Florida A.G.C. Council, Inc.
LEGISLATIVE REPORT

2014 Regular Session of the Florida Legislature
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After nine long weeks, the 2014 Regular Session of the Florida Legislature concluded on Friday, May 2, at 10:39 p.m. Of the 1,812 bills, memorials, and resolutions filed, only 232 passed both the House and the Senate.

On the final day of the session, Florida legislators passed a $77.1 billion budget, voted to authorize and regulate a form of non-euphoric medical marijuana, and supported in-state post-secondary tuition for Florida high school students who are the children of undocumented immigrants. The Legislature authorized 75 mile-per-hour speed limits on some sections of major highways and gave parents a process for protesting instructional materials they find objectionable. Lawmakers also adopted a more regimented process in which sports franchises will compete for state tax breaks, conditioning funding for Major League Baseball facilities on whether the MLB allows Cuban players to bargain as free agents without establishing residency in a third country.

Despite public hearings all over the state and much legislative activity, no casino gambling or other gaming measures made much progress in the 2014 Legislature. Efforts to repeal or revise Florida's controversial "stand your ground" gun law also went nowhere. And once again, efforts to substantially modify Florida's public retirement system were stymied in the Senate.

With a $1.2 billion surplus and elections looming in the fall, cuts in state taxes and fees were a priority for Governor Scott and for legislative leaders. Early in the session, the Legislature passed a $395 million roll-back in vehicle and vessel registration fees – fees that were increased in 2009 under the watch of Governor Scott's likely challenger in the fall, former Governor Charlie Crist.

On the final day of the session, lawmakers passed $105 million in additional tax cuts, reaching Governor Scott's goal of returning $500 million to Floridians this year. These extra cuts include: (a) sales tax holidays on back-to-school clothes and supplies, energy efficient appliances, and hurricane preparedness supplies; (b) elimination of sales tax on child car seats, bicycle helmets, college meal plans, and medicinal pet food; (c) reduced taxes on prepaid calling plans, title insurance, and bail bonds; and (d) a three-year sales tax exemption on cement mixing drums.

Governor Scott will soon receive the state's $77.1 billion budget for fiscal year 2014-15, which includes $3.1 billion in reserves. The budget is filled with line-item projects located all over the state that the Governor has the power to veto. Having campaigned as a fiscal conservative determined to shrink the role of government, the Governor now faces the difficult choice of slashing many of those projects and enhancing his reputation on the right end of the political spectrum versus approving those projects and currying favor with local legislators as he begins a difficult 2014 re-election campaign.

In 2014, the Legislature churned through thousands of bills. AGC was actively tracking 140 of these bills due to their potential impact on general contractors and the construction industry. Beyond the bills that AGC was actively supporting and trying to pass, AGC also had to determine the impact of dozens of other bills and decide to support, oppose, or amend them as warranted.

Next year, AGC expects to pursue changes in the laws impacting construction litigation to more effectively allow general contractors to provide remediation in response to owner complaints and to avoid unnecessary litigation costs.

Outlined below is a list of the major construction-related bills considered during the 2014 Session here in Tallahassee and their final status.

ENHANCEMENT TO PECO FUNDING **STATUS: PASSED**
SB 1076 - Sen. Anitere Flores (R - Miami) **AGC POSITION: SUPPORT**
HB 899 - Rep. Mike Hill (R - Pensacola)
HB 5601- House Finance & Tax Subcommittee

Absent intervention by the Legislature, Florida's public schools, colleges, and universities faced another year without significant funding from the state to construct new buildings or to maintain or renovate existing structures. Historically, such funding has come from the Public Education Capital Outlay ("PECO") program.

PECO funds are generated through a 2.5 percent gross receipts tax on the sale of electricity and a 2.52 percent tax on communications services. This revenue stream, established by a 1963 amendment to the Florida Constitution, has declined dramatically in recent years, in part because consumers are buying more energy-efficient appliances and moving from land-line telephones to cell phones.

Moreover, PECO funds have historically been used to issue bonds. While such leveraging increases the dollars available in the short term, bonding also generates an ongoing need for debt service. PECO's bonding resources have decreased from a high of over $1.4 billion in FY 2006-07 to $0 in FY 2011-12. No additional PECO bonding capacity is estimated to be available until FY 2017-18. Over the past few years, the Legislature has tried to alleviate the severe impact on public schools, colleges, and universities by making annual appropriations of general tax revenue, with total funding ranging from $73 million to $294 million annually, most of which was focused on maintenance and repairs.

