

MCA
Summary of Legislation
October 2010

Employee Misclassification Bill Signed by Rendell

A bill that aims at cracking down of the misclassifying of workers in the construction industry was signed by the Governor on October 13th. The Construction Workplace Misclassification Act attempts to curtail the practice of treating workers as independent contractors.. When companies misclassify workers, they avoid paying workers compensation and various payroll taxes. This is a significant development in an industry where many projects are awarded based on low bid. The provisions of the new law, Act 72 of 2010, apply only to the construction industry.

Plumbers Licensing Bill Running Out of Time

Legislation that would establish a statewide licensing program for plumbers may come up short and literally be a day late in its journey to become enacted. Senate Bill 288 passed the Senate in May of this year. Passage in the House, however, was impeded as multiple groups that had not commented on the bill in the Senate raised objections in the House. The most serious issue came from the Laborer's union which expressed concerns about how the bill would effect jurisdictional agreements. Discussions that occurred over the summer did not result in a resolution.

Ultimately, the bill was scaled back to deal only with who could call themselves a plumber rather than who could perform plumbing. It was amended and passed from the House Labor Relations committee on September 29th. As is the normal process, the bill was given first reading in the House and referred to the Appropriations committee. The bill is scheduled for a vote when the House returns the week of November 8th, but it may all be for nothing. The bill still needs to go back to the Senate for a concurrence vote and the Senate insists it will not take any more votes this legislative session. If the Senate holds to that, the bill cannot reach the Governor's desk and would need to be reintroduced next year.

Residential Sprinkler Requirement in Jeopardy

A lobbying effort spearheaded by the home builders association successfully amended a bill in the Senate that would delay until December of 2011 the International Building Code (IBC) requirement that all new residential buildings include automatic sprinklers. When House Bill 1196 passed the House, it dealt only with non-controversial provisions relating to the construction of log homes. But in one of the last actions it took before going home for the elections, the PA Senate amended the bill to delay the IBC sprinkler provision. The amended bill passed the Senate 37-12 and was then sent back to the House for its consideration. Because the bill was amended, the House must vote to concur in the Senate amendments before it can go to the Governor. It is unclear, at this time, whether or not the House will bring the bill forward for that vote.

House State Government Committee Holds Hearing on Marsico Public Benefits Bill

The committee held a public hearing October 5, on [HB 1359](#), the Proof of Citizenship for Receipt of Public Benefits Act. The bill requires identification of lawful presence in the United States as a prerequisite to the receipt of public benefits; requires an agency that administers public benefits to verify, through the Systematic Alien Verification of Entitlement (SAVE) program operated by the Department of Homeland Security; providing for eligible forms of identification and penalties. **Rep. Ron Marsico (R-Dauphin)**, prime sponsor the bill, gave an overview of the legislation. HB 1359 is similar to a measure passed by the Senate and he indicated that since introducing the bill in the House it has received strong support. "Since the introduction of my legislation, I have received correspondence from dozens of people across Pennsylvania," he stated. "Every single one of them supports the legislation and agrees that the Commonwealth simply cannot afford to continue to support illegal immigrants. At a time when the state's economy is desperately in need of help, we need to fight to do the right thing."

Sandi Vito, Secretary of the Department of Labor and Industry, expressed opposition to the bill. "The potential fiscal impact of this legislation across multiple commonwealth agencies is not negligible, the estimated cost this legislation would impose is more than \$23.5 million," she stated. "At a time when all commonwealth agencies are striving to more effectively and fairly meet an increased demand for services, this legislation would have significant adverse consequences, including unnecessarily delaying the delivery of badly needed benefits to Pennsylvanians who rightly deserve them."

Secretary Vito emphasized that the legislation adds unnecessary redundancy to the benefit process because federal and state laws already require applicants for cash assistance, food stamps or medical assistance to provide proof of citizenship. She explained that Department of Revenue and the Department of Community and Economic Development would incur the expense of implementing the SAVE system because the Department of Labor and Industry and the Department of Revenue already use the system as a verification tool.

"I must confess I would have suspected this legislation would bring Democrats and Republicans together in opposition," she stated, explaining "Democrats are often criticized for adding to the cost of government; Republicans are likewise assailed for reducing much-needed government services. HB 1359 manages to ensure both negative outcomes. By adding costs and constraining services, this legislation makes us equally poor stewards of the public interest."

