

**MCA**  
**Summary of Legislation**  
**December 2011**

**Much Activity Proceeds No Action**

During the last few weeks, we have been reporting to you on the flurry of attacks on issues of importance to the construction industry by the PA House of Representatives. At various times, it appeared that votes were imminent on bills detrimental to the **Prevailing Wage law, Separations Act and the Mechanic's Lien** law. Fortunately, our opponents were not able to muster enough support to bring those issues forward to a final vote before the House adjourned for the year.

While that does not mean that we won't face the same show-down next year, it does give us time to develop strategies to deal with each issue. Below is a very short description of each issue along with my observations.

**Prevailing Wage:** Over the last couple of weeks, the House leadership regularly scheduled one or more anti-prevailing wage bills for a vote by the full House. In every instance, though, the bills were never called up for a vote. Three bills are still on the voting calendar during the adjournment. They are: **House Bill 1271** which expands the definition of "maintenance" in the law so that more projects are excluded from being covered by the act; **House Bill 1329** which raises the threshold of applicability of the act from \$25,000 to \$180,000; and **House Bill 1685** which grants the PA Department of Labor and Industry the specific authority to create definitions for each trade classification thereby eliminating "custom and usage". Of the 3 issues, the effort to raise the threshold is the primary focus of prevailing wage opponents. We have been asked if a compromise was possible on the amount of a threshold increase. Ideas on what we may want in return for a nominal increase in the threshold are something to think about in the event that we ever found it advantageous to reach a compromise.

**Separations Act: House Bill 283** proposes to raise the threshold from the current \$4000 to \$90,000. The bill was approved by the House Labor and Industry committee on a party line vote and has been "laid on the table" in the House. Basically, that means it could be called up for consideration in the House at almost any time. Meanwhile, our lobbyists have been combating other bills and amendments that would do everything from bring back waivers of separate primes for school districts to eliminating separate primes just for charter schools. It is not clear how hard the House will push for these changes. On the positive side, there appears to be more support for Separations Act in the Senate.

**Mechanic's Lien: House Bill 1602** rolls back many of the positive changes that were made to the PA Mechanic's Lien law in 2006. Those changes have been very favorable to the construction community, particularly to subcontractors. If passed in its current form, the bill would create new ways that could result in subs losing their lien rights. We were successful in getting some positive amendments into the bill before it passed the House Labor and Industry committee, but more work needs to be done. Unlike with prevailing wage and separations act, there appears to be a willingness to work with our lobbyists to arrive at a bill that is fair to everyone. Discussions are expected to continue during the holiday break. Regardless of the outcome of those discussions, the expectation is the bill will be voted on by the House sometime next year.

**Public Private Partnerships (P3):** P3 legislation enables private developers to partner with government to build transportation projects that can then repay the developer through fees, fares or tolls. There are competing versions from each chamber. The Senate version, **Senate Bill 344**, passed that chamber in December after language was added to make it clear that both the prevailing wage law and Separations Act apply to P3 projects. The vote in the Senate was overwhelming, 49-1. The House bill, **House Bill 3**, has been the subject of much more controversy. The language specifying prevailing wage and separations act has been added or deleted multiple times. House leadership wants references to those laws to stay out of the bill but

it appears that a majority of the rank and file members want it included. The result is that the bill has been stuck in limbo on the House Calendar; scheduled to vote but no vote ever occurs. This rift between the House and Senate makes it difficult to predict if P3 will pass at all.

## **Funds Approved for Bridges, Roads in Capital Budget Bill**

The General Assembly has passed a bill authorizing the state to borrow more than \$1.6 billion for construction and economic development projects is headed to the governor's desk. That measure, **SB 1054**, known as the Capital Budget Act, is approved annually to fund public highway and bridge repairs, flood-control projects and other similar construction. It also includes funds for private projects selected by the governor and Legislature through the Redevelopment Assistance Capital Program. The state Senate unanimously approved the bill in June, and it passed the House of Representatives on December 19 on a vote of 119-75. The Corbett administration had asked the House to approve that additional borrowing authority, stating in a letter to legislators that certain projects and the related construction jobs would be disrupted without the funds. The economic development projects, however, raised concerns from a handful of lawmakers on both sides of the aisle. Some Republicans expressed concerns about increasing the state's debt burden, and others among the Democratic caucus questioned what they say is too much secrecy in selecting those projects.

