

CAWP

Summary of Legislation

May 2009

House Democratic Policy Committee Looks at Act 44, Other Highway Issues

On May 26, the Pennsylvania House Democratic Policy Committee met to discuss transportation issues relating to Act 44. Passed by the Pennsylvania General Assembly and signed into law by the Governor in 2007, Act 44 provides transportation funding by converting I-80 to a tolled facility, increasing existing mainline Turnpike tolls, and issuing monetization bonds based on future toll revenues. Representatives of PennDOT and the Pennsylvania Turnpike Commission were on hand to brief the House Democratic Policy Committee.

Members in attendance included Chairman Mike Sturla (D-Lancaster), Transportation Committee Chairman Joe Markosek (D-Allegheny), and Representatives Nick Kotik (D-Allegheny), Dante Santoni (D-Berks), Chris Sainato (D-Lawrence), Jaret Gibbons (D-Lawrence), Tim Seip (D-Schuylkill), Lawrence Curry (D-Montgomery), Bryan Barbin (D-Cambria), Neal Goodman (D-Schuylkill), Robert Donatucci (D-Philadelphia), Brendan Boyle (D-Philadelphia), and Ron Waters (D-Philadelphia).

PennDOT Secretary Allen Biehler offered the committee an overview of PennDOT's operations and recent work. He said PennDOT plans improvements to reduce congestion and maintenance issues, and measures roads for smoothness every two years. He noted the department classifies the Commonwealth's roads into four categories: Interstate highways, state highways, local roads carrying more than 2,000 cars a day, and local roads carrying less than that number. Secretary Biehler provided an overview of PennDOT's plans for road and bridge improvements, and its expected use of federal stimulus money. With respect to the thousands of miles of local roads throughout Pennsylvania in need of maintenance, the secretary commented, "Local needs are every bit as great as state needs."

Rep. Goodman, referring to Secretary Biehler's early remarks about specific projects that the stimulus package will fund, asked the secretary which projects the Pennsylvania Department of Transportation (PennDOT) plans to undertake. Secretary Biehler pointed Rep. Goodman to the PennDOT website, and explained that the projects are listed within the site. Secretary Biehler also stated that PennDOT continually updates the website with the progress and implementation of new projects. Rep. Goodman continued, commenting that rural municipalities along the Interstate 80 (I-80) corridor will continue to receive money from Act 44. Secretary Biehler confirmed Goodman's assumption by assuring him that **Act 44** allows "everyone to get their fair share."

Rep. Santoni asked Secretary Biehler to explain where the state is in regards to the **I-80 tolling plan**. Secretary Biehler responded that the federal government did not accept the original application to begin tolling the interstate, and that a meeting is set up with the United States Department of Transportation (USDOT) to "understand the issues of tolling I-80." The secretary also explained that Act 44 provides a mandate for tolling, and that the state will reapply for permission to toll I-80. Rep. Santoni followed by engaging in discussion on what will happen if Pennsylvania does not get permission to toll the interstate. Secretary Biehler remarked that the state will face a loss of anywhere between \$450 and \$500 million, but that PennDOT has not discussed alternative options. He told the committee that the department will have no choice but to reduce the money available for maintenance and capacity improvements. According to Secretary Biehler, the state has already seen a reduction in funds available for maintenance and capacity improvements over the past five years, and expects to decrease even further should I-80 not be tolled. Rep. Santoni also asked Secretary Biehler about SB 850 and its affect on transportation. The secretary responded that there are two items in the bill that affect transportation: the reduction of voter registration line item funds (approximately \$360,000) and the reduction in rail/freight assistance program from \$25 million to \$10 million. Secretary Biehler suggested making the rail/freight assistance program a capital program.

Rep. Barbin commented that the state stands to lose a significant amount of money if I-80 is not tolled. He wanted to know if the reductions that would occur statewide would affect the entire state or just specific municipalities. The secretary assured Rep. Barbin that there will be an even reduction in money throughout the entire state.

