

MCA Summary of Legislation February 2012

House Prevailing Wage Showdown a No Show Again

Over the past several months, the Pennsylvania House of Representatives has made numerous attempts to pass bills that would significantly change the state prevailing wage law by eliminating covered projects or changing how the act is administered. While more than a half dozen bills have been reported out of committee, the full House has yet to vote on any of these measures. It's not for lack of trying though, as House Republican leadership has expended tremendous effort in attempts to round up enough support to pass the bills. Generally speaking, leadership won't call for a final passage vote on a bill unless it knows that sufficient votes exist to pass it. In there lies the reason why there have been so many false starts on the prevailing wage legislation.

The week of February 13th saw the biggest push thus far to round up votes for a bill that would raise the threshold of when prevailing wage applies from the current \$25,000 to \$185,000. That bill, **House Bill 1329**, is thought to have the most support of any of the bills aimed at weakening prevailing wage law. Fortunately, a majority of House members remain steadfast in their support of the act and no vote was taken. That doesn't mean that the bill is off the agenda. Our lobbyists anticipate that a vote may still occur this spring and maybe even before the end of March. Normally a bill needs to receive 102 votes to pass the House. However there are 6 unfilled seats due to Representatives being elected to other offices last November. Those legislators resigned from the House and their seats are empty until elections are held. As a result, the new number to pass a bill is only 99. The vote count is close enough that a pickup of 3 votes is a big deal. Expect the prevailing wage opponents to make another run at the Prevailing Wage Act before those seats are filled.

Mechanic's Lien Bill Scheduled

A bill that would radically change the Pennsylvania Mechanic's Lien law is scheduled for a vote by the House on March 14th. At present, the bill has two thrusts. First, it would entirely eliminate mechanic's liens on residential property. Second, it would require a notice of commencement to be filed by every subcontractor on every project in order to preserve their lien rights. Concerns have been expressed that subcontractors may be coerced by generals to not file the notice of commencement. In such a scenario, it could be like the old waiver of liens process that existed before the 2006 amendments to the law. Back then, the reality on most projects was that you waived your lien rights or you didn't get on the job. You are encouraged to contact your state House member and ask him/her to oppose **House Bill 1602**.

RACP Grants in the Legislative Crosshairs

House Majority Leader Mike Turzai announced legislation this month that would lower the total debt for Redevelopment Assistance Capital Program grants and alter the review and selection process. Turzai's legislation would reduce the RACP debt ceiling, initially to \$3.5 billion from its current \$4.05 billion, then, incrementally until it reaches \$1.5 billion. The legislation should not come as a surprise to observers of Rep. Turzai's and Gov. Corbett's fiscal philosophy.

Bill Would Bring Back Mandate Waivers

It has been a year and a half since school districts could end run public bidding requirements like the Separations Act, but Representative Dan Truitt (Republican, Chester County) has introduced legislation to bring the program back. Under what had been called the "mandate waiver program" school districts were able to waive many of the requirements contained in the Public School Code. The program that existed between 2000 and 2010 was suppose to be about giving local school districts more control over what went on in the classroom. Instead, most waivers involved waivers of the separate primes and competitive bidding requirements. **House Bill 2231** resurrects this highly controversial program. The bill was introduced on February 29th and is expected to be referred to the House Education committee.

Legislative Activity

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

BIDDING / CONTRACTING

[HB 2022](#) RE: Pennsylvania Business Permitting Portal Act (by Rep. Mike Peifer, et al)

Establishes the Pennsylvania Business Permitting Portal to provide a single online access point to aid existing and potential business owners in completing the necessary permit applications associated with establishing and operating a business in Pennsylvania. Provides for functions of the portal and requires the Department of Community and Economic Development to work with other agencies to determine whether their permits can be obtained through the portal. Establishes the Pennsylvania Business Permitting Portal Advisory Board and provides for its composition and duties.

Reported as committed from House Appropriations Committee, read third time and passed House, 2/7/2012 (194-0)

[HB 2147](#) RE: Payments to Subcontractors (by Rep. Jake Wheatley, et al)

Amends Title 62 (Procurement) to require contractors to pay their subcontractors and the subcontractors to pay their subcontractors within seven days of a progress report filing (lowered from 14 days).

Introduced and referred to House State Government committee, 2/3/2012

[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.

