

MCA
Summary of Legislation
June 2010

2010-11 Budget Passed “On Time”, Awaits Governor’s Signature

The General Assembly passed a \$28.05 billion state budget on June 30, marking the first on-time budget during the Rendell Administration. Technically, the budget still needs the Governor’s signature, which was expected on July 6. The Legislature also still needs to finalize the fiscal code bill to fund the budget. The enacted budget is cognizant of the future financial challenges facing Pennsylvania and does not include any broad based tax increases.

The Senate was first to pass an amended version of HB 2279 early Wednesday afternoon. The Senate voted 37 to 13 ([Senate Roll Call](#)) in favor of the bill with twenty Republican votes and seventeen Democrat votes. Later Wednesday, the House concurred with the Senate passed budget bill by a 117 to 84 vote ([House Roll Call](#)). Sixteen Republicans joined 101 Democrats in support of the measure.

Some of the major aspects of the budget agreement include:

The assumption of \$850 million in additional federal Medical Assistance Program (FMAP) dollars. The U.S. Senate recently voted down a bill that included the FMAP money.

A \$250 million increase in basic education spending. Governor Rendell had sought a \$354 million increase, but settled for \$250 million in the final deal.

The budget does not include:

New or increased taxes on cigarettes, cigars, or smokeless tobacco.

Combined reporting.

Any expansion of the sales tax.

Elimination of the vendor allowance for sales tax collection.

A severance tax on natural gas with funds allocated to this year's state General Fund spending. (An agreement was made to craft a separate piece of legislation by October 1 that will include a severance tax that balances recovery of capital investments with compensation to local governments for industry impacts. The agreement also calls for the legislation to provide for regulatory consistency across jurisdictions and "pooling" of land holdings before a tax would take effect January 1.) Details still have to be worked out.

At the time of this report, the Fiscal Code bill that will accompany the budget bill was not yet passed by the Legislature. Despite some last minute glitches, that bill is expected to reach the Governor by the end of the 4th of July weekend and complete the budget process.

Multiple Primes Waivers End

The controversial Mandate Waiver program that allowed school districts to receive waivers of the multiple primes bidding requirement died along with the rest of the Educational Empowerment Act on June 30, 2010. Because of a built in sunset provision (termination date), the Empowerment Act officially ceased to exist 10 years from when it was enacted. That law gave school districts the power to apply for waivers of almost any requirement in the school code. While the original law was billed as a way to help only distressed school districts gain more control over what happened in their local classrooms, it soon became apparent that the waiver program could be used by any school district for almost any purpose. In fact, the multiple primes waiver soon became the most popular waiver applied for by districts.

Commonwealth Court twice ruled that the multiple primes requirement could not be waived, but the PA Supreme Court reversed those rulings and waivers were again issued starting in early 2008. During the past two years, overwhelming evidence has been gathered showing that multiple

primes save taxpayers money. Despite that, the PA Department of Education has continued to grant these waivers. Now that the Empowerment Act has expired, no more waivers may be granted. Pro single prime organizations, however, continue their attempts to renew the waiver program and repeal the Separations Act. It is expected that the General Assembly will consider a school code bill sometime this Fall and that the issue may face a vote at that time. In the meantime, school districts may not be granted additional waivers.

State Board of Crane Operators Publishes Initial Rulemaking

The State Board of Crane Operators proposed in an initial general regulation to add Chapter 6 as authorized under sections 302 and 2102 of the Crane Operator Licensure Act. The proposal is a comprehensive regulatory scheme intended to implement and affect the General Assembly's intent as manifested by the act. The proposed regulation is available for comment at: <http://pabulletin.com/secure/data/vol40/40-23/1064.html>

Legislative Activity

[HB 400](#) RE: Construction Workplace Fraud Act (by Rep. Bryan Lentz, et al)

For the purposes of the Minimum Wage Act, the Wage Payment and Collection Law, the Unemployment Compensation Law and the Workers' Compensation Act, an individual engaging in or performing services in the commercial or residential building construction industry for remuneration is presumed to be an employee unless: (1) the individual has been and is free from control or direction over performance of such services both under the contract of service and in fact; and (2) as to such services, the individual is customarily engaged in an independently established trade, occupation, profession or business. The bill outlines criteria for deeming an individual to be an independent contractor in the construction industry and states improper classification of employees is subject to civil, administrative and criminal penalties, remedies or actions outlined in the legislation. The bill provides for the presumption of independent contractor status, and describes this status, as well as the loss of presumption and penalties. The Attorney General shall have concurrent prosecutorial jurisdiction. The Department of Labor and Industry shall annually report to the General Assembly detailing data on the previous calendar year's administration and enforcement of this act.

