

# American Society of Landscape Architects

## Summary of Legislation

### June 2010

#### 2010-11 Budget Passed “On Time”, Awaits Governor’s Signature

The General Assembly passed a \$28.05 billion state budget on June 30, marking the first on-time budget during the Rendell Administration. Technically, the budget still needs the Governor’s signature, which was expected on July 6. The Legislature also still needs to finalize the fiscal code bill to fund the budget. The enacted budget is cognizant of the future financial challenges facing Pennsylvania and does not include any broad based tax increases.

The Senate was first to pass an amended version of HB 2279 early Wednesday afternoon. The Senate voted 37 to 13 ([Senate Roll Call](#)) in favor of the bill with twenty Republican votes and seventeen Democrat votes. Later Wednesday, the House concurred with the Senate passed budget bill by a 117 to 84 vote ([House Roll Call](#)). Sixteen Republicans joined 101 Democrats in support of the measure.

Some of the major aspects of the budget agreement include:

The assumption of \$850 million in additional federal Medical Assistance Program (FMAP) dollars. The U.S. Senate recently voted down a bill that included the FMAP money.

A \$250 million increase in basic education spending. Governor Rendell had sought a \$354 million increase, but settled for \$250 million in the final deal.

The budget does not include:

New or increased taxes on cigarettes, cigars, or smokeless tobacco.

Combined reporting.

Any expansion of the sales tax.

Elimination of the vendor allowance for sales tax collection.

A severance tax on natural gas with funds allocated to this year's state General Fund spending. (An agreement was made to craft a separate piece of legislation by October 1 that will include a severance tax that balances recovery of capital investments with compensation to local governments for industry impacts. The agreement also calls for the legislation to provide for regulatory consistency across jurisdictions and "pooling" of land holdings before a tax would take effect January 1.) Details still have to be worked out.

At the time of this report, the Fiscal Code bill that will accompany the budget bill was not yet passed by the Legislature. Despite some last minute glitches, that bill is expected to reach the Governor by the end of the 4th of July weekend and complete the budget process.

#### Joint Legislative Conservation Committee Holds Hearing on Green Roof Research

The committee met on June 21 to discuss the benefits of Green Roof Research. Chairman Scott Hutchinson laid out for those in attendance what the dialogue at the meeting would entail, saying, “We are here today to learn more about what goes into a green roof, and the advantages of a green roof, both for businesses as well as home owners.” He then introduced Dr. **Robert Berghage**, director of Penn State University’s Center for Green Roof Research. Berghage first defined what exactly a green roof is, saying it’s a “veneer of media and vegetation on top of a roof.” He then broke that down into two separate groups; “Extensive”, being a more shallow amount of soil and vegetation on a roof, usually less than six inches, and “Intensive”, which is usually anywhere above twelve inches, which he considers a “deep root zone”.

He said that a proper green roof should consist of about 10 layers, with plants on the top, and soil, filter fabric, root barriers, and other various materials layered on top of a roof. The cost of a basic green roof like this, Berghage said, comes to about \$10-\$30 per square foot.

Berghage went on to note the various benefits of a green roof. Aesthetics, he said, is one of the most prominent advantages of a green roof. For those building owners who are looking for more tenants, whether business or residential, Berghage said that green roofs can help improve occupancy. Other large buildings such as hospitals have been using green roofs, which he said have been showing “improved patient outcomes.” Berghage also said that it will help reduce the urban heat island index in cities, as well as air pollution. It may even result in less violence he said, citing an unnamed study which claimed that areas with more green roofs had a fewer number of violent crimes than those that did not.

Storm water runoff control is also a huge benefit of green roofing, Berghage said. With many cities having Combined Sewage Overflow (CSO) problems, having a roof which is able to absorb as much as 80% of rainfall

during the summer time is an incredible boon, he remarked. For the city of Pittsburgh alone, the method of replacing old existing pipes with newer, bigger ones to try and treat the CSO problem is estimated at “somewhere between 10 and 15 billion dollars”, and many other cities are facing similar situations, he said.

Berghage also said energy efficiency is also a major advantage of green roofs. Because of the natural evaporation occurring on top of the green roofs, the roof is significantly cooler than a regular tar covered roof. The cooler roof results in a cooler building during summer time, which cuts back on air conditioning, a major contributor to energy costs of a building. Also beyond the energy benefits, a green roof can last anywhere from two to three times longer than a traditional roof.

