

MCA
Summary of Legislation
April 2014

Multiple Primes Still Under Attack in State House

In recent years, there have been numerous legislative attempts to eliminate the multiple primes bidding requirements for Pennsylvania public works projects. Often those efforts have been disguised as proposals that were mainly about something else with little to no mention of the effect the bill would have on separate primes. Give credit to the supporters of **House Bill 1838** for being unabashed about their desire to end multiple primes construction. This legislation allows local governments to enter into **P3 (Public Private Partnerships)** agreements for any type of municipal facility. That would include water and sewage treatment plants, public park enhancements, schools or any type of municipal building. A private developer contributes the upfront costs to the project and then recoups its investment through fees or maintenance agreements paid for by the taxpayers.

This bill has been the subject of a public hearing in December and, on April 8th, an informational meeting of the House State Government committee. A few revealing comments were made at the April meeting. According to the bill's sponsor, Rep. Eli Evankovich, the "one hotly contested component" in the bill is that the **Separations Act** would not apply. He argued, "One of the real benefits of this for the state of Pennsylvania is private companies will be putting up the risk and I don't see the need to make another unnecessary requirement for them for how their money is spent in pursuit of this project for local government given they are bearing the risk." He added, "I understand that this may be an area of disagreement but it would truly render this legislation somewhat meaningless if we made all procurement processes that currently involve the state apply to public-private partnership projects."

When another Representative (Rep. Rick Saccone) asked how a private company is making money in these types of projects and how they are reducing costs. Rep. Evankovich explained that the state has developed a number of procurement safeguards over the years including the Separations Act. He argued that the Separations Act adds to the cost of these types of projects.

It's not just Separations Act that is caught in the cross-hairs of this legislation. **Prevailing wage** is also an intended target of the bill. While the bill is silent on how it affects prevailing wage, the Chairman of the committee couldn't help but lay it out when the question came up. When Rep. Brad Roae asked if a P3 project would be exempt from prevailing wage. Chairman Daryl Metcalfe explained that if the project involved public money than it would fall under the prevailing wage law but if it is private money it would not. Rep. Roae argued for the need to exempt P3 projects from the prevailing wage law and provide more savings for local governments.

House Bill 1838 is supported by the usual cast that opposes Separations Act and the Prevailing Wage law. The bill may come up for a vote at any time. You are strongly encouraged to contact your legislators to urge their opposition to House Bill 1838.

Grove's School Construction Reform Bill Headed for House Floor

Rep. Seth Grove (R-Dover)'s bill to revise the PlanCon process for school construction, [House Bill 2124](#), was passed by the House Education Committee on April 30. The bill was amended, though, and the amendment split the parties on an issue that had appeared to have bipartisan support previously. The amendment reflected a compromise with the Department of Education that was less generous to school districts in the PlanCon system than the original provisions of the bill. The amendment was adopted on a 13-12 vote with 2 Republicans joining the Democrats in opposition to it. The bill then passed through the committee on a party line vote.

The state's PlanCon system is currently halted in a moratorium as the Pennsylvania Department of Education (PDE) has no way to reimburse the projects already in the system. During a committee hearing on this bill, PDE acknowledged the financial troubles, admitting they owed school districts \$1.7 billion from promised PlanCon reimbursements.

House Bill 2124 repackages PlanCon into the Accountability and Reducing Costs in Construction Process (ARC Con). ARC Con streamlines the process from 14 steps into five steps, which allows school districts to save time and money in the application process. ARC Con also attempts to save costs by rehabilitating old buildings whenever possible. ARC Con further works to reform PlanCon by reducing costs on new projects for the Commonwealth by 10 percent.

Grove maintains that ARC Con saves the Commonwealth money while allowing school districts to receive their reimbursement faster through a one-time lump-sum reimbursement of up to 75 percent of the reimbursement. Currently, districts could wait years before receiving their full reimbursement. Providing a majority of the reimbursement up front saves the Commonwealth 25 percent on the project overall cost by eliminating interest, and also eliminates the backlog PDE is currently facing.

These lump-sum payments reduce debt obligations of school districts as the last decade saw school district debt increase 38 percent. By reducing the debt obligation of school districts, we assist them in focusing on their goal of educating students. ARC Con not only reduces costs but would also provide transparency by creating a website which school districts can access and see where their project is in the process.

