LEGISLATIVE NEWS UPDATE

2015 Regular Session of the Florida Legislature
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The Florida Legislature commenced its session this past Tuesday. To quote reporter Dara Kam from *News Service of Florida*, "Same as it ever was, the 2015 Session will commence with the pomp, circumstance and civility that's made the opening days a ho-hum but must do requisite for even the most jaded capitol insiders." Perhaps it's the five weeks of legislative committee hearings that already occurred which makes "opening day" less of a big deal. For the less jaded, however, opening day 2015 was full of promise. Governor Scott presented his State of the State speech where he discussed Florida "exceptionalism". The Governor touted the progress the state has made since he took office in 2011 – unemployment is down, as well as the state debt, and the state economy is showing a surplus. Governor Scott then discussed his tax reduction proposal which includes a reduction in the communications-services tax, a permanent end of the tax on manufacturing equipment and eliminating sales taxes on college textbooks. He also reiterated his longstanding priority of holding down higher-education costs.

With the formalities officially concluded, the legislature got down to business. Priority issues for the session include gaming, Medicaid, water and natural resources, education accountability and corrections reform. In addition to these priority issues, a budget must be passed and over 1,500 bills on other topics have been filed for legislative consideration. Same as it ever was, the next nine weeks will be hectic.

This list includes a number of bills; it does not include all pieces of legislation which touch the construction industry. We will continue to monitor additional filed legislation and amendments that impact the industry. Outlined below is a list of the major construction-related bills filed for consideration during the 2015 Session here in Tallahassee.

CONSTRUCTION DEFECT CLAIMS — **STATUS: PENDING**
SB 418 – Sen. Garrett Richter (R – Naples) — **AGC POSITION: SUPPORT**
HB 87 – Rep. Kathleen Passidomo (R – Naples)

These bills propose amendments to current law requiring a person to notify a contractor of their intent to sue regarding a construction defect. The bills require the following changes:

- The issuance of a temporary certificate of occupancy or similar authorization triggers the notice and opportunity to cure requirements.
- Requiring the notice of claim to also identify the specific location of each defect and identify any documents that serve as the basis of the claimed defect.
- Any portion of a construction defect action that includes any claim previously resolved by the payment of money or by repairs will be deemed frivolous, will be stricken, and monetary sanctions awarded.
- The terms of the contractor's insurance policy may permit an insurance claim to be made by providing a

copy of the notice to the insurer.

- Requiring a party to also exchange records and documents related to the discovery, investigation, causation, and extent of the defect and any damages resulting from the defect.
- Court-imposed monetary sanctions when a claimant provides a notice of claims for construction defects that are solely the fault of the claimant.

These bills were filed at the request of AGC and are aimed at creating a more efficient notice and cure process for the construction industry.

UPDATE: HB 87 unanimously passed the House Civil Justice Subcommittee on February 4, 2015. There are two remaining committee references. HB 87 was amended to address a technical concern to provide clarity regarding claims that have been previously been resolved. There was significant opposition from attorneys who represent condo and homeowners associations and individuals who have filed construction defect claims. Following the committee hearing, former Senate President Don Gaetz (R – Destin) expressed concern over the proposed legislation. In an attempt to address some of the concerns of the opposition and of Sen. Gaetz, it is likely that we will amend this bill at a future committee.

PUBLIC RECORDS **STATUS: PENDING**
SB 224 – Sen. Wilton Simpson (R – New Port Richey) **AGC POSITION: SUPPORT**
HB 163 – Rep. Halsey Beshears (R – Monticello)

The State Constitution and Florida Statutes require broad access to records of state and local agencies. Current law requires certain contracts with public agencies to contain provisions regarding public records, and provides for the assessment of attorney fees against an agency found in violation of the public records law. Private contractors who act on behalf of state or local agencies are required to comply with Florida's public records laws in the same manner as a public agency. These bills make changes to Florida Statutes to address many of the concerns companies have with public records requests regarding work performed pursuant to state contracts.

Under the proposed legislation, a public agency would be required to include a statement in large, boldface font informing the contractor of the name and phone number of the public agency's records custodian regarding any questions relating to the contractor's duties to provide public records relating to the contract. The contract must also state that the requirements of s. 119.0701, F.S., apply to the contractor unless the agency has determined otherwise. The bill repeals the requirement that contractors transfer public records to the agency upon termination of the contract and now requires the contract to address whether the contractor will retain the public records or transfer to the agency upon termination of the contract. Additionally, the bill requires all public records requests regarding contracts for services be made directly to the agency rather than the contractor, outlines that if the agency does not have the records they must notify the contractor and the contractor must produce the records within a reasonable time or the contractor may be subject to criminal penalties. Additionally, the bill provides that costs and attorney fees will not be assessed in a public records enforcement lawsuit relating to public contracts unless a plaintiff sends a certified letter to the responsible agency records custodian, and the contractor if the contractor is a named party, at least 5 business days in advance of filing suit.