Read third time and passed Senate, 2/8/2012 (34-16)

Received in the House and referred to House Local Government Committee, 2/9/2012

BUDGET RELATED BILLS

[HB 2175](#) RE: Redevelopment Assistance Capital Projects (RACP) (By Rep. Mike Turzai, et al)

Amends a variety of Redevelopment Assistance Capital Projects (RACP) provisions contained within the Capital Debt Enabling Act. Among them, it transfers from the existing act the definition of "applicant" to make it a defined term. "Capital projects" is amended to include five categories and to clarify that infrastructure can be funded as a part of the capital project. Types of eligible projects are expanded to include stormwater infrastructure and tunnels can be funded if they are associated with an economic development project. A minimum 50-percent private match is required for state funding and the Budget Office can give preference to projects with at least 75-percent private funding. Upon enactment, the RACP debt limit would be cut from \$4.05 billion to \$3.5 billion, and would then decrease incrementally until it reaches \$1.5 billion sometime after 2020. No redevelopment assistance capital project may be approved in the period between the date of the general election at which the governor-elect was elected and the third Tuesday of January next following the election. All projects not authorized as of December 31, 2011, would expire and need to be re-listed in compliance with the updated requirements of the act. Requires projects to be submitted to the General Assembly as a single piece of legislation and approved by the General Assembly. Also requires certain reports on the projects to the General Assembly. Provides for disclosure of approved projects on a publicly accessible website.

Introduced and referred to committee on House Finance 2/7/2012

Reported as amended from House Finance Committee, read first time, and laid on the table, 2/13/2012

Removed from the table 2/14/2012

Amended on House floor, read second time and rereferred to House Appropriations Committee, 2/15/2012

EMPLOYMENT

[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.

Laid on the table, and removed from the table, 2/7/2012

ENVIRONMENTAL BUILDING STANDARDS

[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.

Received in the Senate and referred to Senate Environmental Resources and Energy Committee, 2/1/2012

LOCAL/STATE GOVERNMENT/REGULATIONS

[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. Requires the owner to post a copy of the notice for the duration of the project. Further provides a subcontractor shall lose the right to a lien with respect to an improvement to a residential property when the owner has paid the full contract price to the contractor. Form of the notice is provided for and a model notice given. Further provides for priority of lien.

Laid on the table, removed from the table, 2/9/2012

[HB 1718](#) RE: Multiple Consultants (by Rep. Tom Creighton, et al)

Amends the Pennsylvania Municipalities Planning Code, in subdivision and land development, to require in the contents of a subdivision and land development ordinance there to be contracted at least three private consultants from each discipline to be on hand to review applications and only the review fee may be charged to the applicant. Also requires designation by ordinance of three engineers to be on hand for inspection of the land development area. The applicant may be required to reimburse for the inspection. Increases amount of time to 180 days to agree on the amount of the fee.

Passed over in House Local Government Committee, 2/14/2012

[HB 1719](#) RE: Selection of Engineer (by Rep. Tom Creighton, et al)

Amends Title 53 (Municipalities Generally), in municipal authorities, if the authority requires the property owner to reimburse it for engineering review and inspection of the plans the authority shall designate by resolution a minimum of three approved engineers from different firms who are readily available to provide services in the municipality, and the property owner may select an engineer from this list who shall be the authority's engineer for reviewing the plans or inspecting the improvements for that particular project. If the property owner selects an engineer, only the review and inspection fees by the selected engineer may be charged to the property owner. Allows for arbitration over the fee to be assessed and increases the time to settle on a proper fee from 20 working days to 180 days. Based upon the decision of the arbitrator, the property owner, professional consultant or authority shall be required to pay any amounts necessary to implement the decision within 60 days.

Passed over in House Local Government Committee, 2/14/2012

[HB 2231](#) RE: Mandate Waivers (by Rep. Dan Truitt, et al)

Amends the Public School Code reestablishing the mandate waiver program. To be eligible for the waiver, school entities must apply to the Department of Education with information detailing that the waiver will allow them to improve their instructional program or operate in a more, effective, efficient, or economical manner.

Introduced and referred to House Education Committee, 2/29/2012

PREVAILING WAGE

[HB 1329](#) RE: Prevailing Wage Thresholds (by Rep. Fred Keller, et al)

Amends the Pennsylvania Prevailing Wage Act to increase the amount in the contract needed to constitute "public work" to **\$185,000** to be adjusted according to the consumer price index as published by the US Department of Labor. Additionally, the bill states no person shall intentionally divide a construction project into multiple parts for the purposes of circumventing the act. The secretary shall provide written notice acknowledging receipt of materials submitted for the purposes of inclusion in the calculation of the prevailing wage; if the submitted material is determined to be incomplete, the secretary shall send a written statement by mail providing the reasons the information cannot be used. The bill also provides protection of workmen by adding that no contractor or subcontractor may discharge, threaten or otherwise discriminate or retaliate against a workman regarding the employee's compensation, terms, conditions, location or privileges of employment because the workman exercised

his rights or is requested by the secretary to participate in an investigation, hearing or inquiry held by the secretary or in a court action. The bill provides for relief to workmen in the event of a violation.

