

MCA Summary of Legislation July 2006

Mechanic's Lien Reforms Enacted

After more than 30 years of trying, Pennsylvania's much-criticized Mechanic's Lien Law has been amended in a way to make it is useful to contractors. With the passage of House Bill 1637, contractors will no longer be permitted to waive their lien rights except on residential projects worth less than \$1 million. Subcontractors can still waive their lien rights on those residential projects or if a payment bond covers their work. After many years of conflict with the banks and home builders, your lobbyists were able to maneuver a compromise with those groups and pass this important legislation. The bill also eliminates the preliminary notice of lien provision and extends the time to perfect a lien from 4 to 6 months.

The new law becomes effective on January 1, 2007.

Last Week Includes Many Issues, Few Votes

During the final week of session prior to the Legislature's summer recess, it appeared that many high profile construction issues were poised for action. In the end, though, most were withdrawn or passed over before a vote was taken. **House Bill 2100**, a bill allowing local governments to opt out of Separations Act requirements, was scheduled for a vote in the House State Government committee but was withdrawn from the agenda by the time the meeting was held.

A bill amending the workers compensation law that makes it easier to misclassify workers as independent contractors had been scheduled for a vote by the full House. But when **House Bill 1215** was called up for consideration, the prime sponsor, Representative Mark Mustio, asked that the bill be passed over to give him more time to work out a compromise with the bill's opponents (the unionized construction industry).

There were also several amendments posted to education code bills to exempt school districts from having to pay prevailing wages. While none of those bills was ever called up for a vote, there was a prevailing wage vote of sorts in the House. As part of a move by conservatives to defeat the bill that increased the minimum wage in Pennsylvania, Rep. Curt Schroeder offered an amendment to repeal the Prevailing Wage Act, and effectively make the minimum wage the prevailing wage. By a vote of 113 to 81, the House voted that the amendment was not germane, soundly defeating the attempt. Dozens of bills were moving around that final week, but the only bill enacted of real importance to contractors was the Mechanic's Lien reform.

Budget Passes, Just One Day Late

Legislative leaders and Gov. Rendell took advantage of a \$720 million revenue surplus to pass a budget that kept most programs in tact, with significant spending increases in education, while adding tax cuts for businesses. Although some conservatives in the House and Senate wanted more cuts, and they missed the deadline by one day (it was passed on July 1), it was earlier and far less acrimonious than the previous three Rendell budgets.

The tax cuts include:

* expanding the Net Operating Loss deduction cap \$2 million to the greater of \$3 million or 12.5 percent of a company's taxable income;

- * accelerating the scheduled Capital Stock and Franchise Tax phase-out by 1/10 mill beyond what is already prescribed in statute to 4.89 mills;
- * increasing the research and development tax credit to \$40 million from \$30 million; and
- * gradually shifting the weighting of the Corporate Net Income tax away from property and payroll and toward sales, which will benefit Pennsylvania-based job providers. This change also will reward employers that locate or expand production in the state.

Legislative Activity

HB 248 RE: Highway Maintenance Payments 9by Rep. Dick Hess, et al)

Amends Title 75 (Vehicles) by deleting provisions providing for legislative review of State highway transfers. The bill adds that annual maintenance payments would be at the rate of \$4,000 per mile (increased from \$2,500) for each highway or portion of highway transferred under Chapter 92, section 222 of the State Highway Law.

Passed House, 3/6/2006 (195-0)

Passed Senate, amended, 6/22/2006 (50-0)

House concurred in Senate amendments, 6/27/2006 (198-1)

Signed in the House and Senate, 6/28/2006

Approved by the Governor, 7/7/2006. Act No. 70 of 2006

HB 496 RE: Destruction of Survey Monuments (by Rep. Sue Cornell, et al)

Amends Title 18 (Crimes and Offenses) making it a summary offense to intentionally cut, injure, damage, destroy, deface or remove any survey monument or marker and a misdemeanor of the second degree to willfully or maliciously cut, injure, etc. a survey monument or marker in order to call into question a boundary line. Violators would be liable for the cost of the re-establishment of permanent survey monuments or markers by a professional land surveyor and all reasonable attorney fees. The bill states it is an affirmative defense to any prosecution for an offense under this section that the survey monument or marker was improperly placed by a professional land surveyor.