In addition, green roofs help bring increased biodiversity and animal life, in what Berghage called an “oasis in an urban desert”. Birds and pollinating insects often visit the green roofs, which Berghage said can help a dwindling animal population grow in many of these urban areas which have driven native creatures away. Chairman Hutchinson asked about retrofitting existing buildings to hold a green roof area on top, and how to best determine whether a building is capable of holding the weight. Berghage said that a typical green roof contributes about seven pounds per square foot per inch of soil. So if a building has a concrete built deck or steel beam construction, it is usually able to withstand the weight that is added, while a wooden structure has less of a chance, and would need much more supporting beams and columns. However, he pointed out, it is always best to consult a structural advisor before attempting anything.

Chairman Hutchinson followed up, asking what sort of maintenance must be done to maintain a green roof.

Berghage said that it varies depending on the depth of soil, and plant life that is added onto the roof, but the general man hours add up to only a couple hours per square foot per year.

A member of the media asked if there were any specific financial incentives available to businesses to encourage the use of green roofs. Berghage said that in Portland, Oregon, the city will give \$5 per square foot. He added Philadelphia is continued from previous page continued on next page 7 Volume 14 Number 287

enacting an “impervious surface fee on the sewer bill, where you are getting charged for your sewage, based on how much impervious surface you have. A green roof isn’t considered an impervious surface, so it will reduce that fee.” Berghage was also asked what he thought about residential green roof housing, to which he replied that although it could be beneficial, in many suburban areas it is easier to just let the rain water be absorbed into the ground. “In high density housing though, that equation changes. The more of the property that is occupied by the building footprint, the better on return on investment looks” he said.

Rep. Randy Vulakovich (R-Allegheny) asked what Berghage would advise, given that with 30 pounds of extra weight from soil, and a possibility of 30 pounds of snow, how a structure would plan on supporting that amount of weight. Berghage said that one would have to double the strength of the building support, which could mean slightly increasing the size of a steel beam, and possibly adding a few extra beams. “For reinforcing an existing structure, it’s prohibitively expensive, but in a new structure it’s not so much of an issue,” he said.

A question was asked concerning the Pennsylvania Department of Environmental Protection (DEP), and whether they view green roofs as an acceptable strategy for storm water management. Berghage said that it depends on the individual building, but so far he has not heard of any problems with DEP and the green roof projects. A representative of DEP said that they are pushing green roofs, and that they view it as a viable option for cities to try and contain toxic runoff .

Asked whether there is a specific European incentive being used, since the green roof movement began on that continent, Berghage responded that German cities have moved to storm water fee incentives, similar to Philadelphia.

Rep. Vulakovich asked if there were any building code standards developed for green roofs. Berghage said “there are specifications that most companies that put these things use relating to the building codes, but it’s not codified in the building code.” On the question of LEED certification, he added, “You get more LEED points for putting up a green roof than doing pretty much anything else.”

## **Legislative Activity**

[HB 400](#) RE: Construction Workplace Fraud Act (by Rep. Bryan Lentz, et al)

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 is 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 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 bill provides for the presumption of independent contractor status, and describes this status, as well as the loss of presumption and penalties. 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.

**Removed from Senate Labor and Industry Committee meeting agenda for 6/30/10**

[HB 444](#) RE: High-Performance, State Buildings Standards Act (By Rep. Matt Smith, et al)

Requires the design, construction and renovation of state-owned or state-leased buildings to comply with specified energy and environmental building standards. The Department of General Services shall annually report to the Senate and House Environmental Resources and Energy Committees.

**Reported as amended from Senate Environmental Resources and Energy Committee, and read first time, 6/22/2010**

[HB 687](#) RE: Guaranteed Energy Savings Contracts (by Rep. Frank Dermody, et al)

(PN 760) Amends Title 62 (Procurement), in guaranteed energy savings contracts, amending the definition of "energy conservation measure" to include technology upgrades designed to reduce water and wastewater consumption or operating costs, and inserting water and wastewater-related provisions into language relating to contract procedures and provisions.

**Reported as amended from Senate Appropriations Committee, 6/14/2010**

**Read second time, 6/15/2010**

**Read third time and passed Senate, 6/21/2010 (49-0)**

**Received as amended in House and re-referred House Rules Committee, 6/22/2010**

**Re-reported on concurrence as committed from House Rules Committee, 6/23/2010**

**House concurred in Senate amendments, and Signed in the House, 6/23/2010 (198-0)**

**Signed in the Senate, 6/28/2010. In the hands of the Governor 6/28/2010.**

**Approved by the Governor, 7/2/2010**

[HB 786](#) RE: State Energy Office Act (By Rep. Camille George, et al)

Establishes the State Energy Office in the Department of Environmental Protection to promote the goals of energy development and energy conservation. The legislation provides for the powers and duties of the office, including to promote the development of PA's indigenous and renewable energy, to assist the Department of General Services in promoting the efficient use of energy by the State government, and to be the point of contact for private and government energy matters and the lead Commonwealth agency for energy policy development.

