AGC FLORIDA EAST COAST
THE CONSTRUCTION ASSOCIATION

2020 AGC State Legislative Affairs Recap

Except for adoption of the state budget for fiscal year 2020-21, the business of the 2020 Legislative Session has now come to a close. While ordinarily a cause for celebration among legislators, staff, the press, and lobbyists, the conclusion of the Session this year has been fully eclipsed by the coronavirus pandemic.

While the Session will extend into next week for a vote on the state budget, many predict that the Legislature will return to Tallahassee in the next few months in order to deal with the fallout of coronavirus on the state's economy and tax revenues.

Throughout the Session, we tracked 76 priority bills that would impact the state's general contractors, as well as 97 other bills of broader interest to the construction industry. Beyond the bills highlighted below that AGC actively supported or opposed, AGC examined the potential impact of many other bills and hundreds of amendments filed throughout the Session, deciding whether to support, oppose, or amend them further.

During the 2020 Session, AGC pursued the interests of Florida's general contractors on the following major bills and issues.

Construction Liens and Bonds STATUS: **DID NOT PASS**
SB 868 (Albritton)/HB 283 (Toledo) AGC POSITION: **SUPPORT**

This bill, initially filed at the request of material suppliers, has become a magnet for a wide variety of construction lien and bond issues, many of which have come from the Construction Law Committee of the Florida Bar's Real Property, Probate, and Trust Law Section. As outlined below, AGC has been working closely with all of the interested parties to successfully fend off or modify provisions that would be harmful to general contractors and to add provisions that would be beneficial. As such, this bill has now moved from the "Oppose" column to the "Support" column.

- The original bill contained language that would have broadly invalidated any provision in a sub's or supplier's lien or bond waiver unrelated to the specific act of waiving such a claim, e.g., added representations or warranties, indemnity agreements, etc. In effect, all parties would be required to use the "bare bones" statutory waiver form. After much discussion among our general contractor members, AGC decided to oppose this component of the bill due to its many unintended consequences and its restriction on parties' freedom to contract. Instead, AGC advocated for language that would allow the waiving party to agree by contract to use a waiver that varies from the statutory form. After AGC met with the House bill sponsor (Rep. Toledo), the bill was amended to incorporate this alternative, and the Senate sponsor (Sen. Albritton) followed suit.

- AGC pushed back hard on proposed changes to 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. There was also a concerted effort to reverse current 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 truly "prevailed" and each party should bear their own attorney fees. AGC opposed those changes and prevented them from being added to the bill.

- AGC strongly opposed efforts to include in the bill the complete repeal of the statute authorizing conditional payment bonds. AGC was successful in doing so, but a discussion about potential improvements to this statute is a project AGC will be undertaking with other stakeholders in the run-up to the 2021 Session.

- AGC also successfully backed the addition of provisions that would:

  (a) make it clear that construction management and project management services provided by a general contractor or building contractor are lienable under chapter 713;

  (b) provide that private leasehold interests on public property are lienable under chapter 713;

  (c) provide that a person may file one claim of lien for multiple contracts with the same owner; and

  (d) provide a clearer and more practical notice of termination process that requires the owner to pay each person who has properly served a notice to owner/contractor prior to the owner recording the notice of termination, and that requires the owner to provide a copy of the notice of termination to any person who properly serves a notice to owner after the recording of notice of termination.

- Finally, AGC sought to add to the bill a provision allowing the transfer of a lien to a subcontractor's existing payment bond, instead of requiring the subcontractor to procure a special-purpose lien transfer bond. Negotiations over this provision, however, revealed more practical problems than could be resolved in the time remaining for this Session, so the concept will be explored in more depth with other stakeholders as we prepare for the 2021 Session.

STATUS – HB 283 passed the House on Feb. 26 (113-0). Unfortunately, SB 868 stalled in the second of its three committees. While an attempt was made to amend this legislation onto another bill late in the Session (SB 504), this effort was unsuccessful due to procedural concerns. As a result, the legislation did not pass.

Construction Liens STATUS: **DID NOT PASS**
SB 1422 (Flores)/HB 897 (Rodriguez (Ant)) AGC POSITION: **OPPOSE**

This bill would restrict construction liens to only those parties that have a direct contract with the owner. It would also eliminate statutory payment bonds on private work.

Early in the Session, we spoke with the primary bill sponsor, Rep. Rodriguez, and this bill apparently springs from a problem experienced by some condo unit owners in his district. Ultimately, Rep. Rodriguez was persuaded that his bill would have much broader and far-reaching consequences than he first anticipated.

