

MCA Summary of Legislation May 2008

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. In that case, a battle like the one that occurred in the House over the McGeehan amendment could occur in the Senate.

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.

It is believed 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. However the Department of Labor and Industry would like one uniform set of rules to apply to every industry in Pennsylvania. It is believed that the Department may seek an amendment to expand the bill to all industries again.

The committee vote was 20-9 in favor of the amended bill. House Bill 2400 has since been referred to the House Appropriations committee.

Best Value Contracting to Be Restarted

DGS has released updated information on the Best Value proposal process. The documents and a letter dated May 12, 2008 that was sent to DGS construction contractors is located on the DGS website at: http://www.portal.state.pa.us/portal/server.pt?open=512&objID=1235&&PageID=419414&level=2&css=L2&mode=2&in_hi_userid=2&cached=true

There will be a public review and comment period. DGS will accept written comments through June 16, 2008. These written comments may be submitted electronically or may be submitted by letter addressed to **Elizabeth O'Reilly, Deputy Secretary for Public Works, 18th & Herr Streets, Harrisburg, PA 17125**. Remaining hearings are listed below.

May 29, 2008: 10:00 - 12:00 - Public Works Complex, Corporate Board Room, Arsenal Building, 18th & Herr Streets, Harrisburg, PA 17125.

June 2, 2008: 10:00 - 12:00 - Scranton State Office Building, Room B-3, 100 Lackawanna Avenue, Scranton, PA 18503.

June 4, 2008: 10:00 - 12:00 - Penn State Conference Center, Room 106, 215 Innovation Blvd. State College, PA 16803.

On a side note, the Department's plans to post changes to its General Conditions contract for construction have been delayed. DGS still anticipates posting the rewrite of its construction contract documents on its web site. The general public will have 30 days to comment on the proposed changes once the contract is posted.

Legislative Activity

HB 1776 RE: Fair Contracting Act (by Rep. Bob Belfanti, et al)

Provides for the licensing of contractors and for exemptions; establishes the Fair Contracting Board in the Department of Labor and Industry; provides for composition, powers and duties of the Fair Contracting Board; provides for administration and enforcement; establishes the Fair Contracting Fund, into which all fees collected would be deposited; and makes an appropriation of \$125,000 for the payment of costs associated with processing licenses and renewing licenses, for the operation of the board and for other costs associated with this act. The appropriation would be repaid by the board within three years of the beginning of issuance of licenses by the board.

House Labor Relations Committee hearing cancelled for 5/19/2008

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.

Reported as committed from House Education Committee, read first time, and laid on the table, 5/5/2008

Removed from the table and rereferred to House Appropriations Committee, 5/6/2008

HB 2331 RE: Capital Facilities Debt Ceiling (by Rep. Dwight Evans)

Amends the Capital Facilities Debt Enabling Act further by increasing the maximum amount of state redevelopment assistance for capital projects to \$3.4 billion.

Laid on the table and removed from the table, 5/7/2008

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 amended from House Labor Relations Committee, read first time, and laid on the table, 5/13/2008

Removed from the table and rereferred to House Appropriations Committee, 5/13/2008

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.

Introduced and referred to House Appropriations committee, 5/13/2008

Reported as committed from House Appropriations Committee, read first time, and laid on the table, 5/14/2008

Removed from the table and rereferred to House Appropriations Committee, 5/14/2008

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.

Introduced and referred to House Appropriations committee, 5/13/2008

Reported as committed from House Appropriations Committee, read first time, and laid on the table,

5/14/2008

Removed from the table and rereferred to House Appropriations Committee, 5/14/2008

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.

Referred to Senate Environmental Resources and Energy Committee, 5/5/2008

Reported as amended from Senate Environmental Resources and Energy Committee, and read first time, 5/13/2008

Read second time and rereferred to Senate Appropriations Committee, 5/14/2008

S Res. 41 RE: LBFC Strategic Sourcing Study (by Rep. Rob Wonderling, et al)

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.

Report released by Legislative Budget & Finance Committee, 5/14/2008

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, 4/28/08

Adopted 4/29/2008 (49-0)

Transmitted as directed 4/30/2008

New Bills Introduced

HB 2436 RE: Carbon Monoxide Sensor Devices (by Rep. Carl Mantz, et al)

Amends the PA Construction Code Act requiring that hotels, motels and boarding houses which are classified as group R-1 occupancies, have carbon monoxide sensor devices of a type specified by the department in each sleeping unit, and further that regulations include a procedure for building owners to request an exemption from the carbon monoxide sensor device requirement if the owner can demonstrate that there is no potential for carbon monoxide poisoning in the building.

Referred to House Labor Relations Committee, 5/2/2008

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

HB 2517 RE: KOZ Prevailing Wage (by Rep. Ron Marsico, et al)

Amends the Keystone Opportunity Zone, Keystone Opportunity Expansion Zone and Keystone Opportunity Improvement Zone Act by adding that the Pennsylvania Prevailing Wage Act would not apply to a project in a keystone opportunity zone for construction, reconstruction or alteration.

Referred to House Labor Relations Committee, 5/13/2008

Upcoming Meetings of Interest

2008 HOUSE SPRING SESSION SCHEDULE

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