

## MCA Summary of Legislation September 2014

### Amended Mechanics Lien Bill Passes Senate

After much controversy and significant amendments, an agreement on changes to the Pennsylvania Mechanic's Lien law was reached back in June. At that time, one of two bills passed and was signed by the Governor (**Senate Bill 145**). That bill only dealt with 2 items, home owner protections on residential projects and defining the term "construction costs" in so far as it relates to open ended mortgages. That bill was agreed to by all parties before it passed the first chamber.

A second bill, [HB 473](#), followed a path fraught with controversy and conflict. House Bill 473 allows owners to file a "notice of commencement" which in turn would require subcontractors to file a "notice of furnishing" in order to keep lien rights. No agreement could be reached before the bill came before the full House and a contested vote ensued. Fortunately, many additional protections for subcontractors were added by the Senate which resulted in removal of the opposition to the legislation. The bill then passed the Senate unanimously. The House is expected to agree to the Senate amendments and send the bill on to the Governor. The Senate changes included:

- \* Exempting projects of less than \$1.5 million from the filing requirement
- \* Provisions making it unlawful for a subcontractor to be coerced into not filing a notice of furnishing were strengthened.
- \* Construction contracts must contain a written notification of the filing requirements and the anti-coercion provisions of the law.
- \* The timeframe for subs to file the notice of furnishing was extended from 20 days to 45 days from the time work is commenced.
- \* The pre-notice of lien was put back in (the House version of the bill had removed it).

The whole process of filings will be done online and administered by the PA Department of General Services. The effective date of the bill isn't until December 31st of 2016, so there will be plenty of time to get up to speed on how this will work in practice.

### PennDOT Secretary Discusses Rapid Replacement Bridge Project

**Barry Schoch**, Secretary of the Department of Transportation (PennDOT), and the department's public-private partnership director **Bryan Kendro** met with reporters recently to discuss and answer questions about the department's **Rapid Bridge Replacement program**, a Public-Private Partnership program that will soon take another step forward when four teams submit their proposals to replace more than 500 [structurally deficient bridges](#) in the state. [The Public and Private Partnerships for Transportation Act](#) allows the department and other state agencies, transportation authorities and commissions to partner with private companies to participate in delivering, maintaining and financing transportation-related projects.

According to Sec. Schoch and Kendro, the bridges were selected using these considerations:

- Relatively similar structures
- Structurally deficient or located near a structurally deficient bridge
- Average more than 50 years old
- Require full replacement
- Have minimal environmental or other issues to address

The department will meet at the end of October to select a public-private partnership team to receive a contract to design and replace the 558 bridges on the list. The bridge replacements are expected to begin next summer with 99 percent to be done by August 31, 2018.

According to Sec. Schoch, with this program the department will be able to deliver in less than four years what would have taken eight to twelve years using the department's traditional delivery processes. This reduction in time

along with other cost saving factors is expected to reduce the cost of bridge replacements by \$60 to \$70 million annually.

The project's financing requirements include:

- Contract term of 28.5 years including 42 months for construction and a 25-year maintenance responsibility for each bridge
- PennDOT retains ownership of bridges and perform basic maintenance such as snow removal
- Payments to be based on performance and no tolls will be included

Sec. Schoch said that total investment in the program is not likely to exceed five percent of the department's annual investment in road and bridge project.

Kendro noted that the bidding process was "all or nothing." PennDOT selected the 558 and they had to bid on all 558 bridges. Schoch added that the Department reserves the right to add to the list. He believes there will be four, five or six standardized designs. As we go forward with our own traditional program they have the right to buy those designs.

Sec. Schoch said the teams will be comprised of Engineers, contractors, and financial firms. Because of the gamut of services we are requiring they all put their teams together differently, and in-state and out of state firms will be considered. He expects most of the work to be done by PA-based businesses.

Kendro said the team will manage all of the subcontracting They have to meet the terms of the contract and they have to follow any federal or state procurement laws. The Department's role is to make sure they are following those state and federal guidelines.

