

**MCA**  
**Summary of Legislation**  
**April 2009**

**House Holds Hearing then Passes Bill on Worker Misclassification**

The House Labor Relations committee held a hearing on a bill that would make it harder to misclassify an employee as an independent contractor. On April 2nd, the committee received testimony on House **Bill 400**, the same proposal that passed the House as **House Bill 2400** of last legislative session. Just as before, the bill's provisions apply only to the construction industry. Under this proposal, sole proprietors would need to meet specific criteria spelled out in the bill in order to be considered independent contractors rather than employees.

Testifiers at the hearing split between support and opposition to the bill. The unionized construction industry was supportive of the bill while the home builders and the open shop contractors opposed its provisions. However, an amendment was added to the bill on the House floor that changed the dynamics. That amendment inserted a "rebuttable presumption" provision into the bill. It spells out the details of a contract that must be signed before the independent contractor can be presumed not to be an employee. If the criteria are not truly met, the presumption can be rebutted and the individual may still be considered an employee. This provision was adopted unanimously by the full House. A second amendment was also adopted by the House. That amendment reduces the penalties for violations of this act from a felony to a misdemeanor. After some debate, it was narrowly adopted by the House. The bill is expected to pass the House and be sent to the Senate during the week of May 4<sup>th</sup>.

**UCC Advisors Support Sprinklers**

The Advisory Council that recommends changes to the state Uniform Construction Code (UCC) voted to adopt a new provision in the International Building Code (IBC) that requires sprinklers in new residential construction. The advisory council was created last year by the Legislature and charged with reviewing the triennial update of the IBC and to determine if any provisions are not appropriate for Pennsylvania. The hottest topic turned out to be a requirement that newly constructed single family homes and town houses include sprinklers. The home builders made a significant effort to have this requirement blocked from becoming part of the Pennsylvania UCC. But after many hours of hearings and debates, the Council voted almost 2 to 1 to require sprinklers. While opponents claimed that sprinklers could add up to \$5000 to the price of a new home, supporters of it felt that the additional safety more than outweighed the cost factors.

**Legislative Activity**

[HB 400](#) RE: Construction Workplace Fraud Act (By Rep. Bryan Lentz, et al)

States for the purposes of the Minimum Wage Act, the Wage Payment and Collection Law, the Unemployment Compensation Law and the Workers' Compensation Act, an individual engaging in or performing services in the commercial or residential building construction industry for remuneration is presumed to be an employee unless: (1) the individual has been and will continue to be free from control or direction over performance of such services both under the contract of service and in fact; and (2) as to such services, the individual is customarily engaged in an independently established trade, occupation, profession or business. The bill outlines twelve criteria for deeming an individual to be an independent contractor in the construction industry and states improper classification of employees is subject to civil, administrative and criminal penalties, remedies or actions outlined in the legislation. The Attorney General shall have concurrent prosecutorial jurisdiction. The Department of Labor and Industry shall annually report to the General Assembly detailing data on the previous calendar year's administration and enforcement of this act.

**Reported as amended from House Labor Relations Committee, read first time, and Laid on the table 4/27/2009**

**Removed from the table and Rereferred to House Appropriations Committee, 4/28/2009**

**Reported as committed from House Appropriations Committee, amended on House floor, and read second time, 4/29/2009**

[HB 448](#) RE: Energy Star-related Glass Technologies Tax Credit (by Rep. Matt Smith, et al)

Amends the Tax Reform Code providing for an Energy Star related glass or window technologies tax credit. The bill states that a taxpayer that manufactures Energy Star related glass or window technologies may apply for the Energy Star related glass or window technologies tax credit in an amount equal to 20% of the total amount of all capital, operation and maintenance costs paid for Energy Star related glass or window technologies in the taxable year to be applied against the taxpayer's qualified tax liability. The tax credit would end December 31, 2013.

**Reported as committed from House Environmental Resources and Energy Committee, read first time and laid on the table, 4/29/2009**

[HB 689](#) RE: LEED Costs in School Construction (by Rep. Paul Drucker, et al)

Amends the Public School Code further providing for referendum or public hearing required prior to construction or lease and for approved reimbursable rental for certain leases and approved reimbursable sinking fund charges on indebtedness by adding that building construction cost shall not include any additional LEED costs. The bill provides for definitions.

**Amended in House Education Committee and held, 4/22/2009**

**Reported as amended from House Education Committee, read first time and laid on the table, 4/29/2009**

[HB 1089](#) RE: Mini-COBRA Small Employer Group Health Plan and Premium Assistance Act (by Rep. Rob Matzie, et al)

Provides Commonwealth citizens the opportunity to take full advantage of the Federal premium assistance program so the cost of health insurance coverage for the unemployed can be minimized when possible, and which will survive beyond the temporary relief provided in the Federal act. Persons, and the eligible dependents of the persons, who are employed by an employer that normally employed between two and nineteen employees on a typical business day during the preceding year and are not receiving social security benefits are eligible.

