



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

2016 Regular Session of the Florida Legislature
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The 2016 Legislative Session concluded at 6:45pm this evening. Capital blogger Peter Schorsch captured the overall spirit of the session in his blog post from this morning:

[T] things worked out ok. Not great. Not particularly memorable. But it could have been worse. The highlight of the 2016 session has to be the budget it produced, which is expected to pass with bipartisan support.

...The final grade for the 2016 Legislative Session: B-minus, just the kind of good enough grade for everyone to enjoy the Spring Break that begins next week.

The 2016-2017 FY Budget passed with only one dissenting vote between the two chambers: 119-1 in the House and 40-0 in the Senate. The full budget reflected a spending plan of \$82.3 billion and begins July 1, 2016.

Considering the rancor from the 2015 Legislative Session, coupled with the various redistricting special sessions, the 2016 Legislative Session was a vast improvement. Legislators will head home and focus on the Presidential Primary scheduled for this Tuesday and their own political plans moving forward. They will also await Governor Scott's review of their work as the veto period moves into high gear.

Outlined below is a list of the major construction-related bills filed for consideration during the 2016 Session in Tallahassee; however, 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.

PUBLIC CORRUPTION – UPDATE
SB 582 – Sen. Don Gaetz (R – Destin)
HB 7071 – Rep. Ritch Workman (R-Melbourne)

STATUS: PASSED!
AGC POSITION: NEUTRAL

SB 582, filed on October 20, 2015, is a broadly worded bill addressing public corruption. Filed by former Senate President Don Gaetz, this legislation was brought forward on behalf of Gannett newspapers and was aimed at fighting public corruption in state government. Under this bill, government contractors would have been defined as “public servants,” in an effort to make it easier for prosecutors to charge them with crimes like bribery or bid-rigging.

HB 7071, by Rules Committee Chairman Rep. Ritch Workman, is the companion legislation to SB 582. This bill addresses public corruption; however, has been amended to include language which more accurately defines “public contractor” in the appropriate sections of law relating to bid tampering and official misconduct. This language, while new, more accurately conforms with current law relating to actions of public contractors and does not include such individuals as “public servants,” unlike SB 582.

UPDATE: SB 582 has successfully passed all three committees of reference after first failing by a vote of 1 to 4 in the first committee of reference during the first week of the 2016 Legislative Session, before being reconsidered during the second week of Session and unanimously passed. AGC worked closely with stakeholders to address concerns with the language and SB 582, now reflecting requisite changes proposed by AGC and the FTBA, will next be heard by the full Senate.

HB 7071 unanimously passed the full House January 27, 2016. Due to the hard work of AGC and interested stakeholders, HB 7071 does not unnecessarily burden, nor inappropriately define government contractors as public servants. HB 7071 was passed by the full senate, unanimously, and will next be sent to Governor Scott for action.

PUBLIC RECORDS - UPDATE

SB 390 – Sen. Wilton Simpson (R – New Port Richey)
HB 273 – Rep. Halsey Beshears (R – Monticello)

STATUS: SIGNED!
AGC POSITION: SUPPORT

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 8 business days in advance of filing suit.

UPDATE: HB 273 successfully passed the full House floor by a vote of 110 to 73 this week, was then immediately certified and sent to the Senate, and then was substituted for SB 390 on the Senate floor during second reading. HB 273 passed the full senate by a vote of 34 to 1.

This legislation was signed by Governor Scott on March 8, 2016 and was effective upon becoming law.

STATUTE OF REPOSE – UPDATE
SB 316 – Sen. Kelli Stargel (R – Lakeland)
HB 297 – Rep. Keith Perry (R – Gainesville)

STATUS: FAILED!
AGC POSITION: SUPPORT

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

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

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

These bills seek to make amendments to s. 95.11(3)(c), F.S., to better define the date of the completion of the contract. Pursuant to the bill, the completion of the contract is the last day during which the professional engineer, registered architect, or licensed contractor furnishes labor, services, or materials, excluding those furnished to correct a deficiency in previously performed work or materials supplied. In addition, this bill allows for a one year period should an action which would not have been barred under the court's definition of the completion of the contract by July 1, 2016 to extend the date of commencement to July 1, 2017.

This legislation is promoted by a coalition of interested parties including AGC, ABC, the Florida Home Builders Association, and others in the construction industry. The bill is opposed by the Florida Justice Association, condo association attorneys, and various stakeholders looking to benefit from a longer repose period.

UPDATE: HB 297 successfully passed all three committees of reference in the House and was placed on the House calendar for second reading. SB 316 never received a hearing in the Senate and the legislation was not successful this year.

