LEGISLATIVE REPORT

2022 Regular Session of the Florida Legislature

January 21, 2022

Two weeks down in the 2022 Legislative Session, and seven to go!

With the 60-day legislative session scheduled to conclude on March 11, and with over 3,500 bills filed, legislative committees have begun the work of reviewing and amending bills as a prerequisite to their possible future consideration on the House or Senate floors. The Legislature is also moving forward with their respective plans for redrawing legislative and congressional district boundaries in advance of the 2022 election cycle.

We are currently tracking 60 high-priority bills that would impact general contractors, as well as 1116 other bills of broader interest to the construction industry. Beyond thebills AGC is actively supporting, AGC must also determine the potential impact of dozens of other bills, as well as the many amendments filed to those bills throughout the Session, and decide whether to support, oppose, or amend the bills further.

Over the last few weeks, AGC has been pursuing the interests of Florida's general contractors on the following major bills and issues that have begun working their way through the legislative process.

Construction Liens and Bonds STATUS: PENDINGSB
1272 (Bradley)/HB 345 (Overdorf) AGC POSITION: OPPOSE/AMEND

This bill, which began as legislation filed at the request of the material suppliers back in 2020, now contains a wide variety of construction lien and bond issues, including a number of non-controversial changes coming from the Construction Law Committee of the Florida Bar's Real Property, Probate, and Trust Law Section.

AGC has worked hard to include some positive provisions for general contractors in the bill, e.g., making clear that construction management and project management services provided by a general contractor or building contractor are lienable under Chapter 713, thus resolving an issue that some general contractors have had to litigate.The bill also contains a clearer notice of termination process, requiring the owner to pay each person who has properly served a notice to owner prior to recording a notice

of termination and to provide a copy to anyone who properly serves a notice to owner after the recording of the notice of termination.

In 2021, despite extraordinary efforts all session long, we reached an impasse with the material suppliers on their goal of mandating use of a statutory lien/bond waiver form, with no opportunity for negotiation among the parties on the terms of that form. Sincewe could not come to agreement on a mutually acceptable amendment, AGC had no choice but to oppose the bill, and the bill did not pass.

This leads us into the 2022 Session, in which the material suppliers have abandoned their efforts to mandate a prescribed lien/bond waiver form but have instead brought forward a whole host of new issues in the current bill, many of which would be harmfulto general contractors. As in years past, AGC is working closely with all of the interested parties to successfully fend off or amend these bad provisions, some of whichare detailed below:

- Repeal of the Conditional Payment Bond Law – The bill would repeal the Floridalaw authorizing and regulating conditional payment bonds. These bonds offer security to subs and suppliers for all payments due to them that were actually disbursed by the owner. If the owner fails to pay, affected subs and suppliers have lien rights against the owner's property. These bonds are significantly cheaper and can serve a useful purpose in getting some projects built. AGC's position is that these bonds should **not** be removed as an option.

- Allowing Earlier Service of Notices of Non-Payment – The bill would repeal an existing statute that requires a sub on a public construction project to wait 45 days from first working on a job site before serving a "notice of nonpayment," thus allowing a reasonable time for a payment cycle to conclude. Instead, the bill would allow the notice to be served on the first day that a sub works on a jobsite -- before the sub has even billed for the work! This will lead to unnecessary paperwork for all concerned, delays in payment, and confusion for owners. The notice would no longer serve its statutory purpose -– to alert the contractor thatan actual payment problem exists somewhere downstream on the job.

- Extending Deadlines for "Specially Fabricated Materials" – The bill contains a new provision significantly expanding the deadlines for serving notice of nonpayment and filing claims involving "specially fabricated materials" that were not delivered to the job site. This new provision is unworkable for a number of reasons, including: (a) the undefined term "specially fabricated materials" will create significant disputes and litigation, with suppliers who have otherwise

missed their deadlines seeking to extend them by arguing that they are supplying "specially fabricated materials;" (b) the lengthy 9-month time frames create the potential for delayed filing of liens and bond claims, long after a project has been closed out and everyone else on the job has been paid; (c) under many construction contracts, the owner is not required to pay for materials that were not delivered to the project site; and (d) most of the dates from which the new 9-month deadlines run can be manipulated by the supplier to extend the period for filing liens and bond claims, creating disputes and litigation.