Passed House, 11/21/2005 (194-0)

Passed Senate, amended, 6/21/2006 (50-0)

House concurred in Senate amendments, 6/27/2006 (199-0)

Signed in the House and Senate, 6/28/2006

Approved by the Governor, 7/7/2006. Act No. 72 of 2006

HB 881 RE: PA Construction Code Act Amendments (by Rep. Bob Allen, et al)

Amends the PA Construction Code Act by providing that a municipality may not require that any construction document be prepared by an architect or other license design professional unless the work is required to be performed by an architect or any other licensed professional by the Architects Licensure Law or other applicable statute. The bill provides that the fee for an appeal to the board of appeals for a municipality that is administering and enforcing this act would be less than the costs of the public notice of the hearing, appearance fee for the court reporter and administrative fees as necessary. The bill states that in the case of an appeal or request for variance or extension of time involving the construction of a one-family or two-family residential building, the board of appeals would convene a hearing within 30 days of the appeal and would render a written decision to the parties within five business days of the last hearing. If the board fails to act within the time period the appeal would be deemed granted. The bill also states that in interpreting a provision of the Uniform Construction Code (UCC), a construction code official, board of appeal or a court may rely upon and may consider relevant written interpretations of any organization whose referenced standard is listed in the International Building Code or International Residential Code

or the regulations promulgated under this act or any municipal construction code ordinance. The bill also provides timelines for a municipality's decision to grant or deny an application. It requires the code administrator to identify the elements of any application not in compliance with the relevant provisions of the UCC and provide a citation of the specific provision. Under the bill, a construction code official or a third-party agency is allowed to perform inspections if a code administrator fails to complete a requested inspection within two business days after the request. A municipality is required to provide notice to the department of any proposed ordinance amending the requirements of the UCC and the department is required to post the notice on its Internet website.

Reported as committed from House Appropriations Committee, 6/30/2006

Amended on Senate floor and passed Senate, 7/1/2006 (183-15)

HB 1108 RE: Water and Wastewater System Connection Funding Program (by Rep. Carole Rubley, et al)
Amends the Pennsylvania Infrastructure Investment Authority Act establishing the Water and Wastewater System Connection Funding Program to authorize financial assistance in the form of grants and low-interest loans to homeowners for tapping or facilities extension fees and eligible costs relating to the installation of a water or wastewater lateral for homes constructed prior to the installation of a publicly or privately owned water distribution system or a publicly or privately owned wastewater collection system servicing the property or relating to the replacement of water or wastewater laterals to housing units as part of an upgrading or reconstruction of a publicly or privately owned water distribution system or publicly or privately owned wastewater collection system. To be eligible for the program, an applicant must be an owner-occupier of a housing unit and any of the following exist: (1) the housing unit is served by a publicly or privately owned water or wastewater system; (2) the owner-occupier is required to replace private water or wastewater laterals as part of an upgrading or reconstruction of a publicly or privately owned water or wastewater system; (3) the owner of the real property into which the property lateral will be installed is the owner of the housing unit located thereon. Loans would be provided under the program if the applicant's household income does not exceed the statewide median household income and grants would be provided to applicants whose household income does not exceed, by 50%, the most recent Federal poverty guidelines. Grants and loans would be made out of the Water and Wastewater System Connection Funding Program Fund, into which \$5,000,000 would be transferred from the Pennsylvania Infrastructure Investment Bond Authorization Fund. Additionally, if the balance of the Water and Wastewater System Connection Funding Program Fund exceeds \$15,000,000, the Board would suspend the annual transfer of funds until it determines that additional program funding is needed to meet program demand and the board may transfer any amount in excess of \$7,000,000 to the PA Infrastructure Investment Bond Authorization Fund. The legislation also makes several editorial changes.

Passed House, 6/29/2005 (198-0)

Rereferred to Senate Appropriations Committee, 6/19/2006

HB 1215 RE: WC for Independent Contractors (by Rep. Mark Mustio, et al)
Amends the Workers' Compensation Act defining "independent contractor" as the owner of any business entity who does not employ other persons and who meets the following requirements: (1) has a written agreement to perform specific work for a specific amount of money; (2) controls the means and manner of work performed, subject to any federal or state regulatory requirements; (3) receives compensation for work performed for a commission or on a per-job basis and not on an hourly, daily or other time period and realizes a profit or loss from such work; (4) is not prohibited from making comparable services available to the general public; (5) maintains a separate business and furnishes significant tools, materials and equipment to perform work; (6) holds one or more bank accounts for purposes of paying business expenses or other expenses related to work performed; and (7) is not treated as an employe for the purposes of income or employment taxation with regard to work performed. The bill provides that the contractor, subcontractor, and/or insurers are not liable for compensation to independent contractors and that independent contractors aren't required to present proof of insurance. The bill also states that the independent contractor must register with the department and the department will establish regulations and a program for registration of independent contractors to include renewal time frames and random audits and procedures. Once registered, a person will be considered an independent contractor unless a withdrawal of registration is made. Registrations and withdrawals will be kept as public information and an electronic directory of all registered contractors will be established. Benefits can be awarded if it is proven that a person was coerced to file a registration. It is considered an offense for an employer to knowingly force an employee to file application or to use false information with intent to defraud on an application.

