

MCA

Summary of Legislation

August 2006

Governor signs Direct Entry Agreement for Helmets to Hardhats

On August 15th, Governor Edward Rendell signed a proclamation making it easier for veterans to get good paying jobs in the construction industry. The direct-entry program would still require servicemen and women to go through the required apprenticeship application procedures, but it would allow them to start work soon after they apply. The service is free to military personnel. Fourteen other states have already implemented direct-entry programs. Retired Marine Corps Major Gen. Matthew Caulfield, the executive director of the national Helmets to Hardhats program, said that the network provided by the program gives veterans a "fighting chance" for job opportunities that they might otherwise miss out on because of their lack of connections. "How the heck do you network when you're in the middle of the Indian Ocean on a ship?" Caulfield asked.

Helmets to Hardhats is getting \$200,000 in state funding. Gov. Ed Rendell announced the \$200,000 grant for the state program, which links former and active military personnel to employment opportunities within the construction industry. Speaking on behalf of the construction employers, John Wanner said "the program is a win-win for veterans and contractors. Veterans get good paying jobs and the company gets high character employees with a proven work ethic." This is the second consecutive year in which Helmets to Hardhats has received a workforce development grant from the PA Department of Labor and Industry.

House Labor Committee Looks Again at UCC

The **House Labor Relations Committee** held an informational meeting on the Uniform Construction Code (UCC) on July 26 in Harrisburg. **Rep. Dave Steil** (R-Bucks) opened the meeting by explaining he is dismayed by the number of issues out there regarding the UCC, adding that there are a number of proposals to resolve these issues which, if adopted, will result in a "Swiss cheese" law. He noted he has introduced **HB 2696**, which would require a study of the UCC to determine the changes that are needed and those that are not needed.

Frank Thompson, Past-President and member of the Pennsylvania Builders Association (PBA), said his organization continues to believe that the UCC law needs to be amended to address the problem of excessive building permit fees. "In no situation should building permit fees be a profit center for local municipalities," he argued. He also commented on the passage of **HB 881**, stating that the version reported from committee provided for many of the needed changes, but it was weakened on the House Floor by amendments. Thompson also commented that a problem regarding time limits on inspectors issuing certificates of occupancy needs to be addressed. PBA recommends revising the act so that all appeals of Department of Labor and Industry decisions regarding challenges to excessive municipal ordinances are sent to Commonwealth Court, not Common Pleas Court, he told the committee. Thompson stated the bill originally clarified the department's consideration of "local" conditions when reviewing ordinances that exceed minimum requirements of the act. He suggested that this clarification should be amended into the act. He then recommended that before enacting a law that empowers an advisory council for UCC issues, the Legislature should entertain more discussion and continue researching the issues involved. Lastly, he said, the PBA is concerned about the Legislature's passage of SB 1139 of 2004 which stripped alterations and repairs done in homes out of the scope of the code. He expressed his support for narrowing the nonstructural alteration and repair exclusion.

Rep. Steil noted that he offered the amendment to HB 881 that Thompson referred to and expressed his surprise that the Builders Association is asking for further changes to the bill after they agreed to the amendment in negotiations. Thompson clarified several amendments were adopted on the House Floor and noted his intent is not to effect change in the bill but to highlight outstanding issues. Rep. Steil was not consoled by this answer, stating he thought the negotiations were conducted in good faith but now the Builders Association is attempting to change it in the Senate. Thompson replied the negotiations were conducted in good faith and will continue to be conducted in good faith.

Rep. Dan Surra (D-Elk) asked for more details on Thompson's comments regarding alterations and repairs. Thompson explained the scope of the exclusion should be limited so that pathways of escape, plumbing, electric and gas work are UCC compliant. Rep. Surra recognized the concern of ensuring safety, but countered that not all accidents can be prevented. He stated his resentment at forcing people who would otherwise perform a repair themselves to pay for a contractor or inspection. Thompson argued that people would not have to pay more if these

items were included in the UCC, they would just have to ensure the work performed is UCC compliant. Rep. Surra countered the UCC is the biggest mandate ever placed on the people of PA and it has put small businesses out of business. He opined that if anything the requirements of the UCC should be reduced, not expanded.

Rep. Boyd then asked about the recommendations for including home improvements in the UCC and asked if Thompson wants to go back to needing a permit to change a light switch. Thompson replied no, but he added that it would be a step in the right direction to require the work to be done to code. Rep. Boyd asked for clarification that Thompson is advocating for the work to be done to code without enforcement. Thompson affirmed this.