- Attorney Fees - AGC has thus far fought off efforts to change the statute that awards attorney fees to the "prevailing party" in lien and bond claims. Our opponents wanted to replace current law with a "net judgment rule," which would award attorney fees to a supplier or subcontractor if they recovered any amount at all on their lien or bond claim, even $1. AGC is also combatting attempts to reverse recent case law and require a judge to designate a prevailing party and award attorney fees in every case, removing the judge's discretion to determine that neither party in a case truly "prevailed" and each party should bear their own attorney fees.

STATUS: To date, the bill has not been scheduled for a hearing in any committee due to the serious concerns raised by AGC and others. The material suppliers, however, are trying hard to get the bill moving and difficult and lengthy negotiations among the interested parties and bill sponsors are continuing.

Construction Litigation Reform STATUS: PENDING SB
736 (Hutson) & HB 583 (Yarborough) AGC POSITION: SUPPORT

Construction defect claims have become a cottage industry for plaintiffs' lawyers, who entice owners with the promise of large cash recoveries and encourage them to reject reasonable offers of repair. When a recovery is obtained, whether through litigation or settlement, many owners accept those funds but never make the repairs they claimed were necessary. As a result, unsafe conditions may be allowed to persist, and unsuspecting buyers may wind up buying a house or building with unresolved problems. Plus, this situation is making liability insurance for contractors harder and harder to find and premiums are increasing rapidly every year.

This bill combined a number of construction litigation reform proposals that AGC has worked on over the last two years with other construction industry stakeholders, which include the following:

- Requiring the owner to explain its rejection of a pre-suit repair offer and allowingthe contractor to respond with a supplemental offer.

- Barring an owner who rejects a pre-suit repair offer from recovering attorney fees from the contractor at trial unless the owner proves that additional repairs were needed beyond those offered.

- Requiring an owner accepting a settlement offer to enter into a contract to make the necessary repairs within 90 days and to have the repairs completed within one year, with progress payments made directly by the insurer or contractor to the new contractor hired by the owner.

- Providing for a court-appointed expert to evaluate the alleged construction defect and submit a report to the court regarding the extent of the damages, the most likely causes, and the necessary repairs.

- Making an owner who receives a settlement and fails to make the necessary repairs liable for any non-disclosure to a subsequent purchaser.

- Exploring a reduction in the state's current ten-year statute of repose (SB 736), which sets the outer boundary on contractor liability.

STATUS: This bill is shaping up as one that may come down to last-minute bargaining between the Senate and the House. On the Senate side, SB 736 opened with the provisions outlined above plus a repeal of the statute of repose, which would require all construction defect claims to be brought within four years of the latest of the various statutory triggers: actual possession by the owner, issuance of a certificate of occupancy, abandonment of construction, or contract completion or termination.

In its second committee stop, an amendment was put forward to establish a tiered repose period based upon the nature of the construction, which would begin with the earliest of the statutory triggers:

- 5 years - Detached single-family home or standalone building structure intended for use by a single business, occupant or owner, not exceeding three stories in height and related improvements.

- 7 years - Single-family dwelling unit not exceeding three stories in height which is constructed in a series or group of attached units, or a commercial or

nonresidential building not exceeding three stories in height, and related improvements.

- 12 years - Commercial or residential buildings or structures of 4 or more storiesin height and related improvements.

- 10 years – Everything else.

Alarmed by the extension of the repose period on high-rise buildings from the current10 years up to 12 years, AGC immediately contacted the bill sponsor and explained the unavailability of insurance coverage for contractors beyond Year 10. This was the very reason AGC was successful in amending Florida's 15-year repose period down to the current 10 years in 2006. The bill sponsor modified his amendment to take high-rise buildings back to a 10-year repose period, which was adopted.

On the House side, there currently seems to be little appetite for reducing the repose period for construction defects. In fact, this component was absent from the bill as originally filed. In an apparent move to put HB 583 in a posture for future bargainingwith the Senate, HB 583 was amended on January 19 to remove all of the bill's substantive provisions, as outlined in the bullets above, and replace it with a total repealof Chapter 558.

Barring Local Government Wage Mandates STATUS: PENDINGSB 1124 (Gruters)/HB 943 (Harding) AGC POSITION: SUPPORT/AMEND

Current law prohibits a local government from requiring any employer to provide minimum wages or employment benefits not otherwise required by state or federal law, providing uniformity throughout the state. "Employment benefits" means anything of value that an employee may receive from an employer in addition to wages and salary, including health benefits, holidays or sick leave, vacation, and retirement or profit-sharing benefits.

