

ACTIVE/PRIORITY ISSUES – GENERAL CONSTRUCTION

Issue	Current Law	Proposals/Pending Legislation	Status	Position/Action Items
<p>Separations Act – <i>School Mandate Waivers</i></p>	<p>Act 16 of 2000 created the Mandate Waiver Program in the Department of Education. Under the program a school entity may request a waiver from the separate prime requirement for school construction projects.</p> <p>The program sunsets in June 2010</p>	<p>Senator Jake Corman (R-Centre) has introduced SB 250 which would eliminate the June 2010 sunset provision of the Education Empowerment Act.</p> <p>The Pennsylvania School Boards Association will be introducing legislation (most likely in the Senate) that would give school districts the option of choosing single prime or multi-prime bidding without bidding the project both ways.</p> <p>HB 1986 would require a school district to bid a project both ways before implementing a single prime bid.</p> <p>HB 1891 would make construction managers on school projects an eligible cost for reimbursement.</p>	<p>Since the beginning of 2009, 16 school districts, IUs and career and technology centers spread throughout the Commonwealth have received approval from the Department of Education to utilize single prime contracting. In some cases, approvals were given for multiple projects:</p> <p>A.W. Beattie Career Center Antietam SD Avon Grove SD Avonworth SD Bethlehem SD Colonial IU 20 Columbia Borough SD Eastern Lancaster County SD Grove City Area SD Oil City Area SD Parkland SD Rose Tree Media SD Schuylkill Haven Area SD Upper St. Clair SD (2) West Mifflin SD</p> <p>Three districts have applications waiting for approval:</p> <p>Kennett Consolidated SD Kutztown Area SD Plum Borough SD (3 projects)</p>	<p>GCAP strongly supports legislation and all other efforts to give school districts the unqualified option of utilizing single prime contracting for school construction projects.</p> <p>GCAP joined others in strongly opposing any legislative effort to take up a school code bill in conjunction with the 2009-10 state budget. GCAP took this stance to block efforts to attack Mandate Waivers as a part of larger budget negotiations. There was no school code bill, and the education issues covered in the fiscal code bill needed for education funding did not include any provisions related to the Mandate Waiver Program.</p> <p>The State Senate intends to hold a hearing on the Mandate Waiver program. No date has been set for the hearing, but GCAP will participate. In addition, GCAP will work with its education partners on the message that school districts should have the choice to use single prime without being forced to bid a project both ways.</p> <p>GCAP is gearing up for spring 2010 and legislative action on the mandate waiver program since it is due to expire in June 2010.</p> <p>GCAP opposes HBs 1986 and 1891 and has told the prime sponsors of each bill the same.</p>

<p>HB 400 – Employee Misclassification Prevention Act</p>	<p>The PA Workers’ Compensation Act and the Unemployment Law require employers to maintain certain records and make contributions based on employment with the employer.</p>	<p>HB 400 would create the Employee Misclassification Prevention Act to protect employees in construction from being misclassified as “independent contractors and penalize employers who intentionally engage in this practice. This bill is identical to HB 2400 from last session.</p>	<p>On May 5, the State House passed HB 400 (Lentz, D-Delaware).</p> <p>During the weeks leading up to the vote, GCAP advised House Members that these practices result in lost tax revenue, higher workers’ comp premiums, illegal profits and a grossly uneven playing field for those who abide by the rules.</p> <p>In addition, Terry McDonough provided testimony on behalf of GCAP at an April 2 hearing by the House Labor Relations Committee on the bill.</p> <p>As passed, the House version included a re-scaling of penalties and a rebuttable presumption protection for employers.</p> <p>HB 400 is in the Senate Labor and Relations Committee. Committee Staff continues to work on refinements to the bill. HB 400 could see Committee action by the end of the calendar year.</p>	<p>GCAP continues to support the general intent of HB 400. However, GCAP has told the State Senate Labor and Industry Committee that additional changes are required to make the bill an even more effective tool to combat the problem of employee misclassification.</p> <p>The most important of these changes is a specific safeguard for general contractors and subcontractors who operate in full compliance with the law, regardless of the business or hiring practices of their subcontractors or sub-sub.</p> <p>Committee staff understands the concerns raised by GCAP and is committed to protecting a general contractor from the work/hiring practices of anyone outside his direct control.</p> <p>They have also promised to ensure that the bill cannot be used as a means for labor to go on a witch hunt against general contractors.</p>
<p>Mechanics Lien Law</p>	<p>The Mechanic’s Lien Law was amended last session to prohibit the waiver of contractor’s lien rights under most circumstances. It also extended lien rights to 2nd tier subcontractors.</p>	<p>Rep. Mike Turzai (R-Allegheny) is working on legislation that would create a “notice of commencement” provision in the law that is similar to Ohio’s statute.</p> <p>Rep. Turzai supports this concept because he believes it ensures that everyone will know exactly who is providing a service, etc. and whether or not everyone has been paid prior to a final payment being issued to the contractor. He believes this will prevent any “hidden” liens.</p>	<p>No legislation is pending active consideration</p>	<p>GCAP will monitor any legislative action regarding the Mechanic’s Lien law and act accordingly.</p>

