

**MCA**  
**Summary of Legislation**  
**July 2012**

**Another Construction Moratorium Proposal Introduced**

Last month, the final budget included a moratorium on school district construction reimbursement as part of the PLANCON process. That represented a victory of sorts because the Governor's original proposal was a retroactive freeze on PLANCON reimbursements. The final version gives school districts until October 1<sup>st</sup> before the moratorium begins. Now a new bill has been introduced in the House that could freeze construction for the State System of Higher Education. **House Bill 2444**, introduced by Representative Brad Roae (Republican, Crawford County) would freeze all construction by the 14 state system universities except for projects deemed an emergency by the PA Department of General Services (DGS). An alternate interpretation is that the bill would just take away the universities' authority to enter into construction contracts, thus any construction would be authorized and administered by DGS. House Bill 244 is scheduled for a public hearing on **August 15th** before the House State Government Committee. Additional information may come to light at the hearing.

**E-Verify, P3, Keystone Works Bills Signed by Corbett**

Three bills passed by the General Assembly during the June budget rush of interest to the construction industry were signed into law in early July by Gov. Tom Corbett. **SB 637**, sponsored by Sen. Kim Ward, requires verification of eligibility to work on public works projects. The bill had been amended to more closely reflect the House language sponsored by **Rep. John Galloway**, before becoming law. Departing House Transportation Committee Chairman Rick Geist will have one last pen on his wall, as **HB 3**, which provides for Public-Private Partnerships in highway construction projects also was approved by Gov. Corbett. And Rep. Stan Saylor's "Keystone Works" program also was inked this past month. That bill creates a \$2.5 million program to place workers collecting unemployment compensation with companies as unpaid on the job training. Our lobbyists have been in contact with the Department of Labor and Industry for clarification of details of the latter program, and its impact on the construction industry. All three bills were reported in more detail in the June legislative report.

**Tax Reform Proposal Targets Services**

The PA Senate Finance Committee held a hearing July 26 on a bill that would eliminate local property taxes and increase the sales tax as well as expand it to cover services. The expansion to services means that design and construction services would be subject to sales tax. Under **Senate Bill 1400**, the sales tax would increase to 7% and the personal income tax would increase to 4%. The sales tax would be 1% higher in those counties that already have a 7% sales tax. Property tax reform has been a controversial topic for decades in Pennsylvania. Previous efforts have either failed in the Legislature or been rejected by voters. Your lobbyists have worked to prevent the expansion of sales tax to services. Adding 7% to the cost of companies competing for out of state work holds the potential for businesses to move operations and jobs to another state. While no votes are anticipated for this legislation during the current session, this issue has a history of reappearing and will probably do so again. A companion bill in the House, **HB 1776**, has been the subject of discussions, but no affirmative action has been taken on it, and again is not likely in the remaining session days.

**Amendment to Permit Extension Act**

Last month Governor Corbett signed **SB 1263**, now Act 87, the budget bill adopted by the General Assembly, which included an amendment to Act 46 of 2010 (the "Permit Extension Act) to extend the life of permits, approvals, and other authorizations that are in effect as of January 1, 2009 or issued after that date, until July 1, 2016 - thus giving applicants/permittees another three years beyond the original deadline of July 1, 2013 to act on the approved permits.

There was no change to the applicability of the Permit Extension Act, which applies to virtually any approval granted by any government agency, under any state law, such as the Municipalities Planning Code ("MPC"), municipal codes (Borough, First Class Township, Second Class Township, etc.), the Uniform Construction Code, and other applicable statutes such as the Municipal Claim and Tax Lien Law, the Pennsylvania Sewage Facilities Act, and other environmental laws affecting flood plain management, storm water management, dam safety and encroachments, and the Clean Streams Law, with some exceptions.

The extension continues to be automatic (with some exceptions applicable to Philadelphia) and applies broadly to any authorizations issued for "development" including permits, development approvals, agreements, decisions and other authorizations, whether issued by the governing body, such as a borough council or board of supervisors, or other board, commission, department (such as a zoning hearing board or zoning officer), or authority of the municipality.

Despite the automatic nature of the extensions, a municipality is required to provide written verification, upon written request by any person who has received an approval, confirming that the extension applies. If the municipality does not respond in writing within 30 days of such a request, the approval will be deemed extended until the date specified in the request.

To summarize the other provisions of the Act, as amended, "development" is defined to include all of the following:

Subdivision of land, as defined in the MPC;

Construction, reconstruction, conversion, structural alteration, relocation or enlargement of a building or other structure;

Site preparation;

A use, or change in the use, of a building or other structure, or change in land use;

Land development, as defined in the MPC;

Demolition, moving or removing a building or other structure; and

The right to convert convertible real estate or withdraw real estate pursuant to the laws governing condominiums and planned communities.

Although it is unlikely that any pending approval is set to expire after the new deadline of July 1, 2016, any such expiration would not be affected; i.e., will not be shortened, as a result of this legislation.

The Act does NOT limit the authority of a municipality to:

Suspend or revoke an approval for noncompliance with a written condition of the approval;

Enforce conditions of approvals granted prior to the extension period; or

Enforce conditions that must be met prior to final plan approval.

There are significant exceptions to the term "approval" as defined in the Act, including DEP storm water control permits involving discharges to surface waters or wetlands classified as high-quality waters or exceptional-value waters during construction activities, as well as PennDOT highway occupancy permits (unless extended annually pursuant to application to the agency).

### **OSHA Launches Construction Incident Prevention Initiative**

OSHA has announced plans to conduct unannounced inspections of construction sites in OSHA's Philadelphia Region, from April through September, in attempt to cut down on construction site fatalities. OSHA is specifically focusing on injuries and deaths resulting from falls, struck by and crushing events, electrocutions, caught in between events and heat illness among outdoor workers.

