



Florida A.G.C. Council, Inc.
LEGISLATIVE REPORT: Week 1 of SESSION

2017 Regular Session of the Florida Legislature
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The 2017 Legislative Session commenced this week after several weeks of interim legislative committee meetings. The opening day of the legislative session is typically filled with pomp and circumstance, well wishes, and promises of collectively working to move our state forward. While these attributes were all on display this week, the stark differences between the House leadership and Governor Scott over the future of tourism promotion and economic development in Florida remained center stage. Governor Scott delivered his “State of the State” and suggested the actions of the House on these issues were nothing more than “bumper sticker slogans.” The House responded later in the week by passing legislation greatly curtailing the role of Visit Florida—the state’s tourism promotion agency, and legislation eliminating Enterprise Florida—the state’s economic development agency. Meanwhile, the Senate began work on its priorities by passing legislation reforming Florida’s higher education system, legislation requiring a unanimous jury decision in death penalty cases and debated legislation pertaining to Florida’s Stand Your Ground law.

While these key policy issues develop over the nine week legislative session, the legislature will also be spending time on hundreds of other priority issues, while also trying to pass a budget. During this time the promises of “collectively working together” will be tested, but the process is not intended to be easy or smooth. Stay tuned for an exciting nine (hopefully!) weeks.

Included below is a list of the major legislative issues which we are following for AGC. These are the most important issues identified by the AGC Council and we have also included the full tracking list which has the entire list of filed legislation which we are watching.



PRIORITY

WORKERS COMPENSATION REFORM - UPDATE

SB 1582 – Sen. Rob Bradley (R-Orange Park)

HOUSE PROPOSED COMMITTEE BILL – House Insurance & Banking Subcommittee

STATUS: PENDING

AGC POSITION: SUPPORT

Workers’ Compensation reform remains a major topic for the 2017 Legislative Session and the State of Florida. SB 1582 and the House Proposed Committee Bill (PCB) were recently published making significant reforms to the current Florida Workers’ Compensation system following the court rulings which precipitated a 14.5% insurance rate increase. There are a number of issues relating to different provisions of the Workers’ Compensation system which are addressed in one or both of the bills. Some of those provisions are:

- Increases of attorney fees to provide suitable fees for representation.
- Rate setting and review.
- Reimbursements for outpatient care, at hospitals or ambulatory-surgical centers.
- Providing extended benefits to injured workers for work-related injuries.
- Potential conversion to a loss cost system, away from sole reliance on NCCI ratemaking.
- Limits on excessive defense and cost containment expenses.

The legislative proposals to reform the Florida Workers' Compensation system are still very fluid and early in the process. Included below are links to summaries of both the Senate and House proposals:

[Click here](#) for a summary of House's proposal.

[Click here](#) for a summary of Senate's proposal.

As these discussions continue, AGC remains focused on helping provide important industry feedback to legislators and other interested parties. AGC is actively participating in all discussions regarding Workers' Compensation reform to highlight those issues and concerns important to the construction industry. AGC is working with a broad group of stakeholders, including the Florida Chamber, AIF, NFIB, FUBA, insurance companies, and many independent businesses. We will continue to update you as these issues are discussed and legislative proposals take form this Session.



PRIORITY

STATUTE OF REPOSE – UPDATE

SB 204 – Sen. Kathleen Passidomo (R-Naples)

HB 377 – Rep. Tom Leek (R – Daytona)

STATUS: PENDING

AGC POSITION: SUPPORT

These bills relate to the statute of repose for actions founded on the design, planning, or construction of an improvement to real property. Currently, Florida Statutes require that an action must commence within 10 years after the date of the following:

- Date of actual possession by the owner;
- The date of the issuance of a certificate of occupancy;
- The date of abandonment of construction if not completed; or
- The date of completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer.

The statute of repose is similar to a statute of limitations, although a statute of repose bars a suit after a fixed period of time. Although phrased similarly and imposing time limits within which legal actions must be commenced, the timing of a statute of repose begins to run from an established or fixed event, and not the accrual of a cause of action. Further, a statute of repose abolishes the underlying substantive right of action, not just the remedy available following the expiration of a statute of limitations. Statutes of repose are intended to encourage diligence in

the civil prosecution of claims, eliminate potential abuses from stale claims, and provide certainty and finality in liability.