STATUS: Neither bill was heard in committee. Nonetheless, AGC monitored numerous bills moving through the legislative process in order to guard against the addition of any of these bad provisions via an amendment. Ultimately, the legislation did not pass. We will need to work closely with Rep. Rodriguez on his concerns in advance of the 2021 Session.

Construction Litigation Reform (Industry Bill) STATUS: **DID NOT PASS**
SB 948 (Baxley)/HB 1381 (Gregory) AGC POSITION: **SUPPORT**

This bill combines a number of construction litigation reform proposals that AGC worked on much of last year with other construction industry stakeholders, which consist of two primary components.

First, Section 553.84 creates a civil cause of action that any person damaged as a result of a building code violation may bring against a contractor. While the statute provides a "safe harbor" of sorts with respect to these lawsuits if the plans were duly approved by the local government, proper building permits were issued, and the project passed all inspections, the safe harbor is pierced if the contractor "knew or should have known that the violation existed." As such, the safe harbor is rarely useful, and abusive lawsuits for technical violations have proliferated in recent years.

The bill would revise section 553.84 as follows:

(a) limit these lawsuits to "material" building code violations, using the definition already contained elsewhere in state law and in the Florida Building Code: "a violation that exists within a completed building, structure, or facility which may reasonably result, or has resulted, in physical harm to a person or significant damage to the performance of a building or its systems;"

(b) make compliance regarding plans, permits, and inspections an absolute defense, eliminating any consideration of the contractor's actual or implied knowledge of the violation; and

(c) require the complaint to cite to and explain how specific building code provisions were allegedly violated.

Second, the bill would also makes a number of changes to the chapter 558 notice-and- cure process in an effort to make it more effective in resolving disputes over alleged construction defects, including making the notice of claim from the owner far more specific and detailed about the alleged defects.

Finally, the bill would require an owner to exhaust all warranties prior to serving a chapter 558 notice of claim on an alleged construction defect or filing a lawsuit.

STATUS – Neither bill was heard in committee. While an attempt was made to amend this legislation onto another bill late in the Session (HB 295), this effort was unsuccessful due to procedural concerns. As a result, the legislation did not pass.

Construction Litigation Reform (Insurer Bill) STATUS: **DID NOT PASS**
SB 1488 (Gruters)/HB 295 (Santiago) AGC POSITION: **OPPOSE**

On the other side of this equation, liability insurers are pushing a bill to:

(a) require mandatory non-binding arbitration in all construction defect cases;

(b) mandate the use of a special verdict form in all construction defect cases, which would require a detailed description of the nature of the defect, a monetary amount awarded against each party separately, and a further breakdown of how this amount is divided among the types of damages that would (or would not) be typically covered in a party's liability policy, i.e., repairing or replacing the party's defective work (not covered); repairing or replacing other nondefective property damaged by the party's defective work (covered); and other damages awarded against the party; and

(c) limit the insurer's duty to defend to only the scope of work of its named insured, eliminating any defense obligation for additional insureds or indemnitees.

AGC consulted with an attorney who is an expert in insurance coverage matters in construction defect litigation, who explained the practical problems with each of these proposals. On a conference call with Rep. Santiago (sponsor of HB 295) and other construction interests, AGC took the lead and relayed opposition to each of the three insurer proposals. With the kind assistance of our attorney expert, AGC subsequently participated in a lengthy conference call with Rep. Santiago, insurer representatives, and others. During this call, AGC carefully worked through the insurer's proposals and suggested possible alternatives.

STATUS – HB 295 was heard in its first committee during Week #3. At that time, the provisions requiring mandatory non-binding arbitration and limiting the insurer's duty to defend were removed from the bill. The problematic special verdict requirement remained in the bill. The bill was not heard in its two remaining committees in the House. SB 1488 was not heard in any committee. Nonetheless, AGC monitored numerous insurance-related bills moving through the legislative process in order to guard against the addition of any of these bad provisions via an amendment. Ultimately, the legislation did not pass, but the insurers involved will no doubt try again in 2021.

Employer Use of E-Verify STATUS: **PASSED**
SB 664 (Lee)/HB 1265 (Byrd) AGC POSITION: **NEUTRAL**

Continuing his focus on immigration issues from 2019, Governor DeSantis urged state legislators to pass a new law in 2020 that would require all employers to use the federal E-Verify system to validate a worker's immigration status. Of course, the potential impact of this initiative in a presidential election year is very much top of mind. The issue, however, divides many conservatives and moderates within the Republican Party, and it places the business community in the uncomfortable position of opposing a widely popular Republican governor. A few months ago, the Republican Party of Florida took a formal position backing the Governor's stance.