Chairman Sturla focused his questions around different types of roads. He wanted to know if secondary roads would receive less funding than major roads with heavier traffic. Secretary Biehler responded by explaining factors that affect which roads get funding: volume, condition, and population of surrounding areas are all crucial variables. The secretary continued, saying that allocation must be fair, and that secondary roads are as important as major thoroughfares and highways. The secretary stressed that roads that see less than 2,000 cars a day are still a vital and integral part of Pennsylvania's economy and in serving the state's constituents. Chairman Sturla also proposed several other ways to

increase revenue, such as a higher gas tax, having local municipalities fund state police in their area, or even a "distance travelled tax" instead of a gas tax. Secretary Biehler responded that he was not familiar with the details of such plans.

Rep. Payton followed with a question about the minority inclusion goals of the stimulus package and PennDOT's actions in regards to such goals. Secretary Biehler assured Rep. Payton that PennDOT is doing many things to include disadvantaged business enterprises (DBEs) in the department's plans. According to the secretary, the PennDOT website contains plenty of information that is useful to DBEs.

The **Pennsylvania Turnpike Commission** was represented by **Vice Chairman Timothy Carson** and **Chief Executive Officer Joseph Brimmeier**. Carson provided committee members with an overview of the Turnpike's mission under Act 44 which created a Public-Public Partnership between PennDOT and the Turnpike Commission. He explained that the partnership is expected to provide \$83.3 billion over 50 years for transportation in the Commonwealth. According to Carson, the Turnpike has provided \$1.6 billion to the department since the enacted of Act 44 in July, 2007. He further explained that from 2007 to 2010 the total will reach \$2.5 billion. Carson pointed, "Act 44 has already supplied more funding than Pennsylvania's share of highway and transit funds received from the federal Economic-Stimulus Bill." He added, "To date this funding has improved 855 miles of state highway and preserved, rehabilitated or replaced 389 state-owned bridges which providing funding for numerous public-transit agencies."

Brimmeier provided an overview of the Turnpike's operations. He testified that the Turnpike's 2,027-member workforce is down 8.4% since 1999 and they have reduced their complement by 97 positions since November 2008 via voluntary early retirements and position eliminations. Brimmeier further testified that the operating expenses for FY 2009 were reduced by 5.2% for a savings of \$15.6 million. He did add there will be slight increase of 1.6% in projected expenses for FY 2010. Brimmeier outlined some of the projects being undertaken to maintain and improve the Turnpike including:

- Entering into a \$170 million Public-Private Partnership to rebuild 17 service plazas.
 - Injecting \$485 million in Turnpike improvements in FY 2008 with comparable spending in FY 2009.
 - Completing 11 mainline reconstruction projects totaling 68.5 miles.
 - Three other total reconstruction projects underway that will result in 19 miles of new toll road at a cost of nearly \$350 million
- Brimmeier also pointed out the Commission is "aggressively managing the highway capital program to take advantage of construction pricing. He told the committee bids for two major projects came in 20% below estimates.

Carson told the committee members the Commission's financial condition "remains strong." He noted that their credit ratings have been reaffirmed by Moody's Investors Service including an Aa3 rating for the Commission's senior lien bonds and the A2 rating for its subordinate lien bonds. In addition, when the Commission issued additional bonds in January to fund Act 44 payments, the investor orders far exceeded the amount of bonds available. Carson also testified that the toll rates remain low compared to other states even with the recent increase in January, 2009 and they are comparable to tolls in neighboring states. He explained that, beginning in 2010, annual inflationary increases will be implemented to enable the Commission to meet its financial obligations under Act 44 and existing turnpike spending. Carson told the committee, "The 25% toll increase is essential to maintaining the Turnpike's financial strength." He further explained that since the toll increase in January, traffic through April 2009 is down compared to the same period last year but as a result of the toll increase, toll revenue is up 13.9% this year compared to last year during the same period. Carson added, "It's important to note that Vehicle Miles Traveled nationally has declined for 16 consecutive months."

