After nine long weeks, the 2013 Regular Session of the Florida Legislature concluded on Friday, May 3, at 7:16 p.m. Of the more than 1,800 bills filed for consideration during the Session, only 286 passed both the House and Senate.

Campaign finance changes, new ethics standards for public officials, and yet another overhaul to the state's elections process were approved, as was a new law against texting and driving after five long years of effort. Teachers and state workers received pay raises in the state budget, the insurance industry held onto a 26-year-old tax break, and environmentalists got $70 million for Everglades restoration projects.

Fortune was not as kind to Internet cafes, which the Legislature moved to shut down early in the Session. The Miami Dolphins' proposal to have taxpayers help pay the cost of a $350 million renovation of Sun Life Stadium also went down in the waning hours of the Session, taking with it sales-tax subsidies for a new soccer stadium in Orlando and remodeling plans at Daytona International Speedway and the Jacksonville Jaguars stadium.

Two of Governor Rick Scott's priorities going into the 2013 Session -- giving K-12 public school teachers an across-the-board $2,500 pay increase and eliminating the sales tax on certain manufacturing equipment -- were largely achieved. Included in the state's $1 billion increase in funding for K-12 public education was $480 million for teacher salary increases, but school districts will have flexibility in deciding how raises are awarded. Manufacturers buying new equipment won't have to pay sales tax, but only for a limited period of three years, although a future lawsuit may call the validity of this tax break into question.

Despite widespread support from the business community and health-care providers, a third legislative objective of Governor Scott -- accepting federal dollars to expand Medicaid under the federal Affordable Care Act -- did not make it across the finish line. At a cost to the state of $3.5 billion, the Affordable Care Act offered $51 billion over 10 years to expand Medicaid coverage to about one million low-income Floridians earning up to 138 percent of the federal poverty line ($25,980 for a family of three). While Governor Scott and the Senate wanted to take the federal money, House Republicans led by Speaker Will Weatherford refused.

Governor Scott will soon receive the state's $74.5 billion budget for fiscal year 2013-14. The budget is filled with line-item projects located all over the state that the Governor has the power to veto. Having campaigned as a fiscal conservative determined to shrink the role of government, the Governor now faces the difficult choice of slashing many of those projects and enhancing his reputation on the right end of the political spectrum versus approving those projects and currying favor with local legislators as he begins a difficult 2014 re-election campaign.

Against this backdrop, the Legislature churned through thousands of bills filed for consideration during the 2013 Session. AGC was actively tracking 156 of these bills due to their potential impact on general contractors and the construction industry. Beyond the bills that AGC was actively supporting and trying to pass, AGC also had to determine the impact of dozens of other bills and decide to support, oppose, or amend them as warranted.

Outlined below is a list of the major construction-related bills considered during the 2013 Session here in Tallahassee and their status.

PUBLIC-PRIVATE PARTNERSHIPS **STATUS: PASSED**
SB 84 - Sen. Miguel Diaz de la Portilla (R - Miami) **AGC POSITION: SUPPORT**
HB 85 - 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 the current PPP program operated by the Florida Department of Transportation, this bill creates a PPP procurement process for use by counties, cities, school boards, and regional entities. The bill:

 Specifies the requirements for such partnerships, which include provisions that require public entities to provide notice of unsolicited proposals, conduct independent analyses of proposed partnerships, notify other affected local jurisdictions, and enter into comprehensive agreements for qualifying projects.

 Provides that public entities may approve a qualifying project if there is a 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.

 Specifically authorizes counties to use PPPs for construction, operation, ownership, and financing of transportation facilities.

 Creates a task force to recommend uniform PPP guidelines for possible future legislative adoption, including the types of factors responsible public entities should review and consider when processing PPP requests. Notably, however, government entities do not have to wait on such guidelines to begin entering into PPPs.

UPDATE: On the final day of the 2013 Session, HB 85 passed both the House and the Senate. The bill will go to the Governor for his consideration in the coming weeks. AGC has long supported this legislation as a creative means to help address Florida's infrastructure needs and to accelerate construction activity in the state.

ATTORNEY'S FEES ON LIEN & BOND CLAIMS **STATUS: FAILED**
Possible Amendment **AGC POSITION: OPPOSE**

Since 2010, material suppliers have been pushing for a change in the law that would fundamentally alter how "prevailing party" attorney's fees are awarded in suits over liens and payment bond claims. Rather than relying on long-established precedent which requires a court to look at the case as whole to determine which party "prevailed"

on the significant issues in a payment dispute, the change sought by material suppliers would have awarded attorney's fees to the supplier or subcontractor if they recovered any amount at all in the litigation, even $1.