These bills seek to make amendments to s. 95.11(3)(c), F.S., to better define the date of the completion of the contract. Pursuant to the bill, the completion of the contract is the “latter of the date of final payment of all the contracted services or the date that final payment for such services becomes due without regard to the date final payment is made.” This bill provides that these amendments apply to causes of action which accrue on or after July 1, 2017.

This legislation is promoted by a coalition of interested parties including AGC, ABC, the Florida Home Builders Association, and others in the construction industry. The bill, initially opposed by the Florida Justice Association, continues to go through negotiations.

UPDATE: HB 377 successfully passed two of three committees of reference in the House and is waiting to be heard in the full House Judiciary Committee. SB 204 is on the agenda for the first committee of reference, the Senate Judiciary Committee, this coming Tuesday, March 14, 2017.



PRIORITY

ATTORNEY’S FEES ON LIEN & BOND CLAIMS - UPDATE STATUS: PENDING
Possible Amendment AGC POSITION: OPPOSE

Since 2010, material suppliers have been pushing for a change in the law that would fundamentally alter how “prevailing party” attorney’s fees are awarded in suits over liens and payment bond claims. Rather than relying on long-established precedent which requires a court to look at the case as whole to determine which party “prevailed” on the significant issues in a payment dispute, the change sought by material suppliers would have awarded attorney’s fees to the supplier or subcontractor if they recovered any amount at all in the litigation, even \$1.

UPDATE: AGC has been the only construction group vocally opposed to this proposed change in the law. During the run-up to the 2017 Session, material suppliers again initiated a discussion on this topic. While AGC offered a possible compromise on one of the issues raised in the material suppliers’ proposal, no agreement could be reached on their broader agenda. AGC will have to remain vigilant throughout the Session to ensure that this very bad attorney’s fee provision does not get amended onto a construction-related bill.



PRIORITY

MANDATORY LIEN/BOND WAIVER FORMS - UPDATE STATUS: PENDING
Possible Amendment AGC POSITION: OPPOSE

This year, material suppliers also expressed an interest in pushing for a change in the law that would mandate the use of statutorily-prescribed forms for the waiver of a lien/bond claim by a subcontractor or supplier. Currently, the relevant statutes provide a suggested waiver form and require that the actual waiver used must be “substantially” similar to this form. The material

suppliers wanted to require the use of that statutory form and expressly declare any additional terms and conditions unenforceable.

UPDATE: After seeking member input, AGC decided to oppose this suggested statutory change, because it would eliminate the general contractor's ability by contract to require additional waiver terms or to "pass through" additional waiver terms insisted upon by the owner or lender. AGC continues to closely monitor all construction-related bills to ensure that this proposal does not make it onto a piece of legislation.



PRIORITY

ATTORNEY'S FEES for CONTRACTOR PURSUING SUBCONTRACTORS
PERFORMANCE BOND - UPDATE STATUS: **PENDING**
Possible Amendment AGC POSITION: **SUPPORT**

In commercial construction projects (and in some residential projects), it is common for the owner to require the general contractor to post both a "performance bond," which guarantees the contractor's satisfactory completion of the project, as well as a "payment bond," which guarantees the proper payment of subcontractors, sub-subs, suppliers, and laborers on the job. In many circumstances, the owner and/or general contractor will also require that some or all of the subcontractors post a performance bond, guaranteeing satisfactory completion of the subcontractor's work on the project.

Under section 627.756, all of these parties are statutorily entitled to attorney's fees in any action brought against one of these bonds, except for an action brought by a general contractor against the performance bond of a subcontractor.

Section 627.756 was last amended almost 25 years ago. While subcontractor performance bonds were more unusual at that time, they have become increasingly common in commercial construction. Although claims by a general contractor against a subcontractor's performance bond are infrequent, they do occur. When they do, it is because the subcontractor has defaulted and failed to perform under its subcontract. Such a default requires the contractor to quickly remedy the situation by hiring an alternative subcontractor to do the work, typically at greater expense and with resulting construction delays that add even more expense.