## **Legislative Activity**

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

### **BIDDING / CONTRACTING NONE**

### **BUDGET RELATED BILLS**

[HB 2219](#) RE: Highway Capital Budget Project Itemization Act of 2014-2015 (By Rep. Mark Keller, et al)  
Provides for the highway capital budget project itemization for the fiscal year 2014-2015 to be financed from current revenue or by the incurring of debt.

**Reported as committed from House Rules Committee, and laid on the table, 9/10/2014**

[HB 2239](#) RE: Public-Private Partnerships (by Rep. Eli Evankovich, et al)  
Amends Title 62 (Procurement) adding a chapter titled "Local Agency Public-Private Partnerships for Water and Sewer Projects." The bill provides for public-private partnerships, for Federal, State and local assistance, for material default remedies; imposes duties on the Pennsylvania Utility Commission; provides for service contracts; provides for utility crossing; provides for use of intellectual property; and provides for government immunity and for regulations.

**Reported as committed from House Rules Committee, and laid on the table, 9/10/2014**

[HB 2478](#) RE: Capital Budget Project Itemization Act of 2014-2015 (by Rep. Bill Adolph, et al)  
Provides for the capital budget for fiscal year 2014-2015; itemizing public improvement projects, furniture and equipment projects, transportation assistance projects, redevelopment assistance capital projects, flood control projects, Keystone Recreation, Park and Conservation Fund projects, Environmental Stewardship Fund projects, State forestry bridge projects, Motor License Fund projects and Pennsylvania Fish and Boat Commission projects, to be constructed, acquired or assisted by the Department of General Services, the Department of Community and Economic Development, the Department of Conservation and Natural Resources, the Department of Environmental

Protection or the Department of Transportation, the Pennsylvania Fish and Boat Commission, together with their estimated financial costs; authorizing the incurring of debt without the approval of the electors for the purpose of financing the projects to be constructed, acquired or assisted by the Department of General Services, the Department of Community and Economic Development, the Department of Environmental Protection, the Department of Transportation or the Pennsylvania Fish and Boat Commission; authorizing the use of current revenue for the purpose of financing the projects to be constructed, acquired or assisted by the Department of Conservation and Natural Resources or the Department of Transportation stating the estimated useful life of the projects; and providing for an exemption and for limitation on certain capital projects. **The total authorization for the additional capital projects in the category of public improvement projects itemized and to be acquired or constructed by the Department of General Services, its successors or assigns, and to be financed by the incurring of debt shall be \$949,966,000.**

**Introduced and referred to House Appropriations Committee, 9/15/2014**

**Reported as committed from House Appropriations Committee, read first time, and Laid on the table, 9/16/2014**

**Removed from the table, 9/17/2014**

**Read second time and Rereferred to House Appropriations Committee, 9/22/2014**

**Reported as amended from House Appropriations Committee, 9/23/2014**

## **ENVIRONMENTAL BUILDING STANDARDS**

[HB 1672](#) RE: State Agency Green Technology Implementation Act (by Rep. Ron Miller, et al)

Provides for the testing of new, environmentally beneficial and energy efficient technologies within various state agencies. The secretary of the Department of General Services is authorized to direct a state agency, with the approval of the governor, to test certain technology, products or processes that promote energy conservation or efficiency on a trial basis. The testing agency shall maintain records, proprietary information is exempt from the Right to Know Law, and the testing period shall be 30-60 days. Acquisition of any technology, product or process for purposes of the test program shall not be deemed to be a purchase under the provisions of the Procurement Law. After the test period, purchases would be subject to the procurement law. Provides for the promotion of demand-side management and for penalties for displaying Commonwealth endorsement when no such proper endorsement exists.

**Removed from the table, 9/15/2014**

**Read second time and Rereferred to Senate Appropriations Committee, 9/16/2014**

**Reported as committed from Senate Appropriations Committee, 9/22/2014**

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

[HB 1503](#) RE: Nonbuilding Waivers (by Rep. David Maloney, et al)

Amends the Pennsylvania Sewage Facilities Act further providing for official plans by adding that if an applicant is granted a nonbuilding waiver by the department, the municipal secretary or chairperson of the municipality shall sign the request for planning waiver and nonbuilding declaration. The purpose of this requirement is to protect the choice of a landowner to subdivide the landowner's property when the landowner has no intention of developing the property. In the event that the owner or recipient of a subdivided parcel that has been granted a nonbuilding waiver subsequently desires to build upon or develop the property, the owner or recipient shall be required to comply with all applicable statutes, regulations or ordinances in effect at the time of the desired construction or development.

