

IN THIS ISSUE

One-On-One with State Senator
Vincent Hughes 1

Strict Means Strict When It Comes to
Pennsylvania Bid Submissions 1

People News 4

Stradley Ronon Stevens & Young, LLP
2005 Market Street
Suite 2600
Philadelphia, PA 19103-7018
215.564.8000 Telephone
215.564.8120 Facsimile
www.stradley.com

With other offices in:
Washington, D.C.
New York
New Jersey
Illinois
Delaware



www.meritas.org

Our firm is a member of Meritas – a worldwide business alliance of more than 180 law offices in 86 countries, offering high-quality legal services through a closely integrated group of independent, full-service law firms.

Information contained in this publication should not be construed as legal advice or opinion or as a substitute for the advice of counsel. The enclosed materials may have been abridged from other sources. They are provided for educational and informational purposes for the use of clients and others who may be interested in the subject matter.

Copyright © 2018
Stradley Ronon Stevens & Young, LLP
All rights reserved.

One-On-One with State Senator Vincent Hughes



Senator Vincent J. Hughes is a leading progressive voice on local, state and national issues. He was elected by his colleagues in 2010 to be the Democratic Chairman of the Senate Appropriations Committee. He has been a member of the Pennsylvania Senate for more than 20 years, first elected to represent the 7th Senatorial District in 1994.

Government Affairs News (GAN): This summer, you heralded the passage of an early budget, what were some things you got accomplished that you're especially proud of?

Senator Vincent J. Hughes (VJH): I take pride in the fact we were able to restore the \$1 billion cuts to basic education imposed by Gov. Tom Corbett. If you look at the issues this state faces, whether it is employment or crime, many of them can be connected to our education system failing students in poorer districts. Restoring those cuts and pledging support to education also sets the tone for future budget negotiations and makes clear we will not tolerate any future cuts. I'll say it again: Our commonwealth has to do better with funding education on a basic level to provide a solid foundation.

We also continued to push for Democratic principles and found successes in devoting \$10 million to fund training programs and business partnerships through the PA SMART initiative, \$1.3 million to the Pennsylvania Human Relations Commission to investigate discrimination, and \$15 million to increase mental health services.

(continued on page 2)

Strict Means Strict When It Comes to Pennsylvania Bid Submissions

by Karl Myers

A recent decision reminds that a bidder for a Pennsylvania government contract must comply with every requirement in the solicitation – even the seemingly trivial ones. Failing to do so can lead to the severe consequence of disqualification.

In *Center for Climate Strategies v. Department of Environmental Protection*¹ (http://www.pacourts.us/assets/opinions/Commonwealth/out/594CD17_9-24-17.pdf?cb=1) an agency solicited bids on a contract to help update a climate change plan. In the solicitation, the agency told bidders that responses “will only be accepted electronically” through a specific website.

A half hour before the submission deadline, a bidder called the website help line in apparent panic. The bidder could not find its website password because its website contact person no longer worked there. A representative told the bidder to request a password and contact change by email. The bidder did so before the deadline.

(continued on page 3)

Senator Vincent Hughes *(continued from page 1)*

My office helped lead the investment of a new \$60 million School and Community Safety Initiative, which hopefully is the start of a greater focus in protecting our students across the state. We spearheaded the Keystone Scholars Program with the Office of the Treasurer, which creates a college savings account for every child born in Pennsylvania and is a part of a growing effort to reduce the overwhelming burden of college debt too many of our students must face in order to earn an education.

There were many other victories on the legislative level. Given the political circumstances, I think we did well making an impact for the social and economic good of the city and the state.

GAN: Speaking of economic initiatives, are there any new projects you'd like to highlight from your district?

VJH: I would say 2018 has been a good year for development in the district as a whole, with a few major initiatives reaching milestones. In February, we broke ground on New Market West. This 135,700-square-foot hub will be built on a 1.5-acre lot in the district and is expected to be completed by fall 2019. New Market West came with a \$15 million investment from state partners. It will serve as a central hub for early childhood education, workforce development, behavioral health services and community-focused retail space. This joint venture between Mission First Housing Group, Horizon House and ACHIEVEability brings together organizations tasked with providing affordable housing and human services, combining with a community-based partner to have maximum impact in the area.

