

MCA Summary of Legislation May 2018

Prompt Pay Bill Revisions Pass

After many years of inaction, the Pennsylvania Legislature finally passed legislation to strengthen the Contractor and Subcontractor Payment Act, commonly referred to as the “prompt pay law”. House Bill 566 passed the House last June by a vote of 168-26. The not unanimous vote reflected opposition from a few general contractor groups that didn’t like the provisions in the bill that allowed a subcontractor to stop work if payment wasn’t received 70 days (and multiple written notices) beyond the contractual due date. The opposition continued in the Senate but with much the same result. The Senate even amended the bill with language more favorable to subcontractors before passing it by a vote of 43-5.

The bill also contains a number of other favorable changes including one that prohibits the waiving of someone’s rights under this act. The Governor is expected to sign the bill into law. His last day for action is ten days from when the Governor receives the Bill.

Surprises Accompany Expected Results in May Primary Elections

In another primary election marked by depressingly low turnouts in most areas of the state, incumbents at all levels of state government were dealt crushing defeats, while simultaneously held special elections to fill vacant seats served as precursors to fall campaigns on May 15.

State **Sen. Scott Wagner** and businessman **Jeff Bartos** ran as a ticket, and the strategy appears to have worked, as both won their respective primaries. Wagner won with 44% over businessman Paul Mango (37%), and Allegheny County attorney Laura Ellsworth (19%). Bartos received 47% of the vote while Kathleen Coder had 22%, Diana Irey Vaughan had 18%, and Peg Luksik had 14%. Wagner and Bartos will face off against incumbent Democrat **Gov. Tom Wolf**, who will have a new running mate, as Braddock Mayor **John Fetterman** defeated incumbent **Lieutenant Governor Mike Stack** and three other candidates to become Governor Tom Wolf’s running mate in the fall. Stack finished a dismal fourth, with only 19% of the vote, becoming the first sitting Lt. Governor to lose re-election, since second terms have been allowed. Stack had been under siege since last year, when reports of mistreatment of his staff by Stack and his wife led to his security detail being removed by Gov. Wolf.

In the other statewide primary held this month, **Congressman Lou Barletta** won the Republican primary for U.S. Senate over state Rep. Jim Christiana 63%-37%, and will face incumbent Democrat **Senator Bob Casey**. Barletta’s surprisingly close vote over a lesser known and less well funded challenger despite having the endorsement of the state party and President Donald Trump, has raised concern for Republicans, in a race that was thought to be competitive going in.

In a bad night for Allegheny County incumbents, Democratic **state Reps. Dom Costa and Paul Costa**, and Republican state **Sen. Randy Vulakovich** all lost to primary challengers, from the extreme wings of their parties.

In Philadelphia, freshman State Rep. Emilio Vazquez (D-197), finished a distant third against two challengers. Vazquez won a write-in campaign in a special election to replace former Rep. Leslie Acosta in March 2017. The Democratic nominee and presumptive general election winner is **Danilo Burgos**, a former aide to Councilwoman Maria Quiñones-Sánchez. Vazquez has vowed to run again in 2020.

Tuesday’s special elections for State House saw and Democrats Republicans essentially trade the 48th and the 178th districts, while Republicans “held serve” in a third. In **48th** House district in Washington County, Republican **Tim O’Neal** handily defeated Democrat **Clark Mitchell**, 55% to 44%. The seat was formerly held by Democratic state Rep. Brandon Neuman who vacated the seat after winning a Washington County judgeship. Mitchell will have a second shot at O’Neal in November, as he won the Democratic primary. In the **178th** in Bucks County, Democrat **Helen Tai** narrowly defeated Republican **Wendi Thomas**, continuing inroads made by Bucks County Democrats in

the 2017 county elections. The seat had been vacated earlier this year when former Republican State **Rep. Scott Petri** was named to head the Philadelphia Parking Authority. Tai and Thomas will face off again in November, as the nominees for their respective parties in the General election.

Meanwhile in in the conservative Northern Tier **68th** district, Republican **Clint Owlett** defeated Democrat **Carrie Heath** by a 3-to-1 margin. The seat was vacated when **Rep. Matt Baker** took a position with the US Department of Health and Human Services earlier this year. As in the other two races, the two candidates will meet again in November.

Lawmakers Stress Importance of Building Safety Month

In light of May being **Building Safety Month**, the Pennsylvania State Professional Chapter of the International Code Council (ICC) held a press conference May 22 to highlight issues surrounding the code inspection industry.