UPDATE: AGC has been the primary construction group opposed to this change in the law. During the run-up to the 2013 Session, material suppliers advanced an even broader proposal on attorney's fees. While AGC offered a possible compromise on one of the issues raised in this proposal, the material suppliers rejected this offer as not expansive enough. AGC therefore had to monitor all construction-related bills throughout the Session, ensuring that these damaging attorney's fee provisions did not get amended onto another bill. While AGC was successful on this score in 2013, the material suppliers may raise these issues again in the future.

BACKGROUND CHECKS ON SCHOOL CONTRACTORS **STATUS: PASSED**
SB 318 - Sen. Denise Grimsley (R - Sebring) **AGC POSITION: SUPPORT**
HB 21 - Rep. Keith Perry (R - Gainesville)

Florida law requires individuals who work in, or provide services to, public schools and school districts to undergo a fingerprint-based state and federal criminal background check before being permitted access to school grounds. The background screening standards vary depending upon the individual's duties, whether or not the individual is a school district employee, and the degree of contact the individual has with students. Currently, there is no required uniform, statewide identification badge that signifies that a non-instructional contractor has satisfied background screening requirements.

This bill requires the Department of Education (DOE) to create a uniform, statewide identification badge signifying that a non-instructional contractor has satisfied the specified background screening requirements, which would be valid for 5 years. The badge must include a photograph of the contractor and be recognized by each Florida school district. School districts must issue the badge to a contractor if he or she is a U.S. resident and citizen or permanent resident alien; 18 years of age or older; and meets the specified background screening requirements. DOE would determine a uniform cost that a school district may charge for the badge, which would be borne by the recipient.

UPDATE: HB 21 passed the House on April 4 and the Senate on April 25. The bill should soon go to the Governor for his consideration. AGC has long supported this legislation. The new statewide badge would replace a patchwork of inconsistent processes currently administered by local school boards, which currently requires contractors to obtain multiple local credentials.

ENHANCEMENT TO PECO FUNDING **STATUS: PASSED**
SB 1500 - Appropriations Committee **AGC POSITION: SUPPORT**
HB 7149 - Appropriations Committee

Absent intervention by the Legislature, Florida public schools and universities faced another year without significant money from the state to renovate existing buildings or build new ones. A decision from the Florida Department of Education to build reserve funds, coupled with the federal sequestration, is expected to use up about $80 million in cash that was otherwise expected to be available for Public Education Capital Outlay ("PECO") projects, leaving virtually no funds left for the Legislature to appropriate for construction in the coming budget year.

PECO funds are generated through a 2.5 percent gross receipts tax on the sale of electricity and a 2.52 percent tax on communications services. This revenue stream, established by a 1963 amendment to the state constitution, has dried up as consumers have bought more energy-efficient appliances and moved from land-line telephones to cell phones, with all proceeds essentially bonded out. PECO revenue has shrunk from a high of $1.2 billion in the 2007-2008 fiscal year to what was expected to be about $80 million for the 2013-2014 state budget. The past two sessions lawmakers appropriated $55 million in PECO money to charter schools and none to traditional K-12 schools.

UPDATE: Ultimately, despite a series of structural proposals on student fees and on university bonding and debt advanced by the House in HB 7149, there was no systemic resolution of this issue outside of the Legislature's overall funding of public education in the state budget (SB 1500).

The budget appropriates $233 million for school construction projects and maintenance. The biggest portion, $163 million, would go towards maintenance for charter schools, colleges, and universities.

Premised upon a three percent tuition increase – an increase that Governor Scott has already expressed some concerns about, the state budget provides $151 million in new university funding on top of a $300 million repayment of money taken out last year to meet needs in otherareas of the state budget. The House and Senate also agreed to fund a number of new projects, including $7.5 million for a renewable energy institute at Florida Gulf Coast University, $5.6 million for a student support complex at Florida International University, $5 million for a College of Business building at the USF's St. Petersburg campus, $14 million for a STEM building at Gulf Coast State College, $7.25 million for site acquisition at Seminole State College, and $6.5 million for an administrative building at Palm Beach State College.

BAN ON LOCAL WORKER BENEFIT MANDATES **STATUS: PASSED**
SB 726 - Sen. David Simmons (R - Altamonte Springs) **AGC POSITION: SUPPORT**
HB 655 - Rep. Steve Precourt (R - Orlando)

In 2012, a petition drive in Orange County sought to place before local voters a proposed ordinance that would require all employers to offer prescribed leave benefits to their employees when they are sick or caring for a sick family member. Employers with 15 or more employees would be required to provide paid sick time, with employees accruing one hour of sick time for every 37 hours worked, capped at 56 hours in a calendar year. Employers with fewer than 15 employees would not have to offer paid sick time, but those employers could not retaliate against workers who take unpaid sick time. While procedural wrangling kept the proposed ordinance off the ballot in Orange County in the fall of 2012, court action has now forced the Orange County Commission to place the proposal before local voters in August 2014.