Removed from Senate Labor and Industry Committee meeting agenda for 6/30/10

[HB 444](#) RE: High-Performance, State Buildings Standards Act (By Rep. Matt Smith, et al)

Requires the design, construction and renovation of state-owned or state-leased buildings to comply with specified energy and environmental building standards. The Department of General Services shall annually report to the Senate and House Environmental Resources and Energy Committees.

Reported as amended from Senate Environmental Resources and Energy Committee, and read first time, 6/22/2010

[HB 687](#) RE: Guaranteed Energy Savings Contracts (by Rep. Frank Dermody, et al)

(PN 760) Amends Title 62 (Procurement), in guaranteed energy savings contracts, amending the definition of "energy conservation measure" to include technology upgrades designed to reduce water and wastewater consumption or operating costs, and inserting water and wastewater-related provisions into language relating to contract procedures and provisions.

Reported as amended from Senate Appropriations Committee, 6/14/2010

Read second time, 6/15/2010

Read third time and passed Senate, 6/21/2010 (49-0)

Received as amended in House and re-referred House Rules Committee, 6/22/2010

Re-reported on concurrence as committed from House Rules Committee, 6/23/2010

House concurred in Senate amendments, and Signed in the House, 6/23/2010 (198-0)

Signed in the Senate, 6/28/2010. In the hands of the Governor 6/28/2010.

Approved by the Governor, 7/2/2010

[HB 786](#) RE: State Energy Office Act (By Rep. Camille George, et al)

Establishes the State Energy Office in the Department of Environmental Protection to promote the goals of energy development and energy conservation. The legislation provides for the powers and duties of the office, including to promote the development of PA's indigenous and renewable energy, to assist the Department of General Services in promoting the efficient use of energy by the State government, and to be the point of contact for private and government energy matters and the lead Commonwealth agency for energy policy development.

Reported as amended from Senate Environmental Resources and Energy Committee, and read first time, 6/22/2010

[HB 1349](#) RE: Pennsylvania Elevator Act (by Rep. Tom Killion, et al)

Requires a license for elevator mechanics, inspectors, contractors; providing guidelines for licensure; establishing fees and penalties.

Removed from the table and re-referred to House Appropriations Committee, 6/7/2010

[HB 1450](#) RE: Environmental Advisory Councils (by Rep. Dan Deasy, et al)

Amends Title 53 (Municipalities Generally) transferring provisions relating to environmental advisory councils; authorizing a municipal corporation to establish an environmental advisory council to advise other local government agencies; adding the Geologically Hazardous Areas Act providing for the designation and regulation of geologically hazardous areas throughout this Commonwealth to protect people and limit property damage and the disruption of commerce from the possible dangers associated with land development in areas that are prone to landslides, sinkholes or other geologic hazards; imposing duties and conferring powers on the State Conservation Commission, the Department of Community and Economic Development, the Department of Environmental Protection, the Department of Conservation and Natural Resources and municipalities; and providing for enforcement and remedies.

Reported as amended from House Environmental Resources and Energy Committee, read first time, and Rereferred to House Rules Committee, 6/29/2010

[HB 1502](#) RE: E-Verify (by Rep. John Galloway, et al)

Amends Title 62 (Procurement), in contracts for public works, requiring verification of Social Security numbers of all employees of public works contractors contracting with the Commonwealth for purposes of wage reporting and employment eligibility. The bill prescribes penalties and establishes good faith immunity, stipulating that a contractor or subcontractor that relies in good faith on NVS and EVP procedures to verify employee SSNs shall be immune from sanctions in the event incorrect information is provided.