Rep. **Robert Freeman (D-Northampton)** asked if it is fair to say that there are a variety of ways to adequately complete a project without necessarily complying with the UCC. Thompson countered there are a variety of ways to complete a project while adhering to the code. Rep. Freeman cautioned that we need to be mindful that properties may not be UCC compliant when they change ownership and of the repercussions that may result.

Committee Chairman Bob Allen (R-Schuylkill) spoke to those attending the meeting and clarified that when HB 881 passed the House, the amendment was agreed to by the Builders Association. He said compromises are made in good faith and those who don't want to negotiate in good faith will be excluded from future negotiations. He noted the Committee works long and hard and takes people at their word. Once a position has been negotiated and agreed to, Chairman Allen continued, parties can't take a new position and try to change the agreed to language. We have come a long way in trying to correct the problems in the UCC, he stated, adding "I take this a personal understanding of how this committee operates."

Bob Buddenbohn, Executive Director of the PA Association of Building Code Officials, offered the following recommendations:

- Development of a UCC advisory council or commission
- A cooling off period for UCC amendments
- More effective support and enforcement by the Department of Labor and Industry in its UCC oversight role
- Don't give in to public pressure and extend the grandfathering period, which will expire April 8, 2007
- Permit and inspection fees should not be capped and issues should be resolved via the free market system
- UCC compliance by all public utilities
- UCC training for municipal solicitors and district magistrates
- Resist public pressure and continue to regulate swimming pools
- Act 13 training fees should be paid as required

Rep. Mario Scavello (R-Monroe) asked how to address the issue of builders receiving different interpretations of the UCC from various inspectors. Buddenbohn replied this will always be a challenge in PA as inspectors must deal with PA's unique government structure. He noted that enforcement is at a more consolidated level of government in other states and many have a core curriculum of training for inspectors. He expressed hope that a cooling off period will help inspectors get certification, training and education. Buddenbohn also discussed efforts to create a support network among inspectors to encourage discussion. Rep. Scavello opined inspectors should be graded and there should be a mechanism to remove those that perform poorly because their actions affect the livelihoods of builders and businesses. He then stated fees should be revenue neutral, but that is not occurring. Buddenbohn concurred the fees should be revenue neutral, but noted there are ways of addressing the issue without legislative fee caps.

Rep. Boyd asked why inspectors have very different fee structures in the same region. Buddenbohn remarked the services may appear the same but there may be not readily apparent differences. If the services are truly equal, he continued, the only reason for the fee difference is because the elected officials are allowing it. He remarked it is a free market. Rep. Boyd countered it is not a free market because consumers cannot choose their inspectors. He then commented on a regional system in his district that discovered fee disparities in its inspector selection process. He asked how long contracts generally last. Buddenbohn replied that depends on the language, but usually one to two years. He noted contracts usually have bail out clauses that can be used when timeliness is an issue. Rep. Boyd remarked nothing drives prices down and services up like competition, but governing agents are in charge of competition and are not promoting it.

Chairman Allen commented that he introduced HB 881 because of the marked disparity of fees in Schuylkill County. He also noted comments made that voters can vote out their elected officials if they don't like the decisions being made and countered that may not be wise because the high fees are resulting in income for the municipality.

Elam Herr, Assistant Executive Director of the Pennsylvania State Association of Township Supervisors (PSATS), said his organization is not pushing for changes to the UCC at this time but "would prefer more time to allow townships to develop additional experience in administering and enforcing the UCC before the law is further amended". He explained that the House approved an amendment to HB 881 regarding inspections but the current printer's number of the bill does not reflect the changes. PSATS would continue to support the bill with a corrective

reprint which would include all the agreed to changes, he stated. Herr told the committee that PSATS opposes a cap on the fees municipalities and third-party agencies may charge for the administration and enforcement of the UCC. Herr added that they do not want any changes to townships' current authority to contract with one or more third-party agencies for all or part of the administration and enforcement of the UCC. He then noted that some PSATS members are concerned about the exclusion for recreational cabins because they have found that recreational cabins are often poorly built and oftentimes become permanent residences. **According to the 2005 survey of PSATS members, the top five challenges to the administration and enforcement of the UCC were: the public's knowledge and/or perception of the UCC; builders' understanding of the UCC ; regulatory and/or legislative changes to the UCC; the need for standardized interpretation of the UCC; and the need for clear state regulations and regulatory guidance**