Reported as committed from House Appropriations Committee, 6/28/2006

HB 1637 RE: Mechanics' Lien Law (by Rep. George Kenney, et al)

Amends the Mechanics' Lien Law by adding "residential building" to the definitions section. The bill also adds that a contractor or subcontractor may waive his right to file a claim against property on which there is a residential

building by a written instrument signed by him or by any conduct which operates equitably to estop such contractor or subcontractor from filing a claim. Also a written contract between the owner of property on which there is a residential building and a contractor, or a separate written instrument signed by the contractor, which provides that no claim may be filed by anyone, would be binding but the only admissible evidence thereof, as against a subcontractor, would be proof of actual notice to him before any labor or materials were furnished by him; or proof that such contract or separate written instrument was filed in the office of the prothonotary prior to the commencement of the work upon the ground or within ten days after the execution of the principal contract or not less than ten days prior to the contract with the claimant subcontractor. The bill further provides the only admissible evidence that such a provision has, notwithstanding its filing, been waived in favor of the subcontractor, would be a written agreement to that effect signed by all those who, under the contract, have an adverse interest to the subcontractor's allegation. Finally, it provides for priority of lien.

Amended on House floor and passed House, 2/8/2006 (191-0)

Passed Senate, amended, 6/20/2006 (50-0)

House concurred in Senate amendments, 6/26/2006 (196-0)

Signed in the House and Senate, 6/26/2006

Approved by the Governor 6/29/2006. Act No. 52 of 2006

HB 1992 RE: Local Government Capital Project Loan Fund (by Rep. Lynn Herman, et al)

Amends The Fiscal Code further providing for the Local Government Capital Project Loan Fund by stating that the amount of a loan made to a municipality for purchasing equipment would not exceed \$50,000 (current law is \$25,000) for any single piece of equipment. The bill states that the amount of a loan to a municipality made for purchasing, constructing, renovating or rehabilitating facilities would not exceed \$100,000 (current law is \$50,000) for any single facility. The bill also provides for budget implementation, for restrictions on appropriations for funds and accounts and for family planning funding limitations.

Passed House, 1/31/2006 (191-0)

Passed Senate, amended, 7/1/2006 (49-0)

House non-concurred in Senate amendments, 7/1/2006 (194-4)

Senate insists on its amendments non-concurred in by the House, 7/1/2006

House adopted conference committee report (177-20)

Senate adopted conference report (47-2)

Signed in the Senate and House, 7/5/2006

Approved by the Governor 7/5/2006 Act No. 66 of 2006

HB 2100 RE: Separations Act (by Rep. Tom Stevenson, et al)

Amends the act entitled "An act regulating the letting of certain contracts for the erection, construction, and alteration of public buildings." The bill states the preparation of specifications for the erection, construction, and alteration of any public building, when the entire cost of such work would exceed \$4,000, it would be the duty of the architect, engineer, or other person preparing such specifications, to prepare separate specifications for the plumbing, heating, ventilating, and electrical work; and it would be the duty of the person or persons authorized to enter into contracts for the erection, construction, or alteration of such public buildings to receive separate bids upon each of the said branches of work, and to award the contract for the same to the lowest responsible bidder for each of said branches. The bill states this would not apply if an ordinance or resolution stating that this section does not apply is adopted by a political subdivision; an authority, agency or instrumentality of a political subdivision; a school district, an instrumentality of the Commonwealth established for the purpose of providing public transportation; or a redevelopment authority. Also, if an ordinance or a resolution is adopted under this subsection, the adopting entity may choose the type of project delivery system used for the erection, construction, and alteration of public buildings.

Passed over in House State Government Committee, 6/28/2006

HB 2441 RE: Electronic Bidding By Local Government Units (By Rep. Curt Sonney, et al)

Amends Title 62 (Procurement) by adding a chapter providing for electronic bidding by local government units. The bill states that a local government unit may permit the electronic submission of bids and may receive bids electronically if the local government unit has the electronic capability to maintain the confidentiality of the bid until the bid opening time. The bill defines "local government unit" as "a county, city, borough, incorporated town, township, school district, vocational school district, county institution district, home rule municipality, local authority or any joint or cooperative body of local government units or any instrumentality, authority or corporation which has the authority to enter into contracts".