**Reported as amended from Senate Environmental Resources and Energy Committee, and read first time, 6/22/2010**

[HB 1450](#) RE: Environmental Advisory Councils (by Rep. Dan Deasy, et al)

Amends Title 53 (Municipalities Generally) transferring provisions relating to environmental advisory councils; authorizing a municipal corporation to establish an environmental advisory council to advise other local government agencies; adding the Geologically Hazardous Areas Act providing for the designation and regulation of geologically hazardous areas throughout this Commonwealth to protect people and limit property damage and the disruption of commerce from the possible dangers associated with land development in areas that are prone to landslides, sinkholes or other geologic hazards; imposing duties and conferring powers on the State Conservation Commission, the Department of Community and Economic Development, the Department of Environmental Protection, the Department of Conservation and Natural Resources and municipalities; and providing for enforcement and remedies.

**Reported as amended from House Environmental Resources and Energy Committee, read first time, and Rereferred to House Rules Committee, 6/29/2010**

[HB 1679](#) RE: False Claims Act (By Rep. Mike Gerber, et al)

The False Claims Act is enacted to mirror the Federal False Claims Act. The Act provides certain definitions and allows for treble damages for a committing any one of the enumerated prohibited acts. The Act also provides for the requirements of when damages can be limited. The Act allows the Attorney General of Pennsylvania to investigate and prosecute violations, as well as provides rules for when and how qui tam plaintiffs may bring an action. Furthermore, the Act provides anti-retaliatory discharge provisions to protect qui tam plaintiffs. The Act also establishes a ten-year statute of limitations, the burden of proof, and provides for estoppel after plea agreements.

**Reported as amended from House Health and Human Services Committee, read first time and rereferred to House Rules Committee, 6/22/2010**

**Reported as committed from House Rules Committee and rereferred to House Appropriations Committee, 6/23/2010**

[HB 2141](#) RE: Small Business Contracting (by Rep. Ron Buxton, et al)

Amends Title 62 (Procurement) redefining "small business" as a business in the United States which is independently owned, is not dominant in its field of operation, and employs 250 or fewer employees. The small business employee limit may be waived in certain enumerated circumstances.

**Reported as amended from House State Government Committee, read first time, and rereferred to House Rules Committee, 6/29/2010**

[HB 2142](#) RE: Surety Bond Guarantee Fund Program Act (By Rep. Curtis Thomas, et al)

Provides for the establishment of the Surety Bond Guarantee Program to assist disadvantaged businesses to competitively bid for governmental contracts; imposes duties on the Department of Community and Economic Development; establishes the Surety Bond Guarantee Fund; provides for contracts eligible for guarantee and for participation by disadvantaged businesses; and makes an appropriation of \$5 million to DCED, of which up to 10% may be used for administrative costs. An applicant shall be deemed eligible to participate in the program if the department determines that an applicant meets all of the following qualifications: (1) the applicant is a disadvantaged business certified by the department; (2) the applicant's business is in the construction or building trade industry; (3) the applicant has been actively operating its business for at least one year; (4) the applicant has the experience and financial fitness appropriate to a qualified contract; (5) the applicant has agreed to subcontract no more than 75% of the work to be performed under a qualified contract; (6) the applicant has demonstrated an inability to secure bonding under normal market conditions; (7) the applicant or one of its owners, officers, directors, principals or agents has not committed or been convicted of certain activities; and (8) the business meets any other program requirements that establish criteria for eligibility that the department shall adopt by regulation within 180 days of the effective date of this act.

**Reported as amended from House State Government Committee, read first time, and rereferred to House Rules Committee, 6/22/2010**

[HB 2143](#) RE: Disadvantaged Business Contracting (by Rep. Cherelle Parker, et al)

Amends Title 62 (Procurement) providing for oversight and responsibility for significantly increasing contracting opportunities for disadvantaged businesses and requiring best practices for each contractor. Other oversight responsibilities are placed upon the department.

