

MCA
Summary of Legislation
June 2008

Budget and related issues moving forward

June 30th is the deadline for the Commonwealth to adopt a budget for the 2008-2009 fiscal year. But that is a deadline that has not been met since the current Governor took office in 2003. While most observers are not surprised that the deadline will not be met this year, there is a good deal of activity and negotiations occurring. The good news for the construction industry is that there are a number of infrastructure initiatives being discussed along with the possibility of a reduction in taxes.

The list of proposals includes funding projects for flood control, water and sewer improvements, bridge repairs, prison construction and other capital budget buildings. It is too early to predict if any of the proposals make it through the budget battle, but there is significant activity and discussions taking place.

Many legislators, particularly in the Senate Republican caucus, are also promoting tax cuts. That caucus is spearheading an effort to reduce the Corporate Net Income tax and make the Net Operating Loss tax provisions more favorable to business. There are also numerous proposals to reduce the Personal Income Tax rate too. Obviously, not every priority can be funded. That is particularly the case given the slowing economy.

KOZ bill amended to include Prevailing Wage and Separate Contracts

After several weeks of vote delays, the PA House of Representatives adopted the McGeehan amendment to a bill that extends the life of Keystone Opportunity Zones (KOZ). **House Bill 2297** was debated on the floor of the House for more than 4 hours on May 6th. Much of that time was spent debating the amendment offered by Representative Mike McGeehan that makes any project constructed in a KOZ subject to the Prevailing Wage Act and the Separations Act.

After adopting the McGeehan amendment by a vote of 126 to 72, the House rejected 3 different amendments offered by Representative Scott Boyd that would have diluted the McGeehan language in one way or another. Of particular interest was the Boyd amendment that would have left the prevailing wage requirement in the bill but removed the separate primes requirement. That amendment failed by a vote of 73 to 125.

The bill, now in the Senate, faces an uncertain future. The Senate wants a KOZ bill, but without the prevailing wage and separate primes amendment. The chairman of the Senate Labor and Industry committee has indicated that the Senate may vote on a Senate bill that only extends the KOZs. To that end, the Senate has positioned its own KOZ bill, Senate Bill 1412, for a floor vote in the Senate. The issue is not yet completely resolved.

Worker Misclassification Bill Moves Forward

A bill that would make it more difficult to misclassify workers as independent contractors was voted out of the House Labor Relations committee after being amended. **House Bill 2400** provides definitions to distinguish between legitimate independent contractors and workers. The

bill in its original form would cover all industries, but the amended bill that passed out of committee limits its application to the construction industry.

Many people believe that the worst abuses of misclassification of workers occur in the construction industry. That, combined with the opposition from a broad cross-section of industries that opposed the bill in its original form, led to the amendment limiting the bill to construction.

The bill passed the House on June 9th by a vote of 122 to 76. The bill is now in the Senate Labor and Industry committee.

Legislative Activity

HB 44 RE: Mercury-Free Thermostat Act (by Rep. Carole Rubley, et al)

Prohibits the sale or distribution of mercury thermostats in PA. The bill also states that each manufacturer of mercury thermostats that have been sold in PA would establish and maintain a department-approved collection and recycling program for out-of-service mercury thermostats from contractors, service technicians and homeowners. The department would develop a plan for educating schools, local governments, businesses and the public on proper disposal methods for mercury thermostats and other products containing mercury. The bill also states that the department may levy a \$2,500 administrative fine for violations.

Reported as amended from House Environmental Resources and Energy Committee, read first time, and referred to House Rules Committee, 6/17/2008

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 committed from Senate Appropriations Committee, 6/23/2008

HB 1742 RE: Scrap Material Theft Prevention Act (by Rep. Eddie Day Pashinski, et al)

Provides for identification requirements for sale of scrap materials to scrap processors and recycling facility operators. A scrap processor and recycling facility operator would be required to collect certain information for all transactions by a seller of restricted material and from all other sellers when the purchase of scrap material exceeds \$100. Additionally, every scrap processor and recycling facility operator must develop methods of tracking a transaction that obtains the seller's signature on a receipt for the transaction. Every scrap processor and recycling facility operator must also create and maintain a permanent record with a commercial enterprise in order to establish a commercial account. A scrap processor and recycling facility operator may purchase the following scrap material only if the purchase occurs with a commercial enterprise in conjunction with a contract or letter of authorization from the commercial enterprise: (1) new production scrap or new materials that are a part of a manufacturing process that are being sold by an individual, not a company; (2) full sized, new materials, such as those used in construction, or equipment and tools used by contractors; (3) commercial metal property; (4) metallic wire that has been burned in whole or in part to remove insulation; (5) beer kegs; or (6) catalytic converters. The bill provides for law enforcement and penalties.

Reported as amended from Senate Environmental Resources and Energy Committee, and read first time, 6/10/2008

HB 2380 RE: FY 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.