Passed House, 5/1/2006 (183-0)

Passed Senate, 6/30/2006 (49-0)
Signed in the House and Senate, 7/1/2006
Approved by the Governor, 7/7/2006 Act No. 88 of 2006

HB 2499 RE: 2006-07 Budget (by Rep. Brett Feese, et al)
This is the General Appropriation Act of 2006 providing for expenses of the Executive, Legislative and Judicial Departments, the public debt, for the public schools for the fiscal year July 1, 2006, to June 30, 2007.

Amended on House floor and passed House, 4/4/2006 (184-14)
Passed Senate, amended, 6/30/2006 (40-8)
House non-concurred in Senate amendments, 6/30/2006 (196-2)
Senate insists on its amendments non-concurred in the House, 6/30/2006
House adopted conference committee report 7/1/2006 (130-68)
Senate adopted conference report 7/1/2006 (28-21)
Signed in the Senate and House, 7/1/2006
Approved by the Governor, 7/1/2006. Act No. 2A of 2006

SB 300 RE: Tax Code Changes (by Sen. Gib Armstrong, et al)

As amended, the bill amends the Tax Reform Code. This bill was the budget vehicle for agreed-to changes in the tax code, providing for sales and use tax, for exclusions; further providing, in personal income tax, for definitions, for classes of income, for election by small corporation, for manner of making election, for revocation of election, for termination by corporation ceasing to be a small corporation, for revocation or termination year and for election after revocation or termination; further providing, in capital stock franchise tax, for the definitions of "average net income," "capital stock value" and "corporation" and for imposition; further providing, in realty transfer tax, for stamps, commissions, payments and transfers; further providing, in inheritance tax, for valuation of certain farmland; and making related repeals and repealing a provision relating to taxation of restricted professional companies.

Passed Senate, 4/20/2006 (47-0)
Passed House, amended, 6/30/2006 (198-0)
Senate concurred in House amendments, with Senate amendments, 7/1/2006 (49-0)
House Concurred in Senate amends to House amendments, 7/2/2006 (198-0)
Approved by the Governor, 7/6/2006. Act No. 67of 2006

SB 655 RE: Use of Title of "Engineer" (by Sen. Roger Madigan, et al)

Amends the Engineer, Land Surveyor and Geologist Registration Law by adding that the title "engineer" may only be used by an individual licensed as a professional engineer unless the individual is a locomotive engineer, an operating engineer, a project engineer in the construction industry, or an individual who is not offering engineering services or engaged in the practice of engineering as defined by law. The bill also provides for continuing professional engineering competency requirements by stating that each in-state and out-of-state engineering licensee would be required to meet certain continuing professional competency requirements as a condition for licensure renewal. Continuing professional competency obtained by an engineering licensee should maintain, improve or expand skills and knowledge obtained prior to initial licensure or develop new and relevant skills and knowledge. Also, the bill states that each engineering licensee would be required to obtain 24 PDH units during the biannual renewal period. If an engineering licensee exceeds the requirement in any renewal period, a maximum of 12 PDH units may be carried forward into the subsequent renewal period.

Passed Senate, 6/26/2006 (50-0)
Referred to House Professional Licensure Committee, 6/27/2006

SB 1000 RE: Home Improvement Consumer Protection Act (by Sen. Tommy Tomlinson, et al)

Provides that no person would hold himself out as a contractor nor would a person perform any home improvement without first registering with the Bureau of Consumer Protection in the Office of Attorney General. The bill states that the bureau would maintain a toll-free telephone number from which a caller can obtain information as to whether a contractor is registered with the bureau. The bill outlines the procedures for registration as a contractor, and requires that each application for a certificate for a home improvement contractor or renewal of that certificate would be accompanied by a fee of \$50, and would be renewed on a biennial basis. After completion of the application and payment of the fee, the bureau would issue the home improvement contractor a registration certificate identifying the name of the individual contractor, name and address of the business and a registration number. The legislation also outlines the requirements in home improvement contracts. The bill also provides for the offense of home improvement fraud, and provides for penalties. Lastly, registration under this act would preclude

any requirement of payment of a fee or registration of any home improvement contractor by any political subdivision. Political subdivisions would be permitted to require building permits and local enforcement of the building code for that political subdivision, for which a reasonable fee may be charged.

Amended on Senate floor, laid on the table, removed from the table, 6/20/2006

Passed Senate, 6/26/2006 (36-14)

Referred to House Consumer Affairs Committee, 6/27/2006

SB 1046 RE: Swimming Pool Barriers (by Sen. Bob Mellow, et al)

Amends the PA Construction Code Act by adding that regulations must require an owner or lessee of a residential swimming pool, hot tub or spa to secure the structure with a barrier that has a locking device to prevent access to the structure when it is not in use; and utilize the locking device when the pool, hot tub or spa is not in use.