## **New Faces Coming to Harrisburg State House and Senate**

The end of the 2011 year brought with it the end of the careers of several state House members, due to their election to local offices. **Representatives Kenyatta Johnson (D-Philadelphia), Dennis O'Brien (R-Philadelphia), Jewell Williams (D-Philadelphia), Josh Shapiro (D-Montgomery), Doug Reichley (R-Lehigh), and Chelsa Wagner (D-Allegheny)** won elections in the November 2011 election and thus will be leaving the House in January, upon their swearing-in to their new jobs. This will result in a host of Special Elections, to be called by House Speaker Sam Smith, possibly to be held at the April primaries. In the interim, the House Democrats will be even further in the minority, as their numbers will drop to 86, as opposed to the Republicans' 111. In a confusing quirk of state law, because of the recently passed redistricting plan, the specials will apparently be held to elect legislators to the NEW seats, rather than the current ones.

In addition to these legislators leaving in the new year, a host of veteran legislators in both the House and Senate have announced that they will not be seeking re-election in 2012 elections.

**Rep. Mario Scavello (R-Monroe)** will officially announce his candidacy on January 10th for the newly created 45<sup>th</sup> district (Monroe County) state Senate seat, and will not seek re-election to his House seat.

The following legislators have announced they will not be seeking reelection in 2012: **Sens. Mary Jo White (R-Venango); Jane Earll (R-Erie); and Jeff Piccola (R-Dauphin); and Reps. Ron Buxton (D-Dauphin); Tom Creighton (R-Lancaster); Jennifer Mann (D-Lehigh); Curt Schroder (R-Chester); Ed Staback (D-Lackawanna); John Evans (R-Erie) and Scott Boyd (R-Lancaster)**

More retirements are possible before the filing deadline in February.

## **Legislative Activity**

**The following bills were acted on by the General Assembly this month.**

[HB 193](#) RE: High-Performance, State Buildings Standards Act (By Rep. Kate Harper, et al)

Provides for the creation of high-performance building standards. All projects in facilities owned by a Commonwealth agency shall meet or exceed the prescribed level of achievement under the high-performance building standard. The Department of General Services shall promulgate rules and regulations for compliance and shall report annually to the legislature.

**Reported as amended from House Environmental Resources and Energy Committee, read first time, and laid on the table, 12/7/2011**

[HB 1349](#) RE: Regulatory Impact Statements (By Rep. Tina Pickett, et al)

Amends Regulatory Review Act requiring an impact statement for any proposed regulation that may have an adverse impact on small business; providing guidelines for regulatory flexibility analysis.

**Referred to Senate Appropriations Committee, 12/7/2011**

[HB 1602](#) RE: Mechanics' Lien (by Rep. Tom Killion, et al)

Amends the Mechanics' Lien Law further providing for formal notice by subcontractor to the prothonotary of the Court of Common Pleas of the relevant jurisdiction as condition precedent to beginning construction. Notice must be given within 15 days of commencement of the construction. Form of the notice is provided for and a model notice given.

**Removed from the table, 12/13/2011**

[HB 1685](#) RE: Determination of the Prevailing Wage (By Rep. John Bear, et al)

Amends the Pennsylvania Prevailing Wage Act to place duties on the Department of Labor and Industry regarding the determination of the prevailing wage. Requires each type of work be classified and put on a publicly accessible website. Provides the sources that may be used to determine classifications and requires the classifications to be used until project completion.

**Removed from the table, 12/7/2011**

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

Requires identification of lawful presence in the United States as a prerequisite to the receipt of public benefits. Further provides an agency may not issue an access device to a person who is not lawfully present in the United States as determined by federal immigration officials. Also provides a person who is not lawfully present commits a felony of the third degree if that person possesses or uses an access device. Adds language providing if an agency encounters errors and significant delays when using the SAVE program, the agency shall report the errors and delays to the United States Department of Homeland Security and the Attorney General. Further provides the Attorney General shall monitor the SAVE program and provides for notification to the Governor's Office of Administration and posting on PennWATCH. This law shall not apply if compliance would lead to a loss of federal funding or would be in conflict with federal law.

**Reported as amended from House State Government Committee, read first time, and laid on the table, 12/6/2011**

**Removed from the table, 12/7/2011**

[SB 344](#) RE: Public-Private Transportation Partnerships (By Sen. John Rafferty, et al)

Amends Title 74 (Transportation) adding a chapter providing for public-private transportation partnerships; establishing the Public-Private Transportation Partnership Board; establishing a competitive project selection process; and making a related repeal.

**Reported as amended from Senate Appropriations Committee, 2/12/2011**

**Read second time, 12/13/2011**

**Read third time and passed Senate, 12/14/2011 (49-1)**

**Received in the House and referred to House Transportation Committee, 12/15/2011**

[SB 405](#) RE: Mercantile or Business Privilege Taxes (By Sen. Pat Browne, et al)

Amends the Local Tax Enabling Act to limit a local taxing authority's ability to levy a mercantile or business privilege tax to only where such transactions take place. A taxpayer may exclude such gross receipts from any tax on or measured by such gross receipts which is imposed by a jurisdiction in which the taxpayer maintains a base of operations. Where a business has more than one base of operations, the taxes collected by a local jurisdiction may be only for the local base of operations. Pertinent definitions are provided.