This year, Agriculture Commissioner Adam Putnam, a likely candidate for governor in 2018, came forward with a proposal combining energy tax cuts for businesses with a new funding source for PECO. Currently, Florida businesses pay a 7% state sales tax on commercial electricity consumption, totaling nearly $450 million per year. Commissioner Putnam urged the Legislature to spur economic growth in Florida by reducing this tax from 7% down to 3.5% over a three-year period, saving businesses approximately $225 million per year when fully implemented. Businesses in several southeastern states, e.g., Alabama and Louisiana, pay no sales tax on commercial electricity.

At the same time, Commissioner Putnam would gradually divert the remaining 3.5% of this tax to PECO, which, when bonded, could generate up to $2.8 billion to invest in education infrastructure.

UPDATE: AGC supports Commissioner Putnam's proposal and is an active participant in the coalition pushing his plan -- a coalition that includes the state's universities and a number of business groups. In its first legislative committee, SB 1076 was amended to reduce the impact of the bill on state revenue. While businesses would still see the sales tax rate on commercial electricity reduced from 7% to 3.5%, the remaining 3.5% tax would be split between PECO and the state's general revenue fund instead of being diverted entirely to PECO, thus cutting in half the initially proposed PECO increase.

While SB 1076 and HB 899 made no further progress in their respective chambers, the House did pass a bill containing a package of favored tax cut proposals. This bill (HB 5601) included an important component of the Putnam proposal – shifting 3% of the sales tax on commercial electricity consumption to PECO, which would generate an estimated $188 million annually. Cities and counties publicly opposed this provision of the bill, however, because it would result in a loss of almost $21 million per year to local governments.

In the closing days of the session, the House and Senate finally agreed to shift 2.6% of the sales tax on commercial electricity into PECO funding instead of the 3.5% proposed by Commissioner Putnam and the 3% proposed by the House. This action will generate about $161 million per year in PECO funding. The total change in the sales tax rate for commercial electricity will represent a net decrease of .05%, saving Florida businesses approximately $3.1 million annually. This measure, contained in HB 5601, passed the House and Senate during the final two days of the session. The bill will go to Governor Scott for his action in the coming days.

In total, the Florida Legislature appropriated more than $544 million toward PECO projects, including $75 million for charter school maintenance, $50 million for public school maintenance, and more than $59 million for public school projects in seven smaller counties. In addition to maintenance funding, over $159 million was devoted to projects at state universities and more than $107 million to projects at state colleges. The original PECO budgets of the two chambers were $285 million apart, with the House proposing $567 million and the Senate offering only $283 million.

PUBLIC-PRIVATE PARTNERSHIPS **STATUS: FAILED**
SB 900 - Sen. Jack Latvala (R - Clearwater) **AGC POSITION: SUPPORT**
HB 541 - Rep. Greg Steube (R - Sarasota)

Public-private partnerships (PPPs) are contractual arrangements formed between a public agency and a private sector entity that allow for more significant private sector participation in the delivery and financing of public buildings and infrastructure projects. In addition to the sharing of resources, each party shares in the potential risks and rewards in the delivery of the service or facility.

The most common form of PPP is a Design-Build-Finance-Operate (DBFO) transaction, where the government contracts with a private vendor, granting the private vendor the right to

develop a new piece of public infrastructure. The vendor takes on full responsibility and risk for the delivery and operation of the public project in accordance with the terms of the partnership. The vendor is paid through the revenue stream generated by the project, which could take the form of a user charge (such as a highway toll) or, in some cases, an annual government payment for performance (often called a "shadow toll" or "availability charge").

While PPPs often result from a more "conventional" procurement process in which the government issues a request for proposals and then receives competing responses from private vendors, PPPs may also be initiated by the government's receipt of an unsolicited proposal from a private entity. Generally, the government requires a processing fee to cover the cost of its technical and legal review of the unsolicited proposal. If the government is interested in pursuing the project, the government issues public notice and solicits competing proposals before entering into any partnership for the facility in question.

Expanding upon successful 2013 legislation that authorized PPPs for counties, cities, school boards, and regional entities, the 2014 bill would authorize PPPs for state universities. This measure would play an important role in addressing the significant decrease in available funding for building construction and maintenance at state universities (as discussed above). The 2014 bill:

- Specifies the requirements for PPPs, which include provisions that require state universities to provide public notice of unsolicited proposals, conduct independent analyses of proposed partnerships, and enter into comprehensive agreements for qualifying projects.

- Provides that state universities may approve a qualifying project if there is a public need for or benefit derived from the project, the estimated cost of the project is reasonable, and the private entity's plans will result in the timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project.

- Specifies that PPP agreements are subject to the approval of the Board of Governors, which is also responsible for developing a PPP process for the state universities.

<u>UPDATE</u>: AGC has long supported PPP legislation as a creative means to help address Florida's infrastructure needs and to accelerate construction activity in Florida. AGC partnered with the universities and other construction groups to advocate passage of this bill.