Read Second time, 6/7/2010

Read third time and Passed House, 6/8/2010 (188- 6)

Received in the Senate and referred to Senate State Government Committee, 6/11/2010

[HB 1503](#) RE: Construction Industry Employment Verification Act (by Rep. John Galloway, et al)

Requires construction industry employers to verify the Social Security numbers of all employees for purposes of wage reporting and employment eligibility. The bill provides for powers and duties of the Department of Labor & Industry, prescribes penalties and establishes good faith immunity, stipulating that a contractor or subcontractor that relies in good faith on NVS and EVP procedures to verify employee SSNs shall be immune from sanctions in the event incorrect information is provided.

Read Second time, 6/7/2010

Read third time and Passed House, 6/8/2010 (188- 7)

Received in the Senate and referred to Senate State Government Committee, 6/9/2010

[HB 1679](#) RE: False Claims Act (By Rep. Mike Gerber, et al)

The False Claims Act is enacted to mirror the Federal False Claims Act. The Act provides certain definitions and allows for treble damages for a committing any one of the enumerated prohibited acts. The Act also provides for the requirements of when damages can be limited. The Act allows the Attorney General of Pennsylvania to investigate and prosecute violations, as well as provides rules for when and how qui tam plaintiffs may bring an action.

Furthermore, the Act provides anti-retaliatory discharge provisions to protect qui tam plaintiffs. The Act also establishes a ten-year statute of limitations, the burden of proof, and provides for estoppel after plea agreements.

Reported as amended from House Health and Human Services Committee, read first time and rereferred to House Rules Committee, 6/22/2010

Reported as committed from House Rules Committee and rereferred to House Appropriations Committee, 6/23/2010

[HB 2141](#) RE: Small Business Contracting (by Rep. Ron Buxton, et al)

Amends Title 62 (Procurement) redefining "small business" as a business in the United States which is independently owned, is not dominant in its field of operation, and employs 250 or fewer employees. The small business employee limit may be waived in certain enumerated circumstances.

Reported as amended from House State Government Committee, read first time, and rereferred to House Rules Committee, 6/29/2010

[HB 2142](#) RE: Surety Bond Guarantee Fund Program Act (By Rep. Curtis Thomas, et al)

Provides for the establishment of the Surety Bond Guarantee Program to assist disadvantaged businesses to competitively bid for governmental contracts; imposes duties on the Department of Community and Economic Development; establishes the Surety Bond Guarantee Fund; provides for contracts eligible for guarantee and for participation by disadvantaged businesses; and makes an appropriation of \$5 million to DCED, of which up to 10%

may be used for administrative costs. An applicant shall be deemed eligible to participate in the program if the department determines that an applicant meets all of the following qualifications: (1) the applicant is a disadvantaged business certified by the department; (2) the applicant's business is in the construction or building trade industry; (3) the applicant has been actively operating its business for at least one year; (4) the applicant has the experience and financial fitness appropriate to a qualified contract; (5) the applicant has agreed to subcontract no more than 75% of the work to be performed under a qualified contract; (6) the applicant has demonstrated an inability to secure bonding under normal market conditions; (7) the applicant or one of its owners, officers, directors, principals or agents has not committed or been convicted of certain activities; and (8) the business meets any other program requirements that establish criteria for eligibility that the department shall adopt by regulation within 180 days of the effective date of this act.

Reported as amended from House State Government Committee, read first time, and rereferred to House Rules Committee, 6/22/2010

[HB 2143](#) RE: Disadvantaged Business Contracting (by Rep. Cherelle Parker, et al)

Amends Title 62 (Procurement) providing for oversight and responsibility for significantly increasing contracting opportunities for disadvantaged businesses and requiring best practices for each contractor. Other oversight responsibilities are placed upon the department.

Reported as amended from House State Government Committee, read first time, and rereferred to House Rules Committee, 6/29/2010

[HB 2144](#) RE: Department of Minority and Women Business Development (By Rep. Babette Josephs, et al)

Amends the Administrative Code establishing the Department of Minority and Women Business Development and providing for its powers and duties and making editorial changes.