Court Decision Prompts Mechanic's Lien Bill

A much anticipated PA Supreme Court Decision has resulted in employee benefit funds being barred from filing mechanic's lien claims. In the case of *BRICKLAYERS OF WESTERN PENNSYLVANIA COMBINED FUNDS v. SCOTT'S DEVELOPMENT COMPANY*, PA's highest court reversed a lower court ruling that had upheld the funds right to file a lien when payments had not been received. That decision was issued in January of 2012 but was immediately appealed. This latest ruling settles the issue unless the mechanic's lien law is changed. On that account, Representative Bill Keller, Democratic Chair of the House Labor and Industry committee has announced his intention to reverse the ruling and will be introducing a bill to do just that. In a memo to his House colleagues, Keller says "my legislation will amend the Mechanics' Lien Law to ensure that benefit funds covered by the Employee Retirement Income Security Act of 1974 (ERISA) and related federal laws are considered subcontractors and afforded rights and remedies under the law. Health and retirement benefits are unquestionably necessary to workers and especially to those in the demanding construction industry. My legislation seeks to further safeguard benefits that are guaranteed to workers, ensuring benefit fund solvency and the availability of benefits when they are needed."

Senate Finance Committee Holds Hearing on Property Tax Bill

The committee held a public hearing April 30 on **SB 76**, the Property Tax Independence Act. Sponsored by Sen. David Argall (R- Schuylkill), the bill purports to eliminate the school property tax, shifting the burden to the state, and other tax payers, by increasing and broadening sales taxes, increasing the personal income tax, and allowing local districts to impose their own other local taxes to replace the estimated \$16 Billion in school property taxes now being collected across the Commonwealth.

Committee Chairman Mike Brubaker (R- Lancaster) said "Today's hearing marks another step in the ongoing discussion of property tax reform in Pennsylvania." He commended the "tireless" work of his colleagues in their efforts to fundamentally change the way public education is funded in the Commonwealth by eliminating school property taxes. He highlighted past committee hearings and findings from the Independent Fiscal Office (IFO), which have yielded considerations and changes that are reflected in the proposed amendment.

Democrat Committee Chairman John Blake (D- Lackawanna) acknowledged the continuing efforts of members of the General Assembly in addressing the issue of school property taxes. He said, "I think it's important to know at the outset of this conversation that the local tax system in the Commonwealth is flawed and obsolete." Chairman Blake discussed the significant encumbrance of property taxes for particular demographics including fixed-income seniors and low-income households. "We are committed to a responsible solution that can eliminate the property tax burden on these lower income property owners," he asserted. "Adequately funding public education is an urgent imperative; protecting the financial interests of aging and lower-income homeowners is also an urgent imperative."

Chairman Blake reiterated that potential negative outcomes must be carefully weighed and considered to find a "proper balance" moving forward.

Sen. Argall discussed the long history of legislative efforts to permanently remove property taxes to fund basic education in the commonwealth. "The argument used to be that it was only a regional issue, that only some regions of the state had an issue with school property taxes," he said. "Today, with SB 76, we have 26 co-sponsors-including 13 Republicans and 13 Democrats." Sen. Argall pointed out that the legislation was drafted in cooperation with over 70 grassroots taxpayer groups from across the Commonwealth. Furthermore, he noted that the legislation has been extensively vetted through two separate studies by the IFO, a report from the Department of Revenue and many public hearings. While some opposition groups continue to support the "archaic" status quo, Sen. Argall explained, many groups have shared in the process providing productive, positive feedback. "We were able to adopt many of the suggestions from those groups, over eight pages of clarification by the Department of Revenue, concerns from the City of Philadelphia and suggestions from other Senators," he shared.

Sen. Argall outlined **details of the legislation** including an **increase in the state's Personal Income Tax from 3.07 to 4.34 percent, increase in the state's Sales and Use Tax from 6 to 7 percent, and expansion of the Sales and Use tax to cover more goods and services (including design and construction services)**. "Along with revenues from gaming funds, our bill provides a dollar-for-dollar replacement for school property taxes across the state," he asserted. "Each year, our bill will drive out more revenue through a Cost of Living Adjustment (COLA)." Sen. Argall explained the amendment provides clarification into what services are subjected to the expanded Sales and Use Tax, as well as those business-to-business services exempted from the Sales and Use Tax. Citing a variety of polling data, he argued that the majority of the public is overwhelmingly in support of eliminating school property taxes. Sen. Argall challenged his colleagues to defend the state's current funding model for public education through property taxes, which he said was unconstitutional.

As a point of clarification, Chairman Brubaker noted the legislation would increase the Sales and Use Tax from six to seven percent across the majority of the state; however, it would **increase the Sales and Use Tax from seven to eight percent in Pittsburgh and eight to nine percent in Philadelphia**.