Carson then reported on the application to the Federal Highway Administration (FHWA) to toll I-80. He assured the committee that "the state's tolling application today remains viable with FHWA." Carson explained that no decision has yet been made on the possible resubmission of the application. He added that no steps should be taken until key US DOT and FHWA positions have been confirmed and filled. Carson testified, "As we await the suitable time to revisit the application from a federal standpoint, we have an opportunity to develop a more unified political consensus here in Pennsylvania regarding potential resubmission." He emphasized, "With only three spots in the competitive federal pilot program, it is important for Pennsylvania to preserve its status as a qualified applicant." Carson suggested that the state-of-the-art tolling system planned for I-80 would "result in 70% of passenger vehicles not paying a toll which will reduce diversion and keep more cars on the Interstate where they belong." He added that tolling would free-up department resources previously committed to I-80 for use on other Pennsylvania Interstates. Carson cautioned that if the I-80 is not tolled, effective July 1, 2010, the Commission's payments drop to \$450 million per year with no annual increase with the net result of \$60 billion less in transportation funding in Pennsylvania over the remaining life of the agreement. He said, "The Turnpike toll system will become a less efficient revenue generator negating the General Assembly's intent in passing Act 44." Carson concluded, "The unique Public-Public Partnership established under Act 44 is viewed by other states and national transportation finance policymakers as an innovative model for weaning transportation funding off of a dwindling diet of gas-tax revenues and federal appropriations."

Rep. Kotik asked if any other states had multiple toll-roads. Brimmeier responded by saying that Pennsylvania would be the first state in the nation to convert a previously-free interstate into a toll-road. Rep. Kotik followed with a question

about potential improvements in the turnpike between Pittsburgh and Harrisburg. Carson stated that there are several possible capital improvements that are being discussed for the particular area. He mentioned replacing the tunnels in that specific section of the turnpike, or even cutting through the mountains.

Rep. Boyle commented that the majority of drivers on I-80 were in fact out-of-state drivers. Brimmeier estimated that most of the traffic on I-80 were commercial out-of state traffic. Both Brimmeier and Carson agreed that by not tolling I-80, the turnpike was not only losing money, but that out-of-state truck drivers were "receiving a free-ride on Pennsylvania roads." Rep. Boyle also asked about possible repair and improvements to Interstate 63 (I-63). Carson and Brimmeier both suggested that Rep. Boyle talk to Secretary Biehler, for I-63 is not part of the PTC's jurisdiction. Rep. Boyle also asked about a specific timetable for I-80 tolling, if it were to be approved by the USDOT. Both Carson and Brimmeier believed that, given an expedited approval process, I-80 could realistically be tolled in the spring of 2011.

Finally, Chairman Sturla asked about the differences between a gas tax and a "distance travelled" tax. Carson stated that the PTC can only implement what the General Assembly tells it to. Chairman Sturla also wondered if I-95 is being considered for possible tolling, and other interstate roads. Brimmeier explained that the PTC only considers options that are being given serious consideration by the Transportation Committee, or the General Assembly.

PennDOT to begin \$76 million in smarter, safer projects

On Thursday, the state Department of Transportation announced about \$59.2 million in awards to fund 50 "smart transportation" projects as part of the federal- and state-funded Pennsylvania Community Transportation Initiative. Those funds are about 80 percent federal dollars and 20 percent state provided, according to PennDOT officials. According to the department, the smart transportation concept emphasizes repairing current infrastructure, investing in projects that reduce vehicle travel and sprawl, and linking transportation and land use planning. Under PennDOT's initiative, awards of up to \$300,000 can be made for smart transportation project planning purposes and up to \$5 million for the construction of those projects. Department officials said response from municipalities, transit agencies and other groups for assistance on these types of projects was overwhelming. The department received more than 400 applications, requesting \$600 million in funding. Projects will be passed along for bidding and their next steps immediately, said PennDOT spokesman Rich Kirkpatrick. Those projects selected will add or improve paths for pedestrians and cyclists, fund park-and-ride lots for commuters, and increase traffic synchronization. In other counties, funds will help study ways to improve walkability and safety, or seek to increase the efficiency of the municipality's overall traffic management plan. During the announcement of the smart transportation project awards, the department also announced an additional \$16.8 million - all federal dollars - had been awarded to 30 Safe Routes to School projects, which will help municipalities increase safety along their walking and bike paths.