Like last year, AGC did not object to mandatory use of the federal E-Verify system, but AGC did oppose: (a) the harsh penalties considered in 2019, including immediate suspension of all business and professional licenses, which could seriously disrupt construction projects; and (b) the creation of a deceptive and unfair trade practice violation and a private cause of action if an employer discharges an employee while knowingly employing an unauthorized alien.

STATUS – After many significant changes in both overall approach and "the details," SB 664 passed both the House and Senate in the final week of the Session and will go to Governor DeSantis soon for his action.

Beginning January 1, 2021, SB 664 would require all private employers to verify a new hire's employment eligibility using either: (a) E-Verify; or (b) the current federal document-based verification process, in which a new hire must produce documents establishing his or her identity and eligibility to work and the employer completes a federal Form I-9. If the employer chooses the latter option, the employer must retain a copy of the documentation provided by the employee for three years.

The employer would have to provide this documentation upon request to the Florida Department of Law Enforcement, the Florida Attorney General, a state attorney, or a statewide prosecutor, but it would not be subject to random audit by the Florida Department of Economic Opportunity (DEO), which was a major point of contention late in the Session.

If an employer fails to verify a new hire's employment eligibility through one of the prescribed methods, the DEO will require that the employer provide an affidavit affirming that the employer will do so, that the employer has terminated all unauthorized aliens in this state, and that the employer will not knowingly employ an unauthorized alien in this state. Failure to provide the required affidavit within 30 days will result in the suspension of all state and local licenses authorizing the employer to conduct business in Florida until such time as the affidavit is produced. Three violations within any 36-month period will lead to the permanent revocation of those licenses.

Importantly, the provisions in the original bill creating a deceptive and unfair trade practice violation and a private cause of action for discharged employees were removed, as were earlier and more problematic versions of the license suspension provision. Further, the complaint process previously provided in the bill was removed due to its potential for abuse. This process would have allowed any person with a "good faith belief" regarding the hiring of an unauthorized alien to file a complaint against the employer with DEO.

The bill provides immunity from civil and criminal liability under state law for hiring, continuing to employ, or refusing to hire an unauthorized alien if the prescribed verification process indicates that the person's work authorization status was not that of an unauthorized alien. Somewhat inconsistently, with respect to the specific state criminal statute prohibiting employment of an unauthorized alien, compliance with the prescribed verification process also creates a rebuttable presumption that the employer did not knowingly do so.

Use of the E-Verify system is required, however, for any recipient of a state economic development incentive.

Further, use of the E-Verify system is required for all state, regional, county, local, and municipal government entities, as well as all public schools, community colleges, and state universities, and all contractors and their subcontractors providing labor, supplies, or services to those public

entities.

For contractors with public entities, each subcontractor must provide an affidavit to the contractor affirming that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The contractor must maintain a copy of each affidavit for the duration of the contract.

SB 664 requires a public entity, contractor, or subcontractor to terminate a contract with any person or entity when they have a good faith belief that the person or entity has knowingly employed an unauthorized alien. If a public employer terminates a contract with a contractor for knowingly hiring an unauthorized alien, the contractor may not be awarded a public contract for at least 1 year.

Further, a public entity with a good faith belief that a subcontractor knowingly failed to register with and use the E-Verify system must promptly notify the contractor and order the contractor to immediately terminate the subcontract.

SB 664 provides that terminations under either of these scenarios may not be considered a breach of contract, which presumably means that the terminating party's actions could not be considered a breach by the party being terminated.

A public employer, contractor, or subcontractor may file an action with a circuit or county court to challenge such a termination no later than 20 calendar days after the date on which the contract was terminated. SB 664 also provides that a contractor is liable for any additional costs incurred by a public employer resulting from a termination, for which the contractor could presumably seek contractual indemnity from the subcontractor at fault.

Retainage on Public Construction Project STATUS: **PASSED**

HB 101 (Andrade)/SB 246 (Hooper) AGC POSITION: **SUPPORT**

This bill was originally introduced in 2019, when it passed the House (106-10) but did not make it to the Senate floor.

Originally, for public construction contracts with a value of more than $200,000, the bill reduced the maximum amount of retainage: (a) from 10% to 5% until 50% completion of the work; and (b) from 5% to 2.5% after 50% completion of the work.