UPDATE: SB 224 unanimously passed the first committee of reference, the Senate Governmental Oversight and Accountability Committee, with an amendment removing the definition of "acting on behalf of a public agency," making slight changes to the statements and terms to be included in each contract, shortening the notice requirement from 5 days to 3 days, and removing a bad faith and will refusal element from enforcement cases. SB 224 will next be heard in the Senate Judiciary Committee.

HB 163 unanimously passed the first committee of reference, the House Government Operations Subcommittee, this week. There was a strike-all amendment to adopt the changes made in the Senate bill.

AGC counsel participated in drafting the amendatory language and actively advocated advancing this legislation. We will continue to work at successfully passing these bills during the 2015 Session.

STATUTE OF REPOSE **STATUS: PENDING**

SB 1158 – Sen. Kelli Stargel (R – Lakeland) **AGC POSITION: SUPPORT**

HB 501 – Rep. Jay Fant (R – Jacksonville)

These bills reduce the statute of repose for actions founded on the design, planning, or construction of an improvement to real property from 10 years to 7 years with the time running from the latest occurrence of the specified events. 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.

This legislation is promoted by a coalition of interested parties including AGC, ABC, the Florida Home Builders Association, and others in the construction industry.

UPDATE: HB 501 passed the House Civil Justice Subcommittee by a narrow margin of 7-6 on February 17, 2015. There were many opponents of the bill at the committee hearing, including representatives from the Florida Justice Association, independent engineers, and individuals who have had negative experiences due to the statute of repose. Rep. Fant held a meeting with interested construction industry representatives, including AGC, this week asking for advice and help. It is unlikely this legislation will pass the full Legislature as it is currently written and we anticipate an amendment in the next committee of reference to increase the language to suggest a statute of repose of 8 years. AGC continues to advocate the advancement of this legislation.

BAN ON LOCAL BID PREFERENCES **STATUS: PENDING**

SB 778 - Sen. Alan Hays (R - Umatilla) **AGC POSITION: SUPPORT**

HB 113 - Rep. Keith Perry (R – Gainesville)

These bills 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 20 percent or more of the payment is to be made from funds appropriated by the state, excluding any federal aid funding.

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.

As in the past, local governments continued their vocal opposition to the legislation. Nonetheless, SB 778 advanced through its first of three committees this week. As anticipated, the bill was amended to prohibit local bid preferences only when state funds comprise 50% or more of the total project cost.

HB 113 passed through two of its four committees, with a one vote margin in the second committee of reference. The House bill was also amended to prohibit local bid preferences only when state funds comprise 50% or more of the total project cost.

PUBLIC-PRIVATE PARTNERSHIPS **STATUS: PENDING**
SB 824 - Sen. Greg Evers (R - Pensacola) **AGC POSITION: SUPPORT**
HB 63 - 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 2015 bill would authorize PPPs for state universities, and clarifies that the list of authorized entities includes special districts, school districts rather than school boards, and Florida College System institutions. 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 2015 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.

UPDATE: 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 has again partnered with the universities and other con-

struction groups to advocate passage of this bill.

HB 63, and the accompanying HB 65, unanimously passed the first committee of reference in the House in early February. At this time, both the House and Senate substantive bills await further action.

PUBLIC RECORDS EXEMPTION FOR PPPs **STATUS: PENDING**

SB 826 - Sen. Greg Evers (R - Pensacola) **AGC POSITION: SUPPORT**

HB 65 - Rep. Greg Steube (R - Sarasota)

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 HB 65 unanimously passed the first House committee on February 4, 2015, the Senate has failed to hear the companion legislation at this time.

MIAMI-DADE COUNTY LAKE BELT AREA **STATUS: PENDING**

SB 510 - Sen. Rene Garcia (R - Miami) **AGC POSITION: SUPPORT**

HB 359 - Rep. Manny Diaz, Jr. (R - Miami)

These bills make changes to the current laws addressing the Miami-Dade County Lake Belt Area (Lake Belt) and make changes to laws impacting the Lake Belt and Lake Belt Committee (Committee). The Committee, established in 1992, involves government agencies, mining interests, non-mining interests, and environmental groups. Under current law, the mining companies operating in the Lake Belt must pay a combination of fees based on the tonnage of limestone or sand extracted and sold from the area. The fees are then used to conduct wetland mitigation activities, fund seepage mitigation projects, and fund certain water treatment plant upgrades.