### **Legislative Activity**

**The following bills were acted on by the General Assembly in July.**

### **BIDDING / CONTRACTING**

[SB 637](#) RE: E-Verify (by Sen. Kim Ward, et al)

Amends Title 62 (Procurement), in contracts for public works, adding a subchapter requiring verification of the employment eligibility of all employees for purposes of wage reporting and employment eligibility in certain public works projects as a precondition of being awarded a contract. The bill prescribes penalties.  
**Approved by the Governor 7/5/2012 (Act No. 127 of 2012)**

## **BUDGET RELATED BILLS**

**None**

## **ENVIRONMENTAL BUILDING STANDARDS**

**None**

## **LOCAL/STATE GOVERNMENT/REGULATIONS**

**None**

## **PREVAILING WAGE**

[HB 1271](#) RE: "Public Work" (by Rep. Ron Marsico, et al)

Amends the Pennsylvania Prevailing Wage Act by adding that "public work" includes maintenance/rehabilitation/reconstruction road projects on existing alignment in which non-maintenance items exceed fifteen percent of the total project cost; and "maintenance work" includes the following actions taken on roads: (1) replacement in kind, or compliance with current Department of Transportation design criteria and standards, of guide rails, curbs, pipes, line painting and other related road equipment; (2) repair of pavement service by laying bituminous material up to 3.5 inches thick or up to 420 pounds per square yard on asphalt pavement, cement concrete or other hard surface, including associated milling, and related work raising existing paved shoulders to new grade; or patching of cement concrete surface to include joint spalling and repair work; (3) widening of existing alignment which does not result in additional lanes or new shoulders; and (4) bridge cleaning, washing, resurfacing with blacktop, minor non-structural repairs or improvements and painting except when combined with complete bridge rehabilitation.

**Laid on the table, 7/2/2012**

[HB 1543](#) RE: Historic Properties (by Rep. Duane Milne, et al)

Amends the Pennsylvania Prevailing Wage Act to exclude from the definition of "public work" work on certain historic properties. Additionally, the bill states no person shall intentionally divide a construction project into multiple parts for the purposes of circumventing this act. The secretary shall provide written notice acknowledging receipt of materials submitted by any employer, labor organization or other association or organization representing a group of employers or employees for the purposes of inclusion in the calculation of the prevailing wage. If after review the secretary determines that the submitted material is incomplete or unacceptable for inclusion in the calculation of the prevailing wage rate, the secretary shall send a written statement by mail to the employer, labor organization or other association or organization representing a group of employers or employees providing the reasons the information cannot be used. The bill also provides for protection of a workman 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 because the employee 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 civil action.

**Laid on the table, 7/2/2012**

[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, 7/2/2012**

[HB 2545](#) RE: Fringe Benefit Payments (by Rep. Ron Miller, et al)

Amends Prevailing Wage Act adding a new section requiring the Secretary of Labor & Industry to require contractors, trustees or third parties managing the administration of fringe benefit payments under a collective bargaining agreement to maintain accurate records of fringe benefit payments made to each worker. Provides the records must contain a clear description of each item for which funds were allocated in a fringe benefit payment and

that the Secretary must be provided access to the records. Also adds a section providing for the right of workmen to challenge a fringe benefit payments allocation and for remedies and penalties. Further provides a contractor or labor organization may not discriminate against a workman on assignment to work to public project based on his contribution to or his failure to contribute to a fund for political activity.

**Introduced and referred to House Labor and Industry Committee, 7/2/2012**

## **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.

**Approved by the Governor, 7/5/2012 Act No. 88 of 2012**

## **UNEMPLOYMENT/WORKERS COMP**

[HB 1539](#) RE: Keystone Works I Program Act (By Rep. Stan Saylor, et al)

Establishes said program under the purview of the Department of Labor and Industry. The program shall permit a claimant to be matched with a participating business, which will then provide skill enhancement for up to 24 hours per week for up to six weeks. Upon completion of the six-week period, claimants must be considered for employment by the business. A business shall not be required to compensate claimants involved with the program. The bill outlines other duties of the department. The bill also provides eight weeks of training with an employer to displaced workers while continuing to receive unemployment compensation (UC), by outlining comprehensive eligibility standards, establishing guidelines, providing for the arrangement of workers compensation payments, providing for incentive payments to employers, and placing a five-year moratorium on the program. Provides for voluntary nature of the program, duty of CareerLink locations, and further details definitions. The bill requires businesses to register with a CareerLink office, provides for business requirements, and for further business incentives.

**Approved by the Governor, 7/5/2012 Act No. 107 of 2012**

[HB 2547](#) RE: PA Council on Workforce Development (by Rep. Joe Preston, et al)

Act establishing the PA Council on Workforce Development; & providing for its powers and duties as lead agency in cooperation with other State agencies to promote workforce development.

**Introduced and referred to House Labor and Industry Committee, 7/11/2012**

## **Upcoming meetings of Interest**

**The House and Senate are in recess until September 24.**

### **WEDNESDAY - 8/15/12**

**House State Government Committee,  
10:00 a.m., Room G-50, Irvis Office Building**

Public Hearing on State System of Higher Education, amending the Public School Code, specifically:

[HB 2444 \(Roae\)](#) - Amends the Public School Code, in State System of Higher Education, further providing for project contracts.

And several others.

### **2012 SENATE FALL SESSION SCHEDULE**

<b>September</b>	<b>24, 25</b>
<b>October</b>	<b>1, 2, 3, 15, 16, 17</b>
<b>November</b>	<b>14 (Leadership Elections)</b>

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

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