Respectfully, there is simply no principled reason why general contractors should be singled out and denied attorney's fees when they are forced to file an action against a subcontractor's performance bond. This inability to recover attorney's fees compounds the increased expenses that the general contractor is forced to incur when a subcontractor defaults.

UPDATE: We continue to work to identify appropriate legislative proposals where this possible amendment may fit. We have identified a number of legislative proposals and are actively working to amend legislative proposals to include the proposed language, adopted as a priority by the AGC Council, in a successful piece of legislation.



PRIORITY

LOCAL REGULATION PREEMPTION – **UPDATE**

SB 1158 - Sen. Kathleen Passidomo (R – Naples)

HB 17 - Rep. Randy Fine (R - Melbourne)

STATUS: PENDING

AGC POSITION: MONITOR

These bills prohibit counties, municipalities, and special districts from engaging in specified actions regulating commerce, trade, or labor, unless there is a specific general law passed by the Florida Legislature directing such action. While these bills are not identical, and are not currently “related” in the legislative database, they were requested by the same proponent, the Florida Retail Federation. The premise is to limit the ability of local governments to implement and enforce ordinances which negatively impact businesses. These bills would be effective July 1, 2017 and would also require that any regulation adopted prior to July 1, 2017, without general law authority, expire no later than July 1, 2020.

UPDATE: HB 17 passed the first committee of reference, the House Careers and Competition Subcommittee by a vote of 9 to 6. It will next be heard in the House Commerce Committee. SB 1158 received four committee references and has not yet been placed on a committee agenda.



PRIORITY

PUBLIC WORKS PROJECTS – **UPDATE**

SB 534 - Sen. Keith Perry (R – Gainesville)

HB 599 - Rep. Jay Williamson (R - Pensacola)

STATUS: PENDING

AGC POSITION: SUPPORT

These bills create s. 255.0992, F.S., relating to public works projects and define “political subdivision,” “public works project,” and “public works.” These bills prohibit the state or a political subdivision, in which 50% or more of the project is funded with state-appropriated funds, to require a contractor, subcontractor, or material supplier or carrier engage in public works or public works projects:

- Pay employees a predetermined amount of wages or wage rate;
- Provide employees a specified type, amount, or rate of employee benefits;
- Control or limit staffing;
- Recruit, train, or hire employees from a designated single source;
- Designate any particular assignment of work for employees;
- Participate in proprietary training programs; or
- Enter into any type of project labor agreement.

In addition, these bills prohibit the state or any political subdivision from prohibiting a qualified, licensed, or certified contractor, subcontractor, or material supplier or carrier from submitting a bid on any public works projects.

UPDATE: HB 599 and SB 534 both successfully passed the first of three committees of reference and are waiting to be scheduled for the next committee hearing.



PRIORITY

BUILDING CODE PROCESS BILL - UPDATE

SB 7000 - Sen. Tom Lee (R – Brandon)

HB 901 - Rep. Stan McLain (R – Ocala)

STATUS: PENDING

AGC POSITION: SUPPORT

SB 70004 and HB 901 are the building code process bills introduced for the 2017 Legislative Session. The bills make the following changes to how Florida’s building code is adopted:

- Amends s. 553.73, F.S., to require the Florida Building Commission (Commission) to use the 6th edition of the Florida Building Code (Code) as the foundation for the Florida Building Code.
- The Commission is required to consider whether the Code needs to be revised and to adopt such revisions by rule.
- The bill revises that the Commission, when evaluating potential revisions to the Code, shall review, rather than automatically adopt, the new I-Codes every 3 years.
- This is so that only new additions, in lieu of the full, new I-Codes, are adopted by rule.
- Requires that the Commission maintain the efficiencies of the Florida Energy Efficiency Code for Building Construction found in s. 553.901, F.S.
- Amendments and modifications, other than local amendments, to the Code will now remain effective when a new edition of the Code is published.
- The bill also amends s. 553.76, F.S. to require the Commission adopt the Code, and amendments thereto, by a 75% vote of the members present.

UPDATE: SB 7000, which started as a Proposed Committee Bill (PCB), successfully passed the Community Affairs Committee unanimously and now has two remaining committee references. HB 901 awaits action in the first of two committees of reference.