In the wake of these events, state legislators advanced different bills that would prohibit local governments from adopting ordinances requiring private employers to offer sick leave to their employees.

UPDATE: In the closing days of the Session, the House and Senate blended their differing approaches to this issue and passed HB 655. The Governor will receive the bill sometime in the next few weeks. Like current Florida law that already prohibits local governments from imposing higher minimum wage requirements on private employers, the bill would broadly prohibit local governments from mandating all kinds of employee benefits, including health and disability benefits, sick leave and vacation time, and retirement benefits. HB 655 would, however, leave in place a local government's current ability to require private vendors (and their subcontractors) to offer higher wages or more generous benefits as a condition of entering into a contract to supply goods or services to the local government. The bill also establishes a statewide task force to study the impact of prohibiting local regulation of such benefits and to make recommendations for further legislative action in this area.

FLORIDA-BASED BUSINESS PREFERENCE **STATUS: FAILED**
HB 1017 - Rep. Erik Fresen (R - Miami) **AGC POSITION: OPPOSE**

As originally filed, this bill would require the evaluation of all state procurements to determine whether a preference for Florida-based businesses is appropriate. For this purpose, a Florida-based business would be one where at least 60 percent of the owners are Florida residents, at least 60 percent of the employees are Florida residents, and the business has had an operational office in Florida for at least one year where the majority of the business' employees and principals are located. The preference would apply when the low bidder is an out-of-state business and the bid of a Florida-based business is within 10 percent of the low bid. In this circumstance, the out-of-state bidder and the

Florida-based bidder would be given the opportunity to submit a "best and final bid," with the Florida-based bidder getting the contract in the event of a tie.

Subsequently, the bill was amended to mandate application of this preference to procurements by all state agencies, universities, colleges, and school districts, and to construction procurements by all state agencies, universities, colleges, school districts, counties, and municipalities.

UPDATE: This bill surfaced from within Miami-Dade County and is reportedly aimed at businesses based in foreign countries that are allegedly submitting below-cost bids on public work. AGC was forced to oppose the bill due to its mandated preferences and its unworkable criteria for qualification as a "Florida-based business." The bill ultimately did not pass, but the issue will likely resurface in 2014.

BAN ON LOCAL WAGE PROTECTION ORDINANCES **STATUS: FAILED**
SB 1216 - Sen. Rob Bradley (R - Orange Park) **AGC POSITION: SUPPORT**
HB 1125 - Rep. Tom Goodson (R - Titusville)

A few years ago, Miami-Dade County passed a local ordinance to regulate "wage theft"-- the underpayment or nonpayment of wages earned. The ordinance sets up a local quasi-judicial process through which wage theft claims can be reported and processed. Backed by unions, the ordinance primarily targets industries that have a significant number of minimum wage, low-wage, or day labor workers, such as agriculture, restaurant/lodging, construction, and retail. A similar ordinance was recently adopted in Broward County, Palm Beach County has considered one, and Alachua County is now actively considering such a measure.
Of course, numerous federal and state laws already address issues of wage protection and the unfair treatment of workers. Layering on top of this established legal framework a series of inconsistent local regulations and processes that vary from one city or county to the next will impose unnecessary additional burdens and expenses on Florida employers.

As in past years, bills were filed in the 2013 Session to preempt local governments from passing these kinds of wage protection ordinances. The bills, however, would have created a statewide system for addressing wage theft complaints, granting exclusive jurisdiction of such claims to the county courts. The employee would be required to give pre-suit notice to the employer, verbally or in writing, identifying the amount owed and the relevant work dates and hours. The employer would then have seven days to resolve the matter before the employee could bring a suit in county court, which must be filed within one year of the work in question. The aggrieved worker could recover up to twice the compensation due, but the worker may not recover attorney's fees. Local governments would be prohibited from adopting any quasi-judicial processes for resolving wage theft claims, but they could adopt programs to help workers pursue their claims in county court.

UPDATE: In order to move the bills through legislative committees, both bills were amended so as to preserve the local wage theft ordinances already in place in Miami-Dade County and Broward County. The bill, however, got caught up in tensions between the Senate and House that developed in the closing days of the Session over HB 655 (discussed above), which prohibits local governments from imposing employee benefit requirements. In light of the difficulties encountered in ultimately passing HB 655, as well as the considerable public testimony against SB 1216 and HB 1125 in committees, the Senate's appetite for passing this additional employment-related reform diminished.

While HB 1125 did pass the House, the bill was never called up for a vote on the Senate floor.

