

PUBLIC SCHOOL CODE OF 1949 - OMNIBUS AMENDMENTS

Act of Jun. 30, 2021, P.L. 158, No. 26

Cl. 24

Session of 2021

No. 2021-26

SB 381

AN ACT

Amending the act of March 10, 1949 (P.L.30, No.14), entitled "An act relating to the public school system, including certain provisions applicable as well to private and parochial schools; amending, revising, consolidating and changing the laws relating thereto," in preliminary provisions, further providing for Special Education Funding Commission; in grounds and buildings, further providing for limitation on new applications for Department of Education approval of public school building projects; in certification of teachers, further providing for substitute teaching permit for prospective teachers; in community colleges, further providing for financial program and reimbursement of payments and for Community College Capital Fund; in educational tax credits, further providing for limitations; in miscellaneous provisions relating to institutions of higher education, further providing for Public Higher Education Funding Commission; providing for intercollegiate athletics; in funding for public libraries, providing for State aid for fiscal year 2021-2022; in reimbursements by Commonwealth and between school districts, further providing for student-weighted basic education funding, for payments to intermediate units and for assistance to school districts declared to be in financial recovery status or identified for financial watch status; in construction and renovation of buildings by school entities, further providing for applicability; and making an editorial change.

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

Section 1. Section 122(k)(2) of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, amended November 25, 2020 (P.L.1294, No.136), is amended to read:

Section 122. Special Education Funding Commission.--* * *
(k) * * *

(2) The commission shall be reconstituted not later than August 15, 2019, and shall issue the report to the recipients listed in subsection (i)(5) not later than [June 30, 2021] **December 31, 2021**. The commission shall limit the scope of the review provided for under this subsection to only the provision of special education payments to school districts by the Commonwealth through the funding formula contained in section 2509.5.

* * *

Section 2. Section 732.1(a) of the act, amended June 5, 2020 (P.L.223, No.30), is amended to read:

Section 732.1. Limitation on New Applications for Department of Education Approval of Public School Building Projects.--(a) For the 2012-2013 fiscal year, 2013-2014 fiscal year, 2017-2018 fiscal year, 2018-2019 fiscal year, 2019-2020 fiscal year [and], 2020-2021 fiscal year **and 2021-2022 fiscal year**, the Department

of Education shall not accept or approve new school building construction or reconstruction project applications.

* * *

Section 3. Section 1201.1(a) introductory paragraph and (b) of the act are amended to read:

Section 1201.1. Substitute Teaching Permit for Prospective Teachers.--[(a)] An individual who does not hold a certificate under section 1201 shall be eligible to teach as a substitute in a school district, an area career and technical school or an intermediate unit provided that:

* * *

[(b) This section shall expire on June 30, 2021.]

Section 4. Section 1913-A(b)(1.6) of the act is amended by adding subclauses to read:

Section 1913-A. Financial Program; Reimbursement of Payments.--* * *

(b) * * *

(1.6) For the 2006-2007 fiscal year and each fiscal year thereafter, the payment for a community college shall consist of the following:

* * *

(xiv) For the 2021-2022 fiscal year, each community college shall receive an amount equal to the following:

(A) An amount equal to the reimbursement for operating costs received in fiscal year 2019-2020 under subclause (xii)(A) and (C).

(B) An amount equal to the economic development stipend received in fiscal year 2019-2020 under subclause (xii)(B).

(xv) For fiscal year 2021-2022, a community college approved by the State Board of Education during the 2020 calendar year shall receive an amount equal to the difference between the amount appropriated for the allocation of community college funding and the sum of the amounts determined for community colleges under clause (xiv).

* * *

Section 5. Section 1917-A(e) of the act, added June 5, 2020 (P.L.223, No.30), is amended to read:

Section 1917-A. Community College Capital Fund.--* * *

[(e) Payments from the fund may only be made to community colleges that received payment under 1913-A(b)(1.6) in the prior fiscal year.]

Section 6. Section 2006-B(a)(1) introductory paragraph and (i) of the act are amended to read:

Section 2006-B. Limitations.

(a) Amount.--

(1) The total aggregate amount of all tax credits approved for contributions from business firms to scholarship organizations, educational improvement organizations and pre-kindergarten scholarship organizations shall not exceed [\$185,000,000] **\$225,000,000** in a fiscal year.

(i) No less than [\$135,000,000] **\$175,000,000** of the total aggregate amount shall be used to provide tax credits for contributions from business firms to scholarship organizations.