PUBLIC-PRIVATE PARTNERSHIPS - UPDATE

SB 124 - Sen. Greg Evers (R - Pensacola)

HB 95 - Rep. Greg Steube (R - Sarasota)

STATUS: PASSED!

AGC POSITION: SUPPORT

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 construction groups to advocate passage of this bill. SB 124 unanimously passed the first two committees of reference, the Senate Community Affairs Committee and the Senate Governmental Oversight and Accountability Committee. SB 124 next goes to the Senate Fiscal Policy Committee, but has not received notice for a hearing at this time.

HB 95 and SB 124 have passed all committees of reference and the full House and Senate on March 8, 2016. These bills will next be sent to Governor Scott for action.

PUBLIC RECORDS EXEMPTION FOR PPPs – UPDATE

STATUS: PASSED!

SB 126 - Sen. Greg Evers (R - Pensacola)

AGC POSITION: SUPPORT

HB 97 - 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 reinstate 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: HB 97 and SB 126 have passed all committees of reference and the full House and Senate on March 8, 2016. These bills will next be sent to Governor Scott for action.

PUBLIC WORKS PROJECTS – UPDATE

STATUS: FAILED!

SB 598 - Sen. Jeff Brandes (R – St. Petersburg)
HB 181 - Rep. Charles Van Zant (R - Palatka)

AGC POSITION: SUPPORT

These bills create s. 255.0992, F.S., relating to public works projects and define “political subdivision,” “public works project,” and “public works.” These bills prohibit the state or political subdivision to require a contractor, subcontractor, or material supplier or carrier engage in public works or public works projects:

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

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

UPDATE: HB 181 successfully passed all three committees of reference and was scheduled to be heard on the House Special Order Calendar January 26, 2016, but was Temporarily Postponed (TP’d).

SB 598 received a hearing in the Senate Governmental Oversight and Accountability Committee this past week. Sen. Jack Latvala (R-Clearwater) expressed significant concerns regarding opposition to local preemptions since local government is “closer to the people.” Following debate, SB 598 was failed by a vote of 2 to 3, and was laid on the table.

SB 598 failed to pass and this legislation will not become law.

FACILITY CONSTRUCTION – UPDATE

HB 873 - Rep. Manny Diaz (R-Miami)
SB 1064- Sen. Anitere Flores (R-Miami)

STATUS: PASSED!
AGC POSITION: MONITOR

HB 873 and SB 1064 concern capital funding and discussion during the House Education Appropriations Committee, spurred by Rep. Erik Fresen (R-Miami). The bill makes major changes to district participation relating to new construction funding and discretionary capital improvement millage funding, changes the deadline for districts to certify final construction phase plans, changes composition of Special Facility Construction Committee, and modifies requirements relating to application review, enrollment projects, plan surveys and project cost overruns. There is no direct companion to the bill, but the Senate took up proposed legislation addressing similar topics but using different approaches. It is still to be determined how reforms or controls to this account.

UPDATE: Provisions included within the General Appropriations Act (GAA) make revisions to these statutes and implement some reforms included in the language of the originally filed legislation.

EDUCATIONAL FACILITIES – UPDATE

SB 442 - Sen. Anitere Flores (R - Miami)

HB 119 - Rep. Michael Bileca (R – Miami)

STATUS: PASSED!
AGC POSITION: MONITOR

These bills authorize that a school district may adopt a resolution to implement various exceptions to the State Requirements for Educational Facilities (SREF), which is adopted by the Florida Building Commission as part of the Florida Building Code. The Department of Education (DOE) reviews this and recommends updates and revisions to the SREF biennially. Under the bills, districts may adopt the following exceptions:

- Use of wood studs in interior nonload-bearing walls;
- Paved walkways, roadways, driveways, and parking areas;
- Covered walkways for relocated buildings; and
- Site lighting.

The district must conduct a cost-benefit analysis to address whether or not the exceptions will achieve cost savings, improve the efficient use of district resources, and impact the life-cycle costs and life span of the educational facility.

UPDATE: Provisions included within the General Appropriations Act (GAA) make revisions to these statutes and implement some reforms included in the language of the originally filed legislation..

As you will recall, this legislation fell short in 2015 due to the early conclusion of the 2015 Legislative Session.