Resolution to discharge committee presented, 6/10/2008

Amended and held in House Appropriations Committee, 6/11/2008

HB 2400 RE: Construction Industry Independent Contractor Act (by Rep. Brian Lentz, et al)

Formerly titled the Employee Misclassification Prevention Act. As amended in the House Committee, states that an individual engaging in or performing services in the commercial or residential building construction industry for compensation is presumed to be an employee unless the individual can demonstrate by substantial credible evidence that the individual is free from control or direction over performance of such services both under the contract of service and in fact; and the individual is customarily engaged in an independently established trade, occupation, profession or business. The bill states that failure to withhold federal or state income taxes or pay unemployment compensation taxes with respect to an individual's compensation would not be considered in determining whether the individual is an independent contractor. Each employment relationship would be considered separately. A party that does not meet the definition of "employer" but which contracts with an employer knowing the employer intends to misclassify employees in violation of this act would be subject to the same penalties. Lastly, the department would submit an annual report to the General Assembly detailing the data on the previous calendar year's administration and enforcement of this act.

Reported as committed from House Appropriations Committee, 6/2/2008

Amended on House floor, and read second time, 6/3/2008

Amended on House floor, read third time, and passed House, 6/9/2008 (122-76)

Referred to Senate Labor and Industry Committee, 6/11/2008

HB 2509 RE: False Claims Act (By Rep. Mike Gerber, et al)

Provides that any person who commits one of a list of acts (related to false claims) would be liable to the Commonwealth for three times the amount of damages which the Commonwealth sustains because of the act of that person. The person would also be liable to the Commonwealth for the costs of a civil action brought to recover any of those penalties or damages and would be liable to the Commonwealth for a civil penalty of not less than \$5,000 and not more than \$10,000 for each violation. The Attorney General would investigate a violation and if the Attorney General finds that a person has committed a violation, he may bring a civil action against that person. A civil action may not be brought more than ten years after the date on which the violation was committed.

Reported as amended from House Health and Human Services Committee, read first time, and rereferred to House Rules Committee, 6/11/2008

Reported as committed from House Rules Committee, and laid on the table, removed from the table, and rereferred to House Appropriations Committee, 6/16/2008

HB 2522 RE: Capital Budget Act of 2008-2009 (by Rep. Dwight Evans, et al)

Appropriates \$980,000,000 for the capital budget for the fiscal year 2008-2009.

Reported as committed from House Appropriations Committee, 6/9/2008

Read second time, 6/16/2008

Read third time and passed House, 6/23/2008 (139-55)

HB 2539 RE: Flood Protection Measures (by Rep. Tim Seip, et al)

Amends the act entitled "An act authorizing the Department of Forests and Waters to provide for stream clearance and stream channel rectifications; to construct and maintain dams, reservoirs, lakes and other works and improvements for impounding flood waters, and conserving the water supply of the Commonwealth; and for creating additional recreational areas; to acquire by purchase, condemnation or otherwise, certain lands for such purposes; to construct and maintain flood forecasting and warning systems," by authorizing DEP to develop, implement and maintain nonstructural flood protection measures and stream channel environmental improvement projects; and to cooperate with counties, municipalities and municipal authorities to undertake the work. DEP may provide financial assistance to counties, municipalities and municipal authorities for these purposes. Prior to providing the assistance, DEP must have approved the plans and specifications of the project, and the municipality, county or authority must satisfy the terms and conditions of any agreement.

Reported as committed from House Environmental Resources and Energy Committee, read first time, and rereferred to House Rules Committee, 6/11/2008

Reported as committed from House Rules, laid on the table, removed from the table and rereferred to House Appropriations Committee 6/16/2008

Read second time, 6/18/2008

Read third time and passed House, 6/23/2008 (182-13)

HB 2542 RE: Rebuilding Pennsylvania Capital Budget Act (by Rep. Dwight Evans, et al)
Provides for \$240,000,000 for various public improvement projects, furniture and equipment expenses, transportation assistance, redevelopment assistance, flood control, and bridge projects in fiscal year 2008-2009.
Reported as committed from House Appropriations Committee, 6/9/2008
Read second time, 6/11/2008
Read third time and passed House, 6/23/2008 (136-58)

HB 2546 RE: Flood Control Law (by Rep. Scott Conklin, et al)
Amends the Flood Control Law further providing for purpose of act; adding definitions; further providing for plans, for proceedings, for powers and duties of the Department of Environmental Protection, for eminent domain, for flood control works and for financing; and making editorial changes. The bill removes references to the Water and Power Resources Board and replaces them with the Department of Environmental Protection and makes numerous other editorial changes.
Reported as committed from House Appropriations Committee, read first time, and rereferred to House Rules Committee, 6/11/2008
Reported as committed from House Rules, laid on the table, removed from the table and rereferred to House Appropriations Committee 6/16/2008
Reported as committed from House Appropriations Committee, and read second time, 6/18/2008
Passed House, 6/23/2008 (162-34)