**Reported as amended from House Insurance Committee, read first time, and laid on the table, 4/1/2009**

**Removed from the table and Rereferred to House Appropriations Committee, 4/20/2009**

**Reported as committed from House Appropriations Committee, amended on House floor, and read second time, 4/21/2009**

**Read third time and passed House, 4/22/2009 (191-1)**

**Received in the Senate and referred to Senate Banking and Insurance Committee, 4/24/2009**

[HB 1123](#) RE: Industrialized Housing (by Rep. Marc Gergely, et al)

Amends the Industrialized Housing Act further providing for regulations, insignia of certification required by adding that the department is authorized to enter into a multistate agreement for the purpose of regulating the construction of components of industrialized/commercial modular buildings. The department shall adopt regulations to administer the program modules of industrialized/commercial modular buildings that are certified under the program established pursuant to this subsection shall be deemed to meet the requirements of the Pennsylvania Construction Code Act. "Industrialized/commercial modular building" and "Industrialized/commercial building module" are defined in the legislation.

**Reported as amended from House Labor Relations Committee, read first time and laid on the table, 4/21/2009**

**Removed from the table and Rereferred to House Appropriations Committee, 4/22/2009**

[HR 78](#) RE: Minority-owned businesses (by Rep. Jake Wheatley, et al)

Resolution providing for the establishment of a select committee to investigate the degree to which minority-owned business enterprises, women-owned business enterprises and disadvantaged-owned business enterprises have been utilized in contracts awarded by the Commonwealth of Pennsylvania.

**Adopted, 3/25/2009 (192-0)**

**Select Committee established: Wheatley, Chair, Buxton, Thomas, Josephs, Beyer, Mustio and Sonney, 4/27/2009**

### **New Bills Introduced**

**The following bills have been introduced since the last report.**

[HB 1167](#) RE: Sales Tax on Construction by Non-profit Schools (by Rep. Paul Clymer, et al)

Amends the Tax Reform Code by adding that the sale at retail to or use by a construction contractor, employed by a nonprofit school would be exempt from the sales and use tax.

**Referred to House Finance Committee, 4/1/2009**

[HB 1196](#) RE: Code Administrator Appeals (By Rep. Scott Boyd, et al)

Amends PA Construction Code Act further providing that a board of appeals shall consider variance requests, requests for extensions of time and appeals of decisions of code administrators. The bill outlines requirements for code administrator appeals.

**Referred to House Labor Relations Committee, 4/3/2009**

[HB 1219](#) RE: Contributions by Contractors (by Rep. Curt Schroder, et al)

Amends the PA Election Code adding a new section providing no Commonwealth agency may award a contract to an applicant under Title 62 of the Pennsylvania Consolidated Statutes, sections 513 (relating to competitive seal proposals), 514 (relating to small procurement), 515 (relating to sole source procurement), 516 (relating to emergency procurement), 518 (relating to competitive selection procedures for certain services) or 519 (relating to selection procedure for insurance and notary bonds) unless the applicant has submitted a completed and signed disclosure statement to the agency in compliance with this section. Further provides for eligibility for certain contracts; the content for disclosure statements and updates; and for definitions.

**Introduced and referred to House State Government Committee, 4/7/2009**

**HB 1383** Cost-benefit Analysis of Contracts (by Rep. Scott Petri, et al)

Amends Title 62 (Procurement) requiring a cost-benefit analysis of a contract involving property, real, personal or mixed of any kind or description or any contract for personal services where the consideration involved is \$50,000 or more before it is implemented; supplies, services or construction are accepted; or work begun. This requirement shall not apply where there is a threat to public health, welfare or safety or there are circumstances outside the control of the Commonwealth agency that create an urgency of need that does not permit the delay involved for the completion of a cost-benefit analysis. The analysis shall be filed with the Treasury Department and be available on the Treasury Department's publicly accessible website.

**Introduced and referred to House State Government Committee, 4/29/2009**

**SB 793** RE: Liability for Mold Damage (by Sen. Lisa Boscola, et al)

Amends Title 42 (Judiciary and Judicial Procedure) providing for limitation of liability for mold and mold damage by stating that unless the parties otherwise agree in writing, no contractor who installs an HVAC (heating, ventilation and air conditioning) system in a structure would be liable for any personal injuries, property damage or any other damages, losses or claims related to mold or mold damage. **This would not apply to personal injuries, property damage or any other damages, losses or claims related to mold or mold damage caused by one or more defects in workmanship by a contractor relating to the installation of an HVAC system.**

**Introduced and referred to Senate Judiciary Committee, 4/23/2009**

### **Remaining Spring 2009 Session Schedules**

#### **SENATE SESSION SCHEDULE FOR MAY – JUNE 2009**

**May** 4, 5, 6, 11, 12, 13

**June** 1, 2, 3, 8, 9, 10, 15, 16, 17, 22, 23, 24, 25, 26, 29, 30

#### **HOUSE SESSION SCHEDULE FOR MAY – JUNE 2009**

**May** 4, 5, 6, 7, 11, 12, 13, 14

**June** 1, 2, 3, 4, 8, 9, 10, 11, 15, 16, 17, 18, 22, 23, 24, 25, 26, 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>.