**Laid on the table, 12/5/2011**

[SB 1004](#) RE: Surety Bond Guarantee Fund Program Act (By Sen. John Pippy, et al)

Provides definitions and establishes the Surety Bond Guarantee Fund Program to assist disadvantaged businesses competitively bid for government contracts. The Surety Bond Guarantee Fund is established to fulfill the goals of the program. Any guarantee or agreement to indemnify the surety shall not exceed 80 percent of the loss incurred and paid by the surety on any qualified contract. Requires the surety to be licensed and in good standing with the Insurance Department. Payments are not to exceed \$1 million to any one disadvantaged business eligibility requirements and requirements for denying participation in the program are provided for. The Department of Community and Economic Development is given duties, including monitoring of the program.

**Rereferred to Senate Appropriations Committee, 12/12/2011**

[SB 1054](#) RE: Capital Budget Act for 2011-2012 (By Sen. Jake Corman, et al)

Provides for the capital budget for the fiscal year 2011-2012. Provides \$1,662,000,000 for capital improvements: \$935 million for buildings and structures, \$10 million for furniture and equipment, \$212 million for transportation assistance projects, \$270 million for redevelopment assistance projects, \$35 million for flood control projects, and \$200 million for bridge projects.

**Reported as committed from House Appropriations Committee, read first time, and laid on the table, 12/12/2011**

**Removed from the table, 12/14/2011**

**Read second time, and rereferred to House Appropriations Committee, 12/15/2011**

**Reported as committed from House Appropriations Committee, read third time and passed House, 12/19/2011 (119-75)**

**Signed in the House 12/19/2011**

**Signed in the Senate and Approved by the Governor, 12/22/2011 Act 130 of 2011**

## **New Bills Introduced**

**The following bills have been introduced in the General Assembly this month.**

[HB 1855](#) RE: Water Well Construction Standards (By Rep. Ron Miller, et al)

Amends Title 27 (Environmental Resources) adding a new chapter authorizing the Environmental Quality Board to establish water well construction standards through the adoption of rules and regulations by the Department of Environmental Protection. Provides for water well construction standards; decommissioning of abandoned wells; water well completion reports; and inspections. Also provides for the powers and duties of the EQB and DEP under this new chapter and for penalties for violations of this new chapter.

**Introduced and referred to House Consumer Affairs Committee, 12/7/2011**

[HB 2088](#) RE: Equal Opportunity in Contracting (by Rep. Jake Wheatley, et al)

Amends the Public School Code providing for contracts to promote participation by requiring the board of school directors of each school district to develop, adopt and implement binding policies or guidelines to ensure that all persons are accorded equal opportunity in contracting and subcontracting associated with any public contract for the construction, reconstruction, alteration or repair of any school district building or other such public work or for the completion of any project or performance of any other work whatsoever and the purchase of any materials, equipment or any other supplies for the use of the public school.

**Introduced and referred to House Education Committee, 12/16/2011**

[HB 2089](#) RE: Equal Opportunity in Contracting (by Rep. Jake Wheatley, et al)

Amends the Borough Code providing for contracts to promote greater and more equitable participation in the bidding process for borough projects. The bill defines "disadvantaged business" and requires every contract for, or on behalf of, a borough to contain provisions to promote, increase and sustain opportunities for disadvantaged businesses.

**Introduced and referred to House Local Government Committee, 12/19/2011**

[HB 2090](#) RE: Equal Opportunity in Contracting (by Rep. Jake Wheatley, et al)

Amends the Public School Code providing for contracts to promote participation by requiring the system to develop, adopt and implement binding policies or guidelines to ensure that all persons are accorded equal opportunity in contracting and subcontracting associated with construction, repair, renovation and maintenance projects, including all aspects of project management, design and construction and legal and administrative services necessary to the completion of a project.

**Introduced and referred to House Education Committee, 12/16/2011**

[HB 2091](#) RE: Equal Opportunity in Contracting (by Rep. Jake Wheatley, et al)

Amends the Flood Control Law providing for contracts to promote greater and more equitable participation in the bidding process for borough projects. The bill defines "disadvantaged business" and requires every contract for, or on behalf of, the Water and Power Resources Board of the Department of Forests and Waters to contain provisions to promote, increase and sustain opportunities for disadvantaged businesses.

