

MCA
Summary of Legislation
September 2012

IMPORTANT ACTION ALERT

As the Pennsylvania General Assembly approaches its final days of voting for this legislative session, a last minute lobbying effort by pharmacy interests has reared up in dynamic fashion. Chain drug stores joined forces with local pharmacies in an attempt to pass a law that restricts the use of mail order pharmacies. The end result would eliminate the group buying power of large purchasers of prescription drug benefits. This will have a profound effect on the cost control savings that many union health funds have achieved through pooling their resources and negotiating favorable rates. **Senate Bill 201** would force benefits plans to allow any pharmacy to fill members' prescriptions if they are willing to do it at the negotiated rates. While that seems reasonable on the surface, it would have the effect of reducing volume and the volume discount negotiated by the funds.

On October 2nd, the PA Senate passed this bill and the very next day, the committee it was assigned to in the House reported the bill to the House floor without so much as a roll call vote. This quick action is a clear indication that the pharmacy lobbies hope to pass the bill before it attracts too much attention. A study published by the University of North Carolina-Chapel Hill in 2009 predicts that this type of mandate will result in a 6.4% increase in pharmaceutical drug expenditures. If enacted, this legislation will divert more money out of workers' paychecks and into healthcare funds.

Please contact your state Representative immediately and ask them to support an exemption for those covered under collective bargaining agreements. If that effort fails, they should vote against the bill. **This vote is expected to occur on October 15th, so please do not hesitate in making your contacts.**

Final Weeks of the Session to Be Busy, Maybe

Since the House and Senate leaders announced at the beginning of the 2011-2012 legislative session that there would be no voting sessions after the November elections, only two weeks of legislating remain before the clock runs out on this two year cycle. They promise to be nail-biting, as bills not yet moved in one or the other chamber may come flying out at break neck speed, as the bi-annual end of session horse trading takes place between the House, Senate and the Governor's office. Certainly the House Republican leaders have talked all summer about their remaining agenda, while the Senate has been somewhat more circumspect. The Governor's influence on this process, and the volume of legislation that is moved, remains to be seen as well. But everyone agrees, that once the voting ends in October, that is all she wrote, and anything that is not sent to the Governor will die and must start over in 2013.

Mechanic's Lien Committee Action

On October 1st, both the House and Senate Labor and Industry committees took up the issue of mechanic's lien law changes. The House committee considered **House Bill 710**. As reported from that committee, it added a provision that would eliminate subcontractor liens on residences where the owner/tenant has paid the general contractor in full and the property is occupied by the owner or tenant. The Senate committee passed essentially the same thing, Senate Bill 1495, but added an amendment sought by the bankers and title insurance lobbies which would change the priority of liens. That amendment was problematic as it would allow a refinancing or open end mortgage to be placed ahead of a contractor's liens. The same amendment was withdrawn in the House committee meeting.

While both bills were reported from their respective committees, neither has advanced very far beyond that. A number of amendments have been filed to House Bill 710 by Representative Bill Keller, Minority Chair of the House Labor and Industry Committee. The amendments would refine the language dealing with owner occupied residences. Keller also spoke out against the priority of lien amendment that was withdrawn in committee. It is worth noting that the Senate committee chose not to move a more controversial bill, House Bill 1602, which is widely opposed by subcontractor groups. And even though Senate Bill 1495 was reported out of the Senate committee, it appears to have stalled since. The House and Senate reconvene on the week of October 15th for what is scheduled to be the final 3 voting days of session. It would be a surprise if either of the mechanic's lien bills advanced much further before this legislative session ends.

House Local Government Committee Holds Public Hearing On Legislation Pertaining To Minority, Women, and Disadvantage Business Enterprise

The committee held a public hearing September 19 on legislation pertaining to minority, women, and disadvantage business enterprise.

Committee Chairman Tom Creighton (R-Lancaster), introduced Rep. **Jake Wheatley (D-Allegheny)**, prime sponsor of the package, for an overview of the proposal. Rep. Wheatley provided members with a background on the development of the legislative package, explaining that the bills emerged from the **select committee** formed to study the issue pursuant to **HR 78 of 2009**. The committee worked to reach consensus on its recommendations, he noted, adding that this language was approved by the House last session but was not considered in the Senate. Rep. Wheatley said the committee held hearings across the commonwealth and heard from approximately 70 testifiers. Highlighting the major findings of the committee, Rep. Wheatley noted that the proposals provide for veteran and service disabled business owners to be added to the scope of the Department of General Services's (DGS) minority and women business enterprise (MBE/WBE) program; for the expansion of that program to all state agencies, institutions, and related agencies; and improve the state's monitoring and tracking system. He stated the goal is to commit to small business by improving the business climate and eliminating barriers that prevent them from doing business with the state. He also noted the governor's small business reserve program was a recommendation of the committee. However, he concluded, implementation of the recommendations by executive order is not enough. He argued that the legislation must be moved forward in order to institutionalize best practices and change the culture. **Peter Speaks**, Special Counsel to Sen. Vincent Hughes (D-Philadelphia) and former Deputy Secretary and Advisor to the Governor for Minority and Women-Owned Business Development at DGS, gave an overview of legislative work that has been done to cultivate small minority, women and veteran-owned firms in the state contracting and process. He explained that House Resolution 78 was "the precursor to the current legislative package" and highlighted key recommendations that would level the playing field for disadvantaged businesses including the following:

- Establishing an aspirational target of 25 percent on procurement and construction contracts;
- Increasing the employee size from 100 to 250 under the definition of "small business";
- Prompt payment and good faith requirements;
- Establishing a statewide bonding program.

Speaks also discussed current initiatives to improve the inclusion of disadvantaged businesses. He said the Department of General Services implemented the Small Business Procurement Initiative and explained that the program "sets aside certain procurements or creates a sheltered market for these businesses." He noted that the program has been expanded to include Small Veteran and Disabled Veteran-owned businesses.

Legislative Activity

The following bills of interest to the construction industry were acted on by the General Assembly in August.

BIDDING / CONTRACTING

[HB 380](#) 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. The bill clarifies it only applies to public works projects.

Reported as committed from House Rules Committee, and laid on the table, 9/24/2012

[HB 1840](#) RE: Steel Products Procurement Act (by Rep. John Bear, et al)

Amends the Steel Products Procurement Act adding language providing section 4 of the Act shall not apply in any case where a list of exempt steel products, which has been identified by the Department of General Services as not produced in the United States in sufficient quantities in the previous calendar year, is published on the department's website, which contractors, subcontractors, suppliers, bidders, offerors and public agencies can rely upon in preparing bids and contracts. Requires the department to annually update the list of exempt products on a date selected by the department. Further provides the department may not make changes to the list during the year following publication. Lays out the exemption process and provides for publication in the Pennsylvania Bulletin. The sovereign immunity clause is removed. The bill also provides for the requirement of posting exempt machinery in the Pennsylvania Bulletin.

**Reported as amended from House State Government Committee, read first time, and laid on the table, 9/24/2012
Removed from the table, 9/5/2012**

[SB 623](#) RE: Veteran-Owned Small Businesses (by Sen. Tommy Tomlinson, et al)

Amends Title 62 (Procurement) adding chapter providing for contracting with veteran-owned small businesses. Definitions are provided and the Department of General Services (DGS) is given the power to establish policy on the subject. The bill sets a participation goal of not less than three percent participation by veteran-owned small businesses, including service-disabled veteran-owned small businesses. Duties of DGS are outlined and the bill states a purchasing agency may reduce the level or change the types of bonding normally required or accept alternative forms of security to the extent reasonably necessary to encourage procurement from veteran-owned small businesses and service-disabled veteran-owned small businesses. Contracts under \$25,000 with veteran-owned small businesses shall be exempt from bonding requirements. Each agency shall report to DGS annually and DGS and the agencies shall report annually to the House and Senate Veterans Affairs and Emergency Preparedness Committees. Compliance with federal law, where the two conflict, is provided for.

Reported as amended from House Veterans Affairs & Emergency Preparedness Committee, read first time, and laid on the table, 9/25/2012

BUDGET RELATED BILLS

[HB 2020](#) RE: Infrastructure Future Fund Act (By Rep. Jerry Knowles, et al)

Establishes the Infrastructure Future Fund in the State Treasury which shall be composed of by the deposits of the net proceeds from the privatization of wine and liquor operations of the Pennsylvania liquor stores and the net proceeds from the sale of any wine or liquor inventory owned or maintained by the Pennsylvania liquor stores. The bill grants exclusive control and authority to manage, invest and reinvest money in the fund to the State Treasurer. The money in the account shall be used for construction cost of transportation infrastructure projects and the Governor shall submit, yearly, an itemization of transportation infrastructure projects to be funded by this Act along with a description and estimated cost.

Reported as committed from House Rules Committee, and laid on the table, 9/24/2012

[HB 2598](#) RE: County Sales Tax for Infrastructure (by Rep. Mike Carroll, et al)

Amends Title 72 (Taxation & Fiscal Affairs) to provide a new chapter detailing and allowing counties to implement a sales and use tax on tangible personal property and services. The tax shall be split as follows: 25 percent to the Department of Transportation for infrastructure projects in the county in which the tax was generated; and 75 percent to the county from which the tax was generated, 20 percent of which shall be distributed to municipalities in the form of a grant program for municipal infrastructure repairs.