As the bill progressed through legislative committees, it was modified to also allow university direct-support organizations (DSOs) to engage in PPPs. At the same time, however, the Governor's office and the Division of Bond Finance intervened to substantially modify the conditions under which PPPs could be entered into, engrafting onto PPPs much of the state's current higher education bonding framework (Fla. Stat. §1010.62). Among other things, the bill was modified to:

- *Require the approval of certain projects by the Governor and Cabinet sitting as the head of the Division of Bond Finance, including those with a term of more than 10 years.*

- *Require the university or DSO to brief the Cabinet and Legislature prior to engaging in a PPP that yields more than $10 million to the university or DSO. Any objections must be resolved before proceeding with the PPP agreement.*

- *Limit the term of PPPs to 30 years.*

- *Prohibit the obligation of the full faith and credit of the state, the university, or the Board of Governors as part of a PPP.*

Ultimately, it became clear that the changes generated by the Governor's office and the Division of Bond Finance would make the PPP process unduly cumbersome and less effective. With too little time remaining in the 2014 Session, all interested parties decided to hit the "pause" button and work out their differences over the summer, setting the stage for a bill in 2015.

PUBLIC RECORDS EXEMPTION FOR PPPs **STATUS: FAILED**
SB 1318 - Sen. Greg Evers (R - Pensacola) **AGC POSITION: SUPPORT**
HB 1051 - Rep. Ken Roberson (R - Port Charlotte)

As a follow-up to the successful 2013 legislation that authorized PPPs for counties, cities, school boards, and regional entities, this bill would make an unsolicited proposal received by a public entity confidential and exempt from the public records laws until the public entity issues a competitive procurement, ranks all responsive proposals, and provides notice of its intended decision. An unsolicited proposal would not be confidential for more than 90 days after the public entity rejects all proposals, although this time period may be extended if the public entity decides to reinitiate the competitive procurement. If the public entity does not issue a competitive solicitation for a qualifying project, the unsolicited proposal would cease to be exempt 180 days after receipt.

The bill states that portions of public meetings of a public entity at which information related to an unsolicited proposal is discussed are confidential and exempt from the public meetings laws. The bill requires exempt portions of meetings to be recorded and transcribed, with the recording and transcript to be released on a schedule paralleling the one described for the public records exemption.

UPDATE: While SB 1318 passed the Senate on April 29, the House failed to take up the bill in the closing days of the session and it ultimately did not pass. The bill will likely return in 2015.

CONSTRUCTION "TRUST" FUNDS **STATUS: FAILED**
Possible Amendment **AGC POSITION: OPPOSE**

Earlier this year, the material suppliers approached AGC on the issue of bankruptcy preference claims. Several subcontractors and suppliers have apparently had bad experiences with overly aggressive bankruptcy trustees who try to "claw back" construction funds when an

owner (or contractor) has filed for bankruptcy. Reportedly, any funds received during the 90 days preceding the bankruptcy filing are vulnerable.

The material suppliers have cited to a recently enacted Texas statute providing that funds received for real property improvements are deemed held in trust for the purpose of paying those who supplied labor, services, and materials to the project. By designating them as funds held in trust, a defense is created to the bankruptcy trustee's preference claim. Apparently, there are now 14 states that have some form of trust fund protection in place – 12 with statutes and 2 with case law supporting the concept. None of them require monies to be held in a separate account.

The material suppliers have sought AGC's support on the following proposed statutory amendment:

> **489.1261** All payments due, to become due, or received pursuant to a "contract" by or for the benefit of a "lienor," as those terms are defined in s. 713.01, or for the benefit of a "claimant" under s. 255.05 or s. 337.18, are funds to be held in trust for the benefit of all lienors or claimants who have furnished labor, services or materials under the contract, irrespective of whether the payments are in the possession of the contractor or another. However, nothing contained herein shall be construed as requiring the payments to be placed in a separate account.

UPDATE: After seeking feedback from AGC members, our general contractors and their attorneys reported that they typically do not run into major problems dealing with bankruptcy trustees. In the event of an owner bankruptcy, if a trustee tries to "claw back" owner funds, the trustee usually backs off once the contractor documents that the funds were legitimately earned for work performed and that the parties receiving payment have executed the necessary releases. This may entail some unwanted paperwork and effort, but it is not fundamentally different from the challenges faced by any business when a customer or client goes bankrupt.

Moreover, there are already ample opportunities for litigation within the context of a construction project, including lien claims, bond claims, breach of contract claims, equitable claims, etc. The proposed amendment appears to add to this mix by creating breach of fiduciary duty claims up and down the construction chain. This may in large part explain the fact that similar trust fund language was adopted by the Florida legislature in 1987, only to be repealed a year later.