WRAP-UP INSURANCE / WORKERS' COMP **STATUS: PASSED**
SB 810 - Sen. David Simmons (R - Altamonte Springs) **AGC POSITION: SUPPORT**
HB 343 - Rep. Bill Hager (R - Boca Raton)

"Wrap-up" insurance is a series of insurance policies purchased by one party (either the project owner or general contractor) to cover itself and all of its subordinate contractors and subcontractors for operations at a specific

construction site, instead of the more traditional situation in which each party purchases its own coverage. Whether in the form of an OCIP (owner-controlled insurance program) or CCIP (contractor-controlled insurance program), such insurance typically includes workers' compensation and general liability coverage.

Stand-alone workers' compensation policies with large deductibles (a deductible of $100,000 or more per claim) are currently available and regulated by the Office of Insurance Regulation (OIR) under Rule 69O-189.006. The rule, however, restricts large-deductible policies only to larger employers with a workers' compensation standard premium of at least $500,000. This requirement puts large-deductible workers' compensation coverage within wrap-up insurance out of reach, because each covered employer on the construction project would have to be large enough to meet the $500,000 standard premium requirement.

Using the same essential requirements included in Rule 69O-189.006 with regard to individual large-deductible workers' compensation policies, the bill authorizes a wrap-up insurance policy to include a deductible of $100,000 or more for workers' compensation claims if all of the following prerequisites are met:

- The workers' compensation minimum standard premium calculated on the combined payrolls for all entities covered by the wrap-up policy exceeds $500,000;

- The estimated cost of construction at each specified worksite is at least $25 million;

- The insurer pays the first dollar of a workers' compensation claim without a deductible;

- The reimbursement of the deductible by the insured does not affect the insurer's obligation to pay claims;

- The insurer complies with all workers' compensation filing requirements under ch. 440, F.S., for losses, including those below the deductible limit;

- The insurer files unit statistical reports with the National Council on Compensation Insurance (NCCI) which show all losses, including those below the deductible limit;
- Any unit statistical reports needed to calculate an experience modification factor for the insured are filed with the NCCI; and

- The insurer establishes a program for having the first-named insured, whether the owner, the general contractor, or a combination thereof, reimburse the insurer for losses paid within the deductible.

UPDATE: SB 810 passed the Senate and the House during the last two days in April. The bill will go to the Governor for his consideration in the next few weeks.

PUBLIC PROCUREMENT OF DESIGN &"CM" SERVICES **STATUS: FAILED**
SB 1002 - Sen. Darren Soto (D - Kissimmee) **AGC POSITION: OPPOSE**
HB 739 - Rep. Larry Metz (R - Groveland)

The "Consultants' Competitive Negotiation Act" (s. 287.055) allows public entities to procure services within the practices of architecture, engineering, landscape architecture, and surveying and mapping, as well as construction management and project management services, through a competitive qualifications-based selection process.

Once firms are ranked based upon their qualifications, the public entity conducts negotiations with the top-ranked firm, during which fees are a negotiated item. If the public entity and the top-ranked firm cannot come to an agreement, then the public entity may terminate those negotiations and begin negotiations with the second-ranked firm (and so on) until an agreement satisfactory to the public entity is reached.

The CCNA process, adopted in Florida in the 1970's, is used by federal agencies and by 47 of the 50 states. It is also the prevailing method for procuring similar services in the private sector. This process contrasts with the more traditional competitive bidding method in which bids end up primarily ranked based upon price.

The CCNA responds to a variety of concerns about applying a strict "low-bid" scenario to these types of design and construction services, e.g., stifling innovative design and construction solutions, the resulting loss of larger cost savings in both the construction and operation of public facilities, public safety concerns, and the practical inability of public owners to precisely define the scope of work early in the design process.

For the third year running, bills have now been filed to directly insert price back into the vendor selection process. The bills for 2013 would allow a public owner to use a two-stage "best value" selection process. In the first stage, the public entity would evaluate firms using the qualifications-based criteria established in current law and "short-list" several firms. In the second stage, the public entity would solicit cost proposals from the short-listed firms and select the firm representing the "best value," with the cost factor comprising no more than 50% of the firm's total score.

UPDATE: Opposed by AGC, as well as the architects and engineers, this bill was never heard in any legislative committee and was not successful in the 2013 Session.

BAN ON LOCAL BID PREFERENCES **STATUS: FAILED**
SB 684 - Sen. Alan Hays (R - Umatilla) **AGC POSITION: SUPPORT**
HB 307 - Rep. John Tobia (R - Melbourne Beach)

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

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

UPDATE: Although AGC actively supported these bills, our past experience 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 previous years, these bills received a few committee hearings but were ultimately not successful in the 2013 Session.