Introduced and referred to House Finance Committee, 9/5/2012

ENVIRONMENTAL BUILDING STANDARDS

None

LOCAL/STATE GOVERNMENT/REGULATIONS

[HB 710](#) RE: Mechanics' Lien (By Rep. Bob Godshall, et al)

Amends the Mechanics' Lien Law further providing for right to lien and amount by adding that a subcontractor does not have the right to a lien with respect to an improvement to a residential property if the owner or tenant paid the full contract price to the contractor, the property is or is intended to be used as the residence of the owner or tenant, and the residential property is a building that consists of one or two dwelling units used, intended or designed to be built, used, rented or leased for living purposes. The bill also provides for discharge of lien on payment into court or entry of security by adding that a claim filed under this act with respect to an improvement to a residential property subject to section 301(b) shall, upon petition or motion to the court by the owner or a party in interest, be discharged as a lien against the property when the owner or tenant has paid the full contract price to the contractor or the lien shall be reduced to the amount of the unpaid contract price owed by the owner or tenant to the contractor.

Reported as amended from House Labor and Industry Committee, read first time, and laid on the table, 10/1/2012

Removed from the table, 10/2/2012

[HB 1718](#) RE: Municipalities 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. The applicant may be required to reimburse for the inspection. Increases amount of time to 100 days to agree on the amount of the fee. The bill also provides for arbitration costs and a surcharge.

Reported as committed from Senate Local Government Committee, and read first time, 9/24/2012

[HB 1719](#) RE: Municipalities Consultants (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 60 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.

Reported as committed from Senate Local Government Committee, and read first time, 9/24/2012

[HB 2530](#) RE: PCC Board of Appeals (by Rep. Will Tallman, et al)

Amends the PA Construction Code Act further providing for administration and enforcement by stipulating that a municipality which has adopted an ordinance for the administration and enforcement of this act or municipalities which are parties to an agreement for the joint administration and enforcement of this act shall establish or designate a board of appeals as provided by chapter 1 of the 1999 BOCA national building code, fourteenth edition, to hear appeals from decisions of the code administrator. A municipality may establish a board of appeals or may establish or designate a joint board of appeals in accordance with 53 Pa.C.S. Ch. 23 Subch. A (relating to intergovernmental cooperation).

Reported as amended from House Labor and Industry Committee, read first time, and Laid on the table, 9/24/2012

Removed from the table, 9/25/2012

[SB 1261](#) RE: Storm Water Management (by Sen. Ted Erickson, et al)

Amends Title 53 (Municipalities), in municipal authorities, adds storm water management planning and projects to the list of projects which municipal authorities can perform.

Reported as committed from House Local Government Committee, read first time, and laid on the table, 10/2/2012

Removed from the table, 10/4/2012

[SB 1495](#) RE: Mechanics' Lien Law (By Sen. Kim Ward, et al)

Amends the Mechanics' Lien Law to detail instances where subcontractors do not have the right to the lien and further details when a lien may be discharged against a residential property owner.

Reported as amended from Senate Labor and Industry Committee, and read first time, 10/1/2012

PREVAILING WAGE

None

TRANSPORTATION

[HB 2576](#) RE: Highway Construction Projects (by Rep. Eli Evankovich, et al)

Amends the State Highway Law, in construction, improvement, maintenance and repair of State highways, to provide for the Secretary of Transportation to publish a list of proposed projects and possible fees associated with the projects.

Introduced and referred to House Transportation Committee, 8/20/2012

UNEMPLOYMENT/WORKERS COMP

None

Upcoming meetings of Interest

L&I UNIFORM CONSTRUCTION CODE REVIEW AND ADVISORY COUNCIL MEETING

The Uniform Construction Code Review and Advisory Council will meet on Thursday, October 18, 2012, at 10 a.m. at the Department of Labor and Industry, 651 Boas Street, Room E-100, Harrisburg. For more information visit www.dli.state.pa.us or contact Edward Leister at (717) 783-6304.

2012 SENATE FALL SESSION SCHEDULE

October 1, 2, 3, 15, 16, 17
November 14 (Leadership Elections)

2012 HOUSE FALL SESSION SCHEDULE

October 1, 2, 3, 4, 15, 16, 17, 18
November 13, 14, 19, 20

All of the November House session days are understood to be NON-VOTING days, for farewell speeches from departing members, and leadership elections for the 2013-14 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>