**Reported as amended from House State Government Committee, read first time, and Laid on the table, 9/22/2014**

[HB 2045](#) RE: Tax Exemption and Mixed-Use Incentive Program (by Rep. Jerry Stern, et al)

Authorizes local taxing authorities to exempt from real property taxation the assessed valuation of improvements to deteriorated properties and the assessed valuation of new construction within the respective municipal corporations designated deteriorated areas of economically depressed communities in the amounts and in accordance with the provisions and limitations set forth in the bill. If an area is zoned for mixed-use housing and development, improvements shall incorporate mixed-use housing and development that benefit the efficiency and economy of the community. The bill provides for an exemption schedule; establishes standards and qualifications; provides procedure for obtaining exemption incentives; and outlines eligibility requirements.

**Laid on the table, and Removed from the table, 9/24/2014**

[SB 1023](#) RE: Building Code Council (by Sen. Chuck McIlhinney, et al)

Amends the Pennsylvania Construction Code Act adding that the council shall review the provisions revised in published International Code Council updates; the council shall report within 24 months (changed from 12 months) following official publication of the latest triennial code revisions with provisions of the codes that are specified for adoption and which provisions are specified for modification; the provisions of the codes that are specified for rejection (changed from adoption) shall be separately designated in the report; an architect or engineer specializing in building energy efficiency, to be appointed by the governor, is added to the council; terms of council members are increased to three years; the department shall (changed from may) provide staff to assist the council; council members shall not receive a salary but shall be entitled to certain reimbursement; further providing for revised or successor codes; stipulating that 40 percent of money from the fee shall be deposited in the Municipal Code Official Training Account, 40 percent shall be deposed in the Construction Contractor Training Account, and 20 percent shall be deposited in the newly created Review and Advisory Council Administration Account; and stipulating that moneys in the Review and Advisory Council Administration Account shall be transmitted quarterly to the Department of Labor and Industry for expenses of the Review and Advisory Council.

**Reported as amended from House Labor and Industry Committee, read first time, and Laid on the table, 9/24/2014**

[SB 1485](#) RE: Keys For Elevators (by Sen. Tim Solobay, et al)

Amends the Pennsylvania Construction Code, in preliminary provisions, requiring the Department of Labor and Industry to require all of the keys for elevators that allow public access in a building that is more than five stories high shall be keyed so as to allow the elevators to operate in fire emergency situations with a master elevator key.

**Introduced and referred to Senate Labor and Industry Committee, 9/18/2014**

**LIABILITY**

NONE

**MANDATE WAIVERS**

NONE

**MECHANIC'S LIEN**

[HB 473](#) RE: Formal Notice by Subcontractor (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. A petition for a claim from a lien for a construction project must be filed within four months after completion of the work. Requires the Department of General Services to establish and maintain the database. Further, it provides that a searchable project means a commercial construction project costing a minimum of \$1,500,000, makes Notices of Commencement filing by owners a mandatory requirement.

**Removed from the table, 9/22/2014**

**Read third time and passed Senate, 9/23/2014 (50-0)**

**Received as amended in House and rereferred to House Rules Committee, 9/24/2014**

**MINIMUM WAGE**

NONE

**Licensure Bills**

NONE

**PREVAILING WAGE**

NONE

**LOCAL/PROPERTY TAX REFORM**

[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 1505 (b) (2) and (7) and Chapters 3 and 4 shall take effect January 1, 2015 and the remainder of the act shall take effect immediately.

**Reported as amended from Senate Finance Committee, and read first time, 9/16/2014**

## **TRANSPORTATION**

**NONE**

### **Upcoming meetings of Interest**

#### **2014 FALL SENATE SESSION SCHEDULE**

**October 6, 7, 8, 14, 15**

**November 12**

#### **2014 FALL HOUSE SESSION SCHEDULE**

**October 6, 7, 8, 14, 15**

**November 12**

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

<http://www.legis.state.pa.us/cfdocs/legis/home/session.cfm>