Reported as committed from House State Government Committee, read first time, and rereferred to House Rules Committee, 6/29/2010

[HB 2145](#) RE: Disadvantaged Business Contracting (by Rep. Kenyatta Johnson, et al)

Amends Title 62 (Procurement), in small and disadvantaged businesses, adding a section providing Commonwealth agencies shall adopt and institute with the Department of General Services assistance, a mentor-protégé program to assist, support and enable small businesses to successfully compete for prime and subcontract awards by partnering with large companies, which shall serve as mentors, in State contracts. Further provides the mentor-protégé arrangement between a prime contractor and a minority-owned, women-owned or disadvantaged subcontractor shall be an important factor considered or weighed by the Commonwealth agency awarding a contract. Also provides the department shall establish the appropriate and applicable guidelines and criteria for firms to participate in a mentor-protégé program.

Reported as amended from House State Government Committee, read first time, and rereferred to House Rules Committee, 6/29/2010

[HB 2146](#) RE: Pennsylvania Unified Certification program (By Rep. Vanessa Brown, et al)

Amends Title 62 (Procurement) providing for reciprocity of certifications; requiring agencies to accept the certification of the Pennsylvania Unified Certification program.

Reported as amended from House State Government Committee, read first time, and rereferred to House Rules Committee, 6/29/2010

[HB 2147](#) RE: Small Business Reserves (By Rep. Tony Payton, Jr.)

Amends Title 62 (Procurement) requiring agencies to establish a small business reserve; each Commonwealth agency shall set 10 percent of its moneys available for procurement into a small business reserve for award to qualified small and disadvantaged businesses. The amount set aside shall be a minimum of \$25,000 with a maximum of \$5 million.

Reported as amended from House State Government Committee, read first time, and rereferred to House Rules Committee, 6/29/2010

[HB 2148](#) RE: Performance Monitoring (by Rep. Karen Beyer, et al)

Amends Title 62 (Procurement) providing guidelines for the monitoring of a prime contractors' performance.

Reported as amended from House State Government Committee, read first time, and rereferred to House Rules Committee, 6/29/2010

[HB 2149](#) RE: Small and Disadvantaged Business Subcontracting (by Rep. Mark Mustio, et al)

Amends Title 62 (Procurement) in small and disadvantaged businesses, providing for prime contractors' performance by stating that when a subcontractor has performed in accordance with the provisions of the contract, a contractor shall pay to the subcontractor, and each subcontractor shall in turn pay to its subcontractors, the full or

proportional amount received for each such subcontractor's work and material, based on work completed or services provided under the subcontract, five (changed from 14) days after receipt of a progress payment.

Reported as amended from House State Government Committee, read first time, and rereferred to House Rules Committee, 6/29/2010

[HB 2279](#) RE: The General Appropriations Act of 2010 (by Rep. Dwight Evans, et al)

Provides from the General Fund for the expenses of the Executive, Legislative and Judicial Departments of the Commonwealth, the public debt and the public schools for the fiscal year July 1, 2010, to June 30, 2011, for certain institutions and organizations, and for the payment of bills incurred and remaining unpaid at the close of the fiscal year ending June 30, 2010; to provide appropriations from the State Lottery Fund, the Energy Conservation and Assistance Fund, the Aviation Restricted Revenue Account, the Hazardous Material Response Fund, The State Stores Fund, the Milk Marketing Fund, the Home Investment Trust Fund, the Emergency Medical Services Operating Fund, the Tuition Payment Fund, the Banking Department Fund, the Firearm Records Check Fund, the Ben Franklin Technology Development Authority Fund and the Tobacco Settlement Fund to the Executive Department; to provide appropriations from the Judicial Computer System Augmentation Account to the Judicial Department for the fiscal year July 1, 2010, to June 30, 2011; to provide appropriations from the Motor License Fund for the fiscal year July 1, 2010, to June 30, 2011, for the proper operation of the several departments of the Commonwealth and the Pennsylvania State Police authorized to spend Motor License Fund moneys; to provide for the appropriation of Federal funds to the Executive Department of the Commonwealth and for the payment of bills remaining unpaid at the close of the fiscal year ending June 30, 2010; to provide for the additional appropriation of Federal and State funds from the General Fund for the Executive Department of the Commonwealth for the fiscal year July 1, 2009, to June 30, 2010, and for the payment of bills incurred and remaining unpaid at the close of the fiscal year ending June 30, 2009; and making interfund transfers for the fiscal year July 1, 2010, to June 30, 2011.