Now, the bill simply reduces the retainage rate to a maximum of 5% throughout the life of the project. Because the two current tiers of retainage are reduced to just one, the bill also deletes the provision that allows a contractor to direct a higher retainage rate for a particular subcontractor after 50% completion, as well as the provision that allows the contractor to request the release of half of the withheld retainage after 50% completion. The same 5% retainage rate will apply to public construction contracts valued at less than $200,000.

These changes regarding maximum retainage would not apply to state transportation projects under Chapter 337, nor would they apply to any construction contract

entered into, pending approval, or advertised by a government entity on or before October 1, 2020.

STATUS – HB 101 passed the House on Jan. 22 (118-1) and the Senate on Feb. 26 (40-0). The bill will go to the Governor for his action in the coming weeks.

Local Gov't Public Construction Work STATUS: **PASSED**

SB 504 (Perry)/HB 279 (Smith (D)) AGC POSITION: **SUPPORT**

HB 279 specifies how the estimated cost of a public building construction project must be determined when a governing board is deciding whether it is in the local government's best interest to perform the project using its own services, employees, and equipment. The bill requires the estimated project cost to account for additional costs associated with performing and completing the work, including employee compensation and benefits, the cost of equipment and maintenance, insurance costs,
and the cost of direct materials to be used in the construction of the project, including materials to be purchased by the local government. The estimated project cost must also include other direct costs, plus a factor of 20 percent for management, overhead, and other indirect costs. The bill requires local governments to consider the same costs when determining the estimated cost of road and bridge construction and reconstruction projects performed utilizing proceeds from the constitutional gas tax.

The bill requires local governments issuing bidding documents or other requests for proposals to include a listing of all other governmental entities that may have additional permits or fees generated by the project.

The bill requires a local government performing a public building construction project using its own services, employees, and equipment to create a report summarizing completed projects constructed by the local government, which must be publicly reviewed each year by the governing body. The Auditor General must review the report as part of his or her audits of local governments.

STATUS – HB 279 passed the House on March 9 (114-1) and the Senate on March 12 (36-1). The bill will go to the Governor for his action in the coming weeks.

"Continuing Contracts" for Public CM STATUS: **PASSED**

SB 506 (Perry)/HB 441 (DiCeglie) AGC POSITION: **SUPPORT**

In 1973, the Florida Legislature enacted the Consultants' Competitive Negotiation Act (CCNA), which requires state and local government agencies to procure the
"professional services" of an architect, professional engineer, landscape architect, or registered surveyor and mapper using a qualifications-based selection process. Under such a process, service providers are retained on the basis of competency, qualifications, and experience, rather than price.

The CCNA was subsequently expanded so that this same process must be used to contract with construction management entities or a program management entities.

A "continuing contract" may be procured under the CCNA whereby a firm provides

professional services to the public entity for several projects. HB 441 amends the CCNA to increase the maximum limit for contracting with a firm, construction management entity, or program management entity using a continuing contract from an estimated per-project construction cost of $2 million to $4 million. The bill also increases the maximum limit for procuring a study using a continuing contract from $200,000 per study to $500,000.

STATUS – HB 441 passed the House on Feb. 13 (117-0) and the Senate on March 11 (40-0). The bill will go to the Governor for his action in the coming weeks.

Constr. Management on University Projects STATUS: **DID NOT PASS**
SB 72 (Stargel)/HB 613 (Rodrigues (R.)) AGC POSITION: **OPPOSE**

School districts, state colleges, and state universities, just like state agencies, cities, and counties, must use the qualifications-based selection process delineated in s. 287.055 to procure design services, construction management services, and program management services. Under this process, the public entity solicits information regarding firms' qualifications, then short-lists several firms, at which point the public entity can then sequentially negotiate contract terms, including price, with the top firm. If that negotiation reaches an impasse, the public entity can them move on and negotiate with the second firm, and so on.

A late amendment in the House on an otherwise unrelated higher education bill would have allowed state universities to move away from this qualifications-based selection process, and instead allow them to consider other factors, including price, in the initial process of short-listing firms for construction management and program management services.

STATUS – It was a nail-biter that was not resolved until late on Friday evening, but, joining forces with the architects and engineers, we were successful in getting the offending provisions removed from SB 72. The bill passed the House and Senate on Friday and will go to the Governor for his action in the coming weeks.

