

MCA Summary of Legislation

April 2008

Hearing Held on Worker Misclassification Bill

Legislation designed to make it more difficult to misclassify employees as independent contractors was the subject of a public hearing on April 23rd. The House Labor Relations committee is held the hearing at Ridley High School in Delaware County. That is in the district of Representative Bryan Lentz who sponsored the bill. **House Bill 2400** would establish the Employee Misclassification Prevention Act, which seeks to prevent misclassification of workers as independent contractors. The bill would require true independent contractors to meet these criteria:

1. the individual is free from direction of the employer;
2. the services are outside of the employer's usual course of business; and
3. the individual customarily performs work for another, independently established business, trade, or profession.

If an employer wrongly categorizes an individual as an independent contractor when he/she is, in fact, really an employee, the employer escapes payment of workers' compensation, unemployment compensation, and other required taxes and premiums for that individual. As a result, dishonest employers have an unfair business advantage over competitors who follow the law. Also, if the individual becomes injured while on the job and is then determined to have been an employee, the insurer is paying workers compensation benefits for individuals for whom they did not collect a premium.

Negotiations have been taking place between various business and labor organizations in an attempt to hammer out a compromise. Based on those negotiations, it appears that the bill will be limited to addressing the misclassification problem in the construction and trucking industries. Those two industries appear to have the most significant incidence of misclassification. The bill is already scheduled for a vote in the House Labor Relations committee on May 6th.

DGS updating general conditions

Design professionals and construction contractors that do work for the Pennsylvania Department of General Services (DGS) should take note that the state agency is rewriting its general conditions for both groups. The document for design professionals is called the "Agreement for Professional Services and General Conditions to the Agreement for Professional Services". The construction contract is referred to as "The Standard Form of Contract and General Conditions of the Construction Contract".

DGS's agreements have never resembled the contract documents most industry professionals are familiar with such as AIA contract documents. That is not about to change, but the agreements may make some significant improvements. For example, the design professional's agreement allows, for the first time, a negotiated fee as opposed to an arbitrary % of the cost of construction. Likewise, the construction contracts will include references to the "Best Value" selection process, signaling that DGS is about to reinstitute its use for certain construction awards now that the Courts have upheld its legality.

Both documents will be available to view at the Departments web site: www.dgs.state.pa.us. There will be a public comment period for at least 30 days starting with the posting of the documents (estimated to occur within a few weeks). The Department's counsel will also be holding regional public meetings to explain and receive feedback on the new general conditions. No dates or locations are presently available for those hearings.

Contractor licensing to get hearing

A bill that would establish a state-licensing program for all types of commercial construction contractors will be the subject of a public hearing on May 19th. The House Labor Relations committee will accept testimony from interested parties on **House Bill 1776**. That bill was introduced by Representative Bob Belfanti, who also chairs the Labor Relations committee.

House Bill 1776 is part of a package of bills that takes aim at the problem of illegal aliens working in Pennsylvania. Patterned after a West Virginia law, House Bill 1776 charges the Pennsylvania Department of Labor and Industry with establishing the licensing program that will cover everyone from general contractors to specialty contractors. Unlike other licensing bills for electrical and plumbing contractors, HB 1776 sets up one "Fair Contracting Board" that will oversee all of the trades.

Anyone interested in testifying at the May 19th hearing should contact Representative Belfanti's Harrisburg office.

Legislative Activity

HB 816 RE: Uniform Construction Code (UCC) Appeals (by Rep. Scott Boyd, et al)

Amends the PA Construction Code Act further providing for board of appeals. The bill states that a board of appeals can consider an appeal if the Uniform Construction Code (UCC) was incorrectly interpreted by the code administrator, the UCC does not apply, the requirements of the UCC impose an unreasonable burden on the appellant to which a variance will not cause public harm, an equivalent form of construction can be used and the UCC imposes a requirement that violates the basic tenets of a recognized religious sect.

Removed from the table and rereferred to House Appropriations Committee, 3/31/2008

HB 1096 RE: Uniform Construction Code Review Advisory Council (By Rep. Ron Buxton, et al)

Amends the PA Construction Code Act to create the Uniform Construction Code Review Advisory Council. The Council would be charged with gathering information from municipal officers, building code officials, construction code officials, licensed design professionals, builders and property owners concerning issues with the Uniform Construction Code and evaluating this information in order to give recommendations to the Governor, Labor and Industry Committees in the Senate and House, the Secretary of Labor and Industry, President Pro Tempore of the Senate, Speaker of the House and the Code Development Councils of the International Code Council. The Council would also review new and amended provisions issued by the ICC to any of its codes and inform the department of any code provisions that should be excluded from the Uniform Construction Code by May 1 of the year of issuance of the latest triennial code issued by the ICC. The composition of the Council and meeting requirements are further provided for in the legislation.