Design and construction services would be subject to the state sales tax under this proposal's sales tax expansion provisions. The bill appears to be gaining support but its critics believe the expansion of taxable items and the rate increases called for in the bill are not sufficient to replace the billions of dollars presently raised by local property taxes. It is unclear at this time if the Senate will call for a vote on the bill.

Legislative Activity

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

BIDDING / CONTRACTING

[HB 1154](#) RE: Intimidation (by Rep. Ron Miller, et al)

Amends Title 18 (Crimes and Offenses), in assault, adding that the sections providing for the offenses of harassment, stalking and threat to use weapons of mass destruction shall not apply to activity protected by the United States Constitution, federal law, or the Constitution of Pennsylvania.

Reported as amended from Senate Judiciary committee, read first time, 4/1/2014

Read second time, 4/2/2014

Read third time and passed Senate, 4/7/2014 (48-0)

Received as amended in House and rereferred to House Rules Committee, 4/8/2014

Laid on table in House Rules Committee, 4/28/2014

[HB 1838](#) RE: Public-Private Partnerships (by Rep. Eli Evankovich, et al)

Amends Title 62 (Procurement) adding a chapter providing for public-private partnerships, for prerequisite for operation, for approval by responsible government agency, for service contracts, for affected local jurisdictions, for dedication of public property, for powers and duties of operator, for comprehensive agreement, for Federal, State and local assistance, for material default and remedies, for condemnation and for utility crossing; imposing duties on the Pennsylvania Public Utility Commission; and providing for governmental immunity, for procurement, for use of intellectual property and for regulations. The stated intent of the bill is to create definitive guidelines for the use of Public-Private Partnerships (P3) agreements by municipalities and school districts to build and/or operate various public facilities.

Informational meeting held in House State Government Committee, 4/8/2014

Cosponsor Memos filed

[HCO3036](#) (Tobash) - Allows PDE to give priority in school construction or reconstruction reimbursement to school districts that merge while indebtedness related to the school construction or reconstruction project remains outstanding.

Filed, 4/2/2014

[HCO3088](#) (Micozzie) - Adds both state and local projects to the existing list of bridges authorized for design and construction and is financed through general obligation bonds.

Filed, 4/9/2014

[HCO3092](#) (Mark Keller)- Itemizes highway capital projects.

Filed, 4/10/2014

BUDGET RELATED BILLS

Cosponsor Memos filed

[HCO3106](#) (Scavello) - Enacts a severance tax on natural gas extraction in the Commonwealth.

Filed, 4/15/2014

ENVIRONMENTAL BUILDING STANDARDS

[SB 1254](#) RE: Definition of "Lead Free" (by Sen. John Yudichak, et al)

Amends the Plumbing System Lead Ban and Notification Act changing the definition of "lead free" to, when used with respect to solders and flux, solders and flux containing not more than 0.2 percent lead and, when used with respect to the wetted surfaces of pipes, pipe fittings, plumbing fittings and fixtures, the term refers to the wetted surfaces of pipes, pipe fittings, plumbing fittings and fixtures containing not more than a weighted average of 0.25 percent lead. The definition includes a formula for calculating the weighted average lead content of a pipe, pipe fitting, plumbing fitting or fixture.

Read third time and passed Senate, 4/8/2014 (49-0)

Received in the House and referred to House Environmental Resources and Energy Committee, 4/10/2014

[SB 1255](#) RE: Storm Water Management (by Sen. Ted Erickson, et al)

Amends Title 53 (Municipalities Generally), in municipal authorities, authorizing storm water authorities to establish programs that would allow property owners to reduce their storm water rates and charges by implementing and maintaining storm water best management practices that address their own contributions to the problems caused by storm water runoff.

Reported as committed from Senate Local Government Committee, and read first time, 4/1/2014

Read second time, 4/8/2014

Amended on Senate floor, 4/28/2014

Read third time and passed Senate, 4/29/2014

LOCAL/STATE GOVERNMENT/REGULATIONS

[HB 2079](#) RE: Uncertified Buildings (by Rep. Sam Smith, et al)

Amends the Pennsylvania Construction Code Act relating to uncertified buildings over which the department does not have jurisdiction. Requires a construction code official to issue a certificate of occupancy to an uncertified building if it meets the requirement of section 902 (b) relating to uncertified buildings under the department's jurisdiction, the latest adopted version of the International Existing Building Code or Chapter 34 of the International Building Code. Also requires the construction code official to utilize the code that, in his professional judgment, he deems best to apply.

