

MCA
Summary of Legislation
September 2010

Employee Misclassification Bill Passes Senate

A bill intended to eliminate the fraudulent misclassification of workers as independent contractors cleared a major hurdle when it passed the Pennsylvania Senate in the final days of September. **House Bill 400** provides additional powers to the PA Department of Labor and Industry so that the Department can more effectively deal with misclassification of workers in the construction industry. Unscrupulous construction contractors have been known to treat workers as independent contractors to avoid workers compensation and other payroll taxes. In doing so, they gain a price advantage over companies that pay the required taxes. The bill deals solely with the construction industry which is still largely a low bid industry. Even though the bill was somewhat watered down by amendments in the Senate, the legislation has been a top priority for the unionized construction industry for years. At this writing, the bill is awaiting a concurrence vote in the House.

Half of E-Verify Package Advances

Earlier this legislative session, a two bill package requiring construction contractors to use the federal E-verify system to confirm that new hires are citizens passed the Pennsylvania House. There are two separate bills; **House Bill 1502** addresses public works construction projects while **House Bill 1503** deals with all private construction projects. When the bills reached the Senate, House Bill 1502 was referred to the State Government committee and House Bill 1503 was sent to the Labor and Industry committee. The Senate State Government committee voted on House Bill 1502 last week and sent the public works E-verify to the Senate floor. There is still a chance that it will pass even though there are few voting days left. The E-verify bill dealing with private projects remains in the Senate Labor and Industry committee and it is not expected to be given any consideration there.

Plumbers Licensing Bill Amended

Legislation that would establish a state plumbers licensing procedure, passed the House Labor Relations committee on September 29th after it was amended. The bill originally proposed to regulate plumbing activities much like most local plumbing ordinances. In other words, one needed to be licensed in order to do plumbing. The amended version of **Senate Bill 288** only regulates who can call themselves a plumber or licensed plumbing contractor. The bill exempts Philadelphia and Allegheny Counties' plumbing programs. Senate Bill 288 could pass the House in the remaining days of legislative session.

Legislative Activity

[HB 19](#) RE: The Child Labor Act (By Rep. Jaret Gibbons, et al)

Repeals Pennsylvania's Child Labor Law and provides a comprehensive rewrite of the laws regulating child labor. Confers powers and duties on the Department of Labor and Industry and the Department of Education and imposes penalties.

Public hearing held in House Labor Relations committee, 9/23/2010

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

(PN 4289) Provides that, for the purposes of Workers' Compensation, Unemployment Compensation and improper classification of employees, an individual who performs services in the construction industry is an independent contractor only if: (1) the individual has a written

contract to perform such services; (2) the individual is free from control or direction over performance of such services both under the contract of service and in fact; and (3) as to such services, the individual is customarily engaged in an independently established trade, occupation, profession or business. The bill provides for determination of violation and penalties. Additionally, the Secretary of the Department of Labor & Industry may petition a court to issue a stop-work order. Penalties collected shall be paid into various Workers' Compensation and Unemployment Compensation Funds. The department shall report annually to the General Assembly. The department shall not be required to enforce this act until adequate funding is appropriated.

Reported as amended from Senate Labor and Industry Committee, and read first time, 9/21/2010

Read second time and Rereferred to Senate Appropriations Committee, 9/22/2010

Reported as committed from Senate Appropriations Committee, 9/28/2010

Read third time and passed Senate, 9/29/2010 (34-13)

as amended in House and rereferred House Rules Committee, 9/29/2010

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

(PN 4013) 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 committed from House Rules Committee, and laid on the table, 9/13/2010

Removed from the table and rereferred to House Appropriations Committee, 9/14/2010

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

(PN 3556) 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. (Prior Printer's Numbers: 1961, 2982)

Reported as committed from Senate State Government Committee, and read first time, 9/28/2010

[HB 2066](#) RE: Independent Fiscal Office Act (By Rep. Anthony DeLuca, et al)

(PN 4394) Creates the independent fiscal office, which is to provide revenue estimates to the General Assembly. An estimate as to the state's fiscal condition and future projections for the next five years must be provided by the office by November 15. Also, impacts of revenue bill and new taxes must be analyzed by the office. The sales and use tax law must be analyzed by the office. Other discretionary duties are provided. An initial revenue estimate is due by the office on May 1 and an official estimate is due to the General Assembly by June 15. Contents of the revenue estimate are provided and the governor must submit an appropriations bill not to exceed revenue estimates. Expenditure reports are due to the office, along with revenue reports. A budget committee is provided for to determine the appropriations budget for the next year. Access to fiscal data is also provided. (Prior Printer Number: 2845, 2999, 3192)

Reported as committed from Senate Finance Committee, and read first time, 9/22/2010

Read second time, and Recommitted to Senate Finance 9/27/2010

Reported as amended from Senate Finance Committee, and Rereferred to Senate Appropriations Committee, 9/28/2010

Rereported as committed from Senate Appropriations 9/29/2010

[HB 2141](#) RE: "Small Business" Definition in Procurement (by Rep. Ron Buxton, et al)