**Reported as amended from House State Government Committee, read first time, and rereferred to House Rules Committee, 6/29/2010**

[HB 2144](#) RE: Department of Minority and Women Business Development (By Rep. Babette Josephs, et al)

Amends the Administrative Code establishing the Department of Minority and Women Business Development and providing for its powers and duties and making editorial changes.

**Reported as committed from House State Government Committee, read first time, and rereferred to House Rules Committee, 6/29/2010**

[HB 2145](#) RE: Disadvantaged Business Contracting (by Rep. Kenyatta Johnson, et al)

Amends Title 62 (Procurement), in small and disadvantaged businesses, adding a section providing Commonwealth agencies shall adopt and institute with the Department of General Services assistance, a mentor-protége program to assist, support and enable small businesses to successfully compete for prime and subcontract awards by partnering with large companies, which shall serve as mentors, in State contracts. Further provides the mentor-protége arrangement between a prime contractor and a minority-owned, women-owned or disadvantaged subcontractor shall be an important factor considered or weighed by the Commonwealth agency awarding a contract. Also provides the department shall establish the appropriate and applicable guidelines and criteria for firms to participate in a mentor-protége program.

**Reported as amended from House State Government Committee, read first time, and rereferred to House Rules Committee, 6/29/2010**

[HB 2146](#) RE: Pennsylvania Unified Certification program (By Rep. Vanessa Brown, et al)

Amends Title 62 (Procurement) providing for reciprocity of certifications; requiring agencies to accept the certification of the Pennsylvania Unified Certification program.

**Reported as amended from House State Government Committee, read first time, and rereferred to House Rules Committee, 6/29/2010**

[HB 2147](#) RE: Small Business Reserves (By Rep. Tony Payton, Jr.)

Amends Title 62 (Procurement) requiring agencies to establish a small business reserve; each Commonwealth agency shall set 10 percent of its moneys available for procurement into a small business reserve for award to qualified small and disadvantaged businesses. The amount set aside shall be a minimum of \$25,000 with a maximum of \$5 million.

**Reported as amended from House State Government Committee, read first time, and rereferred to House Rules Committee, 6/29/2010**

[HB 2148](#) RE: Performance Monitoring (by Rep. Karen Beyer, et al)

Amends Title 62 (Procurement) providing guidelines for the monitoring of a prime contractors' performance.

**Reported as amended from House State Government Committee, read first time, and rereferred to House Rules Committee, 6/29/2010**

[HB 2149](#) RE: Small and Disadvantaged Business Subcontracting (by Rep. Mark Mustio, et al)

Amends Title 62 (Procurement) in small and disadvantaged businesses, providing for prime contractors' performance by stating that when a subcontractor has performed in accordance with the provisions of the contract, a contractor shall pay to the subcontractor, and each subcontractor shall in turn pay to its subcontractors, the full or proportional amount received for each such subcontractor's work and material, based on work completed or services provided under the subcontract, five (changed from 14) days after receipt of a progress payment.

**Reported as amended from House State Government Committee, read first time, and rereferred to House Rules Committee, 6/29/2010**

[HB 2279](#) RE: The General Appropriations Act of 2010 (by Rep. Dwight Evans, et al)

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, 2010, to June 30, 2011, 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, 2010; to provide appropriations from the State Lottery Fund, the Energy Conservation and Assistance Fund, the Aviation Restricted Revenue Account, 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, 2010, to June 30, 2011; to provide appropriations from the Motor License Fund for the fiscal year July 1, 2010, to June 30, 2011, 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, 2010; to provide for the additional appropriation of Federal and State funds from the General Fund for the Executive Department of the Commonwealth for the fiscal year July 1, 2009, to June 30, 2010, and for the payment of bills incurred and remaining unpaid at the close of the fiscal year ending June 30, 2009; and making interfund transfers for the fiscal year July 1, 2010, to June 30, 2011.

**Reported with a negative recommendation from Senate Appropriations Committee, and read first time, 6/14/2010**

**Read second time, and recommitted to Senate Appropriations Committee, 6/15/2010**

**Reported as amended from Senate Appropriations Committee, read third time, and passed Senate, 6/30/2010 (37-13)**

**Received as amended in House and rereferred House Rules Committee, re-reported on concurrence as committed from House Rules Committee, and House concurred in Senate amendments, 6/30/2010 (117-84)**

**Signed in the House and Senate, 6/30/2010**

**In the hands of the Governor 6/30/2010. Last day for Governor's action, 7/10/2010**

[HB 2286](#) RE: Workers Comp Fund Appropriation (By Rep. Dwight Evans, et al)

An Act making appropriations from the Workmen's Compensation Administration Fund to the Department of Labor and Industry and the Department of Community and Economic Development to provide for the expenses of administering the Workers' Compensation Act, The Pennsylvania Occupational Disease Act and the Office of Small Business Advocate for the fiscal year July 1, 2010, to June 30, 2011, and for the payment of bills incurred and remaining unpaid at the close of the fiscal year ending June 30, 2010.