Reported as committed from House Labor and Industry Committee, read first time, and laid on the table, 4/29/2014

Removed from the table, 4/30/2014

[HB 2089](#) RE: Building and Housing Regulations and Inspectors (by Rep. Kate Harper, et al)

Amends the First Class Township Code further providing for powers of the board of township commissioners as to building and housing regulations and inspectors; and providing for Uniform Construction Code, property maintenance code and reserved powers. The bill adds an article providing for Uniform Construction Code, property maintenance code, and reserved powers. The article states the Pennsylvania Construction Code Act and the Uniform Construction Code shall apply to the construction, alteration, repair and occupancy of all buildings and structures within a township. The commissioners may enact an ordinance to equal or exceed the minimum requirements of the Uniform Construction Code in accordance with and subject to the requirements of section 503 of the Pennsylvania Construction Code Act. Any ordinance exceeding the provisions of the Uniform Construction Code shall be required to meet the standards provided in the Pennsylvania Construction Code Act. Any construction contrary to any of the provisions of any ordinance passed may be declared, by a court of law, a public nuisance, and may be abatable as such, which exceptions. Commissioners may enact a property maintenance ordinance and may appoint property maintenance inspectors who shall have the right to enter upon and inspect any premises.

Reported as committed from House Local Government Committee, read first time, and Laid on the table, 4/2/2014

[HB 2124](#) RE: Approval of School Building Projects (By Rep. Seth Grove, et al)

Amends the Public School Code, in grounds and buildings, further providing for approval by Department of Education of plans, etc. of buildings and exceptions; providing for accountability and reducing costs in construction process; further providing for limitation on new applications for Department of Education approval of school building projects; providing for interest on delayed reimbursement; and, in reimbursements by Commonwealth and between school districts, further providing for definitions, for approved reimbursable rental for leases hereafter approved and approved reimbursable sinking fund charges on indebtedness, for payments on account of leases hereafter approved and on account of sinking fund charges on indebtedness for school buildings hereafter constructed and for payments on account of building costs; and providing for lump sum reimbursement for construction or reconstruction. For the 2014-2015 fiscal year the General Assembly shall appropriate not less than \$396,198,000 to the Authority Rentals and Sinking Fund Requirements line item in the General Appropriation Act. Section 731.2(d), (e), (f) and (g) 4 are effective July 1, 2015; and the remainder is effective immediately.

Reported as amended from House Education Committee, read first time, and laid on the table, 4/30/2014

[SB 1319](#) RE: Uniform Construction Code (Sen. Ted Erickson, et al)

Amends the Second Class Township Code further providing for building and housing regulations; repealing provisions relating to building and housing inspectors; and providing for Uniform Construction Code, property maintenance code and reserved powers. The bill adds an article providing for Uniform Construction Code, property maintenance code, and reserved powers. The article states the Uniform Construction Code shall apply to the construction, alteration, repair and occupancy of all buildings and structures within a township. Any construction contrary to any of the provisions of any ordinance passed may be declared, by a court of law, a public nuisance, and may be abatable as such, which exceptions. Supervisors may enact a property maintenance ordinance and may appoint property maintenance inspectors who shall have the right to enter upon and inspect any premises.

Introduced and referred to Senate Local Government Committee, 4/2/2014

[SB 1321](#) RE: Verification of Citing Requirements (by Sen. John Wozniak, et al)

Amends the Pennsylvania Sewage Facilities Act conferring the duty to local agencies to set and collect fees to conduct the verification of citing requirements for permit exempt systems.

Introduced and referred to Senate Environmental Resources and Energy Committee, 4/2/2014

LIABILITY

NONE

LICENSURE BILLS

[SB 1351](#) RE: Elevator Contractor and Mechanic Licensure Act (by Sen. David Argall, et al)

Provides for the licensure of elevator contractors and mechanics; and imposes duties on the Department of Labor and Industry. Section 301 (license required) shall take effect upon the effective date of regulations promulgated by the department or in three years after the date of enactment, whichever is earlier; the remainder is effective immediately.

Introduced and referred to Senate Labor and Industry Committee, 4/28/2014

MANDATE WAIVERS

NONE

MECHANIC'S LIEN

NONE

MINIMUM WAGE

NONE

PREVAILING WAGE

NONE

LOCAL/PROPERTY TAX REFORM

[HB 1513](#) RE: Business Privilege Tax (by Rep. George Dunbar, et al)

Amends the Local Tax Enabling Act, allowing local taxing authorities to levy a tax on the privilege of doing business in the jurisdiction of the local taxing authority if business transactions occur fifteen or more days in a year and/or the transactions occur through a base of operations in the jurisdiction of the levying local tax authority.