Prison Expansion Projects	The Department of General Services is currently engaged in six prison expansion and housing unit projects. There will be a seventh once the necessary land at SCI Fayette is acquired.	N/A	<p>A lawsuit by three contractors focused primarily on the use of PLAs is impacting at least five of the projects currently in the pipeline. The status of each project is as follows:</p> <p>SCI Cambridge Springs: Contract awarded to P.J. Dick</p> <p>SCI Coal Township: Contract awarded to Wohlsen Construction Company</p> <p>SCI Pine Grove: Contract awarded to G.M. McCrossin</p> <p>SCI Forest: All previous bids rejected. It will be re-bid without a requirement for a PLA.</p> <p>SCI Rockview: On hold, but will be re-bid without a requirement for a PLA</p> <p>SCI Grateford: Will be re-bid with PLA.</p>	<p>GCAP is working with DGS to move the contracts (of GCAP members) for those projects successfully bid.</p> <p>GCAP does not oppose the use of PLAs and supports design build bids with relief from the Separations Act for these prison projects.</p>
Prevailing Wage	The Prevailing Wage law applies to public projects over \$25,000.	As in most sessions, legislation has been introduced to make changes to Prevailing Wage such as raising the project threshold, exempting local governments from the requirement, etc.	In addition to the legislation that has already been introduced, tough budget years tend to draw focus to the overall fiscal impact of Prevailing Wage. <i>However, no immediate action on any Prevailing Wage legislation is expected.</i>	GCAP opposes legislation intended to weaken Prevailing Wage
Crane Licensure	Last Session, the Governor signed into law the Crane Operator Licensure Act which provides for state licensure of crane operators	In May, Rep. Wallko introduced HB 702 to extend the grandfathering clause of the Crane Operator Licensure Act to coincide with when the board meets, etc. There are no other substantive changes.	The bill passed the House 195-0 and remains in the Senate Consumer Protection and Professional Licensure Committee.	GCAP will continue to monitor and introduce amendments to the bill as needed.

ACTIVE/PRIORITY ISSUES – STATEWIDE BUSINESS AND INDUSTRY

Issue	Current Law	Proposals/Pending Legislation	Status	Position/Action Items
Business Privilege Tax	In a recent decision (<i>Redina v. Harrisburg</i>), the Pennsylvania Supreme court overturned prior case law covering a municipality’s ability to impose a business privilege tax (BPT) on anybody doing business within its borders – regardless of whether or not they maintain a permanent base of operations there. In <i>V.L. Rendina v. Harrisburg</i> , the state Supreme Court reversed a Commonwealth Court finding that a contractor was not subject to a city’s BPT because he did not maintain a permanent office within the city limits. The Supreme Court held that Act 511 allows municipalities to impose a tax on <u>any</u> entity exercising the privilege of “doing business within their jurisdiction.”	<p>The Supreme Court’s decision in <i>Redina</i> runs completely counter to all previous rulings which provided that a business entity must have a permanent base of operations within the municipality’s borders for it to be subject to taxation by that municipality.</p> <p>Therefore, Senate Finance Chairman Pat Browne (R-Lehigh) has introduced SB 601 to resolve this issue. His bill would reverse the <i>Redina</i> decision by statute and require that a BPT may only be levied on an entity that maintains a permanent basis of operations in the municipality – the way things were before the Supreme Court reversed previous precedent in <i>Redina</i>.</p>	<p>In early May, GCAP successfully lobbied members of the Senate Finance Committee to report SB 601 from Committee. The bill is now in Senate Appropriations.</p> <p>GCAP is a lead member of a business coalition (PA Chamber, PA Institute of CPAs, Associated Contractors of Pennsylvania, etc.) working to pass this legislation.</p> <p>On May 18, Scott Bishop represented GCAP at a meeting with Senate Appropriations to discuss the merits of the bill.</p> <p>The bill has been on hold due to the priority that was placed on enacting a state budget.</p>	GCAP strongly supports SB 601 and will continue working with its coalition partners to keep the bill moving forward in the legislative process.
Illegal Immigration Issues – <i>Access to public benefits</i>	Immigration matters are largely a federal issue. However, many states are attempting to better control the impact of illegal immigrants under its jurisdiction.	Several lawmakers, including Senate President Pro Tempore Joe Scarnati (R-Jefferson) have introduced legislation intended to limit access to public benefits (i.e. Senate Bill 9).	<p>The jury is still out as to what a state/local government may or may not do with regard to illegal immigration. It is likely that this issue will continue to be debated by the General Assembly.</p> <p>The State Senate passed SB 9 on April 1. The bill remains in the House State Government Committee.</p>	GCAP supports legislation to limit access of illegal immigrants to public benefits. GCAP will issue a position statement on legislation related to these issues as appropriate.

Legislative Calendar

Currently Scheduled House Session Days: November 9, 10, 16, 17 and 18
December 1, 2, 3, 7, 8 and 9

Currently Scheduled Senate Session Days: October 19 and 20

Copies of any bill highlighted in this report or any other legislation are available from the GCAP office. They are also available via the Internet at: <http://www.legis.state.pa.us/WU01/LI/BI/billroom.htm>.