There are several specific exemptions to this state preemption, however, including a local government's continued ability to establish minimum wages and benefits for its own employees and its contractors. An exemption is also provided when necessary to allow for receipt of federal funds.

The aim of the bill is to remove the exemption that currently allows a local government to impose minimum wage requirements on the local government's contractors.

Unfortunately, rather than just repealing the exemption, the bill replaces the entire statute with a minimum wage preemption, and, in so doing, would repeal the current preemption on local governments mandating "employment benefits." AGC will workwith the bill sponsors to correct this major oversight.

STATUS: SB 1124 will be heard in its first committee on January 25. HB 943 has not yet been scheduled for a committee hearing.

Building Plan Changes STATUS: PENDING SB 1020 (Perry)/HB 635 (Maggard) AGC POSITION: SUPPORT

If a local building official or plans examiner finds that building plans do not comply with the Building Code, the local building official or inspector must identify the specific plan features that do not comply with the Building Code, identify the specific chapters and sections upon which the finding is based, and provide this information to the local enforcing agency. The local enforcing agency must provide this information to the permit applicant.

HB 635 would:

- Require local governments that make substantive changes to building plans to notify the permitholder of the specific reasons for changes.

- Prohibit local governments from making substantive changes to plans after a permit has been issued unless the changes are required for compliance with the Building Code or the Fire Prevention Code.

- Require a building official or inspector who requests another person to review building plans to notify the local government if such person determines the plansdo not comply with the Building Code.

- Require a local fire official to notify the permit applicant if building plans do not comply with the Fire Prevention Code and give specific reasons why the plans are not in compliance.

- Allow a plans reviewer, inspector, building official, or fire safety inspector to be disciplined for failure to notify the appropriate person of the reasons for making substantive changes to building plans.

- With respect to demolition of single-family buildings in certain flood zones:

    - Bar local governments from prohibiting or restricting private propertyowners from demolishing such buildings.
    - Limit the review process for these demolition permit applications and provide that they may not be subject to additional local regulations or public hearings.
    - Prohibit local governments from requiring additional building requirementsfor new homes built on the site of such demolished single-family buildings.

STATUS: HB 635 has moved successfully through the first of its three committees, but SB 1020 has not yet been heard in any committee.

Building Inspection Services STATUS: PENDING SB 644 (Brodeur)/HB 423 (LaMarca) AGC POSITION: SUPPORT

Building officials, inspectors, and plans examiners are regulated by the Building Code Administrators and Inspectors Board (BCAIB) housed within the Department of Business and Professional Regulation (DBPR).

Current law also allows property owners and contractors to hire licensed engineers, architects, and building code officials, referred to as private providers, to review plans, perform inspections, and prepare certificates of completion.

In addition to a number of changes designed to ease the licensing process for building officials, building inspectors, and plans reviewers, the bill would do the following with respect to private providers:

- If a person uses a private provider, the local government must provide equal access to all permitting and inspection documents and reports to the private provider, the owner, and the contractor.

- Defines the “reasonable administrative fee” that a local government may charge when an owner or contractor uses a private provider, which expressly must be based on the associated costs that are actually incurred by the local government.

- Provides that if a notice of deficiency is not issued within two business days of receiving a request for a certificate of occupancy from a private provider:

    - A certificate is “automatically” granted, instead of “deemed” granted;

- The building permit is closed; and
- Local building officials must provide the permit applicant with a written certificate of occupancy within 10 days.

STATUS: HB 423 has moved successfully through the first of its three committees, but SB 644 has not yet been heard in any committee.

Emergency Aid - Independent Contractor Status STATUS: PENDING SB 542 (Rodriguez, A.)/HB 411 (Melo) AGC POSITION: SUPPORT

When a business engages an individual to perform work, it is important that the personbe correctly classified as either an independent contractor or an employee because tax and labor laws apply differently to each classification. An employee may have a civil cause of action against his or her employer for claims related to workers' compensation, retaliatory personnel actions, wages and benefits, and labor pool violations. In each instance, the employee must prove the existence of an employee-employer relationship before the employer can be held liable.

This bill arises from the COVID-19 pandemic and actions that businesses took to assist those that worked for them in an independent contractor role. The bill specifies that an engaged individual may not use the following actions of a business as evidence against the business in any of the above-specified civil causes of action if the business takes such actions during a public health emergency or other declared state of emergency:

- Providing financial assistance to previously engaged individuals who are unable to work because of health and safety concerns.