**Reported as committed from Senate Appropriations Committee, and read first time, 6/14/2010**

**Read second time, and recommitted to Senate Appropriations Committee, 6/15/2010**

**Reported as amended from Senate Appropriations Committee, read third time, and passed Senate, 6/30/2010 (50-0)**

**Signed in the House and Senate, 6/30/2010**

**In the hands of the Governor 6/30/2010. Last day for Governor's action, 7/10/2010**

[HB 2289](#) RE: Capital Budget Act of 2010 (By Rep. Dwight Evans, et al)

Provides for the capital budget for fiscal year 2010-2011. *This bill may be held until fall.*

**Reported as committed from Senate Appropriations Committee, and read first time, 6/14/2010  
Read second time, and recommitted to Senate Appropriations Committee, 6/15/2010**

[HB 2290](#) RE: Capital Facilities Debt Enabling Act (By Rep. Dwight Evans, et al)  
Amends Capital Facilities Debt Enabling Act further providing for appropriation for and limitation on redevelopment assistance capital projects by stating that the maximum amount of redevelopment assistance capital projects undertaken by the commonwealth for which obligations are outstanding shall not exceed, in aggregate, \$4,250,000,000. *This raises the cap by \$600 million.*

**Reported as committed from Senate Finance Committee, read first time, and recommitted to Senate Finance Committee, 6/30/2010**

[HB 2435](#) RE: Tax Reform Code (By Rep. Dwight Evans, et al)  
(PN 3573) Amends Tax Reform Code repealing certain provisions relating to discounts; providing for the imposition of tax reports and the payment of tax; providing a 30 percent tax on the purchase price charged to the retailer for the purchase of any tobacco product; establishing the Natural Gas Severance Tax Act and imposing a 5 percent tax on the gross value of units severed at the wellhead during a reporting period, plus 4.7 cents per unit severed.

**Laid on the table and removed from the table, 6/30/2010**

[HB 2460](#) RE: Pennsylvania MESA Initiative Act (By Rep. Jim Roebuck, et al)  
Establishes a program to increase exposure, educational motivation, and achievement of students in science, engineering, or mathematics. The program is to be coordinated by the Department of Education and the department is to work with all commonwealth agencies so there is no duplication. A MESA Oversight Commission is established and the commission is given powers and responsibilities and the appointment of commission members is detailed. The commission is to submit an annual report to the General Assembly noting the progress of the program.

**Reported as amended from House Education Committee, read first time, and rereferred to House Rules Committee, 6/9/2010**

[SB 728](#) RE: High-Performance, State Government Buildings Standards Act (By Sen. John Rafferty, et al)  
(PN 2082) Requires the design, construction and renovation of certain State buildings to comply with specified energy and environmental building standards. The Department of General Services shall annually report to the chairmen of the House and Senate Environmental Resources and Energy Committees, the chairmen of the Senate Community, Economic and Recreational Development Committee, and the chairmen of the House Intergovernmental Affairs Committee. (Prior Printer Number: 855)

**Reported as amended from Senate Environmental Resources and Energy Committee, and read first time, 6/22/2010**

**Rereferred to Senate Appropriations Committee, 6/29/2010**

## **New Bills Introduced**

[HB 2555](#) RE:  
Amends the Tax Reform Code adding a new subsection providing the total cost associated with hiring a surveyor and filing a letter of map amendment and other related application requirements established by FEMA for the National Flood Insurance Program shall be deductible from taxable income on the annual state personal income tax return.

**Introduced and referred to House Finance Committee, 6/1/2010**

## **Upcoming Meetings of Interest**

NONE

### **2010 SENATE SESSION SCHEDULE**

July 1, 2, 3

### **2010 HOUSE SESSION SCHEDULE**

July 1, 2, 3

**The Fall Session schedule has not been announced. We expect the General Assembly to return in late September for a few weeks of session.**

*Copies of all bills of interest can be accessed via the Internet at:*  
<http://www.legis.state.pa.us/WU01/LI/BI/billroom.htm>