Amended on Senate floor, 6/27/2006

Laid on the table, Removed from the table, 6-28-06 S

SB 1104 RE: One Call System (by Sen. Tommy Tomlinson, et al)

Amends the Underground Utility Line Protection Law further providing for the title of the act, for definitions, for duties of facility owners and for the duties of the One Call System; providing for liability, fees and governance of the One Call System; further providing for applicability; providing for the duties of project owners and for rights of the Auditor General; further providing for the governing board of the One Call System, for fines and penalties and for applicability to certain pipeline systems and facilities; providing for a voluntary payment dispute resolution process, for best efforts, for removal or tampering with a marking, for determination of position and type of lines and for impairment of rights and immunities; further providing for expiration; repealing provisions of the Propane and Liquefied Petroleum Gas Act, concerning the prohibition of certain liquefied petroleum gas facilities or distributors from being subject to the Underground Utility Line Protection Law; and making an editorial change.

Amended on Senate floor, 6/22/2006

Passed Senate, 6/26/2006 (50-0)

Referred to House Consumer Affairs Committee, 6/27/2006

SB 1166 RE: Capital Budget (by Sen. Noah Wenger, et al)

An act providing for the capital budget for the fiscal year 2006-2007, which provides \$845,000,000 for capital projects; itemizing transportation assistance and redevelopment assistance projects to be constructed or acquired or assisted by the Department of Community and Economic Development and the Department of Transportation, together with their estimated financial costs; authorizing the incurrence of debt without approval of the electors for the purpose of financing the projects; and stating the estimated useful life of the projects.

Passed Senate, 3/22/2006 (48-0)

Reported as amended from House Appropriations Committee, read first time, and laid on the table, 6/20/2006

Removed from the table, read second time, and Rereferred to House Appropriations Committee, 6/21/2006

Reported as amended from House Appropriations Committee, 6/30/2006

Passed House, amended, 7/1/2006 (198-0)

Received as amended in Senate and rereferred Senate Rules and Executive Nominations Committee, 7/1/2006

SB 1179 RE: PA Construction Code Act (by Sen. Jim Rhoades, et al)

Amends the PA Construction Code Act by adding that the act would not apply to the installation of aluminum or vinyl siding on an existing residential or commercial building. The bill also provides for the training of inspectors and states that an applicant who is a member of a religious sect may be exempt from a lumber or wood provision, not related to pressure treatment, of the Uniform Construction Code if that sect has established tenets that conflict with the provisions. Lastly, the bill states coal-fired boilers installed in residential buildings must be designed, constructed, and tested in accordance with the requirements of Chapter 20, Section M2001.1.1 of the International Residential Code, except these boilers would not be subject to the stamping requirements.

Passed Senate, 6/5/2006 (48-0)

Amended on House floor and passed House, 7/1/2006 (198-0)

Senate concurred in House amendments, 7/1/2006 (49-0)

Signed in the Senate and House, 7/5/2006

Approved by the Governor, 7/7/2006. Act No. 108of 2006

New Bills Introduced

HB 2834 RE: Community Paper Of Mass Dissemination (by Rep. Ron Marsico, et al)

Amends Title 45 (Legal Notices) by adding that a government unit may authorize publication in a community paper of mass dissemination in substitution of publication in a newspaper. The bill provides a definition of "community paper of mass dissemination."

Referred to House Judiciary Committee, 6/26/2006

HB 2876 RE: Sales Tax Exclusion for School Construction (by Rep. Scott Boyd, et al)

Amends the Tax Reform Code by exempting construction contractors working on a school building from sales and use tax.

Referred to House Finance Committee, 7/1/2006

SB 1182 RE: Service-Disabled Veteran-Owned Businesses (by Sen. Sean Logan, et al)

Amends Title 51 (Military Affairs) by adding that departments would have annual Statewide participation goals of not less than 5% for service-disabled veteran-owned businesses for all contracts entered into by the department during the year. The goal would apply to the overall dollar amount expended by the awarding department with respect to the contracts. The bill provides for the appointment of State service-disabled veteran-owned business coordinator.

Referred to Senate State Government Committee, 6/19/2006

2006 HOUSE Fall Session Schedule

September 25, 26, 27

October 2 (non-voting), 3, 4, 16, 17, 18, 23, 24

November 13, 14, 15, 20, 21, 22, 27 (non-voting)

Fall Senate session schedule has not been announced

Session Ends on November 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>.