(PN 4023) 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. (Prior Printer Number: 3083)

Reported as committed from House Rules Committee, and laid on the table, 9/13/2010

Removed from the table and Rereferred to House Appropriations Committee, 9/14/2010

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

(PN 3955) 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. (Prior Printer Number: 3084)

Reported as committed from House Rules Committee, and laid on the table, 9/13/2010

Removed from the table and Rereferred to House Appropriations Committee, 9/14/2010

[HB 2143](#) RE: Contracting Opportunities for Disadvantaged Businesses (By Rep. Cherelle Parker, et al) (PN 4024) 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. (Prior Printer Number: 3085)

Reported as committed from House Rules Committee, and laid on the table, 9/13/2010

Removed from the table and Rereferred to House Appropriations Committee, 9/14/2010

[HB 2144](#) RE: Department of Minority and Women Business Development (By Rep. Babette Josephs, et al) (PN 3086) 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 Rules Committee, and laid on the table, 9/13/2010

Removed from the table and Rereferred to House Appropriations Committee, 9/14/2010

[HB 2145](#) RE: Mentor-protégé program (by Rep. Kenyatta Johnson, et al) (PN 4025) 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. (Prior Printer Number: 3087)

Reported as committed from House Rules Committee, and laid on the table, 9/13/2010

Removed from the table and Rereferred to House Appropriations Committee, 9/14/2010

[HB 2146](#) RE: Pennsylvania Unified Certification Program (By Rep. Vanessa L. Brown, et al) (PN 4026) Amends Title 62 (Procurement) authorizing the Department of General Services to accept the certification granted to a disadvantaged business under the Pennsylvania Unified Certification Program as established by the department in accordance with the federal Department of Transportation requirements. Prohibits the department from certifying or accepting the certification of any owner of a disadvantaged business who is not a United States citizen or lawful permanent resident. Requires a governmental agency to accept the certification of any disadvantaged business certified by DGS under the Unified Certification Program and authorizes each governmental agency to establish a disadvantaged business utilization program. (Prior Printer Number: 3088)

Reported as committed from House Rules Committee, and laid on the table, 9/13/2010

Removed from the table and Rereferred to House Appropriations Committee, 9/14/2010

[HB 2147](#) RE: Small Business Reserve Program (By Rep. Anthony Payton, et al) (PN 4027) Amends Title 62 (Procurement) authorizing the Department of General Services the authority to establish a small business reserve program for small and disadvantaged businesses. The purpose of the program is to bid on Commonwealth contracts without competing with larger businesses. Directs the department to structure its procurement procedures to reserve up to 10% of the total dollar value of its procurement contracts for direct designation to qualified small and disadvantaged businesses. Provides a contract designated for the program shall be awarded to the small or disadvantaged business that: submits the lowest bid; is the lowest evaluated bid or proposal; or is in the best interest of the Commonwealth. Further provides that participation in the program shall not preclude a small or disadvantaged business from participating in other Commonwealth procurement. Further provides for the promulgation of regulations and for submission of an annual report by the department. (Prior Printer Number: 3089)

Reported as committed from House Rules Committee, and laid on the table, 9/13/2010
Removed from the table and Rereferred to House Appropriations Committee, 9/14/2010

[HB 2148](#) RE: Monitoring of a Contractors' Performance (by Rep. Karen Beyer, et al)
(PN 4028) Amends Title 62 (Procurement), in small and disadvantaged businesses, providing guidelines for the monitoring of a contractors' performance. (Prior Printer Number: 3090)

Reported as committed from House Rules Committee, and laid on the table, 9/13/2010
Removed from the table and Rereferred to House Appropriations Committee, 9/14/2010

[HB 2149](#) RE: Procurement Contracting (By Rep. Mark Mustio, et al)
(PN 4287) Amends Title 62 (Procurement), in general provisions, providing for public access to procurement information; in source selection and contract information, further providing for competitive sealed proposals; in small and disadvantaged businesses, further providing for definitions and providing for authority to waive employee limit, for mentor-protégé program, for small business reserve program, for alternative certification, for oversight and responsibility and for contractor performance and general conditions; in small and disadvantaged businesses, establishing a surety bond guarantee program; and, in contracts for public works, further providing for contractors' and subcontractors' payment obligations.

Reported as committed from House Rules Committee, and laid on the table, 9/13/2010
Removed from the table and Rereferred to House Appropriations Committee, 9/14/2010
Reported as committed from House Appropriations Committee, amended on House floor, and read second time, 9/21/2010
Read third time, and passed House, 9/27/2010 (189-0)

[HB 2291](#) RE: Capital Budget for the Fiscal Year 2010-2011 (By Rep. Dwight Evans, et al)
(PN 4386) Act providing for the capital budget for the fiscal year 2010-2011; itemizing 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, State forestry bridge projects, General Fund current revenue projects, State ATV/Snowmobile Fund projects, State transportation enhancement funds projects and State Stores Fund current revenue 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, or the Department of Transportation, together with their estimated financial costs; authorizing 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 or the Department of Transportation; stating the estimated useful life of the projects; providing an exemption; providing for limitation on certain capital projects; making appropriations; and making a repeal. (Prior Printer Number: 3357, 4311)