- Directly providing benefits related to an engaged individual's health and safety, including medical or cleaning supplies, personal protective equipment, health checks, or medical testing.

- Providing training or information related to an engaged individual's health and safety.

- Taking any action, including action required or suggested by any federal, state, or local law, ordinance, order, or directive intended to protect public health and safety.

Thus, the bill keeps any of the aforementioned actions from being considered as evidence that there is an employer-employee relationship between a business and a plaintiff in specified civil actions.

STATUS: SB 542 has moved successfully through all of its committees and may now be considered on the Senate floor. HB 411 has one committee remaining before it reaches a similar posture.

Notices of Commencement STATUS: PENDING SB 352 (Hooper)/HB 263 (Bell) AGC POSITION: MONITOR

Current law exempts from the notice of commencement requirement a direct contract valued at $2,500 or less – a value that was set in 1997, and a direct contract for the repair or replacement of an existing heating or air-conditioning system ("HVAC system") in an amount less than $7,500 – a value that was set in 2006.

The bill increases the HVAC exception limit to $12,500 (HB 263) or $15,000 (SB 352),so a notice of commencement would not be required for a direct contract for HVAC system repair or replacement for less than that amount. The exception would not applywhere an HVAC contractor is acting as a subcontractor on a larger project that includes HVAC system repair or replacement or where the project involves the installation of a new HVAC system.

Unlike the Senate bill, HB 263 also increases the "general" direct contract exemption from $2,500 to $5,000, so a notice of commencement would not be required for a direct contract of $5,000 or less.

HB 263 also requires that, upon receipt of a building permit application, the issuing authority verify that the address of the contractor provided in the corresponding noticeof commencement is consistent with the information contained in the building permit application.

STATUS: SB 352 and HB 263 moved successfully through their final committees on January 20 and are available to be heard on the Senate and House floor.

Mandatory Inspections for High-Rise Residential STATUS: PENDING SB 1702 (Bradley) AGC POSITION: MONITOR

In response to the Surfside tragedy, this bill would require the owner or condo board of a multifamily residential building greater than three stories in height to obtain a "milestone inspection" by December 31 of the year in which the building reaches 30 years of age, based on issuance of the certificate of occupancy, and every 10 years thereafter. If the building is within 3 miles of the coastline, the milestone inspection must be performed by December 31 of the year in which the building reaches 20 years of age and every 7 years thereafter. For buildings where the certificate of occupancy was issued on or before July 1, 1992, the building's initial milestone inspection must be performed before December 31, 2024.

The referenced "milestone inspection" is a two-phase structural inspection of the building by a licensed architect or engineer for the purposes of attesting to the life safety and adequacy of the structural components of the building and the general structural condition of the building as it affects safety. The purpose of this inspection is not to determine if the buildings current condition complies with the Florida Building Code. Phase one of the inspection is a simple visual examination of the building for signs of structural distress, e.g., cracks, distortion, sagging, excessive deflections, significant misalignment, signs of leakage, or peeling of finishes. A more extensive phase two inspection, which may involve testing, is required only if signs of distress are found in the phase one inspection.

The Florida Building Commission is charged with developing comprehensive structural and life safety standards for maintaining and inspecting all building types and structures in this state by December 31, 2022. The standards are in addition to those provided in this section and must be made available for local governments to adopt at their discretion.

STATUS: SB 1702 will be heard in its first committee on January 25. No companion House bill has yet emerged, but a House committee bill is still an option.

Use of U.S. Iron & Steel in Public Projects STATUS: PENDING SB 1336 (Boyd)/HB 619 (Rodriguez, A.) AGC POSITION: MONITOR

The bill requires a governmental entity contracting for a public works project or for the purchase of materials for such a project to include a requirement that any iron or steel product used must be produced in the United States.

The bill waives this required contract term if the governmental entity determines the following:

- Iron or steel products produced in the United States are not produced in sufficient quantities, reasonably available, or of satisfactory quality;

- The use of iron or steel products produced in the United States will increase the total cost of the project by more than 20 percent; or

- Compliance is inconsistent with public interest.

Lastly, the bill provides that it must be applied in a manner consistent with the state's obligations under any international agreement and may not be construed to impair any such obligations.

STATUS: HB 619 has moved successfully through two of its four committees, but SB 1336 has not yet been heard in any committee.