Reported with a negative recommendation from Senate Appropriations Committee, and read first time, 6/14/2010

Read second time, and recommitted to Senate Appropriations Committee, 6/15/2010

Reported as amended from Senate Appropriations Committee, read third time, and passed Senate, 6/30/2010 (37-13)

Received as amended in House and rereferred House Rules Committee, re-reported on concurrence as committed from House Rules Committee, and House concurred in Senate amendments, 6/30/2010 (117-84)

Signed in the House and Senate, 6/30/2010

In the hands of the Governor 6/30/2010. Last day for Governor's action, 7/10/2010

[HB 2286](#) RE: Workers Comp Fund Appropriation (By Rep. Dwight Evans, et al)

An Act making appropriations from the Workmen's Compensation Administration Fund to the Department of Labor and Industry and the Department of Community and Economic Development to provide for the expenses of administering the Workers' Compensation Act, The Pennsylvania Occupational Disease Act and the Office of Small Business Advocate for the fiscal year July 1, 2010, to June 30, 2011, and for the payment of bills incurred and remaining unpaid at the close of the fiscal year ending June 30, 2010.

Reported as committed from Senate Appropriations Committee, and read first time, 6/14/2010

Read second time, and recommitted to Senate Appropriations Committee, 6/15/2010

Reported as amended from Senate Appropriations Committee, read third time, and passed Senate, 6/30/2010 (50-0)

Signed in the House and Senate, 6/30/2010

In the hands of the Governor 6/30/2010. Last day for Governor's action, 7/10/2010

[HB 2289](#) RE: Capital Budget Act of 2010 (By Rep. Dwight Evans, et al)

Provides for the capital budget for fiscal year 2010-2011. *This bill may be held until fall.*

Reported as committed from Senate Appropriations Committee, and read first time, 6/14/2010

Read second time, and recommitted to Senate Appropriations Committee, 6/15/2010

[HB 2290](#) RE: Capital Facilities Debt Enabling Act (By Rep. Dwight Evans, et al)

Amends Capital Facilities Debt Enabling Act further providing for appropriation for and limitation on redevelopment assistance capital projects by stating that the maximum amount of redevelopment assistance capital projects undertaken by the commonwealth for which obligations are outstanding shall not exceed, in aggregate, \$4,250,000,000. *This raises the cap by \$600 million.*

Reported as committed from Senate Finance Committee, read first time, and recommitted to Senate Finance Committee, 6/30/2010

[HB 2435](#) RE: Tax Reform Code (By Rep. Dwight Evans, et al)

(PN 3573) Amends Tax Reform Code repealing certain provisions relating to discounts; providing for the imposition of tax reports and the payment of tax; providing a 30 percent tax on the purchase price charged to the retailer for the purchase of any tobacco product; establishing the Natural Gas Severance Tax Act and imposing a 5 percent tax on the gross value of units severed at the wellhead during a reporting period, plus 4.7 cents per unit severed.

Laid on the table and removed from the table, 6/30/2010

[HR 761](#) RE: PLA's (by Rep. Marc Gergely, et al)

Resolution offering the support and recommendation of the House of Representatives for the use of project labor agreements for all publicly funded or guaranteed public works construction, alteration, renovation, demolition, excavating and paving projects in this Commonwealth.

Reported as committed from House Labor Relations Committee, 6/8/2010

[SB 728](#) RE: High-Performance, State Government Buildings Standards Act (By Sen. John Rafferty, et al)

(PN 2082) Requires the design, construction and renovation of certain State buildings to comply with specified energy and environmental building standards. The Department of General Services shall annually report to the chairmen of the House and Senate Environmental Resources and Energy Committees, the chairmen of the Senate Community, Economic and Recreational Development Committee, and the chairmen of the House Intergovernmental Affairs Committee. (Prior Printer Number: 855)

Reported as amended from Senate Environmental Resources and Energy Committee, and read first time, 6/22/2010

Rereferred to Senate Appropriations Committee, 6/29/2010

New Bills Introduced

The following bills have been introduced since the last report.

Upcoming Meetings of Interest

None

2010 SENATE SESSION SCHEDULE

July 1, 2, 3

2010 HOUSE SESSION SCHEDULE

July 1, 2, 3

The Fall Session schedule has not been announced. We expect the General Assembly to return in late September for a few weeks of session.

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

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