* * *

Section 7. Section 2001-I(i)(13) of the act, amended June 5, 2020 (P.L.223, No.30), is amended to read:

Section 2001-I. Public Higher Education Funding Commission.

* * *

(i) Additional powers and duties.--The commission shall have all of the following powers and duties:

* * *

(13) Issue a report of the commission's findings and recommendations to the Governor, the President pro tempore of the Senate, the Speaker of the House of Representatives, the Majority Leader and Minority Leader of the Senate, the Majority Leader and Minority Leader of the House of Representatives, the Secretary of Education, the State Board of Education, the Appropriations Committee of the Senate, the Appropriations Committee of the House of Representatives, the Education Committee of the Senate and the Education Committee of the House of Representatives not later than [November 30, 2021] **May 31, 2022.**

* * *

Section 8. The act is amended by adding an article to read:

ARTICLE XX-K

INTERCOLLEGIATE ATHLETICS

Section 2001-K. Scope of article.

This article relates to college athlete compensation related to name, image or likeness and professional representation.

Section 2002-K. Definitions.

The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Athlete agent." As defined in 5 Pa.C.S. § 3102 (relating to definitions).

"College student athlete." An individual enrolled at an institution of higher education who participates in intercollegiate athletics for the institution of higher education. The term does not include an individual whose participation is or was in a college intramural sport, club sport or in a professional sport outside of intercollegiate athletics.

"Institution of higher education." Any of the following:

(1) A university within the State System of Higher Education.

(2) The Pennsylvania State University, the University of Pittsburgh, Temple University, Lincoln University or any other institution designated as State related by the Commonwealth.

(3) The Thaddeus Stevens College of Technology.

(4) A community college as defined in Article XIX-A.

(5) A college established under Article XIX-G.

(6) An institution of higher education located in and incorporated or chartered by the Commonwealth and entitled to confer degrees as specified in 24 Pa.C.S. § 6505 (relating to power to confer degrees) and as provided for by the standards and qualifications prescribed by the State Board of Education under 24 Pa.C.S. Ch. 65 (relating to private colleges, universities and seminaries).

(7) A private school licensed under the act of December 15, 1986 (P.L.1585, No.174), known as the Private Licensed Schools Act.

(8) A foreign corporation approved to operate an educational enterprise under 22 Pa. Code Ch. 36 (relating to foreign corporation standards).

"NCAA." The National Collegiate Athletic Association.

Section 2003-K. Compensation regarding college student athlete's name, image or likeness rights.

(a) Compensation allowed.--A college student athlete may earn compensation for the use of the college student athlete's name, image or likeness under this article. The compensation shall be commensurate with the market value of the student athlete's name, image or likeness. The compensation may not be

provided in exchange, in whole or in part, for a current or prospective student athlete to attend, participate or perform at a particular institution of higher education.

(b) Prohibition regarding institutions of higher education.--An institution of higher education may not:

(1) Uphold a rule, requirement, standard or other limitation that prevents a college student athlete of the institution of higher education from earning compensation through the use of the college student athlete's name, image or likeness rights.

(2) Arrange third-party compensation for a college student athlete relating to the use of the college student athlete's name, image or likeness rights or use a similar type of arrangement as an inducement to recruit a prospective college student athlete.

(c) Prohibitions regarding intercollegiate athletic entities.--An athletic association, conference or other group or organization with authority over intercollegiate athletics, including the NCAA, may not:

(1) Prevent a college student athlete from earning compensation through the use or license of the college student athlete's name, image or likeness rights.

(2) Prevent an institution of higher education from fully participating in intercollegiate athletics as a result of a college student athlete's use of the college student athlete's name, image or likeness rights to seek compensation.

(d) Royalty payment.--A person that produces a college team jersey, a college team video game or college team trading cards for the purpose of making a profit shall make a royalty payment to each college student athlete whose name, image, likeness or other individually identifiable feature is used.

Section 2004-K. Professional representation.

(a) Prohibitions.--

(1) An institution of higher education, athletic association, conference or other group or organization with authority over intercollegiate athletics, including the NCAA, may not interfere with or prevent a college student athlete from fully participating in intercollegiate athletics for obtaining professional representation in relation to contracts or legal matters, including representation provided by athlete agents, financial advisors or legal representation provided by attorneys, in relation to a college student athlete's use of the college student athlete's name, image or likeness rights.

(2) An athletic association, conference or other group or organization with authority over intercollegiate athletics, including the NCAA, may not prevent an institution of higher education from fully participating in intercollegiate athletics without penalty to the institution or individual student as a result of a college student athlete obtaining professional representation in relation to contracts or legal matters, including representation provided by athlete agents, financial advisors or legal representation provided by attorneys, in relation to a college student athlete's use of the college student athlete's name, image or likeness rights.