Legislative Review of Licensing STATUS: **DID NOT PASS**
SB 1124 (Diaz)/HB 707 (Renner) AGC POSITION: **MONITOR**

A sunset review is a provision within a statute or regulation requiring the statute or regulation to expire or cease to be effective on a certain date, unless the legislature takes action to renew the statute or regulation. A sunset review allows regulations to be periodically examined to determine if they are necessary or if the need to be changed, improved, or reduced.

This bill schedules the staggered repeal of specified professional and occupational licensing statutes over a four-year period, beginning July 1, 2021, and ending July 1, 2024. The bill relates to over one-hundred professions and occupations, including all construction contractors and subcontractors licensed under chapter 489. The sunset date for all chapter 489 licensing statutes is July 1, 2024.

The bill establishes that it is the intent of the legislature to complete a systematic review of the costs and benefits of these licensing statutes prior to the date set for repeal to determine whether the statutes should be allowed to expire, be fully renewed, or be renewed with modifications.

STATUS – HB 707 passed the House on Feb. 26 (85-29), but SB 1124 did not get through all of its committees in the Senate. As a result, the legislation did not pass.

Preempting Local Licensing STATUS: **DID NOT PASS**
SB 1336 (Perry)/HB 3 (Grant (M)) AGC POSITION: **SUPPORT**

This bill, which did not make it across the finish line in 2019, expressly preempts the licensing of occupations to the state and supersedes any local government licensing of occupations. However, any licensing of occupations adopted prior to July 1, 2020, will not expire until July 1, 2022.

The bill specifically prohibits local governments from requiring a license for a person whose job scope does not substantially correspond to that of a contractor or journeyman type licensed by the Construction Industry Licensing Board, and specifically precludes local governments from requiring a license for: painting, flooring, cabinetry, interior remodeling, driveway or tennis court installation, decorative stone, tile, marble, granite, or terrazzo installation, plastering, stuccoing, caulking, canvas awning installation, and ornamental iron installation.

The bill expressly authorizes counties and municipalities to issue journeyman licenses in the plumbing, pipe fitting, mechanical and HVAC trades, as well as, the electrical and alarm system trades, which is the current practice by counties and municipalities.

STATUS – HB 3 passed the House on Feb. 20 (78-40), but SB 1336 did not get through all of its committees in the Senate. As a result, the legislation did not pass.

Local Licensing STATUS: **DID NOT PASS**
SB 890 (Perry)/HB 1161 (Plakon) AGC POSITION: **SUPPORT**

Construction contractors and certain specialty contractors are licensed and regulated by the state. However, the state gives local governments the authority to license and regulate some of these contractors and gives contractors a choice: become certified with the state and practice statewide or become registered in a local jurisdiction and only practice in that jurisdiction.

Outside of the job scopes for which a state license is available, local jurisdictions may regulate and license individuals performing other types of work within their jurisdictions. The bill allows an individual with such a local license to work throughout the state with no geographic limitation, and without obtaining any additional local licenses, taking an examination, or paying additional fees. The bill allows local governments to have disciplinary authority over licensees who are licensed in another jurisdiction.

The bill would allow local licensees, such as, cabinet makers, drywall, fence and deck installers, and rain gutter, interior remodeling, masonry, painting, paving, stuccoing, vinyl siding, and decorative tile and granite workers, to be licensed in one local jurisdiction but work anywhere in the state.

The bill requires DBPR to maintain a local licensing website to allow the public to review the licensing status of local licensees. The bill also requires a local government to transmit specified local licensing information to DBPR or to maintain its own website that DBPR may link to.

STATUS - These bills did not move successfully through all of their assigned committees in time. As a result, the legislation did not pass.

Preempting Local Gov't Employment Reg's STATUS: **DID NOT PASS**

SB 1126 (Gruters)/HB 305 (Rommel) AGC POSITION: **SUPPORT**

This bill, which stalled in the Senate in 2019, expressly prohibits a local government from requiring an employer to offer particular conditions of employment. As is the case under current law, this would not prohibit the political subdivision from requiring conditions of employment for its own employees, the employees of its contractors and subcontractors, or the employees of any entity receiving a direct tax abatement or subsidy. "Conditions of employment" include pre-employment screening, job classification, job responsibilities; hours of work; scheduling and schedule changes, wages, payment of wages, leave, paid or unpaid days off for holidays, illness, vacations, and personal necessity, and employee benefits. The bill voids any ordinance, regulation, or policy currently in existence which is now preempted.

STATUS – These bills did not move successfully through all of their assigned committees in time. As a result, the legislation did not pass.