I participated in the ribbon cutting celebration in August at Centennial Village alongside Mayor Jim Kinney, Councilman Curtis Jones and other leaders and community members. Centennial Village provides 51 affordable housing units and 7,200-plus square feet of commercial space. All of this will revitalize a key part of our vibrant community. I couldn't ask for a better idea to come to fruition.

A total of \$5 million in grants from the Redevelopment Assistance Capital Program (RACP) went to six projects in the district in September. These projects at NewCourtland Elder Services, West Philadelphia Institute, SUPRA/EMSCO, Community College of Philadelphia, Esmith Properties and Philadelphia Ronald McDonald House all bring a level of value to the district that would not be accessible without the investment from Gov. Tom Wolf's administration and the work from our office to identify the worthy programs. Job creation notwithstanding, the district will also see new business, better services for the elderly and increased services for those in need at the Ronald McDonald House. Those investments have a monetary figure but are invaluable to our constituents.

With the help of Gov. Wolf and the Department of Community and Economic Development (DCED), we were able to keep

AmerisourceBergen in Pennsylvania, keeping 1,900 jobs in the state. DCED created \$1,659,000 in Job Creation Tax Credits and an \$8 million RACP grant will assist with facility development and construction costs. The tax credit and grant helped persuade AmerisourceBergen to expand its national headquarters in Conshohocken. The Fortune 12 company will create 550 high-paying new jobs in the district that could have been lost to other states, including neighboring New Jersey.

Those are just some of the highlights when it comes to development and revitalization the Hughes team has worked on, and we expect to be just as busy next year.

GAN: What else are you looking to work on when the Senate reconvenes in 2019?

VJH: When I said the Hughes team would be busy, I meant it. I plan to continue the push to clean up Philadelphia schools. The conditions our students must endure is appalling. We have a lead problem, crumbling schools and a growing lack of resources in the city compared to the resources children receive in other districts. I will continue to point to Overbrook High School and Upper Dublin High School as examples of why we need to do better for our children within the city. Both schools are in my district, but they are worlds apart in terms of conditions and as a result, student achievement. We should be pushing to give every Pennsylvania public school student an experience similar to what is in place at Upper Dublin High School. That is a cause I will fight for as long as I am in the General Assembly. We also need to be creative about addressing our schools' infrastructure needs. Some crumbling buildings are beyond repair and need to be torn down. Other public school buildings can be invested in and repurposed for other needs, such as for housing and local economic development projects. Every public school building should be an environment where a student can get a 21st century education. We all have to be committed, creative and innovative to make that goal a reality.

I also plan to continue to push for free college and the Pennsylvania Promise initiative. The PA Promise would make this state as competitive as any in terms of turning out graduates and trained workers to successfully transition students from college, technical school or a vocational training program, to a well-paying job. Imagine what that would do for our economy if companies knew we could provide qualified, capable candidates year-in and -out? Finally, in that vein, I plan to introduce legislation packages that address the lifetime of a worker and all of the relevant issues one may face over the course of a career. Everything from workplace equality to paying workers a living wage. We have a lot we plan to tackle in 2019 and beyond. ■

Strict Means Strict *(continued from page 1)*

But it does not appear it received a response in time for it to reset its website information and submit through the site.

So with three minutes to go before the submission deadline, the bidder instead emailed its bid materials to three department employees involved with the solicitation. The bidder did so as “a failsafe measure” because it “encountered challenges” with submission on the website.

The department still rejected the bid because the bidder did not submit it through the website. The bidder protested, claiming the department should have accepted its submission because the bidder made a reasonable effort to comply.

The department denied the protest, and the Commonwealth Court affirmed. The court explained that when specifications are mandatory, “they must be strictly followed for the bid to be valid.” Here, the solicitation documents “specified the exact electronic solicitation method.” They also used words like “only” and “must” to describe that requirement. This led the court to conclude the agency properly disqualified the bid “regardless of the timely submission of its bid through a different electronic submission method.”