John Eby, who holds numerous leadership positions for the Pennsylvania Association of Building Code Officials (PABCO), said that Building Safety Month is a campaign dedicated to help individuals and businesses understand code regulations to create safe and sustainable structures.

“The campaign reinforces the need for adoption of updated building codes, strong efficient system of code enforcement and well trained code professionals,” Eby said, prior to praising **Act 36 of 2017**, which mandated using the updated 2015 safety codes.

“I greatly appreciate all the hard work and dedication of building safety and fire prevention officials, architects, engineers, builders, tradespeople, design professionals and laborers in my community and across the state who worked together to guarantee the safe construction of our buildings,” said **Sen. Kim Ward (R-Westmoreland)**. Sen. Ward claimed that Act 36 helps ensure that places in the community are safe and stated that PABCO cooperated with the legislature to create Act 36 as a bipartisan law.

Prime sponsor of **HB 298, Rep. Sheryl Delozier (R-Cumberland)**, briefed the description of her legislation, which focuses on training of code inspectors.

“Simply, it allows for individuals who are inspectors to train on the job and allow them to get their degrees and all their required classes while on the job,” Rep. Delozier said. According to the Rep. Delozier, due to the increase of inspectors retiring, there will be a shortage of code inspectors across the commonwealth and after speaking to local officials, Rep. Delozier claimed that they need HB 298.

“Act 36 of 2017 is a wonderful piece of legislation that is certainly going to improve code adoptions in Pennsylvania,” said Regional manager for ICC, **Bryan Soukup**, claiming that the 2015 codes are safer, more energy efficient and overall better than previous code standards.

Public School Building Construction and Reconstruction Advisory Committee Issues Long Awaited Final Report

The committee met on May 23 to consider and release its [final report](#).

Chairman Pat Browne (R-Lehigh) recalled the charge of the committee pursuant to [Act 25 of 2016](#) is to review and make recommendations related to the state's reimbursement program for construction, reconstruction and lease of public school buildings. He said the committee has accomplished that goal through a comprehensive due diligence process, multiple hearing across the state, and consultation with many stakeholders. He said they have examined Pennsylvania's system relative to other states and worked through numerous submissions and executive sessions. Chairman Browne said the end result is a series of recommendations that would promote greater efficiency, modernization, environmental stewardship, and better utilization of available funds.

Chairman Browne said the report deals with four main categories of recommendations - the administrative process; high-performance building standards; maintenance, repairs, and modernization projects; and reimbursement formulae. He highlighted key suggestions in each category, including:

Administrative Process:

- Reduce from an 11 to a 4-step administrative process.
- Authorize the Department of Education to develop a web-based app and data collection system.

High-Performance Building Standards:

- Recognize LEED and Green Gloves as high-performance building standards.
- Provide a 10 percent incentive in the reimbursement formula for projects that recognize high-performance building standards.

Maintenance, Repairs, and Modernization Project:

- Create a project building maintenance and repair grant program by designating a 20 percent set-aside of monies appropriate for the new reimbursement program.
- Include a set-aside of five percent of monies appropriated for the new program to be dedicated to school safety projects.

Reimbursement Formula:

- Determine a base per full-time equivalent reimbursement amount using the state median structural cost of completed school building projects during the last five years as determined by the Department of Education.
- Multiply the Per Pupil Amount by the Adjustment Factor by the Building Capacity by the Wealth Factor to determine the State share.

Chairman Browne emphasized it will be up to the discretion of the General Assembly and then the governor to adopt the recommendations and allocate funding. Notwithstanding that, Chairman Browne said it is his belief that the adoption of the recommendations will greatly improve the commonwealth's role and place in the work of local school districts.

Education Secretary Pedro Rivera thanked Chairman Browne for running the committee and members for advocating for a process "that needed significant change."

Rep. Stan Saylor (R-York) thanked Sec. Rivera and his staff, and Senate and House staff who worked to research and put together the report. He also expressed gratitude to the school districts that the committee visited over the course of its work. He acknowledged there may be disagreements over certain parts of the report among members but overall it represents a work of compromise to benefit the state's school districts overall.

Rep. Joe Markosek (D-Allegheny) echoed the comments of the previous speakers and thanked the committee's membership for its work. He said that despite his long experience in the legislature, his work on the committee provided an opportunity to learn something new. He remarked there is a "vast difference in assets" among school districts in the state, which the committee realized over the course of its visits. He said he wholeheartedly support the final report.

Sen. Vince Hughes (D-Philadelphia) targeted his gratitude at staff for managing the logistics of a large and varied committee. He said the issue is one that many have been working on for years and that there is a fundamental funding issue that has to be addressed.