WORKERS' COMP / DRUG BENEFITS **STATUS: PASSED**
SB 662 - Sen. Alan Hays (R - Umatilla) **AGC POSITION: SUPPORT**
HB 605 - Rep. Matt Hudson (R - Naples)

Chapter 440, Florida Statutes, generally requires employers and carriers to provide medical and indemnity benefits to workers who are injured due to an accident arising out of and during the course of employment. Medical benefits can include, but are not limited to, medically necessary care and treatment and prescription medications. In Florida, the prescription reimbursement rate for dispensing physicians and pharmacies is the average wholesale price (AWP) plus a $4.18 dispensing fee, or the contracted rate, whichever is lower.

Drug repackagers purchase pharmaceuticals in bulk from the manufacturer and repackage the drugs into individual prescription sizes. The repackaged drugs are assigned a new National Drug Code and can be assigned a higher AWP than the original manufacturer's AWP, resulting in no real cap on the amount that doctors can charge for repackaged drugs within the workers compensation system.

Business groups have blamed recent increases in workers' compensation premiums, in part, on the inflated pricing of repackaged drugs. They have battled drug repackagers and doctors in the Legislature for several years now over instituting a statutory cap on doctor's charges for repackaged drugs.

UPDATE: After heavy lobbying all Session long, legislators finally pushed back and demanded that all of the interested parties reach a compromise. The final bill, passed during the final week of the 2013 Session, would create a workers' comp fee schedule for repackaged drugs set at 112.5% of the average wholesale price plus an $8.00 dispensing fee. Carriers would still be able to contract directly with providers for reimbursement amounts lower than this rate. NCCI has estimated that the bill will yield about a $20 million cost savings, which would begin to be reflected in its next rate filing submitted to the Office of Insurance Regulation in late August. The bill will go to the Governor for his consideration in the next few weeks.

DESIGN PROFESSIONAL LIABILITY **STATUS: SIGNED INTO LAW**
SB 286 - Sen. Joe Negron (R - Palm City) **AGC POSITION: OPPOSE**
HB 575 - Rep. Kathleen Passidomo (R - Naples)

As you may recall, the architects and engineers championed a bill in 2010 to limit their malpractice liability. Under current law, individual design professionals are personally subject to malpractice claims, regardless of what the contract between the employing design firm and the project owner or general contractor may provide regarding limitations on the design firm's contractual liability, required insurance coverages, etc.

The 2010 bill would have granted immunity to individual design professionals and eliminated all malpractice claims with respect to damage to the project itself. A breach of contract action, subject to the liability limitations and insurance requirements of the contract, would control all questions of liability for such damages caused by faulty design work. For damages arising from personal injuries or from collateral property damage, a professional malpractice claim against a design professional would still exist. The 2010 bill passed the Senate (33-4) and the House (111-2). Ultimately, however, Governor Crist vetoed the bill.

The same bill was resurrected in the 2011 Session. After intense lobbying by a coalition comprised of AGC, other construction groups, condominium owners, and trial lawyers, the Senate version was voted down in its first legislative committee early in the Session and advanced no further in either chamber.

After taking a year off in 2012, the architects and engineers have advanced a re-tooled bill in 2013. Instead of granting an outright statutory immunity to individual architects and engineers, the new bill is premised upon giving the project owner the "right" to waive in advance any malpractice claims against those parties. The bill allows an owner (or general contractor) entering into a contract with a design firm to waive any potential malpractice claims against the firm's individual professionals if:

- The contract is made between the business entity and a claimant or another entity for the provision of services to the claimant;

- The contract does not name an individual employee or agent as a party to the contract;

- The contract prominently states that an individual employee or agent may not be held individually liable for negligence;

- The business entity maintains any professional liability insurance required under the contract; and

 Any damages are solely economic in nature and do not extent to persons or property not subject to the contract.

UPDATE: AGC repeatedly testified against this bill before legislative committees, along with the same coalition that was able to defeat the bill in 2011, which included the Florida Home Builders Association, the Florida Transportation Builders Association, ABC, condominium owners, and trial lawyers. Despite this effort, the re-tooled SB 286 passed both the Senate and the House.

AGC advanced an amendment on the Senate floor to condition the waiver of malpractice claims on the design firm disclosing in its contract with the owner the policy limits of the firm's professional liability insurance (if any). While this amendment generated considerable floor debate, it was ultimately unsuccessful.

In large part, the success of this bill was a byproduct of the fact that the bill sponsor, Sen. Negron, is currently the powerful chairman of the Senate Appropriations Committee and is likely to be a future Senate President. Sen. Negron was also the original sponsor of the earlier versions of the bill in 2010 and 2011. On the other side of the Capitol, HB 575 presented equally difficult fight in the House, where the House sponsor of this bill in prior sessions was Rep. Steve Precourt, an engineer who is now the House Majority Leader.