While Texas has adopted a "construction trust fund" law, it seems to differ significantly from the proposed amendment. The Texas statute sets up the construction trust fund concept for the purpose of imposing criminal penalties, i.e., creating a special brand of theft, as opposed to altering civil liability.

Because the ramifications of the proposed amendment seemed far reaching, with many unintended and unforeseen consequences, AGC opposed this measure. AGC closely monitored all construction-related bills throughout the session to ensure that this proposal did not make it onto a piece of legislation. As a result, this measure was not enacted by the 2014 Legislature.

MANDATORY LIEN/BOND WAIVER FORMS **STATUS: FAILED**
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 closely monitored all construction-related bills throughout the session to ensure that this proposal did not make it onto a piece of legislation. As a result, this measure was not enacted by the 2014 Legislature.

ATTORNEY'S FEES ON LIEN & BOND CLAIMS **STATUS: FAILED**
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 primary opponent to this proposed change in the law, which would fundamentally alter the resolution of payment disputes to the detriment of general contractors. AGC closely monitored all construction-related bills throughout the session to ensure that this proposal did not make it onto a piece of legislation. As a result, this measure was not enacted by the 2014 Legislature.

FLORIDA-BASED BUSINESS PREFERENCE **STATUS: FAILED**
HB 1281 - Rep. Erik Fresen (R - Miami) **AGC POSITION: OPPOSE**

Continuing an effort he began in the 2013 Session, Rep. Fresen's bill appears to be aimed at businesses based in foreign countries that are allegedly submitting below-cost bids on public construction projects in South Florida. For public construction work, his 2014 bill would provide a bid preference for Florida-based businesses in situations where the low bidder is an out-of-state business and the bid of a Florida-based business is within 10 percent of the low bid. In this circumstance, the out-of-state bidder and the Florida-based bidder would be given the opportunity to submit a "best and final bid," with the Florida-based bidder getting the contract in the event of a tie.

To qualify as a Florida-based business, at least 60 percent of the company's employees must be Florida residents at the time of contract award, its principal place of business must have

been located in Florida during the previous year, and the majority of the company's employees and principals must be located in that Florida office.

The bill applies the same essential preference mechanism and qualifications with respect to the public procurement of most goods and services.

UPDATE: As in 2013, AGC opposed this bill due to its mandated preference and its unworkable criteria for qualification as a "Florida-based business." The bill had no companion legislation in the Senate. The House never advanced the bill through legislative committees, and this legislation ultimately did not pass.

BAN ON LOCAL WAGE PROTECTION ORDINANCES **STATUS: FAILED**
SB 926 - Sen. Wilton Simpson (R - New Port Richey) **AGC POSITION: SUPPORT**
HB 957 - Rep. Neil Combee (R - Auburndale)

A few years ago, Miami-Dade County passed a local ordinance to regulate "wage theft"--the underpayment or nonpayment of wages earned. The ordinance sets up a local quasi-judicial process through which wage theft claims can be reported and processed. Backed by unions, the ordinance primarily targets industries that have a significant number of minimum wage, low-wage, or day labor workers, such as agriculture, restaurant/lodging, construction, and retail. A similar ordinance was later adopted in Broward County and Alachua County. Palm Beach County also considered this approach, but ultimately instituted a more informal process involving the referral of wage theft claims to local legal aid organizations.

Of course, numerous federal and state laws already address issues of wage protection and the unfair treatment of workers. Layering on top of this established legal framework a series of inconsistent local regulations and processes that vary from one city or county to the next will impose unnecessary additional burdens and expenses on Florida employers.

As in past years, bills were filed in the 2014 Session to preempt local governments from passing these kinds of prescriptive wage protection ordinances. The original 2014 bills would authorize counties to adopt a process similar to the one instituted in Palm Beach County, in which wage theft claims are referred to local legal aid organizations. Such organizations would be charged with seeking a more rapid and informal resolution of claims before any legal actions are filed. This approach differs from the one pursued in 2013, in which preemption was coupled with the creation of a statewide system for addressing wage theft complaints via the county courts. Similar to last year, the 2014 bills would "grandfather" and keep in place the local wage theft ordinances already adopted in Miami-Dade County, Broward County, and Alachua County.

UPDATE: In 2013, this bill passed the House but got caught up in tensions between the two chambers over eventual passage of another bill that prohibited local governments from imposing employee benefit requirements. This year, HB 957 proceeded through one committee on a vote of 7-4. There was considerable public testimony against the bill, the defeat of which was a top priority of labor unions and worker advocates. HB 957 did not advance any further in the House, because Rep. Eddy Gonzalez (R - Hialeah Gardens), the chair of the bill's next committee, decided not to schedule it for a hearing. Rep. Gonzalez is widely expected to run for local office in Miami-Dade County in the fall, and Miami-Dade County publicly opposed the legislation.