Legislative Activity

BUDGET BILLS

[HB 1410](#) RE: Budget Cuts (by Rep. John Payne, et al)

Act directing the Secretary of the Budget to reduce all State appropriations by 10% for fiscal year July 1, 2009, through June 30, 2010.

Introduced and referred to House Appropriations Committee, 5/4/2009

[HB 1416](#) RE: General Appropriation Act of 2009 (by Rep. Dwight Evans, et al)

The House version of the 2009-10 budget. Provides from the General Fund for the expenses of the Executive, Legislative and Judicial Departments of the Commonwealth, the public debt and the public schools for the fiscal year July 1, 2009, to June 30, 2010, for certain institutions and organizations, and for the payment of bills incurred and remaining unpaid at the close of the fiscal year ending June 30, 2009; to provide appropriations from the State Lottery Fund, the Energy Conservation and Assistance Fund, the Hazardous Material Response Fund, The State Stores Fund, the Milk Marketing Fund, the Home Investment Trust Fund, the Emergency Medical Services Operating Fund, the Tuition Payment Fund, the Banking Department Fund, the Firearm Records Check Fund, the Ben Franklin Technology Development Authority Fund and the Tobacco Settlement Fund to the Executive Department; to provide appropriations from the Judicial Computer System Augmentation Account to the Judicial Department for the fiscal year July 1, 2009, to June 30, 2010; to provide appropriations from the Motor License Fund for the fiscal year July 1, 2009, to June 30, 2010, for the proper operation of the several departments of the Commonwealth and the Pennsylvania State Police authorized to spend Motor License Fund moneys; to provide for the appropriation of Federal funds to the Executive Department of the Commonwealth and for the payment of bills remaining unpaid at the close of the fiscal year ending June 30, 2009.

Introduced and referred to House Appropriations Committee on 5/4/2009
Discussed in House Appropriations Committee public hearings, 5/21 and 5/22/2009

[HB 1418](#) RE: Capital Budget Act of 2009-2010 (by Rep. Dwight Evans, et al)
Provides for the capital budget for the fiscal year 2009-2010.

Introduced and referred to House Appropriations Committee on 5/4/2009

[SB 850](#) RE: The General Appropriations Act of 2009 (By Sen. Jake Corman)

The Senate Republicans 2009-10 budget. Provides from the General Fund for the expenses of the Executive, Legislative and Judicial Departments of the Commonwealth, the public debt and the public schools for the fiscal year July 1, 2009, to June 30, 2010, for certain institutions and organizations, and for the payment of bills incurred and remaining unpaid at the close of the fiscal year ending June 30, 2009; to provide appropriations from the State Lottery Fund, the Energy Conservation and Assistance Fund, the Hazardous Material Response Fund, The State Stores Fund, the Milk Marketing Fund, the Home Investment Trust Fund, the Emergency Medical Services Operating Fund, the Tuition Payment Fund, the Banking Department Fund, the Firearm Records Check Fund, the Ben Franklin Technology Development Authority Fund and the Tobacco Settlement Fund to the Executive Department; to provide appropriations from the Judicial Computer System Augmentation Account to the Judicial Department for the fiscal year July 1, 2009, to June 30, 2010; to provide appropriations from the Motor License Fund for the fiscal year July 1, 2009, to June 30, 2010, for the proper operation of the several departments of the Commonwealth and the Pennsylvania State Police authorized to spend Motor License Fund moneys; to provide for the appropriation of Federal funds to the Executive Department of the Commonwealth and for the payment of bills remaining unpaid at the close of the fiscal year ending June 30, 2009; to provide for the additional appropriation of Federal and State funds from the General Fund, from the State Lottery Fund and from the Tobacco Settlement Fund for the Executive Department of the Commonwealth for the fiscal year July 1, 2008 to June 30, 2009, and for the payment of bills incurred and remaining unpaid at the close of the fiscal year ending June 30, 2008; and making interfund transfers for the fiscal year July 1, 2008, to June 30, 2009.