Reported as amended from Senate Labor and Industry Committee, and read first time, 4/8/2009

Rereferred to Senate Appropriations Committee, 4/9/2008

HB 1589 RE: Capital Budget Project Itemization Act of 2007-2008

Provides for the capital budget for the fiscal year 2007-2008; itemizes public improvement projects, furniture and equipment projects, transportation assistance projects, redevelopment assistance capital projects, flood control projects, Keystone Recreation, Park and Conservation Fund projects, Environmental Stewardship Fund projects, Motor License Fund projects, State forestry bridge projects, Pennsylvania Fish and Boat Commission projects, Manufacturing Fund projects and federally funded projects to be constructed or acquired or assisted by the Department of General Services, the Department of Community and Economic Development, the Department of Conservation and Natural Resources, the Department of Environmental Protection, the Pennsylvania Fish and Boat Commission and the Department of Transportation, together with their estimated financial costs; authorizes the incurring of debt without the approval of the electors for the purpose of financing the projects to be constructed, acquired or assisted by the Department of General Services, the Department of Community and Economic Development, the Department of Conservation and Natural Resources, the Department of Environmental Protection, the Pennsylvania Fish and Boat Commission or the Department of Transportation; states the estimated useful life of the projects; provides an exemption; provides for limitation on certain capital projects, for special provisions for certain redevelopment assistance capital projects and for preemption of local ordinances for Department of Corrections projects; and makes appropriations.

Passed Senate, 4/2/2008 (47-2)

Received as amended in House and rereferred House Rules Committee, 4/2/2008

HB 2113 RE: Industrialized/commercial modular buildings (by Rep. Marc Gergely, et al)

Amends the Industrialized Housing Act adding a definition for "industrialized/commercial modular building". The Department of Community and Economic Development would be required to promulgate regulations for industrialized/commercial modular buildings and authorized to enter into a multi-state agreement for the purpose of regulating the buildings.

Removed from the table, and referred to House Appropriations Committee, 3/31/2008

HB 2186 RE: School Construction Costs (by Rep. Bev Mackereth, et al)

Amends the Public School Code further providing for approved reimbursable rental for certain leases and approved reimbursable sinking fund charges on indebtedness by adding that for new school buildings or for additions, alterations or improvements, the approved building construction cost would consider the cost of employing a construction manager to oversee construction.

Voted favorably from House Education Committee, 4/9/2008

HB 2380 RE: 2008-09 Budget (by Rep. Dwight Evans, et al)

This is the budget bill providing for expenses of the Executive, Legislative and Judicial Departments, the public debt, for the public schools for the fiscal year July 1, 2008, to June 30, 2009.

Removed from the table, and referred to House Appropriations Committee, 3/31/2008

H Res. 694 RE: Pennsylvania One Call System Month (by Rep. Joe Preston, et al)

A Resolution designating the month of May 2008 as "Pennsylvania One Call System Month."

Introduced as non-controversial resolution, 4/7/2008

Adopted 4/8/2008 (203-0)

SB 9 RE: Proof of Citizenship for Receipt of Public Benefits Act (by Sen. Joe Scarnati, et al)

Requires anyone who is at least 18 years of age and applies for public benefits to provide one of a specified list of identifications and execute an affidavit stating that the person is a U.S. citizen or legal permanent resident or is otherwise lawfully present in the U.S. pursuant to Federal law. The agency receiving this affidavit would have to keep it on file. Agencies that administer public benefits have to verify, through the SAVE program that each applicant who has executed an affidavit is an alien legally present in the U.S. Penalties are further provided for in the bill.

Reported as amended from Senate Appropriations Committee, 3/31/2008

Amended on Senate floor, 4/7/2008

Amended on Senate floor, and read second time, 4/8/2008

Read third time, and Passed Senate, 4/9/2008 (39-10)

Referred to House State Government Committee, 4/15/2008

S Res. 263 RE: Permit Fees Study (by Sen. Mike Waugh, et al)

A Resolution directing the Legislative Budget and Finance Committee to conduct a study relating to the funds collected from the fee from construction or building permits and to report its findings to the General Assembly by June 30, 2008.