On the other side of the Capitol, SB 926 made it through all of its committees, although it passed its final committee by the narrowest of margins (8-7). The substance of the bill was significantly amended several times. In an early committee, the bill was amended to give counties the option of adopting a Palm Beach-style/legal aid ordinance or a Miami-Dade-style/quasi-judicial ordinance -- a change which was supported by labor unions and worker advocates. In its last committee, the bill was amended to remove this option and largely revert back to proposed 2013 legislation that would create a statewide system for addressing wage theft complaints. The bill gave county courts jurisdiction over wage theft claims, required pre-suit notice to employers, and allowed aggrieved workers to recover twice the compensation owed. The bill would "grandfather" and keep in place the local wage theft ordinances already adopted in Miami-Dade County, Broward County, and Alachua County, while preempting any new ordinances elsewhere.

Since HB 957 never made it out of its House committees, the Senate chose not to bring SB 926 up for a vote in the closing days of the session. As a result, the bill did not pass the 2014 Legislature.

BAN ON LOCAL BID PREFERENCES **STATUS: FAILED**
SB 612 - Sen. Alan Hays (R - Umatilla) **AGC POSITION: SUPPORT**
HB 801 - Rep. Heather Fitzenhagen (R - Ft. Myers)

This bill would prohibit any local ordinance or regulation that grants a preference to a "local" bidder based upon the bidder maintaining a business office or principal place of business in the local jurisdiction, the bidder hiring personnel or subcontractors from within the jurisdiction, or the bidder paying local taxes, assessments, or duties. This prohibition would apply to any local public construction project for which payment is to be made in whole or in part from funds appropriated by the state.

In addition, the bill would require each state agency, university, college, school district, or other political subdivision of the state procuring construction services to award a bid preference to Florida-based businesses. If the low bidder on a Florida project is from a state that awards its own in-state preference, then the same degree of preference would be awarded to the Florida-based bidders. If the low bidder is from a state that does not award its own in-state preference, then Florida-based bidders would receive a 5% preference. This preference already exists in state law for the procurement of commodities, but the bill would expressly extend it to the procurement of construction services.

UPDATE: Similar preemption legislation has been advanced for several years now, and AGC has always actively supported it. Our past experience, however, has been that legislators often oppose local bid preferences in the abstract but quickly change their position once they understand that: (a) one or more local governments in their legislative district have a local bid preference; and (b) the local contractors in their district support the bid preference.

This year, local governments continued their vocal opposition to the legislation. Nonetheless, SB 612 advanced through three of its four committees. As anticipated, the bill was amended to prohibit local bid preferences only when state funds comprise 51% or more of the total project cost. The general bid preference for Florida-based businesses was also removed.

HB 801 passed through only one of its three committees. The bill did not advance further because Rep. Eddy Gonzalez (R - Hialeah Gardens), the chair of the bill's second committee, chose not schedule it for a hearing. Rep. Gonzalez is widely expected to run for local office in Miami-Dade County in the fall, and Miami-Dade County publicly opposed this legislation.

As a result, neither bill received a vote on the Senate or House floor.

EXTENSION OF BUILDING & DEVELOPMENT PERMITS **STATUS: PASSED**
SB 1624 - Senate Commerce & Tourism Committee **AGC POSITION: SUPPORT**
HB 7023 - **House Economic Development & Tourism Subcommittee**

This bill relates to economic development and contains provisions assisting small businesses, small cities, and rural areas, as well as modifying several programs administered by the Department of Economic Opportunity to assist employers, improve accountability, and conform to federal requirements.

A provision that would have temporarily required local governments to take affirmative action in order to apply transportation concurrency, impact fees, and transportation mitigation fees on commercial developments of 6,000 square feet or less or on new business developments employing 12 people or less was ultimately removed from the bill.

Another provision was added, however, to extend for an additional two years any building permit, local development order, DEP permit, or water management district permit due to expire from January 1, 2014, through January 1, 2016, if the holder notifies the issuing agency in writing by December 31, 2014. When coupled with extensions granted by law over the past few years, the total extension can be for no more than four years.

UPDATE: This bill moved from the House to the Senate and back to the House in the closing days of the session. HB 7023 ultimately passed both chambers on the final day of the session. The bill will go to the Governor for his action in the coming days.

ELECTRICAL JOURNEYMAN REQ'TS **STATUS: FAILED**
SB 154 - Sen. Darren Soto (D - Kissimmee) **AGC POSITION: OPPOSE**
HB 705 - Rep. Vic Torres (D - Orlando)

Current law allows a county or city to adopt an ordinance requiring one electrical journeyman to be present on an industrial or commercial new construction site of 50,000 gross square feet or more when electrical work in excess of 77 volts is being performed.