SB 2 RE: H2O PA Act (by Sen. Jane Earll, et al)
Provides for the allocation of all money in the Pennsylvania Gaming Economic Development and Tourism Fund not previously allocated to the Commonwealth Financing Authority for distribution for water or sewer projects, storm water projects, flood control projects and high hazard dam projects. For a ten-year period beginning with the initial deposits, no loans or grants shall be distributed for any project located in a city or county of the first or second class (Philadelphia, Pittsburgh and Allegheny County). The authority would incur indebtedness of up to \$750 million to fund the projects. The bill provides for distribution of funds, project review, and requires an annual report to the General Assembly.
Reported as amended from Senate Appropriations Committee, 6/9/2008
Passed Senate, 6/11/2008 (50-0)
Referred to House Environmental Resources and Energy Committee, 6/18/2008

SB 1087 RE: Electronic Advertising (by Sen. Bob Robbins, et al)
Amends Title 45 (Legal Notices) providing for electronic publication of legal advertising by stipulating that a government unit has the authority to electronically publish legal notices in lieu of newspaper advertisements required under Chapter 3 (relating to legal advertising) or any other law. The Center for Local Government Services would create and maintain a list of the names and websites of all government units for which it has received a copy of an enactment to advertise, accessible through the department's website.
Reported as amended from Senate Communications and Technology Committee and read first time, 6/11/2008
Rereferred to Senate Appropriations Committee, 6/16/2008

SB 1389 RE: Supplemental 2007-08 Budget, FY 2008-09 Budget (by Sen. Gibson Armstrong)
Amends the General Appropriation Act of 2007 increasing and decreasing Federal and State appropriations for the Department of Education, the Department of Public Welfare, the Department of State, the Pennsylvania Emergency Management Agency, the Pennsylvania Historical and Museum Commission, the courts of common pleas and community courts and magisterial district judges; and adding a Federal appropriation to the Department of Aging.
As amended in the Senate, it includes the Senate Republicans' scaled down version of the Governor's proposed 2008-09 spending plan, and a 1% COLA for community MH/MR providers.
Reported as amended from Senate Appropriations, 6/16/2008
Passed Senate, 6/18/2008 (28-21 – all Democrats voted NO)

SB 1408 RE: Flood Control Law (by Sen. John Wozniak, et al)
Amends the Flood Control Law further providing for purpose of act; adding definitions; further providing for plans, for proceedings, for powers and duties of the Department of Environmental Protection, for eminent domain, for

flood control works and for financing; and making editorial changes. The bill removes references to the Water and Power Resources Board and replaces them with the Department of Environmental Protection and makes numerous other editorial changes. **This bill is identical to HB 2546.**

Reported as committed from Senate Environmental Resources and Energy Committee, and read first time, 6/10/2008

Rereferred to Senate Appropriations Committee, 6/16/2008

SB 1409 RE: Flood Protection Measures (by Sen. John Wozniak et al)

Amends the act entitled "An act authorizing the Department of Forests and Waters to provide for stream clearance and stream channel rectifications; to construct and maintain dams, reservoirs, lakes and other works and improvements for impounding flood waters, and conserving the water supply of the Commonwealth; and for creating additional recreational areas; to acquire by purchase, condemnation or otherwise, certain lands for such purposes; to construct and maintain flood forecasting and warning systems," by authorizing DEP to develop, implement and maintain nonstructural flood protection measures and stream channel environmental improvement projects; and to cooperate with counties, municipalities and municipal authorities to undertake the work. DEP may provide financial assistance to counties, municipalities and municipal authorities for these purposes. Prior to providing the assistance, DEP must have approved the plans and specifications of the project, and the municipality, county or authority must satisfy the terms and conditions of any agreement. **This bill is identical to HB 2539.**

Reported as committed from Senate Environmental Resources and Energy Committee, and read first time, 6/10/2008

Rereferred to Senate Appropriations Committee, 6/16/2008

New Bills Introduced

SB 1443 RE: The Capital Budget Act of 2008-2009 (by Sen. Gibson Armstrong, et al)

Appropriates \$980,000,000 for the capital budget for the fiscal year 2008-2009.

Introduced and referred to Senate Appropriations Committee, 6/16/2008

Reported as committed from Senate Appropriations Committee, and read first time, 6/16/2008

Recommitted to Senate Appropriations Committee, 6/18/2008

Upcoming Meetings of Interest

THURSDAY - 6/26/2008

House Transportation Committee

8:30 a.m., Room 140 Main Capitol

Public hearing on: **HB 2593** - Amends Title 74 (Transportation) & 75 (Vehicles) providing for public-private transportation projects for the development, operation & financing of PA Turnpike; conversion of Interstate 80 to a toll road; Motor License Fund.

2008 HOUSE SPRING SESSION SCHEDULE

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

June 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

June 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>.