While AGC and others urged Governor Scott to veto SB 286, he signed the bill into law in late April. The new law will allow an owner (or general contractor) entering into a contract with a design firm on or after July 1, 2013, to waive any potential malpractice claims against the firm's individual professionals.

CONSTRUCTION LIEN LAW **STATUS: FAILED**
SB 1136 - Sen. Arthenia Joyner (R - Tampa) **AGC POSITION: OPPOSE**
HB 889 - Rep. Mike Fasano (R - New Port Richey)

In apparent response to homeowner concerns that have bubbled up in prior years, this new bill would significantly change the state's construction lien law. The bill includes the following provisions:

 Current law requires a lienor's notice to owner to be served before commencing, or not later than 45 days after commencing, to furnish labor, services, or materials. The bill would strike that language and allow the lienor's notice to owner to be served at any time before the date on which payment is due to the lienor for its labor, services, or materials.

 Requires the prime contractor to provide the owner with a notarized list of the names, addresses, and phone numbers of each party owed money in a particular request for payment, along with the written releases currently required by law.
 Removes current law stating that any payments made by the owner after the expiration of the notice of commencement are considered improper payments. Thus, an owner who let the notice of commencement expire would no longer face the threat of paying twice for the work in question – once to the prime contractor and then again to the subcontractor.

UPDATE: These bills were never heard in any legislative committees, and they were unsuccessful in the 2013 Session.

FILING FRAUDULENT INSTRUMENTS **STATUS: PASSED**
SB 112 - Sen. Charlie Dean (R - Inverness) **AGC POSITION: MONITOR**
HB 915 - Rep. Neil Combee (R - Auburndale)

This bill arose from a 2011 federal case in Florida in which a defendant filed false financial statements and liens against a number of federal officers who were involved in a separate criminal prosecution against him. Although the liens in this case were wholly unfounded, the court found that the sham documents could still be damaging to the

credit of the federal officers because they were recorded in official state and local registries. While the U.S. attorney sought injunctive relieve and prosecuted the defendant under federal mail fraud laws, there are no comparable statutes in Florida that would provide for injunctive relief or criminal prosecution.

The bill makes it a third-degree felony for a person to file, or direct another to file, with the intent to defraud or harass another, any instrument containing materially false or fraudulent statements which affect an owner's property interest. The bill gives authority to the sentencing court to declare the instrument null and void and have it sealed, and to enjoin the defendant from filing any future instruments affecting property interests in an official record without prior court approval.

The bill creates a civil cause of action for any person adversely affected by a false or fraudulent instrument filed in the official record. In a civil action, the court may declare the instrument null and void (in whole or in part), award actual and punitive damages, and grant other necessary relief.

With respect to construction liens under part I of chapter 713, the fraud provisions of s. 713.31 would control instead of the provisions of this bill.

UPDATE: SB 112 passed both the Senate and the House, and the bill will go to the Governor for his consideration in the coming weeks.

ELECTRICAL JOURNEYMAN REQ'TS **STATUS: FAILED**
SB 346 - Sen. Darren Soto (D - Kissimmee) **AGC POSITION: OPPOSE**

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

The bill would remove this provision and replace it with a statewide requirement that one electrical journeyman must be present on any industrial or commercial new construction site of 5,000 gross square feet or more when electrical work in excess of 98 volts is being performed.

AGC opposes any such state mandate. The decision on how any particular job should be staffed should be left to the electrical contractor and should not be dictated by state law.

UPDATE: SB 346 was never heard in any legislative committee and was not successful in the 2013 Session.

BAN ON "PROJECT LABOR AGREEMENTS" **STATUS: FAILED**
SB 1118 - Sen. Alan Hays (R - Umatilla) **AGC POSITION: SUPPORT**
HB 181 - Rep. Charles Van Zant (R - Palatka)

"Project labor agreements" (PLA's) are sometimes imposed by government entities on public construction projects and typically require that the contractor hire all workers through union halls, that nonunion workers pay dues for the length of the project, and that the contractor follow union rules on pensions, work conditions and dispute resolution. In 2009, President Obama signed Executive Order 13502, which allows federal agencies to require contractors on large-scale government construction projects to enter into PLA's as a condition of a contract award.

This bill prohibits government entities from requiring that a contractor, subcontractor, supplier or carrier on a public works project enter into an agreement with a labor union and prohibits government entities from restricting otherwise qualified/licensed/certified bidders from doing any of the work described in a bid document.

The bill also limits the ability of government entities to require a contractor, subcontractor, supplier or carrier on a public works project to: 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 or 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: These bills were never heard in any legislative committees, and they were unsuccessful in the 2013 Session.