PRIORITY

PREJUDGMENT INTEREST - UPDATE

SB 334 - Sen. Greg Steube (R-Lakewood Ranch)

HB 469 - Rep. Shawn Harrison (R – Tampa)

STATUS: PENDING

AGC POSITION: OPPOSE

SB 334 and HB 469 provide for the award of prejudgment interest relating to awards of damages, including costs for litigation. Both bills, as filed, apply the provision of prejudgment interest to all claims of action. This is a major shift in Florida Statutes and has been staunchly opposed by a broad coalition of business, insurance and industry groups. These bills have been proposed at the request of the Florida Justice Association, the state association representing the plaintiffs’ trial bar.

UPDATE: SB 334 and HB 469 have each received hearings and have been amended throughout that process. One of the major amendments was to limit the adoption to only

economic damages and not punitive damages. Both bills passed the first committees of reference prior to the start of the 2017 Legislative Session.

SB 334 was heard in the Senate Rules Committee, the final committee of reference, and was amended to permit judicial discretion for the award of prejudgment interest. Following adoption of that amendment, the bill was Temporarily Postponed (TP'd) and now sits in limbo. It is still unknown what the next steps, if any, will be for this legislation.



PRIORITY

CH. 558 REFORM - UPDATE

SB 1164 - Sen. Kathleen Passidomo (R-Naples)

HB 1271 - Rep. Jay Trumbull (R-Panama City)

STATUS: PENDING

AGC POSITION: SUPPORT

These bills provide reforms to the statutory notice-and-cure process to promote the resolution of disputes while minimizing the litigation costs and attorney's fees. Specifically, these bills make changes to s. 558.004, F.S., to require that a claimant, and not the claimant's attorney or agent, sign the notice of claim, and only permits attorney's fees to be awarded should there be a contract or agreement in place which anticipates and allows for the award of attorney's fees. These bills require that a claimant be present for the inspection, that all parties must be served with a copy of the notice of claim, and require that claimants must serve a written demand for mediation prior to rejecting an offer to settle.

UPDATE: These bills have not yet been heard in committee and both received three committees of reference. HB 1271 received committee references March 10, 2017.



PRIORITY

CCNA REFORM - UPDATE

HB 789 - Rep. Charlie Stone (R-Ocala)

STATUS: PENDING

AGC POSITION: OPPOSE

The "Consultants' Competitive Negotiation Act" (s. 287.055) allows public entities to procure services within the practices of architecture, engineering, landscape architecture, and surveying and mapping, as well as construction management and project management services, through a competitive qualifications-based selection process.

Once firms are ranked based upon their qualifications, the public entity conducts negotiations with the top-ranked firm, during which fees are a negotiated item. If the public entity and the top-ranked firm cannot come to an agreement, then the public entity may terminate those negotiations and begin negotiations with the second-ranked firm (and so on) until an agreement satisfactory to the public entity is reached.

The CCNA process, adopted in Florida in the 1970's, is used by federal agencies and by 47 of the 50 states. It is also the prevailing method for procuring similar services in the private sector. This process contrasts with the more traditional competitive bidding method in which bids end up primarily ranked based upon price.

The CCNA responds to a variety of concerns about applying a strict “low-bid” scenario to these types of design and construction services, e.g., stifling innovative design and construction solutions, the resulting loss of larger cost savings in both the construction and operation of public facilities, public safety concerns, and the practical inability of public owners to precisely define the scope of work early in the design process.

Like past years, HB 789 was filed to insert price back into the initial selection criteria. HB 789 amends the current CCNA process to replace the competitive negotiation phase with a best value selection process. Under the new process, each contractor firm selected as one of the most qualified during the competitive selection phase must submit a compensation proposal for the proposed work. The agency requesting the competitive selection, must evaluate the compensation proposal, the information provided during the selection phase, and any other information to make a best value selection. The bill provides that compensation may not exceed 50 percent of the total weight of the published evaluation criteria and permits an agency may reject any or all submissions received in response to a public announcement for a project. The bill was opposed by AGC, architects, engineers, etc.

UPDATE: HB 789 does not have a Senate companion and is noticed for the first of two committees of reference in the House, the House Oversight, Transparency & Administration Subcommittee for March 13, 2017.



