shall be done under separate contracts to be entered into
25 by such school district with the lowest responsible bidder, upon
26 proper terms, after due public notice has been given asking for
27 competitive bids. Whenever a board of school directors shall
28 approve the use of a prefabricated unit, complete in itself, for
29 a school building or other proper structure to be erected upon
30 school property, the board of school directors may have prepared

1 appropriate specifications detailing the size and material
2 desired in a particular prefabricated unit, including all
3 utilities such as plumbing, heating and ventilating, and
4 electrical work, and may advertise for a single bid on all the
5 work and award the contract therefor to the lowest responsible
6 bidder: Provided, That if due to an emergency a school plant or
7 any part thereof becomes unusable competitive bids for repairs
8 or replacement may be solicited from at least three responsible
9 bidders, and upon the approval of any of these bids by the
10 Secretary of Education, the board of school directors may
11 proceed at once to make the necessary repairs or replacements in
12 accordance with the terms of said approved bid or bids.

13 (a.1) Written or telephonic price quotations from at least
14 three qualified and responsible contractors shall be requested
15 by the board of school directors for all contracts that exceed
16 [four thousand dollars (\$4,000)] seven thousand dollars
17 (\$7,000), subject to adjustment under section 118, but are less
18 than the amount requiring advertisement and competitive bidding,
19 or, in lieu of price quotations, a memorandum shall be kept on
20 file showing that fewer than three qualified contractors exist
21 in the market area within which it is practicable to obtain
22 quotations. A written record of telephonic price quotations
23 shall be made and shall contain at least the date of the
24 quotation, the name of the contractor and the contractor's
25 representative, the construction, reconstruction, repair,
26 maintenance or work which was the subject of the quotation and
27 the price. Written price quotations, written records of
28 telephonic price quotations and memoranda shall be retained for
29 a period of three years.

30 (b) The board of school directors in any school district may

1 perform any construction, reconstruction, repairs, or work of
2 any nature, where the entire cost or value, including labor and
3 material, is less than [five thousand dollars (\$5000)] seven
4 thousand dollars (\$7,000), subject to adjustment under section
5 118, by its own maintenance personnel. The board of school
6 directors in any school district may authorize the secretary of
7 the board or other executive to award contracts for
8 construction, reconstruction, repairs, or work of any nature,
9 where the entire cost or value, including labor and material,
10 [is ten thousand dollars (\$10,000)] subject to adjustment under
11 section 118, is twenty-five thousand dollars (\$25,000) or less,
12 without soliciting competitive bids, subject, however, to the
13 provisions of subsection (a.1).

14 * * *

15 (f) No board of school directors shall evade the provisions
16 of this section as to advertising for bids or purchasing
17 materials or contracting for services piecemeal for the purpose
18 of obtaining prices under [ten thousand dollars (\$10,000)]
19 twenty-five thousand dollars (\$25,000), subject to adjustment
20 under section 118, upon transactions which should, in the
21 exercise of reasonable discretion and prudence, be conducted as
22 one transaction amounting to more than [ten thousand dollars
23 (\$10,000)] twenty-five thousand dollars (\$25,000), subject to
24 adjustment under section 118. This provision is intended to make
25 unlawful the practice of evading advertising requirements by
26 making a series of purchases or contracts each for less than the
27 advertising requirement price, or by making several simultaneous
28 purchases or contracts each below said price, when in either
29 case the transaction involved should have been made as one
30 transaction for one price.

1 Section 807.1. Purchase of Supplies.--(a) All furniture,
2 equipment, textbooks, school supplies and other appliances for
3 the use of the public schools, costing [ten thousand dollars
4 (\$10,000)], subject to adjustment under section 118, twenty-five
5 thousand dollars (\$25,000) or more shall be purchased by the
6 board of school directors only after due advertisement as
7 hereinafter provided. Supplies, subject to adjustment under
8 section 118, costing [ten thousand dollars (\$10,000)] twenty-
9 five thousand dollars (\$25,000) or more shall be purchased by
10 the board of school directors only after public notice has been
11 given by advertisement once a week for three (3) weeks in not
12 less than two (2) newspapers of general circulation. In any
13 district where no newspaper is published, said notice may, in
14 lieu of such publication, be posted in at least five (5) public
15 places.

16 (a.1) Written or telephonic price quotations from at least
17 three qualified and responsible vendors shall be requested by
18 the board of school directors for all purchases of supplies that
19 exceed [four thousand dollars (\$4,000)] seven thousand dollars
20 (\$7,000), subject to adjustment under section 118, but are less
21 than the amount requiring advertisement and competitive bidding,
22 or, in lieu of price quotations, a memorandum shall be kept on
23 file showing that fewer than three qualified vendors exist in
24 the market area within which it is practicable to obtain
25 quotations. A written record of telephonic price quotations
26 shall be made and shall contain at least the date of the
27 quotation, the name of the vendor and the vendor's
28 representative, the supplies which were the subject of the
29 quotation and the price of the supplies. Written price
30 quotations, written records of telephonic price quotations and

1 memoranda shall be retained for a period of three years.