Heat Illness Prevention STATUS: PENDING SB 732 (Rodriguez, A.)/HB 887 (Chambliss) AGC POSITION: MONITOR

SB 732 creates s. 448.111, F.S., which provides responsibilities for certain employees and employers relating to heat illness prevention at work. These employers include industries where employees regularly perform work in an outdoor environment, including, but not limited to, agriculture, construction, and landscaping. Employers are required to:

- Train and inform supervisors and employees about heat illness, how to protect themselves and coworkers, how to recognize signs and symptoms of heat illness in themselves and coworkers, and appropriate first-aid measures.

- Provide preventative and first-aid measures to address signs or symptoms of heat illness.

- Ensure effective communication so that an employee may contact an employer, manager, supervisor, contractor, or emergency medical services provider if necessary.

- Provide a sufficient amount of cool or cold drinking water that is quickly and easily accessible to employees throughout the workday and remind employees to consume water.

- Ensure that each employee takes a 10-minute recovery period for every 2 hours that the employee is working in an outdoor environment under high-heat conditions.

- Provide accessible shade.

- Conduct annual training approved by the Department of Agriculture and Consumer Services (FDACS) and the Department of Health (DOH).

The bill states that these new state requirements are "supplemental to all related industry-specific standards," but the new state requirements control if they offer greater protection than the industry-specific standards.

STATUS: SB 732 moved successfully through the first of its three committees on January 20, but HB 887 has not yet been heard in any committee.

Local Ordinances – Business Impact Statement STATUS: PENDING SB 280 (Hutson)/HB 403 (Giallombardo) AGC POSITION: SUPPORT

This bill makes changes related to passing and challenging local ordinances. SB 280, which has advanced the farthest of the two bills, adds to the process for local governments passing ordinances and gives certain additional rights to those challenging local ordinances.

SB 280 bill requires counties and cities to produce a "business impact estimate" prior to passing an ordinance, with specified exceptions. The estimate must be published on the local government's website and include certain information, such as the proposed ordinance's purpose, estimated economic impact on businesses, and compliance costs.

In addition, the bill imposes certain conditions on lawsuits brought by any party to challenge the legal validity of local ordinances as preempted by state law, arbitrary, or unreasonable. In these cases, the bill:

- Requires the local government to suspend enforcement of an ordinance of such legal challenge, including appeals, under certain circumstances.

- Requires the court to give those cases in which enforcement of the ordinance is suspended priority over other pending cases and render a preliminary or final decision as expeditiously as possible.

- Provides that a court may award up to $50,000 in attorney fees to a prevailing plaintiff who successfully challenges an ordinance as arbitrary or unreasonable.

STATUS: SB 280 has moves successfully through both of its committees and is now available for consideration by the full Senate. HB 403 has moved through one of its three committees thus far.

Business Damages vs. Local Governments STATUS: PENDINGSB
620 (Hutson)/HB 569 (McClure) AGC POSITION: MONITOR

This bill creates a cause of action for an established business to recover loss of business damages from a county or municipality whose regulatory action has caused a significant impact on the business.

Currently, landowners have a cause of action under the Bert J. Harris Act to compensate them for the lost value of their land caused by certain local government actions; landowners have a cause of action for onerous local regulation in the form of exactions; and business landowners have a cause of action under eminent domain law for business damages related to a taking of real property.

Similarly, SB 620, which has advanced the farthest of the two bills, creates a cause of action for a business to sue a local government when the enactment or amendment of certain types of ordinances or charter provisions causes at least a 15 percent loss of profit on a per location basis. The business must have been in operation for at least 3 years to qualify. Compliance with a 180-day pre-suit notice and settlement period is required. A prevailing business may also be awarded costs and attorney fees.

STATUS: SB 620 has moved successfully through all of its committees and is now available for consideration by the full Senate. HB 569 has moved through one of its three committees.

Minority Subcontractor Quotas on State Projects STATUS: PENDINGSB
1530 (Jones)/HB 1385 (Woodson) AGC POSITION: OPPOSE

This bill would require state contracts for all goods and services to be awarded only to contractors who agree to use certified minority, woman-owned, or veteran-owned businesses as subcontractors or subvendors for at least 30 percent of the contract value.

STATUS: Neither of these bills has been scheduled for a committee hearing thus far.

The AGC Florida East Coast Chapter and the South Florida AGC Chapter partner to comprise and equally fund the AGC Florida Council, AGC's state legislative lobbying arm, utilizing the lobbying team of Metz, Husband, and Daughton.

Florida A.G.C. Council, Inc.
P.O. Box 10569
Tallahassee, Florida 32302