Impact Fees STATUS: **PASSED**

SB 1066 (Gruters)/HB 637 (DiCeglie) AGC POSITION: **SUPPORT**

SB 1066 would prohibit the application of a new or increased impact fee to pending permit applications unless the result is to reduce the total impact fees or mitigation costs imposed on the applicant. The bill would authorize some local governments to impose both a contribution requirement related to public education facilities and a separately purposed education-related impact fee without any offsetting credit. The bill would also provide that impact fee credits are assignable and transferable at any time after establishment within the same impact fee zone or an adjoining zone within the same local jurisdiction.

STATUS – SB 1066 passed both the House and the Senate in the final week of the Session, and it will go to the Governor for his action in the coming weeks.

Environmental Resource Management STATUS: **PASSED**

SB 712 (Mayfield)/HB 1343 (Payne) AGC POSITION: **SUPPORT**

This bill primarily relates to water quality and responds to recommendations from the Blue-Green Algae Task Force, including measures related to septic systems, wastewater, stormwater, agriculture, and biosolids.

Notably, however, the bill also contains a provision prohibiting local governments from providing legal rights to any plant, animal, body of water, or other part of the natural environment unless otherwise specifically authorized by state law or the State Constitution. Orange County recently approved a proposed charter amendment for local voter approval in November along these very lines. This proposal, known as the "Wekiva and Econlockhatchee Rivers Bill of Rights," would provide that those rivers have the rights not to be polluted and would authorize citizens or the county to sue anyone, including corporations, for polluting them.

STATUS – SB 712 passed the Senate on March 6 (39-0) and the House on March 11 (118-0). The bill will go to the Governor for his action in the coming weeks.

Environmental Resource Permits STATUS: **PASSED**

SB 326 (Perry)/HB 73 (Overdorf) AGC POSITION: **SUPPORT**

State law allows water management districts and the Department of Environmental Protection (DEP) to require an environmental resource permit (ERP) and impose reasonable conditions to ensure certain construction activities comply with the law and will not harm water resources. Some projects can be exempted from ERP permitting if they meet specific statutory restrictions, and local governments may require an applicant get verification from DEP that an activity qualifies for an ERP exception.

The bill would prohibit local governments from requiring further verification from DEP that a particular construction activity meets an ERP exception.

STATUS – HB 73 passed the House on Jan. 22 (119-0) and the Senate on Feb. 26 (40-0). The bill will go to the Governor for his action in the coming weeks.

Apprenticeship & Preapprenticeship Programs STATUS: **DID NOT PASS**

SB 1568 (Hutson)/HB 1203 (Mariano) AGC POSITION: **SUPPORT**

SB 1568 modifies Florida's career and technical education program to improve and expand apprenticeship and preapprenticeship programs, provide supports for students in work-based learning programs, and modify funding incentives for industry certifications. Specifically, among many other provisions, the bill:

- Broadens the scope of apprenticeship and preapprenticeship programs (programs) to additional program sponsors and occupations.
- Specifies that students in a preapprenticeship program or courses with a work- based component are deemed to be employees of the state for workers' compensation purposes for medically necessary care.

STATUS – SB 1568 did not move successfully through all of its assigned committees in time, and HB 1203 was never heard on the House floor. HB 1203 did not include the provision from SB 1568 regarding state workers' comp coverage for students.
The Session concluded without passage of this legislation, nor were its more significant provisions picked up in other education bills.

Deregulation of Occupations STATUS: **PASSED**

SB 474 (Albritton)/HB 1193 (Ingoglia) AGC POSITION: **MONITOR**

Among many other provisions, this bill would require an applicant for a contractor's license to take and pass only the business and finance portion of the license exam if the applicant has a 4-year building construction degree, or another degree approved by the Construction Industry Licensing Board (CILB), and maintained a 3.0 GPA or higher.

The bill allows an applicant to also qualify for a license by endorsement if the

applicant has:

- held a valid license to practice the same type of construction contracting in another state or territory for at least 10 years before the date of application,
- complied with workers' compensation requirements, shown proof of financial health of their business organization, and submitted fingerprints, and
- made the application either when the applicant's license in another state or territory is active, or within 2 years of when such license was last active.

When making a decision to grant a license by endorsement, the CILB may evaluate an applicant's technical competence with respect to meeting the state's wind mitigation and water intrusion standards, as well as the applicant's prior disciplinary history. The licensee must complete an approved 2-hour course on the Florida Building Code, to include wind mitigation techniques.