Laid on the table, and removed from the table, 2/6/2012

Amended on House floor, read second time, and rereferred to House Appropriations Committee, 2/13/2012

Reported as committed from House Appropriations Committee, 2/14/2012

[HB 1543](#) RE: "Public Work" Definition (By Rep. Duane Milne, et al)

Amends the Pennsylvania Prevailing Wage Act to exclude work on land held or owned by nonprofit historical organizations or land conservancies from the definition of "public work."

Reported as amended from House Labor and Industry Committee, read first time, and laid on the table, 2/8/2012

[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.

Laid on the table, and removed from the table, 2/7/2012

TRANSPORTATION

[HB 3](#) RE: Public-Private Transportation Partnerships (By Rep. Rick Geist, et al)

Amends Title 74 (Transportation) adding a chapter providing for public-private transportation partnerships and making a related repeal.

Amended on House floor, 2/13/2012

Amended on House floor, read second time, and rereferred to House Appropriations Committee, 2/15/2012

UNEMPLOYMENT/WORKERS COMP

[HB 1754](#) RE: Unemployment Compensation (by Rep. Ron Miller, et al)

Amends Unemployment Compensation Law defining "abuse" and "domestic violence" and further providing for relief from charges and for ineligibility for compensation; and providing for applicability. The bill states an employe shall be ineligible for compensation for any week in which his unemployment is due to voluntarily leaving work without cause of a necessitous and compelling nature attributable to his employment. No employe shall be deemed to be ineligible where the Federal Unemployment Tax Act requires eligibility; no employe shall be deemed ineligible if the employe is a spouse of a full-time member of the United States Armed Forces or a full-time member of any of its reserve components and the employe is leaving employment due to the reassignment of the military member to a different geographical location; and no employe shall be deemed to be ineligible for voluntarily leaving work if the individual reasonably believes that due to a domestic violence situation such individual's continued employment would jeopardize the safety of the individual. The domestic violence situation shall be verified by reasonable and confidential documentation. Additionally, **an employe shall be ineligible for compensation for any week in which his unemployment is due to discharge or temporary suspension from work for any of the enumerated reasons, including disregard of any reasonable workplace rule, deliberate damage to property of the employer, reporting to work under the influence of drugs or alcohol, threatening a coworker, or failure to maintain a valid license or certificate.**

Reported as amended from House Labor and Industry Committee, read first time, and laid on the table, 2/13/2012

Other Bills of Interest

MONDAY - 3/5/12

Senate Appropriations Committee

Off the Floor, Rules Committee Conference Room

To consider: [SB 623](#) (Tomlinson) - Amends Title 62 (Procurement) providing for contracting with veteran-owned small businesses; and imposing duties on the Department of General Services and other Commonwealth purchasing agencies.

And other bills

WEDNESDAY - 3/7/12

Senate Banking and Insurance Committee

9:30 a.m., Room 8E-B, East Wing

Meeting to consider: [SB 10](#) (Scarnati) - Joint Resolution proposing an amendment to the Constitution of the Commonwealth of Pennsylvania, providing for health care services.

WEDNESDAY - 3/14/12

House Insurance Committee

10:00 a.m., Room 39, East Wing

The PA Insurance Department will provide an informational update on the status of establishing a state-based health insurance exchange.

Upcoming meetings of Interest

2012 SPRING SENATE SESSION SCHEDULE

March 5, 6, 7, 12, 13, 14, 26, 27, 28
April 2, 3, 30
May 1, 2, 7, 8, 9, 21, 22, 23
June 4, 5, 6, 11, 12, 13, 18, 19, 20, 25, 26, 27, 28, 29
**** Budget Hearings: March 1st.**

2012 SPRING HOUSE SESSION SCHEDULE

March 12, 13, 14, 26, 27, 28
April 2, 3, 4, 30
May 1, 2, 7, 8, 9, 21, 22, 23
June 4, 5, 6, 11, 12, 13, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29
**** Budget Hearings: 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>