The bill would change this provision to allow a county or city to require one electrical journeyman to be present on any industrial or commercial new construction site of 5,000 gross square feet or more when electrical work in excess of 98 volts is being performed.

UPDATE: AGC has determined that it must oppose this change in law. The decision on how any particular job should be staffed should be left to the electrical contractor and should not be further dictated by an individual county or city. The bill was never heard in any legislative committee, and this legislation ultimately did not pass.

CONSTRUCTION LIENS **STATUS: FAILED**
SB 460 - Sen. Wilton Simpson (R - New Port Richey) **AGC POSITION: OPPOSE**

Apparently arising from a constituent's problems with a contractor performing some home repairs, this bill:

- Increases the charge for recording a claim of lien to $50.

- Requires a lienor recording a claim of lien to furnish to the clerk of court a copy of the notice of commencement, the building permit, and an affidavit attesting that the labor or materials were furnished.

- Makes the recording of a claim of lien more than 90 days after the final furnishing of labor, services, or material an act of fraud.

UPDATE: The bill has no companion legislation in the House. The bill was never heard in any Senate committee, and this legislation ultimately did not pass.

Late in the session, there were two attempts by Rep. Greg Steube (R - Sarasota) to amend the provisions of SB 460 onto HB 593 (discussed below). The first of these amendments would have also eliminated all lien rights on owner-occupied, single-family residential properties. The second amendment would have eliminated all lien rights on such properties for subcontractors, suppliers, and laborers. Both amendments were ultimately withdrawn.

BUILDING CONSTRUCTION **STATUS: PASSED**
SB 1106 - Sen. Wilton Simpson (R - New Port Richey) **AGC POSITION: MONITOR**
HB 593 - Rep. Dane Eagle (R - Cape Coral)
HB 7147 - **House Energy & Utilities Subcommittee**

A bill is filed almost every year making changes to the laws surrounding the Florida Building Code, and this year is no exception. The bill contains the following provisions of note:

- Provides an additional method for local governments to provide notices to alleged code enforcement violators.

- Requires application to the Department of Health for an operating permit for a public swimming pool or bathing place before an application may be filed for a building permit, and provides additional requirements for obtaining an operating permit.

- Specifies inspection criteria for construction or modification of manufactured buildings or building modules.

- Authorizes the Florida Building Commission to interpret the Florida Accessibility Code for Building Construction and provides specific procedures for those interpretations.

- Revises the definition of "building energy-efficiency rating systems" to set forth qualifying criteria for such systems rather than adopting the systems established by the specific entities identified in statute.

- Allows the Florida Building Commission to grant variances from the public swimming pool provisions of the Florida Building Code.

- Clarifies that, for the purpose of inspection and record retention, site plans or building permits may be maintained at the worksite in the original form or in the form of an electronic copy, open to inspection by the building official, as required by the Florida Building Code.

- Revises education and training requirements for the Florida Building Code Compliance and Mitigation Program.

UPDATE: In the closing days of the session, the provisions of this bill were rolled into HB 7147, a bill originally containing a package of energy-related items from the Department of Agriculture and Consumer Services. After several modifications, HB 7147 passed the House and the Senate during the last two days of the session.

CONCRETE MASONRY EDUCATION **STATUS: PASSED**
SB 286 - Sen. Garrett Richter (R - Naples) **AGC POSITION: MONITOR**
HB 147 - Rep. Matt Caldwell (R - Lehigh Acres)

This bill creates the "Concrete Masonry Education Act," and establishes the Florida Concrete Masonry Council, Inc., as a nonprofit corporation operating as a direct-support organization of the Department of Economic Opportunity (DEO). The bill:

- Outlines administrative powers and duties of the Council including the power to plan, implement, and conduct educational programs related to the field of concrete masonry, particularly for individuals seeking employment.

- Provides for the appointment of a 13 member governing board.

- Allows the Council to accept grants, donations, contributions, gifts, and to collect self-imposed, voluntary assessments on concrete masonry units produced and sold by concrete masonry manufacturers in the state.

UPDATE: SB 286 passed the Senate on April 24 and the House on April 30. The bill will go to Governor Scott for his action in the coming days.

WORKERS' COMPENSATION "RETRO-RATING" **STATUS: PASSED**
SB 952 - Sen. Wilton Simpson (R - New Port Richey) **AGC POSITION: MONITOR**
HB 785 - Rep. Ben Albritton (R - Bartow)

Workers' compensation premiums are based on the employer's payroll, the type of work performed by its employees (roofers, clerical, etc., each with a classification code to which a specific premium rate applies), and the employer's loss experience (as reflected in an experience modification factor). Generally, premiums are paid up front to provide coverage for the policy period. At the end of the policy, the insurer conducts an audit to ensure that the appropriate premium has been paid. If the actual payroll is less than that initially estimated, the employer will receive a refund. If the actual payroll exceeds the initial estimation, the employer must pay an additional amount to the insurer.