(b) Qualifications.--Professional representation obtained by a college student athlete shall be from a person:

(1) acting as an athlete agent in accordance with 5 Pa.C.S. Ch. 33 (relating to registration);

(2) acting as a financial advisor in accordance with the laws of this Commonwealth; or

(3) admitted to practice law by a court of record of this Commonwealth.

(c) Limitation.--A person that represents an institution of higher education may not represent a college student athlete in a business agreement.

Section 2005-K. Scholarships.

(a) Eligibility.--Earning compensation from the use of a college student athlete's name, image or likeness rights may not affect the college student athlete's scholarship eligibility, duration or renewal.

(b) Compensation.--

(1) For purposes of this article, an athletics grant-in-aid or stipend scholarship from an institution of higher education in which a college student athlete is enrolled may not be considered to limit a college student athlete's right to use the college student athlete's name, image or likeness rights, except as expressly provided in this section.

(2) An athletics grant-in-aid or stipend scholarship may not be revoked or reduced as a result of a college student athlete earning compensation under this article, except if otherwise mandated by Federal or state student aid guidelines.

Section 2006-K. Contracts.

(a) Opportunities.--An institution of higher education, athletic association, conference or other group or organization with authority over intercollegiate athletics may not be required to identify, create, facilitate, negotiate or enable opportunities for a college student athlete to earn compensation for the college student athlete's use of the college student athlete's name, image or likeness rights.

(b) Use of trademarks.--This article shall not establish or grant a right to a college student athlete to use the name, trademarks, services marks, logos, symbols or any other intellectual property, registered or unregistered, of an institution of higher education, athletic association, conference or other group or organization with authority over intercollegiate athletics, in furtherance of the college student athlete's opportunities to earn compensation for the college student athlete's use of the college student athlete's name, image or likeness rights.

(c) Enforcement.--This article shall not limit the right of an institution of higher education to establish and enforce any of the following:

(1) Academic standards, requirements, regulations or obligations for the institution of higher education's college student athletes.

(2) Team rules of conduct or other rules of conduct.

(3) Standards or policies regarding the governance or operation of or participation in intercollegiate athletics.

(4) Disciplinary rules and standards generally applicable to all students of the institution of higher education.

(d) Prohibition.--A college student athlete may not earn compensation as a result of the use of the college student athlete's name, image or likeness in connection with a person, company or organization related to or associated with the development, production, distribution, wholesaling or retailing of any of the following:

(1) Adult entertainment products and services.

- (2) Alcohol products.
- (3) Casinos and gambling, including sports betting, the lottery and betting in connection with video games, online games and mobile devices.
- (4) Tobacco and electronic smoking products and devices.
- (5) Prescription pharmaceuticals.
- (6) A controlled dangerous substance.

(e) Prohibition.--An institution of higher education may prohibit a college student athlete's involvement in name, image or likeness activities that conflict with existing institutional sponsorship arrangements at the time the college student athlete discloses a contract to the institution of higher education as required under subsection (f). An institution of higher education, at the institution of higher education's discretion, may prohibit a college student athlete's involvement in name, image or likeness activities based on other considerations, such as conflict with institutional values, as defined by the institution of higher education. An institution of higher education shall have policies that specify the name, image or likeness activities in which college student athletes may or may not engage.

(f) Disclosure.--A college student athlete who proposes to enter into a contract providing compensation to the college student athlete for use of the college student athlete's name, image or likeness rights shall disclose the contract at least seven days prior to execution of the contract to an official of the institution of higher education, who is designated by the institution of higher education.

Section 2007-K. Violations and claims.

(a) Protections and right to adjudicate.--A college student athlete, institution of higher education or conference shall not be deprived of a protection provided under State law with respect to a controversy that arises in this Commonwealth and shall have the right to adjudication in this Commonwealth of a claim that arises in this Commonwealth.

(b) Private civil action.--A college student athlete shall have the right to pursue a private civil action against a person that violates this article. The court shall award costs and reasonable attorney fees to a prevailing plaintiff in an action brought against a person violating this article.

Section 2008-K. Settlements.

Legal settlements made on or after the effective date of this section may not permit noncompliance with this article.

Section 2009-K. Severability.

The provisions of this article are severable. If any provision of this article or the application of any provision of this article is held to be invalid, that invalidity shall not affect any other provision or application of any other provision that can be given effect without the invalid provision or application.