PRIORITY

NOTICE OF TERMINATION - UPDATE

SB 734 - Sen. Bobby Powell (D – West Palm)

~~**HB 685** - Rep. Tom Leek (R-Daytona)~~

STATUS: PENDING
AGC POSITION: MONITOR

These bills provide for reforms relating to the requirements for recording a notice of termination and lien rights for projects where financing may be changing. These bills are proposals supported by the Real Property, Probate and Trust Law Section of the Florida Bar (RPPTL). As discussed during our Council meeting last week, these proposals seem to be positive changes to the current process for notice of terminations; however, the details of how these will work in practice are difficult to completely see.

UPDATE: SB 734 has received three committees of reference and has not been placed on an agenda at this time. HB 685 was withdrawn prior to introduction and has not been re-filed at this time. We will continue to be mindful and watch for this proposal to be introduced as amendment language in another vehicle and also cautiously monitor all other lien-related proposals.



PRIORITY

VERIFICATION OF EMPLOYMENT ELIGIBILITY - UPDATE

HB 443 - Rep. Joe Gruters (R-Sarasota)

STATUS: PENDING
AGC POSITION: OPPOSE

The federal Immigration Reform and Control Act of 1986 made it illegal for any U.S. employer to knowingly:

- Hire, recruit, or refer for a fee an alien knowing he or she is unauthorized to work;
- Continue to employ an alien knowing he or she has become unauthorized; or
- Hire, recruit, or refer for a fee any person (citizen or alien) without following the record keeping requirements of the Act.

Employees are required to present documents to their employers that establish both the worker's identity and eligibility to work, and employers are required to complete a federal "I-9" form for each new employee hired.

In 1996, Congress enacted legislation creating three pilot programs to test electronic employment eligibility verification systems. Of these three programs, what is now known as the "E-Verify" system was chosen to provide an automated link to federal databases to help employers determine employment eligibility of new hires and the validity of their Social Security numbers. The E-Verify system is free to employers and is available in all 50 states.

After a string of unsuccessful bills in prior years, the Legislature is once again considering a statewide requirement that all employers use the federal "E-Verify" system to check the immigration status of new hires. HB 443, as introduced, requires private employers to use the E-Verify system to verify employment eligibility and prohibits an employer from knowingly or intentionally employing unauthorized aliens. HB 443 requires government agencies regulating companies to develop and implement rules to enact use of the E-Verify system by their respective industries. Industry groups, including AGC, have opposed this legislation as an overly burdensome and unnecessary requirement for private enterprise.

In prior years, few pieces of legislation generated as much intense and emotional public debate as bills dealing with immigration, which routinely drew "standing-room only" crowds.

UPDATE: HB 443 currently has no Senate companion and received three committee references. This bill has not been heard or placed on a committee agenda at this time.



PRIORITY

WORKFORCE/APPRENTICESHIP - UPDATE

STATUS: PENDING
AGC POSITION: SUPPORT

As reported during our last Council meeting, workforce and apprenticeship remain a major problem for the construction industry. The construction industry continues to see a shortage of skilled workers and has seen a lack of entry of new employees. Following the inclusion of funding in last year's FY 2016-2017 FY Budget, the Construction Workforce Taskforce met and worked during the interim. The taskforce was asked to address the following concerns:

- Address the critical shortage of individuals trained in building construction and inspection.
- Develop a consensus path for training the next generation of construction workers in the state.
- Determine the causes of the current shortage of a trained construction industry work force and address the impact of the shortages on the recovery of the real estate market.
- Review current methods and resources available for construction training.
- Review the state of construction training available in K-12 schools.
- Address training issues relating to building code inspectors to increase the number qualified inspectors.

The taskforce report, and any accompanying documentation, can be found at the following link: [Construction Workforce Taskforce](#)

The report has been presented in both the House and Senate and we anticipate seeing some workforce related proposals included in legislation, as well as in budget bills. AGC continues to remain committed to helping increase the workforce and will continue to advocate for additional opportunities for apprenticeship, including additional funding from surplus funds from industry licensing fees.

We hope this update is helpful. Please let us know if you have any questions.