Center for Climate Strategies teaches us two lessons. First, bidders must comply with every mandatory requirement in a procurement document – no matter how minor or clerical. Second, bidders should not wait until the last minute to submit their procurement responses – or, at least, should prepare well in advance to ensure the submission process goes smoothly. By learning and applying these important lessons, bidders can avoid the unfortunate outcome for the bidder in *Center for Climate Strategies*.

Sunshine Act amendment signed into law

On October 24th, Gov. Wolf signed into law Senate Bill 1078 (<https://www.legis.state.pa.us/cfdocs/legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2017&sessInd=0&billBody=S&billTyp=B&billNbr=1078&pn=1560>), amending the Sunshine Act. The amendment allows agencies to discuss public safety matters in executive session. In particular, agencies may discuss matters “necessary for emergency preparedness, protection of public safety and security of all property” in a closed session, where public discussion would be “reasonably likely to jeopardize or threaten public safety or preparedness or public protection.” Senators Robert Tomlinson and Mike Regan sponsored the bill, which passed unanimously in the Senate and House. Now known as Act 156, the amendment takes effect on Dec. 23, 2018.

¹ No. 594 CD 2017, ___ A.3d ___, 2018 WL 4557062 (Pa. Commw. Sept. 24, 2018).



Karl S. Myers represents government entities and contractors in governmental litigation matters, including proceedings involving the Pennsylvania Right-to-Know Law, bid protests, and state constitutional disputes. For more information, please contact Karl at 215.564.8193 or kmyers@stradley.com.

Government & Public Affairs Practice Group

John R. Saler, <i>Chair</i>	215.564.8709	jsaler@stradley.com
Mark E. Chopko	202.419.8410	mchopko@stradley.com
Steven B. Davis	215.564.8714	sdavis@stradley.com
Stephen J. Johnson	215.564.8010	stephen.johnson@stradley.com
Andrew S. Levine.....	215.564.8073	alevine@stradley.com
Karl S. Myers	215.564.8193	kmyers@stradley.com
Corey S. D. Norcross	215.564.8742	cnorcross@stradley.com
William R. Sasso	215.564.8045	wsasso@stradley.com
Mark S. Schweiker	215.564.8003	mschweiker@stradley.com
Catherine M. Ward	856.321.2402	cward@stradley.com

People News



Bill Sasso was selected as *The Philadelphia Inquirer's* 2018 Influencers of Law award recipient in the "Lifetime Achievement" and "Investment Management" categories, respectively. This recognition honors Philadelphia's leading lawyers who "set the bar high" by impacting business and serving the community.

Bill Sasso was also named to the *Philadelphia Business Journal's* "Power 100" list, a compilation of "the most influential people in greater Philadelphia." The nominations were evaluated based on those wielding the most influence and with the most impact in shaping the future of Greater Philadelphia.



Karl Myers was appointed vice chair of the American Bar Association's Tort Trial and Insurance Practice Section's Appellate Advocacy committee at the ABA's annual meeting in Chicago.



Andy Levine was elected to the Lower Bucks Family YMCA advisory board. The Morrisville Branch of Lower Bucks Family YMCA is a Keystone STAR 4 Child Care facility.

Andy served as the moderator at the Practicing Law Institute's on-demand web program

on Sept. 21. Levine's panel, "Negotiating a Power Purchase Agreement," examined the key issues in a power purchase agreement from the perspectives of the developer, counsel and commercial customer for renewable energy facilities and projects.

Andy also served as the moderator at the Practicing Law Institute's on-demand web program on Sept. 21. Levine's panel, "Energy Project Finance Considerations," examined project finance considerations from the perspective of counsel, lender and borrower to highlight the factors necessary to facilitate project funding of merchant energy facilities.



Mark Schweiker was appointed executive-in-residence of Rider University's department of political science's homeland security program on August 8. Schweiker will use his considerable emergency management, crisis response and counter-terrorism experiences from his former role as governor of Pennsylvania to support the University's graduate-level homeland security program.