Sen. Andy Dinniman (D-Chester) recognized the inclusion of a five percent carveout for school safety funding and said it is a timely and excellent addition to the report. The committee unanimously released its report.

Legislative Activity

The following bills of interest to the construction industry have been introduced and/or acted upon in the past month.

Bidding / Contracting

[HB 566](#) RE: Contractor and Subcontractor Payment (by Rep James Santora, et al)

Amends the Contractor and Subcontractor Payment Act further providing for owner's payment obligations and for contractors' and subcontractors' payment obligations. If payment is not received by a contractor or subcontractor as required, the contractor shall have the right to suspend performance of any work, without penalty, until payment is received in full. Stipulates that the provisions of the act cannot be waived in a contract. Requires a written explanation of a good-faith reason to be given when the payment is retained for a deficiency item. Provides that a contractor or subcontractor to facilitate the release of retainage on its contract before final completion of the project by posting a maintenance bond with approved surety for 120 percent of the amount of retainage being held; and provides that if the withholding of retainage is longer than 30 days after the acceptance of the work, a written explanation must be provided.

Amended on Senate floor, read second time, 5/21/2018

Read third time, and passed Senate, 5/22/2018 (43-5)

Re-reported on concurrence as committed from House Rules Committee, and House concurred in Senate amendments, 5/23/2018 (175-16)

Signed in the House, 5/23/2018

Budget Related Bills

[SB 1163](#) RE: Public-Private Partnership Infrastructure Act (by Sen. Tom Killion, et al)

Establishes the Public-Private Partnership Infrastructure Board; provides for solicitation of public-private projects and for public-private agreements; and establishes the Public-Private Account.

Introduced and referred to Senate Community, Economic & Recreational Development Committee, 5/7/2018

Environmental Building Standards

[HR 924](#) RE: Building Safety Month (by Rep. Rob Kauffman, et al)

A Resolution designating the month of May 2018 as "Building Safety Month" in Pennsylvania.

Introduced as noncontroversial resolution, 5/17/2018

Adopted 5/22/2018 (193-0)

Liability

[SB 652](#) RE: [Critical Infrastructure Protection Act \(CIPA\)](#) (by Sen. Mike Regan, et al)

Amends Title 18 (Crimes and Offenses), in burglary and other criminal intrusion, further providing for the offense of criminal trespass by establishing an offense for critical infrastructure facility trespass. Provides differing grading for the offense depending whether it is a first offense, whether the defendant is a minor, and whether there is an intent to damage or obstruct the operation of the facility.

Reported as committed from Senate Appropriations Committee, and amended on Senate floor, 5/22/2018

Read third time, and passed Senate, 5/23/2018 (28-20)

Local/State Government/Regulations

[HB 1960](#) RE: State Agency Regulatory Compliance Officer Act (by Rep. Brian Ellis, et al)

Requires each state agency to designate an employee as the agency's regulatory compliance officer. Provides for the powers and duties of the regulatory compliance officer. Requires each agency to submit an annual report to the General Assembly detailing the progress made by each agency and the regulatory compliance officer in the preceding calendar year towards compliance with this act, the number of regulated communities served, and the type of regulated communities serves.

Reported as committed from House Appropriations Committee, read third time, and passed House, 5/1/2018 (116-72)

Received in the Senate and referred to Senate Inter-Governmental Operations Committee, 5/18/2018

[SB 1005](#) RE: County Code Updates (by Sen. John Eichelberger, et al)

Amends the County Code making extensive revisions relating to preliminary provisions; names and corporate powers, classification of counties; fixing and relocating lines and boundaries; county officers; county commissioners

and chief clerks; controller; auditors; treasurer; county solicitor; engineer; sheriff and coroner; prothonotary, clerks of court, clerk of orphan's court, register of wills, recorder of deeds; district attorney, assistants and detectives; salaries of county officers; fees of salaried county officers, salary boards, payment of solicitors appointed by county officers; fiscal affairs; contracts and special powers and duties of counties; public health; aeronautics; grounds and buildings; eminent domain and injury to property; recreation places; bridges, viaducts and culverts and roads. Allows the chief ranking deputy that remains in the office of the sheriff in the event of a vacancy to petition the court to designate someone in that office to carry out the functions of the sheriff. Provides for military and veterans affairs; and making editorial changes.

Reported as committed from Senate Appropriations Committee, 5/21/2018

Amended on Senate floor, 5/22/2018

Cosponsor memo filed

[HCO3420](#) (Kampf) - Requires an inspection of stucco installation on residential construction.