After Sec. Vito spoke, a stream of representatives from various advocacy groups also expressed their opposition, including: Michael Froehlich, Staff Attorney for Community Legal Services Inc., Desiree Hung Associate State Director for Advocacy for AARP Pennsylvania, Julie Zaebs, Policy Center Manager for the Greater Philadelphia Coalition Against Hunger, Nicole Lindemyer, Policy Director for the Pennsylvania Coalition Against Domestic Violence; [Joseph Quattrocchi](#), Executive Director of the Pennsylvania Hunger Action Center; [Andy Hoover](#), Legislative Director for the ACLU of Pennsylvania; [Brad Baldia](#), Executive Director of the Pennsylvania Immigration and Citizenship Coalition; [Rue Landeu](#), Executive Director of the Commission on Human Relations for the City of Philadelphia; [Michele Levy](#), Managing Attorney for the Homeless Advocacy Project; [Judith Bernstein-Baker](#), Executive Director of Hias and Counsel Migration Service of Philadelphia; [Rev. Amy E. Reumann](#), Director of the Lutheran Advocacy Ministry of Philadelphia

Legislative Activity

[HB 400](#) RE: Construction Workplace Misclassification Act (by Rep. Bryan Lentz, et al) (PN 4289) Provides that, for the purposes of Workers' Compensation, Unemployment Compensation and improper classification of employees, an individual who performs services in the construction industry is an independent contractor only if: (1) the individual has a written contract to perform such services; (2) the individual is free from control or direction over performance of such services both under the contract of service and in fact; and (3) as to such services, the individual is customarily engaged in an independently established trade, occupation, profession or business. The bill provides for determination of violation and penalties. Additionally, the Secretary of the Department of Labor & Industry may petition a court to issue a stop-work order. Penalties collected shall be paid into various Workers' Compensation and Unemployment Compensation Funds. The department shall report annually to the General Assembly. The department shall not be required to enforce this act until adequate funding is appropriated.

Re-reported on concurrence as committed from House Rules Committee, 10/4/2010

Rep. Harkins motion to postpone consideration of HB 400 until November 8, 2010 at 1:00 p.m. fails, 10/5/2010

Rep. Boyd motion to postpone consideration of HB 400 until November 9, 2010 at 11:00 a.m. fails, 10/5/2010

House concurred in Senate amendments 10/5/2010 (109-90)

Signed in the House 10/5/2010

Signed in the Senate 10/12/2010

Approved by the Governor 10/13/2010. Act No. 72 of 2010

[HB 664](#) RE: SWIF (By Rep. Gene DiGirolamo, et al)

(PN 4474) Amends the Workers' Compensation Act providing for sole proprietors by adding that insurers, including the State Workers' Insurance Fund, are authorized to provide, to sole proprietors, partners of a partnership or officers of a limited liability company, workers' compensation insurance equivalent to that which employers provide to employees which insure their liability. In all cases where an injury which is compensable under the terms of this coverage is received by a sole proprietor, partner or officer, there is a rebuttable presumption that his wages shall be equal to 50% of the statewide average weekly wage for the purpose of computing his compensation. Additionally, the definition of "employee" is amended to include individuals who: (1) have completed the Community Emergency Response Team program; (2) are authorized in writing by a county or municipality to assist first responders in disaster assistance; (3) are acting voluntarily in the capacity of assisting first responders in an emergency or disaster; (4) are properly dispatched by the municipality or county to be acting in capacity of assisting first responders; (5) are injured while actively engaged in assisting first responders or going to or from the emergency or disaster; and (6) have written acknowledgments, in advance of injury, from the county or municipality stating that the county or municipality opts to cover the individuals under this act and assumes liability for the individuals. The bill also makes a related repeal.

Received as amended in House and rereferred to House Rules Committee, 10/18/2010

[HB 1196](#) RE: Sprinkler Requirements (By Rep. Scott Boyd, et al)
(PN 4475) 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. Exempts certain log homes and exempts single-family homes and duplexes from the sprinkler requirement.

**Removed from the table, read second time, and Rereferred to Senate Appropriations Committee, 10/12/2010
Reported as amended from Senate Appropriations Committee, 10/13/2010**

Read third time and passed Senate, 10/14/2010 (37-12)

Received in House as amended and rereferred House Rules Committee, 10/18/2010

[HB 1359](#) RE: Proof of Citizenship for Receipt of Public Benefits Act (by Repl. Ron Marsico, et al)
Requires identification of lawful presence in the United States as a prerequisite to the receipt of public benefits; requires an agency that administers public benefits to verify, through the Systematic Alien Verification of Entitlement (SAVE) program operated by the Department of Homeland Security; providing for eligible forms of identification and penalties.