The bill also takes the Florida Building Commission down from 27 members to 19 members, removing the at-large chair position and these seven discrete member slots: fire protection, Dep't of Financial Services, county building official, mechanical or electrical engineer, local government, public education, green building industry, and the state Office of Energy.

STATUS – HB 1193 passed both the House and the Senate in the final week of the Session. The bill will go to the Governor for his action in the coming weeks.

Enhanced Environmental Penalties STATUS: **PASSED**

SB 1450 (Gruters)/HB 1091 (Fine) AGC POSITION: **MONITOR**

This bill, which is a priority for Governor DeSantis, makes numerous changes to the penalties for violating Florida's environmental laws. The bill increases required or maximum environmental penalties in various sections of the Florida Statutes, most of which would increase by 50 percent. Additionally, the bill changes the duration that certain penalties may run, so that, until a violation is resolved by order or judgment, each day during any portion of which a violation occurs or is not remediated constitutes a separate offense.

STATUS: HB 1091 passed both the House and the Senate in the final week of the Session. The bill will go to the Governor for his action in the coming weeks.

Statewide Office of Resiliency STATUS: **DID NOT PASS**

SB 7016 (Infrastructure)/HB 1073 (Stevenson) AGC POSITION: **MONITOR**

This bill establishes the Statewide Office of Resiliency within the Executive Office of the Governor, headed by a Chief Resilience Officer, appointed by and serving at the pleasure of the Governor. Under this Office, the bill also creates a Statewide Sea- Level Rise Task Force to recommend consensus projections of anticipated sea-level rise and flooding impacts along Florida's coastline for planning horizons determined by the Task Force. The Task Force will convene no later than October 1, 2020, and submit its recommended projections to the Environmental Regulation Commission

for adoption or rejection by January 1, 2021. If adopted, these projections will serve as the state's official estimate of sea-level rise and flooding impacts along Florida's coastline for the purpose of developing future state projects, plans, and programs.

STATUS – This bill did not make sufficient progress in the House, so the legislation did not pass in 2020.

Public Construction – Sea Level Impacts STATUS: **PASSED**
SB 178 (Rodriguez (J))/HB 579 (Aloupis) AGC POSITION: **MONITOR**

Under current law, coastal construction is regulated by the Department of Environmental Protection (DEP) in order to protect beaches and dunes from construction that can jeopardize the stability of the beach-dune system, accelerate erosion, provide inadequate protection to upland structures, endanger adjacent properties, or interfere with public beach access.

The bill prohibits a governmental entity from commencing construction of a state- funded coastal structure unless the entity has conducted a sea level impact projection (SLIP) study, submitted the SLIP study to DEP, and received notification from DEP that the SLIP study was received and has been published on DEP's website. The bill requires DEP to adopt a standard by rule for conducting the SLIP study.

STATUS – SB 178 passed the Senate on March 6 (38-0) and the House on March 11 (115-0). The bill will go to the Governor for his action in the coming weeks.

Building Design STATUS: **DID NOT PASS**
SB 954 (Perry)/HB 459 (Overdorf) AGC POSITION: **MONITOR**

The bill prohibits local governments from applying land development regulations that require specific building design elements to single- and two-family dwellings, unless certain conditions are met. "Building design elements" refer to exterior color, type or style of exterior cladding, style or material of roof structures or porches, exterior nonstructural architectural ornamentation, location or architectural styling of windows or doors, and number, type, and layout of rooms.

The bill also establishes a process whereby a substantially affected person may seek a non-binding advisory opinion from the Florida Building Commission on whether a local government regulation meeting certain criteria may constitute an improper technical amendment to the Florida Building Code.

STATUS – HB 459 was ready for consideration on the House floor, but SB 954 never got heard in a committee. As a result, the legislation did not pass.

Underground Facility Safety STATUS: **PASSED**
SB 1464 (Flores)/HB 1095 (Fitzenhagen) AGC POSITION: **MONITOR**

This bill amends provisions of law relating to the Underground Facility Damage Prevention and Safety Act, which is intended to identify and locate underground facilities prior to an excavation or demolition to prevent injury to persons or property or interruption of services resulting from damages to those facilities. Specifically, the bill:

- Expands the list of entities that may issue citations for existing and new enhanced-penalty violations of ch. 556, F.S., to include the State Fire Marshal and the fire chiefs of special districts, municipalities, and counties.
- Increases the maximum civil penalty (up to $2,500 plus five percent, in addition to any other court costs) for certain violations of ch. 556, F.S., that involve an underground pipe or facility transporting hazardous materials regulated by the U.S.D.O.T. Pipeline and Hazardous Material Safety Administration (PHMSA).
- Provides a civil penalty for knowingly and willfully removing or damaging a permanent marker.
- Requires the Sunshine State One-Call of Florida, Inc., to transmit reports of incidents that involve high-priority subsurface installations (HPSI) for investigation by one of several authorities, who may issue a citation and impose a civil penalty.
- Creates an "underground facility damage prevention review panel" under the State Fire Marshal for the purpose of reviewing complaints of alleged violations of ch. 556, F.S., identifying issues or potential issues related to damage prevention and enforcement, and recommending any needed legislation.