The bill makes revisions to the Lake Belt laws relating amendments to local zoning and subdivision regulations so that property local to the Lake Belt is compatible with limestone mining activities, mitigation fees are reduced, reallocates the mitigation fee to be used to conduct water quality to ensure protection of water resources within the Lake Belt, directs how to use other of the fees collected due to extraction and sale of Lake Belt limestone and sand, and reduces fees for extraction and sale of limestone and sand from the Lake Belt over the next 3 years.

UPDATE: The House bill, HB 359, was amended in the House Agriculture and Natural Resources Appropriations Subcommittee, and passed unanimously. The amendment was largely technical, but did require that if certain water quality standards are not met in the quarries in the Lake Belt then certain fees must be used to upgrade a water treatment plant to treat water coming from the Northwest Wellfield.

The Senate bill, SB 510, has not yet received a hearing.

PUBLIC WORKS PROJECTS **STATUS: PENDING**

SB 934 - Sen. Jeff Brandes (R – St. Petersburg) **AGC POSITION: SUPPORT**

HB 527 - Rep. Charles Van Zant (R - Palatka)

Currently, contracts for construction services over a specified, projected threshold cost must be competitively awarded. Those thresholds are $200,000 for state contracts and $300,000 for counties, municipalities, special districts, or other political subdivisions seeking to construct or improve a public building. These projects must be publicly advertised in the Florida Administrative Register and Floridians are guaranteed a minimum wage and the right to collectively bargain; however, workers are not required to participate in a labor union or organization.

These bills create an unnumbered section of law relating to public works projects and define "political subdivision," "project labor agreement," and "public works." These bills prohibit the state or political subdivision require a contractor, subcontractor, or material supplier or carrier engage in public works:

- 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.

UPDATE: HB 527 successfully passed the House Government Operations Subcommittee this week by a vote of 10 to 2. Both the House and Senate bills are scheduled for a hearing early during the second week of the 2015 Session.

RESIDENTIAL MASTER BUILDING PERMITS **STATUS: PENDING**

SB 1486 - Sen. Jeff Brandes (R – St. Petersburg) **AGC POSITION: SUPPORT**

HB 1151 - Rep. Blaise Ingoglia (R – Spring Hill)

These bills would require each local government to create a residential master building permit program for builders intending to construct identical single-family or two-family dwellings or townhomes on a repetitive basis. The legislation includes language explaining the program is intended to achieve standardization and consistency during the permitting process and to reduce the time spent by local building departments on permit applications.

The master building permit program would require all general construction plan pages, documents, and drawings, including structural calculations if required, signed and sealed by the design professional of record be submitted with a written acknowledgement by the design professional that the plans will be used for future site-specific building permit applications. These bills require the design professional to be a licensed engineer or architect.

Additionally, these bills require local building departments to approve or deny a master building permit application within 120 days after receipt of a completed application, unless the applicant agrees to an extension, and the permit will remain valid until the Florida Building Code is updated, as provided in s. 553.73, F.S.

For each site-specific building permit, a contractor would be required to submit the master building permit number and additional specified information. The legislation includes a $10,000 penalty for each dwelling or townhome that is built under the master building permit that does not conform to the permit on file with the local building department. This penalty is against a builder or design professional who willfully violates the master building permit law.

STATUS: At this time, neither bill has been heard by any committee. The Senate bill has been referred to 3 committees and the House bill has not yet received committee references.

APPLICANTS TO BE CONTRACTORS **STATUS: PENDING**

SB 1168 - Sen. Maria Sachs (R – Boca Raton) **AGC POSITION: OPPOSE**

This bill makes changes to Ch. 489, Florida Statutes. These changes relate to the ability of licensing boards to look to past criminal convictions for individuals seeking licensure. The bill prohibits the Department of Business and Professional Regulation from determining that an applicant is ineligible for certification based upon a conviction of a felony of the third degree, a misdemeanor, or a civil penalty. Currently, these can be reasons to determine an applicant ineligible; however, they cannot be the sole reason for ineligibility if they are not directly related to the field in which they are applying to be licensed and impact the board's review and consideration of an applicant's good moral character.

STATUS: This bill has been referred to 3 committees, has not received a hearing and currently has no House companion.