LIMITING LOCAL GOV'TS SELF-PERFORMING WORK **STATUS: FAILED**
SB 602 - Sen. Dorothy Hukill (R - Port Orange) **AGC POSITION: SUPPORT**
HB 687 - Rep. Charles McBurney (R - Jacksonville)

The long-standing policy of this state has been to require local governments to put public construction work out for competitive bid. This policy maximizes the efficient use of public funds, with fair and open competition among experienced private sector contractors delivering the best possible project to the community at the lowest possible price for taxpayers. Under current law, local governments must competitively award all construction work with a value in excess of $200,000 (as adjusted for inflation), unless a recognized statutory exception applies, e.g., repairing damage from natural disasters or where a dangerous condition exists, repairing public utilities, etc.

Some local governments, however, are abusing these exceptions to get around the state's competitive bidding requirements. The most frequently abused statutory exception to competitive bidding is one that allows a local government to "self-perform" construction work with its own employees and equipment if the local government simply determines that it is "in the public's best interest."

The referenced bills would repeal this exception to competitive bidding. Both bills are strongly opposed by local governments.

UPDATE: HB 687 was heard in only one of its three legislative committees, where the bill was amended to keep the "public's best interest" exception but to significantly limit its use, allowing a local government to use the exception to avoid competitive bidding and self-perform the work only if there are no state funds being used to pay for the construction work in question. On the other side of the Capitol, SB 602 stalled in its first legislative committee. As a result, this bill was not successful in the 2013 Session.

TRANSPORTATION CONCURRENCY **STATUS: PASSED**
SB 972 - Sen. Dorothy Hukill (R - Port Orange) **AGC POSITION: SUPPORT**
HB 319 - Rep. Lake Ray (R - Jacksonville)

In 2011, the Legislature passed a new law dramatically curtailing state oversight of local growth management decisions. Those changes gave cities and counties the option of requiring "transportation concurrency," with developers paying only their "proportionate share" for road improvements needed.
Some local governments, such as Pasco County, have developed transportation mobility plans or fee systems that they claim are not subject to the proportionate share requirement.

In response, these two bills would make clear that local government mobility fee systems are subject to the proportionate share requirement.

The bill provides that an alternative mobility funding system may not be used to deny approvals if the developer agrees to pay for the development's identified transportation impacts using the funding mechanism implemented by the local government. The bill also requires a mobility-fee-based funding system to comply with the dual rational nexus test applicable to impact fees. An alternative system that is not mobility-fee-based may not be applied in a manner that imposes upon new development any responsibility for funding existing transportation deficiencies.

Finally, the bill provides that a local government may accept contributions from multiple applicants for a planned improvement if it maintains such contributions in a separate account designated for that purpose.

UPDATE: HB 319 ultimately passed in both the House and the Senate. The bill will go the Governor for his consideration in the next few weeks.

BAN ON LOCAL GROWTH MANAGEMENT REFERENDA **STATUS: PASSED**
SB 528 - Sen. Wilton Simpson (R - New Port Richey) **AGC POSITION: SUPPORT**
HB 537 - Rep. George Moraitis (R - Ft. Lauderdale)

In 2006, voters in St. Pete Beach amended the city's charter to require voter referenda on all future changes to comprehensive plans, redevelopment plans, and building height regulations. This process, often called "Hometown Democracy," caused delay in the local development process. In November 2010, Florida voters decided against implementing Hometown Democracy statewide with a 67 percent "no" vote on Amendment 4. Shortly thereafter, in March 2011, voters in St. Pete Beach repealed the town's Hometown Democracy provisions.

The 2011 Legislature passed HB 7207, known as the "Community Planning Act." Section 7 of the Act prohibited local governments from adopting initiative or referendum processes for any development orders, comprehensive plan amendments, or map amendments. As the result of a legal challenge by the Town of Yankeetown, the 2012 Legislature amended this prohibition so as to allow any local government charter provision, in effect as of June 1, 2011, providing for an initiative or referendum process on development orders, local comprehensive plan amendments, or map amendments.

A state trial court in Palm Beach County recently interpreted the language of this 2012 amendment as also preserving any generalized charter provision setting forth a procedure for local voter initiative or referendum, in place as of June 1, 2011, i.e., allowing such a generalized initiative or referendum process to continue to be used to force local votes on growth management issues.

The bill attempts to resolve these matters by expressly prohibiting initiative or referendum processes for all development orders. The bill further prohibits local initiative or referendum processes for local comprehensive plan and map amendments affecting more than five parcels, except for those processes specific to such growth management decisions and in effect on June 1, 2011.

UPDATE: HB 537 ultimately passed in both the House and the Senate, and the bill will go to the Governor in the coming weeks.