Retrospective rating plans are utilized by large, sophisticated employers to decrease workers' compensation premiums. In a retro-rating plan, the insurer and employer agree that the final premium paid will be based upon losses actually incurred in the policy period. The insurer and employer negotiate on additional expenses, charges, taxes, and assessments, based upon minimum and maximum premiums. Retrospective rating has been a component of workers' compensation rating for over 50 years in Florida and nationwide.

In 1991, the National Council on Compensation Insurance (NCCI) filed the Large Risk Alternative Rating Option (LRARO) in Florida, the point of which was to provide greater flexibility in negotiation between an insurer and employer for risks with over $1,000,000 in standard premium. The Florida Department of Insurance rejected the filing, determining that the LRARO did not comply with Florida law. Currently, LRARO plans are available in the majority of the states, but Alaska, Arkansas, Florida, and Nebraska do not allow them.

The bill permits LRARO plans in Florida in situations where an employer has: (a) exposure in more than one state; (b) an estimated annual standard workers' compensation premium in Florida of at least $175,000; and (c) an estimated annual countrywide standard workers' compensation premium of at least $1 million.

UPDATE: HB 785 passed the House on April 22 and the Senate on April 25. Prior to its passage, the bill was amended to permit LRARO plans in Florida in situations where the insurer has at least $500 million in policyholder surplus and where the employer has: (a) exposure in more than one state; (b) an estimated annual standard workers' compensation premium in Florida of at least $100,000; and (c) an estimated annual countrywide standard workers' compensation premium of at least $750,000. The bill will go to the Governor for his action in the coming days.

WORKERS' COMPENSATION ADMINISTRATION **STATUS: PASSED**
SB 444 - Sen. Bill Galvano (R - Bradenton) **AGC POSITION: MONITOR**
HB 271 - Rep. Travis Cummings (R - Orange Park)

This bill contains a variety of administrative changes to the state's workers' compensation system put forward by the Department of Financial Services (DFS).

Stop-Work Orders: Currently, if an employer fails to comply with workers' compensation coverage requirements, DFS must issue a stop-work order (SWO) within 72 hours. SWOs require the employer to cease all business operations. Additionally, employers are assessed a penalty equal to 1.5 times what the employer would have paid in workers' compensation premiums for all periods of non-compliance during the preceding 3-year period or $1,000, whichever is greater. SWOs remain in effect until the employer secures appropriate coverage and the DFS issues: (a) an order releasing the SWO (for employers that have paid the assessed penalty); or (b) an order of conditional release (for employers that have agreed to pay the penalty in installments). The bill makes the following changes:

- Requires an employer to produce business records requested by DFS within 10 days instead of 5 days, with failure subjecting the employer to a SWO.

- Information related to an employer's SWO will be available on the DFS website, updated daily, and remain on the website for at least 5 years.

- Authorizes DFS to issue an order of conditional release from a SWO to an employer that has secured appropriate coverage if the employer pays $1,000 as a down payment on the assessed penalty and agrees to pay the remainder of the penalty in full or pursuant to a payment agreement schedule.

- Reduces the look-back period for failure to comply with coverage requirements from 3 to 2 years and increases the penalty multiplier from 1.5 to 2 times the amount of unpaid premiums.

- Credits the initial payment of premium made to secure coverage against the assessed penalty for employers that have not previously been issued a SWO. When coverage is obtained through an employee leasing company, the credit is based on the amount attributable to the initial workers' compensation expense. The minimum penalty of $1,000 will be assessed regardless of this credit.

Special Disability Trust Fund: The bill changes the methodology for calculating the Workers' Compensation Special Disability Trust Fund (SDTF) assessment. It requires the DFS to calculate the assessment based upon the net premiums written by carriers, the amount of premiums calculated by the DFS for self-insured employers, and the anticipated fund balance and expenses of the SDTF. DFS indicates that this change will benefit the private sector by allowing DFS to draw down the fund balance of the SDTF to pay approved reimbursement requests that are awaiting payment, without increasing the SDTF assessment rate

In addition, the bill also reduces the statutory rate cap on the SDTF from 4.52 to 2.5 percent, lowering the maximum assessment that could be applied to employers.

UPDATE: HB 271 passed the House on April 1 and the Senate on April 30. The bill will go to the Governor for his action in the coming days.