Filed 5/24/2018 H

Local/Property Tax Reform

[SB 234](#) RE: Property Assessed Clean Energy (PACE) Programs (by Sen. John Blake, et al)

Amends Title 12 (Commerce and Trade) adding a chapter authorizing counties or municipalities to create property assessed clean energy programs, which authorize assessments for energy improvements in districts designated by municipalities. Before a real property can establish an assessment under the program and begin local financing or owner financing of a qualified project, the following shall occur: (1) Any financial institution holding a lien, mortgage or security interest in or other encumbrance of the real property that secures a current, future or contingent payment obligation must be given written notice of the real property owner's intention to participate in the program and acknowledge in writing to the property owner and municipality or county that established the program that they have received such notice; and (2) Any financial institution required to be given notice must provide written consent to the property owner and municipality or county that established the program that the property may participate in the program. Reviews and public notice are required. An assessment and any interest or penalties on the assessment is a first and prior lien on the real property and has the same priority status as a lien for any other tax.

Reported as committed from House Commerce Committee, read first time, and laid on the table, 5/1/2018

Removed from the table, 5/2/2018

Read second time, and Rereferred to House Appropriations Committee, 5/22/2018

Reported as committed from House Appropriations Committee, read third time, and passed House, 5/23/2018

[\(163-28\)](#)

Mandate Waivers

NONE

Mechanic's Lien

NONE

Permitting

[HB 1959](#) RE: Permit Administration Act (by Rep. Greg Rothman, et al)

Provides for the administration of permits by state agencies, for a tracking system for permit applications, for the establishment of permit programs and for annual reports. The bill requires state agencies to establish, maintain and make available a secure tracking system for applicants to track the status of applications on their websites.

Delineates the types of categories that are required for reporting to the General Assembly.

Reported as committed from House Appropriations Committee, read third time, and passed House, 5/1/2018

(112-75)

Received in the Senate and referred to Senate Inter-Governmental Operations Committee, 5/18/2018

Prevailing Wage

NONE

Professional Licensure

NONE

Sales/Use Tax

NONE

School Construction

NONE

Transportation

NONE

Worker's Comp

[SB 963](#) RE: Impairment Rating Evaluations (by Sen. Kim Ward, et al)

Amends the Workers' Compensation Act allowing employers to request an Impairment Rating Evaluation after an employee has received total disability compensation for a period of 104 weeks. Requires the employee to submit to a medical evaluation which shall be requested by the insurer within 60 days upon the expiration of the 104 weeks to determine the degree of impairment due to compensable injury. Further provides for physical examination or expert interview.

Laid on the table, removed from the table, 5/23/2018

Workforce Development

NONE

Upcoming Meetings of Interest

Some House Committee meetings and session can be viewed online at: <http://www.pahousegop.com/>

Senate Committee meetings and session can be streamed at: <http://www.pasenategop.com/>

MONDAY - 6/4/18

House Labor and Industry Committee

Off the Floor, Room G-50, Irvis Office Building

To consider:

[HB 1840](#) (Kauffman) - Amends the Workers' Compensation Act, in liability & compensation, further providing for schedule of compensation and for physical examination or expert interview; **and**

[SB 676](#) (Gordner) - Amends the Workers' Compensation Act, in liability & compensation, further providing for injuries outside this Commonwealth; for definitions, for fund, for assessments, for claims & uninsured employer obligations & for penalties & orders.

TUESDAY - 6/5/18

House State Government Committee

9:00 a.m., Room B31, Main Capitol

To consider: [HB 1531](#) (Christiana) - Amends Title 65 (Public Officers), in open meetings, further providing for public notice and providing for notification of agency business required.

WEDNESDAY - 6/6/18

House Local Government Committee

9:30 a.m., Room G-50, Irvis Office Building

Informational meeting on: [SB 1005](#) (Eichelberger) - Amends the County Code making extensive revisions relating to preliminary provisions; names & corporate powers, classification of counties; boundaries; county officers; fiscal affairs; buildings; military affairs; editorial changes.

WEDNESDAY - 6/13/18

House Labor and Industry Committee

9:00 a.m., Room 60, East Wing (Note time change from 9:30 a.m.)

Public hearing on: [HB 861](#) (Grove) - Amends Title 53 (Municipalities Generally), in preemptions providing for employer mandates by municipalities.

2018 SENATE SESSION SCHEDULE

June 4, 5, 6, 11, 12, 13, 18, 19, 20, 25, 26, 27, 28, 29

2018 HOUSE SESSION SCHEDULE

June 4, 5, 6, 11, 12, 13, 18, 19, 20, 21, 25, 26, 27, 28, 29, 30

The Fall Session schedule has not yet been released.

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

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