Rep. Tom Tangretti (D-Westmoreland) introduced **Barry Morris**, an architect from Greensburg, who related his experiences with the UCC and **recommended that small projects be excluded from the UCC**. Morris described two similar projects that he undertook this year, noting that one occurred in a non-UCC municipality and was therefore subject to the Fire and Panic Act, whereas the other was in a UCC municipality. Morris argued that the UCC fees are crushing small projects and hurting businesses, whereas the Fire and Panic Act was in place for 80 years without any catastrophic building problems. He also noted that inspectors do not understand the 3,500 page UCC, while the Fire and Panic Act was less than 200 pages. Morris proposed excluding small projects, such as those under 30,000 square feet and \$2 million, from the UCC and instead subjecting them to the Fire and Panic Act, with the consent of the building owner. He concluded this will resolve the cost issues in fees and compliance.

Rep. Freeman asked if the UCC is a hindrance to reusing older buildings. Morris replied yes, but noted that is common to any code and was a problem under the Fire and Panic Act. He noted it is becoming more cumbersome and stated many architects feel "if we have enough new work, we're not accepting renovation work."

Maureen Guttman, member of the Architects Institute of America (AIA) Pennsylvania board of directors, advocated for the integrity of the statewide building code in its current form, and suggested that the problems with the UCC can be better resolved by addressing administration and enforcement than through continued legislative amendments. She noted that since the beginning of this legislative session 26 bills have been introduced to modify the UCC and six of those bills have become law. "If we continue to chip away at the state building code law, we run the risk of carving away enough structure so that it no longer meets the stated contents of Act 45 from 1999," she argued. Guttman said AIA Pennsylvania believes the problems that have arisen in the last two years stem more from poorly prepared enforcement programs than from structural flaws in the code itself. She then offered two suggestions: taking a close critical look at the gaps in training and enforcement that exist across the state and seeking a more thorough technical review of future amendments proposed by constituents, special-interest groups or local government organizations.

Rep. Steil asked if Guttman feels there should be a cooling off period. Guttman replied "absolutely".

Rep. Boyd asked Guttman to respond to Morris' recommendations. Guttman replied she doesn't take issue with Morris' testimony, but noted the problems he described have to do with administration and not with how the law is written. Rep. Boyd disagreed with Guttman that the UCC doesn't need to be changed, stating "there are systemic things that will continue to get worse as the code evolves." Guttman concurred that some issues hurt competition, but they don't necessarily have to do with how the UCC is written. She reiterated administration is the problem and stated PA "won't regret it when we grow into it".

Legislative Activity

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.

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

Referred to House Labor and Industry Committee, 7/13/2006

Discussed in House Labor Relations Committee, 7/26/2006

HB 2696 RE: Uniform Construction Code Review Commission (by Rep. Dave Steil, et al)

Amends the Pennsylvania Construction Code Act establishing the Uniform Construction Code Review Commission, which would gather information from the general public, including municipal officers, licensed design professionals, builders and property owners concerning proposed alterations of the Uniform Construction Code. This information would be evaluated in order to propose recommendations to the Governor and the Labor and Industry Committees of the House and Senate.

Discussed in House Labor Relations Committee, 7/26/2006

New Bills Introduced

No bills of interest to the construction industry were introduced in the past month. The legislature is in recess until late September.

Upcoming meetings of interest

Wednesday, August 23, 2006

House Consumer Affairs Committee

9:00 a.m., David L. Lawrence Convention Center, East Lobby Area, 1000 Fort Duquesne Road, Pittsburgh

Informational meeting on:

SB 1000 - An Act providing for the regulation of home improvement contracts and for the registration of certain contractors; prohibiting certain acts; & providing for penalties.

HB 2577 - Act providing for the regulation of home improvement contracts, for the registration of certain contractors & supersedure over municipal ordinances; prohibiting certain conduct; and prescribing penalties.

Thursday, August 24, 2006

House Consumer Affairs Committee

9:00 a.m., David L. Lawrence Convention Center, East Lobby Area, 1000 Fort Duquesne Road, Pittsburgh

Informational meeting on:

SB 1104 - Amends the Underground Utility Line Protection Law providing for definitions & duties of the One Call System; for liability, applicability, and repealing provisions of the Propane & Liquefied Petroleum Gas Act.

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

September 19, 20, 25, 26, 27

October 3, 4, 16, 17, 18

Post-election Senate 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>.