Introduced and referred to Senate Appropriations Committee, 5/1/2009

Reported as committed from Senate Appropriations Committee, and read first time, 5/4/2009

Read Second time, 5/5/2009

Read third time and passed Senate, 5/6/2009 (30-20)

Received in the House and referred to House Appropriations Committee, 5/7/2009

Discussed in House Appropriations Committee public hearings, 5/21 and 5/22/2009

SMALL BUSINESS ISSUES

[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.

Passed House, 4/22/2009 (191-1)

Reported as committed from Senate Banking and Insurance Committee, and read first time, 5/5/2009

Read Second time and Rereferred to Senate Appropriations Committee, 5/6/2009

[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)

Public hearing held in House Select Committee 5/20/2009

LOCAL GOVERNMENT/REGULATIONS

[HB 1530](#) RE: Separations Act (by Rep. Donna Oberlander, et al)

Amends The County Code further providing separate bids for plumbing, heating, ventilating, electrical work, elevators and moving stairs. Makes separate bids an option, rather than mandatory for counties.

Introduced and referred to House Local Government Committee on 5/26/2009

[SB 601](#) RE: Local Taxing Authority (by Sen. Pat Browne, et al)
(PN 651) Amends the Local Tax Enabling Act further providing for delegation of taxing powers and restrictions, stipulating local authorities may not, by virtue of the act, assess a mercantile or business privilege tax on gross receipts or on the privilege of doing business within or from a location within a local taxing jurisdiction may be imposed by a local taxing jurisdiction only if the privilege of doing business is exercised through a base of operations in the local taxing jurisdiction. In the case of a tax on the privilege of doing business within or from a location within a local taxing jurisdiction, no tax shall be imposed on gross receipts from activities which are also subject to a tax imposed by another local taxing jurisdiction on business transacted within that other jurisdiction. The taxpayer may exclude the gross receipts that are taxed or taxable in the other local jurisdiction. This bill is an effort to reverse *V.L. Rendina v. Harrisburg*, in which the state Supreme Court reversed a Commonwealth Court finding that a contractor was not subject to a city's business privilege tax because he did not maintain a permanent office within the city limits. The Court held that Act 511 allows municipalities to impose a tax on any entity exercising the privilege of "doing business within their jurisdiction." This decision runs completely counter to previous rulings – all of which provided that a business entity must have a permanent base of operations within the municipality.

Reported as committed from Senate Finance Committee, and read first time, 4/22/2009

Rereferred to Senate Appropriations 4/28/2009

INDEPENDENT CONTRACTORS

[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.

Read third time and passed House, 5/5/2009 (126-72)

Received in the Senate and referred to Senate Labor and Industry Committee, 5/11/2009

[SB 882](#) RE: Subcontractor Mechanics Liens (by Rep. John Rafferty, et al)
Amends the Mechanics' Lien Law adding a new subsection providing, notwithstanding any other provisions of the act, if the contractor has been paid in full a subcontractor may not file a claim against the residential property unless the owner provides a written waiver to the subcontractor to file a claim.

Introduced and referred to Senate Labor and Industry Committee, 5/27/2009

BIDDING THRESHOLDS

No activity

Remaining Spring 2009 Session Schedules

SENATE SESSION SCHEDULE FOR MAY – JUNE 2009

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

HOUSE SESSION SCHEDULE FOR MAY – JUNE 2009

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>.