EDUCATIONAL FACILITIES FINANCING **STATUS: FAILED**
SB 628 - Sen. Bill Montford (D - Apalachicola) **AGC POSITION: MONITOR**
HB 377 - Rep. George Moraitis (R - Ft. Lauderdale)

The Higher Educational Facilities Financing Authority is a public corporation that assists eligible institutions of higher education in financing and refinancing the construction of facilities. The Authority may issue tax-exempt or taxable revenue bonds, which are privately financed and not secured by full faith and credit of the state. Financing acquired through the Authority may be used for such construction projects as dormitories, parking and student service facilities, administration and academic buildings, libraries, and loans made in anticipation of tuition revenues.

Independent nonprofit colleges or universities which are located in and chartered by the state of Florida; are accredited by the Southern Association of Colleges and Schools (SACS); grant baccalaureate degrees; and are not a state university or community college may participate in educational facilities construction financing through the Authority. This includes all 31 institutions belonging to the Independent Colleges and Universities of Florida (ICUF).

The bill adds authorization for tax-exempt K-12 private schools, located and incorporated in the state of Florida, and accredited by SACS to participate in construction financing through the Authority.

The bill also expands the types of projects that the authority may finance by adding the construction of dining halls; student unions; laboratories; research facilities; classrooms; athletic facilities; health care facilities; maintenance, storage, or utility facilities; and related facilities or structures required or useful for the instruction of students, research, or the operation of an educational institution, e.g., parking; as well as certain purchases of equipment and machinery.

UPDATE: HB 377 passed the House on April 11, but the bill was never taken up for a vote by the Senate. As a result, this measure was not enacted by the 2014 Legislature.

STATE CONTRACTING CRITERIA **STATUS: PASSED**
SB 914 - Sen. Jack Latvala (R - Clearwater) **AGC POSITION: MONITOR**
HB 953 - Rep. Kathleen Peters (R - St. Petersburg)

Current law requires agencies to utilize a competitive solicitation process for contracts for commodities or services in excess of $35,000. Depending on the cost and characteristics of the needed goods or services, agencies may utilize a variety of procurement methods, which may include a request for proposal or invitation to negotiate. The agency must consider certain criteria when evaluating the proposal or reply before selecting a vendor.

The bill requires state agencies to consider the prior relevant experience of a vendor when evaluating the responses to a request for proposal or invitation to negotiate. Currently, agencies may consider such prior relevant experience, but they are not required to do so.

UPDATE: HB 953 passed the House on April 22. On the House floor, Rep. Elaine Schwartz (D - Hollywood) filed an amendment to require the vendor on a state agency outsourcing contract to disclose the vendor's CEO compensation and executive compensation

packages, as well as to obtain agency approval of any increase in salary or benefits of a vendor employee working under the contract. The amendment was defeated. HB 953 passed the Senate on May 1, and it will go to the Governor for his action in the coming days.

HOMEOWNERS' CONSTRUCTION RECOVERY FUND **STATUS: FAILED**
SB 1098 - Sen. Charlie Dean (R - Inverness) **AGC POSITION: MONITOR**
HB 1235 - Rep. Dwight Dudley (D - St. Petersburg)

The Florida Homeowners' Construction Recovery Fund was created in 1993, after Hurricane Andrew, as a fund of last resort to compensate consumers who contracted for construction, repair or improvement of their Florida residence and who suffered monetary damages due to contractor misconduct. A claimant must be a homeowner and, currently, the damage must have been caused by a Division I contractor (general contractor, building contractor, or residential contractor). The Fund is not permitted to compensate consumers who contracted with Division II contractors or to compensate consumers who have suffered damages as a result of payments made in violation of the Florida Construction Lien Law.

Each recovery claim is limited to both a per-claim maximum amount and a total lifetime per-contractor maximum. For contracts entered into after July 1, 2004, the per-claim payment limits are $50,000 with a total lifetime aggregate of $500,000 per licensee. Claims are paid in the order that they are filed. The Fund must be repaid by the contractor in violation or have their license suspended until the repayment is made. The Fund is financed by a 1.5 percent surcharge on all building permit fees. The proceeds from the surcharge are allocated equally to the fund and to support the operations of the Building Code Administrators and Inspectors Board.

The bill revises the law to include Division II contractors within the parameters of the Fund. It revises the statutory limits on recovery payments to include Division II contracts beginning January 1, 2015, for any contract entered into after July 1, 2014. The bill limits Division II claims to $15,000 per claim with a $150,000 lifetime maximum per licensee. The bill removes the prohibition against paying consumer claims where the damages resulted from payments made in violation of the Florida Construction Lien Law for contracts entered into after July 1, 2014. The bill also revises the notice that contractors must give to homeowners detailing their rights under the Fund.

UPDATE: Neither of these bills was taken up for a vote on the floor of the House or Senate. As a result, the measure was not enacted by the 2014 Legislature.