Reported as amended from Senate Appropriations Committee, and read first time, 9/22/2010
Read Second time, 9/27/2010
Amended on Senate floor, 9/28/2010
Read third time and Passed Senate, 9/29/2010 (43-4)
Vote on final passage reconsidered 9/29/2010
Passed Senate, 9/29/2010 (42-5)
Received as amended in House and rereferred House Rules Committee, 9/29/2010

[HB 2400](#) RE: Non-mandatory Work (by Rep. Marc Gergely, et al)
(PN 4310) Amends the Unemployment Compensation Law to provide definitions and make eligible for benefits a person who refuses non-mandatory work after losing employment, if in approved training or works more than 20 hours per week in a job that is not the person's full time work for a majority of weeks in the base year. The bill also does not allow a penalty for leaving work on a compelling or necessitous basis. The bill also adds a claimant shall not be disqualified for leaving work to tend to a domestic relations/violence matter, to care for an immediate family member, or helping a spouse get to work when the change in work has caused an impracticality. In addition the bill also provides for referral to employment offices, and for qualifications required to secure compensation.

Reported as amended from House Labor Relations Committee, read first time, laid on the table, removed the table, and rereferred to House Appropriations Committee, 9/22/2010

[SB 162](#) RE: Veteran-Owned Businesses (by Sen. Tommy Tomlinson, et al)
(PN 2229) Amends Title 62 (Procurement) adding a chapter related to veteran-owned businesses, outlining a goal of 5 percent participation by veteran-owned businesses for all agencies authorized by law to enter into contracts for itself or as the agent of another Commonwealth agency. The bill provides for the duties of the Department of General Services in assisting veteran-owned businesses. The bill also provides for reports made to the Veterans

Affairs and Emergency Preparedness Committees of the House and Senate, and for compliance with federal requirements.

Reported as amended from Senate Appropriations Committee, and read second time, 9/21/2010

Amended on House floor, 9/28/2010

Read third time, and passed Senate, 9/29/2010 (43-4)

SB 288 RE: Plumbing Contractors Licensure Act (by Sen. Ted Erickson, et al)

(PN 2240) Provides for plumbing contractor licensure, establishes the State Board of Plumbing Contractors and provides for its powers and duties, and establishes fees, fines and civil penalties. The State Board of Plumbing Contractors within the Department of Labor and Industry shall be created and charged with various duties including regulating the licensing of individuals engaged in providing plumbing services, contracting with a professional testing organization to administer tests to qualified applicants for licensure, maintaining a registry of licensees, providing for its contents, and ensuring various reporting requirements are met. Individuals who are not licensed could not provide plumbing services and only master plumbers could use the title "licensed plumbing contractor" and the abbreviation "L.P.C.", subject to certain exceptions. Qualifications for various classes of plumbers are further provided for under the act as are disciplinary options. Reciprocity with other states is also provided for, subject to certain conditions. The sum of \$85,000 shall be appropriated to the department for the payment of costs associated with this bill. This amount shall be repaid by the board within three years of the beginning of issuance of licenses. The act does not authorize the board or a municipality to adopt plumbing standards outside the relevant provisions of the Pennsylvania Construction Code. Also the bill creates the Plumbing Contractors Licensure Account in the State Treasury. Beginning July 1, 2010, all moneys collected by the board shall be paid into the account. Bill further requires all plumbers be properly licensed under the Act before holding themselves out as a plumber and places greater requirements on plumber licensure.

Reported as amended from House Labor Relations Committee, read first time, laid on the table, removed from the table, and rereferred to House Appropriations, 9/29/2010

New Bills Introduced

HB 2758 RE: Affordable Small Group Health Care Coverage (by Rep. Anthony DeLuca, et al)

(PN 4318) Amends The Insurance Company Law adding an article providing for affordable small group health care coverage, providing for enforcement, and making inconsistent repeals. The bill states the premium for a small group health benefit plan shall not be adjusted by an insurer more than once each year, except as provided in the bill. An insurer shall base its rating methods and practices on commonly accepted actuarial assumptions and sound actuarial principles. Rates shall not be excessive, inadequate or unfairly discriminatory. The bill also outlines fair marketing standards that all insurers and producers must meet. At least once per year, the Insurance Department may require each insurer to file certain reports relating to finances and expenses. The reports shall be available online for public access. The Insurance Department and the Department of Education shall promulgate regulations as necessary for the implementation and administration of the new article. Lastly, the bill provides for small employer groups by stating that a group of two or more small employers may form a purchasing group for the purpose of purchasing a small group health benefit plan.

Introduced and referred to House Insurance Committee, 9/24/2010

2010 HOUSE FALL SESSION SCHEDULE

October 4, 5, 6

November 8, 9, 10, 15, 16

2010 SENATE FALL SESSION SCHEDULE

October 12, 13, 14

November 18 (Ceremonial Session to Elect an Interim President Pro Tempore)

Session ends officially at midnight on November 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>