Applies to taxable years beginning January 1, 2014. Effective immediately.

Read third time, and passed Senate, 4/28/2014 (34-16)

Signed in the House and Senate, 4/29/2014

In the hands of the Governor, 4/30/2014. Last day for Governor's action, 5/10/2014

[SB 76](#) RE: Property Tax Independence Act (by Sen. Dave Argall, et al)

Provides for tax levies and information related to taxes; authorizes the imposition of a personal income tax or an earned income tax by a school district at a rate determined by the district, subject to voter approval; provides an exception for low income persons; imposes a **statewide education tax of 0.94 percent** to be deposited in the Education Stabilization Fund; implements the **Sales and Use Tax for the Stabilization of Education Funding, at a rate of seven percent**, which shall be a replacement for the existing sales and use tax and shall be deposited in the Education Stabilization Fund; every person maintaining a place of business in Pennsylvania, selling or leasing services or tangible personal property, the sale or use of which is subject to tax shall be licensed; imposes a seven percent hotel occupancy tax, to be deposited into the Education Stabilization Fund; **the amount of additional revenues that are generated by taxes received under this chapter that are necessary to replace the revenue earmarked for transportation under 74 Pa.C.S. 1506 (relating to fund), not to exceed 4.4 percent of such additional revenues**, shall be deposited in the Public Transportation Reserve Fund, which is established; provides **for increase to the personal income tax**, for certain licenses, for hotel occupancy tax, for procedure and administration of the tax, for expiration of authority to issue certain debt and for reporting by local government units of debt outstanding; establishes the Education Stabilization Fund; provides for disbursements from this fund and for certain rebates and assistance to senior citizens; and repeals certain provisions of The Local Tax Enabling Act, sales and use tax provisions of the Tax Reform Code and provisions relating to senior citizens property tax and rent rebate assistance in the Taxpayer Relief Act. The authority of any school district to levy, assess and collect any real property tax shall expire at midnight December 31, 2013; the authority of a city of the first class (Philadelphia) to impose or continue to provide for the imposition or continuation of any tax, including, but not limited to, the real property tax, for the use of a school district of the first class shall also expire. For fiscal year 2014-2015, the department shall make disbursements from the Education Stabilization Fund to each school district based on the base revenue of the district and the cost of living. Section 1504 (b) (2) and (7) and Chapters 3 and 6 shall take effect January 1, 2014 and the remainder of the act shall take effect immediately.

Public hearing held in Senate Finance Committee, 4/30/2014

TRANSPORTATION

NONE

UC/Workers Comp

NONE

Upcoming Meetings of Interest

MONDAY - 5/5/14

House Environmental Resources and Energy Committee

11:00 a.m., Room B31 Main Capitol

To consider: [SB 1254](#) (Yudichak) - Amends the Plumbing System Lead Ban and Notification Act further providing for definitions.

Joint Legislative Conservation Committee

12:00 p.m., Room 8E-A, East Wing

Environmental Issues Forum on the TreeVitalize program, a public-private partnership to restore tree cover in PA communities

TUESDAY - 5/6/14

House Urban Affairs Committee

9:30 a.m., Room 205, Ryan Office Building

To consider: [HB 2045](#) (Stern) - Act authorizing local taxing authorities to provide for tax exemption incentives for certain deteriorated industrial, commercial, business & residential property & for new construction in economically depressed communities; & standards.

Senate State Government Committee

12:30 p.m., Room 8E-B, East Wing

To consider:

[HB 201](#) (Dunbar) - Amends Title 62 (Procurement), in source selection and contract formation, further providing for competitive sealed proposals; providing for investment activities in Iran; & imposing civil penalties.

[HB 1672](#) (Miller) - Act providing for the testing of new, environmentally beneficial and energy efficient technologies within various State agencies.

2014 SENATE SESSION SCHEDULE

May 5, 6, 7

June 2, 3, 4, 9, 10, 11, 16, 17, 18, 19, 23, 24, 25, 26, 27, 28, 29, 30

2014 HOUSE SESSION SCHEDULE

May 5, 6, 7

June 2, 3, 4, 9, 10, 11, 16, 17, 18, 19, 23, 24, 25, 26, 27, 28, 29, 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>