

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

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," providing for adjustments based on Consumer Price Index; and further providing for work to be done under contract let on bids and exception, for purchase of supplies, for contracts for construction, repair, renovation or maintenance, for project contracts and for powers and duties of institution presidents.

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

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

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

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

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

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

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

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

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

clause (1) is made.

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

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

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

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

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

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

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

* * *

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

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

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

memoranda shall be retained for a period of three years.

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

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

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

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

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

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

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

* * *

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

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

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

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

* * *

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

* * *

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

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

* * *

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

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