Reported as amended from Senate Labor and Industry Committee, 4/8/2008

Amended on Senate Floor, 4/28/2008

Adopted 4/29/2008 (49-0)

Transmitted as directed 4/30/2008

New Bills Introduced

HB 2400 RE: Employee Misclassification Prevention Act (By Rep. Bryan Lentz, et al)

States that services performed by an individual for wages would be deemed to be employment and the individual would be considered an employee of the party that pays the wages. The bill provides for exceptions. An employer or an officer or agent of the employer that fails to properly classify an individual as an employee or fails to pay benefits or other contributions required by law would be subject to penalties, remedies or actions. The bill provides for enforcement and criminal penalties. Any sum collected as a penalty would be applied toward enforcement and administration costs of the Department of Labor and Industry.

Referred to House Labor Relations Committee, 4/3/2008

House Labor Relations Committee Voting Meeting set for 10:00 a.m., Room 60, East Wing, 5/6/2008

HB 2439 RE: Prevailing Wage Threshold (By Rep. Ron Marsico, et al)

Amends the PA Prevailing Wage Act raising the threshold for applicability to \$250,000 from \$25,000.

Referred to House Labor Relations Committee, 4/7/2008

HB 2469 RE: One Call System (by Rep. Bud George, et al)

Amends Underground Line Protection Law providing it would be the duty of each facility owner to respond to all notices made through the One Call System to terminate, disable, or otherwise suspend any line or facility and to develop and maintain a protocol for complying with One Call System notices to terminate, disable or otherwise suspend any line or facility. Further provides each owner must compile and submit an annual report to the One Call System's board of directors detailing each owner's protocol for verifying its response to and compliance with all notices made through the System. Also provides this report would be submitted to the Public Utility Commission for all facility owners that fall under the PUC's jurisdiction.

Referred to House Consumer Affairs Committee, 4/15/2008

SB 1304 RE: Highmark Merger (by Sen. Don White, et al)

Amends the Insurance Company Law further providing for effect of act on existing laws and, in insurance holding companies, for definitions, for acquisition of control of or merger with domestic insurer and for acquisitions involving insurers not otherwise covered; providing for committee review; imposing a duty on the Insurance Department; establishing the Insurance Restructuring Restricted Receipt Account; providing for community health reinvestment; imposing duties on the Insurance Department; and establishing a restricted receipts account in the Tobacco Settlement Fund; and making related repeals. The bill extensively provides for mergers and consolidations and provides for legislative review of an application or statement submitted by a hospital plan corporation or professional health services plan corporation seeking the approval of a merger, consolidation or other acquisition of control of a hospital plan corporation or professional health services plan corporation.

Referred to Senate Banking and Insurance Committee, 4/9/2008

Upcoming Meetings of Interest

TUESDAY - 5/6/08

House Labor Relations

10:00 a.m., Room 60, East Wing

To consider: HB 2400 - An Act re proper classification of employees

TUESDAY, 5/13/08

House Consumer Affairs Committee

9:00 a.m., Room G-50, Irvis Office Building

To consider: **HB 1821 RE: New Home Construction Consumer Protection Act** (by Rep. Frank Andrews Shimkus, et al)

Provides for the regulation of home construction contracts and for the registration of certain home builders; prohibits certain acts; provides for penalties; establishes the Home Builder Guaranty Fund; and provides for claims against the fund.

WEDNESDAY – 5/14/2008

Legislative Budget & Finance Committee

10 AM Room G-50, Irvis Building

Public meeting to discuss reports pursuant to:

S Res. 41 - Resolution directing the Legislative Budget and Finance Committee to investigate the Department of General Services **strategic sourcing initiative** for State and local government procurement; to accurately measure actual saving and costs of strategic sourcing; to review alternative plans examined by the department; to examine the department's development and implementation of strategic sourcing, especially with regard to the impact on Pennsylvania small business; and to analyze procurement spending data.

MONDAY - 5/19/08

House Labor Relations

1 PM, Room G-50, Irvis Building

Public Hearing on HB 1776 - Fair Contracting Act

2008 HOUSE SPRING SESSION SCHEDULE

The House has announced the following session days for Spring 2008, subject to change

May 5, 6, 7, 12, 13, and 14

June 2, 3, 4, 9, 10, 11, 16, 17, 18, 23, 24, 25, 26, 27, 28, 29, and 30

2008 SENATE SPRING SESSION SCHEDULE

The Senate has announced the following session days for Spring 2008, subject to change

May 5, 6, 7, 12, 13, 14, 19, 20, 21

June 2, 3, 4, 9, 10, 11, 16, 17, 18, 23, 24, 25, 26, 27, 30

Copies of all bills of interest can be accessed via the Internet at:

<http://www.legis.state.pa.us/WU01/LI/BI/billroom.htm>.