STATUS: HB 1095 passed the House and Senate during the final week of the 2020 Session. The bill will go to the Governor for his action in the coming weeks.

Drug-free Workplaces STATUS: **DID NOT PASS**

SB 1186 (Baxley)/HB 1297 (Robinson) AGC POSITION: **MONITOR**

Currently, an employer subject to state workers' compensation laws who implements a drug-free workforce program pursuant to s. 440.102 is eligible for a premium discount of up to 5 percent. If an employee in such a program tests positive for drugs or alcohol, the employee may be terminated, and forfeits his or her eligibility for medical and indemnity benefits.

HB 1297 makes a number of changes to the drug-free workplace program, to include:

- Requiring prescreening validity tests for urine specimens;
- Amending the definition of "drug" to include substances named in state and federal law;
- Adding additional certification requirements for drug tests and specimens;
- Removing a requirement that an employee be provided a form on which to note medications, which must be taken into account in interpreting drug tests;
- Replacing a list of professions qualified to collect specimens with a requirement that such persons meet qualification standards set by specified federal agencies;
- Requiring specimens from positive tests to be preserved for one year after the confirmation test was conducted, instead of 210 days after result was mailed;
- Shortening from 180 to 60 days after notification of a positive result the period during which an employee may have a specimen retested; and
- Requiring that prescreening and drug-screening tests meet specified standards;
- Prohibiting sending urine specimens for out-of-state testing unless the drug- testing facility meets Florida standards.

STATUS – These bills did not move successfully through all of their assigned committees in time. As a result, the legislation did not pass.

Transportation STATUS: **DID NOT PASS**
SB 1172 (Albritton)/HB 395 (Andrade) AGC POSITION: **MONITOR**

Among other provisions dealing with transportation, the bill clarifies that any contractor who desires to bid on a DOT contract valued in excess of $50 million, in addition to having successfully completed two other state road projects each valued in excess of $15 million, must also first be certified by DOT as qualified.

The bill requires each application for certification to be accompanied by audited financial statements prepared in accordance with U.S. generally accepted accounting principles and auditing standards by a state-licensed CPA. The applying contractor's audited financial statements must be specifically for the applying contractor and must have been prepared within the immediately preceding 12 months. DOT may not consider any financial information relating to the applying contractor's parent entity.

If the application or the annual financial statement shows the applying contractor's financial condition more than four months before the date on which DOT receives the application, the applying contractor must also submit interim audited financial statements.

STATUS – HB 395 passed the House on March 9 (118-0), but SB 1172 was never heard in any committee. As a result, the legislation did not pass.

Fire Safety Inspectors STATUS: **DID NOT PASS**
SB 1404 (Perry)/HB 1077 (LaMarca) AGC POSITION: **MONITOR**

Among many other provisions in this bill, which deals with a number of matters that fall under the responsibilities of the CFO's office, is a provision that prohibits any person from threatening, coercing, or tricking a firesafety inspector into violating the Fire Prevention Code, rules adopted by the State Fire Marshal, or any provision of ch. 631, F.S., or from offering compensation for this purpose. The bill also prohibits a firesafety inspector from knowingly accepting an attempt to improperly influence the performance of his or her duties.

STATUS – Each bill moved successfully through its respective committees, but the bills stalled out and were not considered by their full chambers.

AGC fights for Florida's General Contractors. The AGC Florida East Coast Chapter is committed to advocating locally and in Florida's legislature on behalf of Commercial General Contractors in Palm Beach County and the Treasure Coast and beyond in the sectors of Private, Federal and Heavy construction, Highway and Transportation, and Utility Infrastructure construction. 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.

Not a member? Join the AGC Florida East Coast today! Your membership dues fuel our advocacy efforts on issues impacting your business. AGC's work in the Florida Legislature is just one of the ways we serve our community of General Contractors. If you are already a member, we thank you for your support of our efforts on your behalf.