**Introduced and referred to House Local Government Committee, 12/19/2011**

[HB 2092](#) RE: Equal Opportunity in Contracting (by Rep. Jake Wheatley, et al)

Amends the Housing Authorities Law further providing for powers of an authority to enact policies or guidelines to ensure equal opportunity in any contracting and subcontracting subject to the control of any Housing Authority. The bill defines "disadvantaged business" and requires every contract for, or on behalf of, a Housing Authority to contain provisions to promote, increase and sustain opportunities for disadvantaged businesses.

**Introduced and referred to House Local Government Committee, 12/19/2011**

[HB 2093](#) RE: Equal Opportunity in Contracting (by Rep. Jake Wheatley, et al)

Amends the Housing Authorities Law further providing for powers of an authority to develop, adopt and implement policies or guidelines to ensure that everyone has an equal opportunity in employment and contracting associated with housing projects. The bill applies to contractors, subcontractors, assignees, lessees, agents, vendors, and suppliers.

**Introduced and referred to House Local Government Committee, 12/19/2011**

[HB 2094](#) RE: Equal Opportunity in Contracting (by Rep. Jake Wheatley, et al)

Amends the Third Class City Code providing for contracts to promote participation, specifying the city council shall implement policies or guidelines to ensure everyone has equal opportunity in contracting and subcontracting associated with the construction, reconstruction, alteration or repair of any building or other public work. It also specifies every contract on behalf of a city will contain provisions by which the contractor agrees to promote, increase and sustain contracting opportunities for disadvantaged businesses. This bill provides definitions for disadvantaged business, service-disabled veterans, small business, and veterans.

**Introduced and referred to House Local Government Committee, 12/19/2011**

[HB 2140](#) RE: Equal Opportunity in Contracting (by Rep. Jake Wheatley, et al)

Amends Title 62 (Procurement) further providing for definitions; providing for authority to waive employee limit, for alternative certification, for contractor performance & general conditions, etc. & for payment obligations. This bill provides definitions for Commonwealth agency, judicial agency, independent agency, legislative agency, local agency, service-disabled veteran, state-affiliated entity, state-related institution, and veteran and expands on the definition of disadvantaged business. This bill allows a Commonwealth agency to waive the small business employee limit requirement, when it is determined to be in the best interest of the Commonwealth, in order to promote and create economic opportunities for disadvantaged business and mandates the agency to inform prospective bidders of the decision to waive the limit. The department must also include in its annual report to the General Assembly information on its use of the waiver. The bill allows the department to accept the certification of any eligible disadvantaged business certified under the Pennsylvania Unified Certification Program and will be used by a government agency as adequate certification for the purpose of bidding on or participating in any public bid that involves the use of Commonwealth funds but will not accept any certification from an owner who is not a citizen or lawful permanent resident of the United States. The bill mandates that each government agency receiving Commonwealth funds may establish a disadvantaged business utilization programs and the agencies that fail to do so will implement the program established by the department. This bill provides regulations for contractor performance, and the establishment of a **Mentor-protégé program, a small business reserve program, and a surety bond guarantee program.**

**Introduced and referred to House Local Government Committee, 12/20/2011**

### **Upcoming meetings of Interest**

#### **TUESDAY - 1/10/12**

##### **House Consumer Affairs Committee**

**1:00 p.m., Room G-50, Irvis Office Building**

Public hearing on: [HB 1855](#) (Miller) - Amends Title 27 (Environmental Resources), in conservation and natural resources, providing for water well construction standards.

#### **2012 SPRING SENATE SESSION SCHEDULE**

<b>January</b>	<b>3, 17, 18, 23, 24, 25</b>
<b>February</b>	<b>6, 7, 8</b>
<b>March</b>	<b>5, 6, 7, 12, 13, 14, 26, 27, 28</b>
<b>April</b>	<b>2, 3, 30</b>
<b>May</b>	<b>1, 2, 7, 8, 9, 21, 22, 23</b>
<b>June</b>	<b>4, 5, 6, 11, 12, 13, 18, 19, 20, 25, 26, 27, 28, 29</b>

**\*\* Budget Hearings: February 13, 14, 15, 16, 21, 22, 23, 27, 28, 29 and March 1<sup>st</sup>.**

#### **2012 SPRING HOUSE SESSION SCHEDULE**

<b>January</b>	<b>3 (non-voting), 17, 18, 23, 24, 25</b>
<b>February</b>	<b>6, 7, 8, 13, 14, 15</b>
<b>March</b>	<b>12, 13, 14, 26, 27, 28</b>
<b>April</b>	<b>2, 3, 4, 30</b>
<b>May</b>	<b>1, 2, 7, 8, 9, 21, 22, 23</b>
<b>June</b>	<b>4, 5, 6, 11, 12, 13, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29</b>

**\*\* Budget Hearings: February 21, 22, 23, 24, 27, 28, 29 and March 1, 2, 5, 6, 7, 8, 9**

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

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