REGULATION OF COAL ASH **STATUS: PASSED**
SB 682 - Sen. Wilton Simpson (R - New Port Richey) **AGC POSITION: SUPPORT**
HB 659 - Rep. Tom Goodson (R - Titusville)

Coal ash is a byproduct of the burning of coal in power plants and cement kilns, which typically contains mercury, cadmium and arsenic. In 2010, 6.6 million tons of coal ash, including fly ash, was produced in Florida. Usually 30 to 50 percent of coal ash is used for cement production, road construction, wall board manufacturing, and for agricultural use as a part of fertilizer.

After a well-publicized incident four years ago in which a dam break in Tennessee caused a coal ash pond to spill into tributaries of the Tennessee River, the EPA has been considering whether to classify coal ash as a hazardous waste. Under current Florida law, hazardous waste landfills are prohibited in the state due to the permeability of the soil and high water table. The EPA's classification of coal ash as hazardous waste could therefore present a major problem for disposal.

As a result, the two referenced bills would exempt coal ash from the state's current prohibition on hazardous waste landfills. Anyone wishing to store coal ash at a Florida site, however, would still be required to obtain a hazardous waste facility permit. Certain "beneficial" uses for coal ash, including use as fill dirt, fertilizer, or as a material in concrete or asphalt, would not be subject to many hazardous waste regulations.

UPDATE: SB 682 ultimately passed in both the Senate and the House. The bill will go the Governor for his consideration in the next few weeks.

BUILDING CONSTRUCTION & INSPECTION **STATUS: PASSED**
SB 1080 - Sen. Greg Evers (R - Crestview) **AGC POSITION: MONITOR**
HB 269 - Rep. Halsey Beshears (R - Monticello)

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

 Increases the maximum civil penalty imposed by local enforcement agencies against unlicensed contractors from $500 to $2,000, and increases the civil penalty that may be charged per day by the local enforcement or licensing board or designated special magistrate from $1,000 to $2,500.

 Allows local building departments to collect delinquent fines and retain 75%, remitting 25% of fines to DBPR.

 Clarifies that the Florida Building Commission may not mandate fire sprinklers in single-family homes.

 Authorizes building site plans to be maintained electronically at the worksite and open to inspection by the local building official or duly authorized representative.

 Provides for multiple alternative energy-efficiency building rating systems, to include whole building energy evaluation systems established by the Residential Energy Services Network, Commercial Energy Services Network, the Building Performance Institute, or the Florida Solar Energy Center (eliminating the current monopoly held by the Florida Solar Energy Center) and clarifies the functions of energy raters and energy auditors.

UPDATE: HB 269 passed both the House and the Senate in the final days of the Session. The bill will go to the Governor for his consideration in the next few weeks.

STATE PROCUREMENT & CONTRACTING **STATUS: PASSED**
SB 1150 - Sen. Lizbeth Benacquisto (R - Ft. Myers) **AGC POSITION: MONITOR**
HB 1309 - Rep. Ben Albritton (R - Bartow)
HB 5401 - Gov't Operations Approp's Subcommittee

The duties of the state's Chief Financial Officer (CFO) include contract review, procurement training, and auditing. The Transparency Florida Act requires the CFO to provide a state contract management system for purposes of providing access to information and documentation relating to contracts procured by governmental entities; however, the contract itself is not part of the information disclosed on the website.

Effective July 1, 2013, HB 5401 expands the contract information that agencies are required to upload onto the Florida Accountability Contract Tracking System (FACTS). Specifically, the bill requires state agencies to upload into FACTS pertinent information about each contract, including the total compensation to be paid under the contract, payments made to the contractor to date, and an electronic copy of the contract (redacted to conceal confidential or exempt information).

HB 1309 adds a number of other changes to the state's procurement laws regarding the administration of grant agreements and contracts, including a requirement for agency use of certified grant and contract managers and an expansion of the CFO's auditing role.

UPDATE: HB 5401 and HB 1309 passed both the House and the Senate in the closing days of the 2013 Session. The bills will go to the Governor for his review in the coming weeks.

REVISED ARBITRATION CODE **STATUS: PASSED**
SB 530 - Sen. John Thrasher (R - St. Augustine) **AGC POSITION: MONITOR**
HB 693 - Rep. George Moraitis (R - Ft. Lauderdale)

This bill creates the Revised Florida Arbitration Code, based on a 2000 model act. The original act, the Florida Arbitration Code (FAC), was passed in 1957 and subsequently revised in 1967. Since 1967, the FAC has gone mostly unchanged. The bill includes concepts that were not included in the original act, such as the ability of arbitrators to issue provisional remedies, challenges based on notice, consolidation of separate arbitration proceedings, required conflict disclosures by arbitrators, immunity of arbitrators, and other substantive changes to the law. The bill lays out a detailed framework for arbitration conducted under Florida law.

UPDATE: SB 530 passed both the Senate and the House and will go to the Governor for his consideration in the next few weeks.