WORKERS' COMPENSATION- UPDATE

SB 986 - Sen. Wilton Simpson (R-Trilby)

HB 613 - Rep. Jennifer Sullivan (R-Eustis)

STATUS: SIGNED!
AGC POSITION: MONITOR

These bills make revisions to Florida's Workers' Compensation laws. SB 986 and HB 613 were drafted and proposed by the Department of Financial Services, Division of Workers' Compensation, which provides oversight for the system. Included below are some of the changes to the current Workers' Compensation statutes:

- Removes the three day response requirement for exempted information because DFS holds that information online;
- Reduces the imputed payroll from twice the SAWW to the pre-2014 level of one and one-half times SAWW;
- ~~**Removes a 10% ownership threshold for a member of an LLC to claim an exemption from Workers' Compensation premiums;**~~

- Removes insurers and employers from filing a medical reimbursement dispute regarding disallowance or adjustment of a medical payment and permits only health care providers to do so;
- Allows a Judge of Compensation Claims to appoint an Expert Medical Advisor of their choosing, if certain statutory requirements are met;
- Deletes a requirement that exemption holders revoke their exemptions by mail since the DFS maintains an online exemption application and record review system;
- Removes the requirement that exemption applicants provide their Federal Tax Identification Number when filing an electronic application for exemption with the DFS. The Internal Revenue Service does not issue Federal Tax Identification Numbers to individuals; rather, they are issued to businesses; and
- Changes a requirement that employers provide their insurer with copies of their employee's certificate of exemption, instead the employer will notify the insurer of the exemptions. Since the DFS maintains online exemption information, the insurer can still verify the exemption without needing a copy of the certificate of exemption.

AGC and other concerned business advocacy groups publicly expressed concern to Rep. Sullivan and committee members this past week regarding the exemption of “members” of an LLC and the potential for bad actors to permit employees to be listed as a member, thus circumventing the intent of the Florida Workers’ Compensation system. Rep. Sullivan committed to remove this provision of the legislation at the next stop. AGC will continue to monitor the progress of this bill to ensure the removal or amendment to protect the status quo.

UPDATE: HB 613 and SB 986 passed the full House and Senate and were sent to Governor Scott March 3, 2016. Governor Scott signed HB 613 and this law will become effective October 1, 2016.

BUILDING CODE BILL - UPDATE

SB 704 - Sen. Travis Hutson (R – Palm Coast)

HB 535 - Rep. Dane Eagle (R – Cape Coral)

STATUS: PASSED!

AGC POSITION: SUPPORT

SB 704 and HB 535 are the two building code bills for the 2015 Legislative Session. The bills make the following changes to law:

- Require the Department of Health (DOH) to inspect public pools to determine compliance with laws, rules, and the Florida Building Code.
- Authorizes DOH to close public pools or public bathing places, imposes fines, or deny, suspend, or revoke operating permits for those pools if the code is violated.
- Requires permitted installation or replacement of a hot water heater to include a water-level detection device and specifies alarm requirements for the device.
- Removes provisions regarding the development of advanced courses related to the Florida Building Code Compliance and Mitigation Program and accreditation of courses related to the code.
- Adds Underwriters Laboratories, LLC to the list of entities authorized to produce information on which product approvals are based.

UPDATE: *HB 535 passed the full Senate and House March 9, 2016. Important for AGC members is the language relating to the Construction Industry Workforce Taskforce. This taskforce is created within the bill and outlines taskforce membership representing the construction industry to look at current workforce deficits, training concerns, and addition issues concerning the construction industry. AGC worked closely with industry representatives to develop the proposal. The taskforce will include 19 members, including a representative of AGC.*

HB 535 will next be sent to Governor Scott for action.

PREJUDGMENT INTEREST - UPDATE

SB 1086 - Sen. Rob Bradley (R-Orange Park)

HB 1005 - Rep. Carlos Trujillo (R – Miami)

STATUS: FAILED!
AGC POSITION: OPPOSE

SB 1086 and HB 1005 provide for the award of prejudgment interest relating to economic damages, including costs for litigation. SB 1086, as filed, limits the provision of prejudgment interest to specified actions relating personal injury or wrongful death; however, HB 1005 provides for prejudgment interest in any action for economic damages, medical costs, lost wages or property damage.

UPDATE: *Neither HB 1005, nor SB 1086 received much support this year, but do highlight the importance of legislative advocacy efforts and also forecast what future proposals we may see. These proposals would create additional liability for AGC member companies by creating prejudgment interest for certain actions. These proposals were not successful this year; however, it does show that there are interested parties advocating for this proposal to become law. AGC will continue to monitor these issues and will oppose any efforts creating prejudgment interest which may negatively impact our industry.*

BUILDING CODE WATER BILL - UPDATE

SB 1348 - Sen. Eleanor Sobel (D - Hollywood)

HB 51 - Rep. Kristin Jacobs (D – Fort Lauderdale)

STATUS: FAILED!
AGC POSITION: OPPOSE

These bills provide information related to amendments or modifications relating to local government water conservation practices or design criteria which are adopted into an edition of the Florida Building Code. These adopted amendments or modifications shall not expire and will be carried forward into the next edition of the Florida Building Code. This legislation is opposed by a number of entities, including AGC.

UPDATE: *Neither bill received a hearing this year and will not become law.*

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