Section 9. The act is amended by adding a section to read:
Section 2325. State Aid for Fiscal Year 2021-2022.

Notwithstanding any other provision of law to the contrary, each library subject to 24 Pa.C.S. Ch. 93 (relating to public library code), shall be eligible for State aid for fiscal year 2021-2022 as follows:

- (1) Funds appropriated for libraries shall be distributed to each library under the following formula:
 - (i) Divide the amount of funding that the library received in fiscal year 2020-2021 under section 2324 by the total State-aid subsidy for fiscal year 2020-2021.

(ii) Multiply the quotient under subparagraph (i) by the total State-aid subsidy for fiscal year 2021-2022.

(2) Following distribution of funds appropriated for State aid to libraries under paragraph (1), any remaining funds may be distributed at the discretion of the State Librarian.

(3) If funds appropriated for State aid to libraries in fiscal year 2021-2022 are less than funds appropriated in fiscal year 2002-2003, the State Librarian may waive standards as prescribed in 24 Pa.C.S. Ch. 93.

(4) Each library system receiving State aid under this section may distribute the local library share of that aid in a manner as determined by the board of directors of the library system.

(5) In the case of a library system that contains a library operating in a city of the second class, changes to the distribution of State aid to the library shall be made by mutual agreement between the library and the library system.

(6) In the event of a change in district library center population prior to the effective date of this section as a result of:

(i) a city, borough, town, township, school district or county moving from one library center to another; or

(ii) a transfer of district library center status to a county library system;

Funding of district library center aid shall be paid based on the population of the newly established or reconfigured district library center.

(7) In the event of a change in direct service area from one library to another, the State Librarian, upon agreement of the affected libraries, may redistribute the local library share of aid to the library currently servicing the area.

Section 10. Sections 2502.53(b), 2509.1(c.2)(1) and 2510.3(a)(2) of the act, amended June 5, 2020 (P.L.223, No.30), are amended to read:

Section 2502.53. Student-Weighted Basic Education Funding.--* * *

(b) For the 2015-2016 school year and each school year thereafter, except the 2019-2020 school year which shall be governed by subsection (b.1), the Commonwealth shall pay to each school district a basic education funding allocation which shall consist of the following:

(1) An amount equal to the school district's basic education funding allocation for the 2013-2014 school year.

(2) A student-based allocation to be calculated as follows:

(i) Multiply the school district's student-weighted average daily membership by the median household income index and local effort capacity index.

(ii) Multiply the product in subparagraph (i) by the difference between the amount appropriated for the allocation of basic education funding to school districts and the amount appropriated for the allocation in paragraph (1).

(iii) Divide the product in subparagraph (ii) by the sum of the products in subparagraph (i) for all school districts.

(iv) For the 2018-2019 school year, the difference determined under subparagraph (ii) shall be \$698,667,244.

(v) For the 2020-2021 school year, the difference determined under subparagraph (ii) shall be \$898,667,244.

* * *

Section 2509.1. Payments to Intermediate Units.--* * *

(c.2) The following apply:

(1) For the 2016-2017, 2017-2018, 2018-2019, 2019-2020 [and], 2020-2021 **and 2021-2022** school years, five and five-tenths percent (5.5%) of the State special education appropriation shall be paid to intermediate units on account of special education services.

* * *

Section 2510.3. Assistance to School Districts Declared to be in Financial Recovery Status or Identified for Financial Watch Status.--(a) The following apply:

* * *

(2) For the 2017-2018, 2018-2019, 2019-2020 [and], 2020-2021 **and 2021-2022** fiscal years, the Department of Education may utilize up to seven million dollars (\$7,000,000) of undistributed funds not expended, encumbered or committed from appropriations for grants, subsidies and assessments made to the Department of Education to assist school districts declared to be in financial recovery status under section 621-A, identified for financial watch status under section 611-A or identified for financial watch status under section 694-A; except that the funds must be first utilized to accomplish the provisions contained in section 695-A. The funds shall be transferred by the Secretary of the Budget to a restricted account as necessary to make payments under this section and, when transferred, are hereby appropriated to carry out the provisions of this section.

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Section 11. Section 2608-J of the act, amended June 5, 2020 (P.L.223, No.30), is amended to read:
Section 2608-J. Applicability.

This article shall apply to projects for which approval and reimbursement is sought and to the maintenance project grant program beginning July 1, [2021] **2022**.

Section 12. This act shall take effect immediately.

APPROVED--The 30th day of June, A.D. 2021.

TOM WOLF