Public hearing held in House State Government Committee, 10/5/2010

[HB 1502](#) RE: E-Verify (By Rep. John Galloway, et al)
(PN 3556) Amends Title 62 (Procurement), in contracts for public works, requiring verification of Social Security numbers of all employees of public works contractors contracting with the Commonwealth for purposes of wage reporting and employment eligibility. The bill 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. (Prior Printer's Numbers: 1961, 2982)

Laid on the table in Senate, 10/14/2010

[HB 2066](#) RE: Independent Fiscal Office Act (By Rep. Anthony DeLuca, et al)
(PN 4394) Creates the independent fiscal office, which is to provide revenue estimates to the General Assembly. An estimate as to the state's fiscal condition and future projections for the next five years must be provided by the office by November 15. Also, impacts of revenue bill and new taxes must be analyzed by the office. The sales and use tax law must be analyzed by the office. Other discretionary duties are provided. An initial revenue estimate is due by the office on May 1 and an official estimate is due to the General Assembly by June 15. Contents of the revenue estimate are provided and the governor must submit an appropriations bill not to exceed revenue estimates. Expenditure reports are due to the office, along with revenue reports. A budget committee is provided for to determine the appropriations budget for the next year. Access to fiscal data is also provided. (Prior Printer Number: 2845, 2999, 3192)

Amended on Senate floor, 10/12/2010

Laid on the table 10/14/2010

[HB 2149](#) RE: Procurement Contracting (By Rep. Mark Mustio, et al)
(PN 4287) Amends Title 62 (Procurement), in general provisions, providing for public access to procurement information; in source selection and contract information, further providing for competitive sealed proposals; in small and disadvantaged businesses, further providing for definitions and providing for authority to waive employee limit, for mentor-protégé program, for small business reserve program, for alternative certification, for oversight and responsibility and for contractor performance and general conditions; in small and disadvantaged businesses, establishing a surety bond guarantee program; and, in contracts for public works, further providing for contractors' and subcontractors' payment obligations.

Received in the Senate and referred to Senate State Government Committee, 10/12/2010

[HB 2291](#) RE: Capital Budget for the Fiscal Year 2010-2011 (By Rep. Dwight Evans, et al)
(PN 4386) Act providing for the capital budget for the fiscal year 2010-2011; 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, General Fund current revenue projects, State ATV/Snowmobile Fund projects, State transportation enhancement funds projects and State Stores Fund current revenue projects to be constructed or acquired or assisted by the Department of General Services, the Department of Community and Economic Development, the Department of Conservation and Natural Resources, or the Department of Transportation, 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 Conservation and Natural Resources, the Department of Environmental Protection or the Department of Transportation; stating the estimated useful life of the projects; providing an exemption; providing for limitation on certain capital projects; making appropriations; and making a repeal. (Prior Printer Number: 3357, 4311)

Re-reported on concurrence as committed from House Rules Committee, and House concurred in Senate amendments, 10/4/2010 (128-68)

Signed in the House 10/4/2010

Signed in the Senate 10/12/2010

Approved by the Governor 10/19/2010. Act No. 82 of 2010

[SB 162](#) RE: Veteran-Owned Businesses (by Sen. Tommy Tomlinson, et al)

(PN 2229) Amends Title 62 (Procurement) adding a chapter related to veteran-owned businesses, outlining a goal of 5 percent participation by veteran-owned businesses for all agencies authorized by law to enter into contracts for itself or as the agent of another Commonwealth agency. The bill provides for the duties of the Department of General Services in assisting veteran-owned businesses. The bill also provides for reports made to the Veterans Affairs and Emergency Preparedness Committees of the House and Senate, and for compliance with federal requirements.

Passed Senate, 9/29/2010 (43-4)

Received in the House and referred to House State Government Committee, 10/4/2010

New Bills Introduced

The following bill was introduced this month. It cannot pass, as the Senate will not return to vote on it, even if the House does.

[HB 2500](#) RE: Pennsylvania Turnpike (by Rep. John Pallone, et al)

Amends Titles 74 (Transportation) and 75 (Vehicles) repealing provisions relating to sustainable mobility options and the Pennsylvania Turnpike in Title 74 and relating to the Pennsylvania Turnpike and taxes for highway maintenance and construction in Title 75.

Introduced and referred to House Transportation Committee, 10/4/2010

2010 HOUSE FALL SESSION SCHEDULE

November 8, 9, 10, 15, 16

2010 SENATE FALL SESSION SCHEDULE

November 17 (Ceremonial Session to Elect an Interim President Pro Tempore)

Session ends officially at midnight 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>