2 (b) The board of school directors shall accept the bid of
3 the lowest responsible bidder, kind, quality, and material being
4 equal, but shall have the right to reject any and all bids, or
5 select a single item from any bid. The board of school directors
6 in any district may authorize or appoint the secretary of the
7 board or other executive as purchasing agent for the district,
8 with authority to purchase supplies costing less than [ten
9 thousand dollars (\$10,000)] twenty-five thousand dollars
10 (\$25,000), subject to adjustment under section 118.

11 (c) The following shall be exempt from the above provisions:
12 maps, music, globes, charts, educational films, filmstrips,
13 prepared transparencies and slides, pre-recorded magnetic tapes
14 and disc recordings, textbooks, games, toys, prepared kits,
15 flannel board materials, flash cards, models, projectuals and
16 teacher demonstration devices necessary for school use.

17 (d) No board of school directors shall evade the provisions
18 of this section as to advertising for bids or purchasing
19 materials piecemeal for the purpose of obtaining prices under
20 [ten thousand dollars (\$10,000)] twenty-five thousand dollars
21 (\$25,000), subject to adjustment under section 118, upon
22 transactions which should, in the exercise of reasonable
23 discretion and prudence, be conducted as one transaction
24 amounting to more than [ten thousand dollars (\$10,000)] twenty-
25 five thousand dollars (\$25,000), subject to adjustment under
26 section 118. This provision is intended to make unlawful the
27 practice of evading advertising requirements by making a series
28 of purchases or contracts each for less than the advertising
29 requirement price, or by making several simultaneous purchases
30 or contracts each below said price, when in either case the

1 transaction involved should have been made as one transaction
2 for one price.

3 Section 3. Section 1913-B.1(c) of the act, added December 9,
4 2002 (P.L.1472, No.187), is amended to read:

5 Section 1913-B.1. Contracts for Construction, Repair,
6 Renovation or Maintenance.--* * *

7 (c) All contracts, other than contracts for the retention of
8 architects and engineers, authorized by this section which
9 exceed [ten thousand dollars (\$10,000) or any larger amount as
10 otherwise provided for in 62 Pa.C.S. (relating to procurement)]
11 twenty-five thousand dollars (\$25,000), subject to adjustment
12 under section 118, shall be advertised in the manner provided by
13 law and competitively bid and awarded to the lowest responsible
14 bidder. In case of emergencies and notwithstanding any other
15 provision of this section to the contrary, the board of trustees
16 may make or authorize others to make an emergency procurement
17 whenever a threat exists to public health, welfare or safety or
18 circumstances outside the control of the college and creates an
19 urgency of need which does not permit the delay involved in
20 using more formal competitive methods. Whenever practical, in
21 the case of a procurement of a supply, at least two (2) bids
22 shall be solicited. A written determination of the basis for the
23 emergency and for the selection of the particular contractor
24 shall be included in the contract file.

25 * * *

26 Section 4. Sections 2003-A.1(c) and 2010-A(10) of the act,
27 amended April 27, 1998 (P.L.270, No.46), are amended to read:

28 Section 2003-A.1. Project Contracts.--* * *

29 (c) All contracts, other than contracts for the retention of
30 architects and engineers, authorized by this section which

1 exceed [ten thousand dollars (\$10,000)] twenty-five thousand
2 dollars (\$25,000), subject to adjustment under section 118,
3 shall be advertised in the manner provided by law and
4 competitively bid and awarded to the lowest responsible bidder.
5 In case of emergencies and notwithstanding any other provision
6 of this section to the contrary, the chancellor may make or
7 authorize others to make an emergency procurement whenever a
8 threat exists to public health, welfare or safety or
9 circumstances outside the control of the State system and
10 creates an urgency of need which does not permit the delay
11 involved in using more formal competitive methods. Whenever
12 practical, in the case of a procurement of a supply, at least
13 two (2) bids shall be solicited. A written determination of the
14 basis for the emergency and for the selection of the particular
15 contractor shall be included in the contract file.

16 * * *

17 Section 2010-A. Power and Duties of Institution
18 Presidents.--The president of each institution shall be
19 appointed by the board. The president shall be the chief
20 executive officer of that institution. He shall have the right
21 to attend all meetings of the council of that institution and
22 shall have the right to speak on all matters before the council
23 but not to vote. Subject to the stated authority of the board
24 and the council, each president shall have the following powers
25 and duties:

26 * * *

27 (10) Within the limitations of the operating budget and
28 other available funds in accordance with the procedures
29 established by the board and with the approval of the local
30 council, to negotiate and award all contracts for equipment,

1 services and supplies in excess of a cost of [ten thousand
2 dollars (\$10,000)] twenty-five thousand dollars (\$25,000),
3 subject to adjustment under section 118, on a competitive bid
4 basis and to purchase instructional, educational,
5 extracurricular, technical, administrative, custodial and
6 maintenance equipment and supplies not in excess of a cost of
7 [ten thousand dollars (\$10,000)] twenty-five thousand dollars
8 (\$25,000), subject to adjustment under section 118, without
9 competitive bidding, except that such items shall not be bought
10 in series to avoid the dollar ceiling.

11 * * *

12 Section 5. This act shall apply to contracts and purchases
13 advertised on or after January 1 of the year following the
14 effective date of this section.

15 Section 6. This act shall take effect in 60 days.