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

2017 Regular Session of the Florida Legislature
Prepared by Metz, Husband & Daughton, P.A.
May 8, 2017

Extension! - A word that one never wants to hear when describing the legislative session. After months of interim legislative meetings and the long hours of the 60-day regular session, Friday, May 5th was the scheduled conclusion of the 2017 Legislative Session. However, budget deliberations took longer than anticipated thus extending the legislative session until Monday, May 8th. The legislature's work on substantive legislation concluded late on Friday, and Monday's work focused exclusively on the state budget.

The press and various political observers have already begun to weigh in on the successes and failures of the 2017 Legislative Session. The stage now turns to Governor Scott as he contemplates which bills he will veto and, more importantly, whether he will veto the proposed budget, or any portions thereof. When these actions conclude, legislators will focus on summer fundraising and preparations to start the legislative process all over again. Legislative committee meetings are expected to start in September and the 2018 Legislative Session will begin on January 9th 2018.

Included below is a list of the major legislative issues which we follow for AGC. These are the most important issues identified by the AGC Council and we have also included the full tracking list which has the entire list of filed legislation we watched this session.

PRIORITY

WORKERS COMPENSATION REFORM - **UPDATE** **STATUS: DIED**
SB 1582 – Sen. Rob Bradley (R-Orange Park) **AGC POSITION: SUPPORT**
HB 7085 – House Insurance & Banking Subcommittee

Workers' Compensation reform remains a major topic for the 2017 Legislative Session and the State of Florida. SB 1582 and the House proposal, which started as a House Insurance and Banking Subcommittee Proposed Committee Bill (PCB) were recently published making significant reforms to the current Florida Workers' Compensation system following the court rulings which precipitated a 14.5% insurance rate increase. There are a number of issues relating to different provisions of the Workers' Compensation system which are addressed in one or both of the bills. Some of those provisions are:

- Increases of attorney fees to provide suitable fees for representation.
- Rate setting and review.
- Reimbursements for outpatient care, at hospitals or ambulatory-surgical centers.
- Providing extended benefits to injured workers for work-related injuries.

- Potential conversion to a loss cost system, away from sole reliance on NCCI ratemaking.
- Limits on excessive defense and cost containment expenses.

The legislative proposals to reform the Florida Workers' Compensation system are still very fluid and early in the process. Included below are links to the Senate and House proposals:

Click here for the House proposal.

Click here for the Senate proposal.

As these discussions continue, AGC remains focused on helping provide important industry feedback to legislators and other interested parties. AGC is actively participating in all discussions regarding Workers' Compensation reform to highlight those issues and concerns important to the construction industry. AGC is working with a broad group of stakeholders, including the Florida Chamber, AIF, NFIB, FUBA, insurance companies, and many independent businesses. We will continue to update you as these issues are discussed and legislative proposals take form this Session.

UPDATE: HB 7085 was voted out of the full House last month by a vote of 82 to 37. Many business groups and insurance companies support the new language of HB 7085, which capped attorneys' fees at $150 per hour. There are still major differences between HB 7085 and the Senate companion, SB 1582, but we expect to these bills see floor action in the coming weeks. Both proposals must be substantially similar before reforms may pass. HB 7085 has been sent to the Senate "In Message" and was referred to the Senate Rules Committee.

SB 1582 was voted out of all three Senate Committees and the bill was substituted for HB 7085 and there were numerous provisions which did not match, thus starting the negotiating between the two chambers. The Senate amended HB 7085 to reflect the substance of a bill initially filed by Sen. Gary Farmer (D-Fort Lauderdale), which the House and business advocacy organizations strongly opposed. One of the main differences between SB 1582 and HB 7085 remains the starting point for the attorneys' fees component, which was competing between the House and Senate positions of $150 and $250, respectively. HB 7085 remained alive until the very end of the regular session, being one of the latest bills the House worked on during the 60th day of the 2017 Session. Late in the evening, the House amended HB 7085 to reflect the original status of HB 7085, but with a compromise attorney fee of $180 per hour, and sent it back to the Senate. The Senate chose not to take up the legislation and ultimately there were no successful revisions made to reform Florida's Workers Compensation system this year.

It is unclear if there will be any efforts made by the Legislature for a Special Session to discuss Workers Compensation reforms, but we will continue to monitor and stay involved in the conversations.

PRIORITY

STATUTE OF REPOSE – UPDATE **STATUS: PASSED**
SB 204 – Sen. Kathleen Passidomo (R-Naples) **AGC POSITION: SUPPORT**

HB 377 – Rep. Tom Leek (R – Daytona)

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

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

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

These bills seek to make amendments to s. 95.11(3)(c), F.S., to better define the date of the completion of the contract. Pursuant to the bill, the completion of the contract is the "latter of the date of final payment of all the contracted services or the date that final payment for such services becomes due without regard to the date final payment is made." This bill provides that these amendments apply to causes of action which accrue on or after July 1, 2017.

This legislation is promoted by a coalition of interested parties including AGC, ABC, the Florida Home Builders Association, and others in the construction industry. The bill, initially opposed by the Florida Justice Association, continues to go through negotiations.

<u>UPDATE</u>: HB 377 successfully passed both the full House and Senate. The final language ties the Statute of Repose to the later of "final performance of all the contracted services or the date that final payment for such services becomes due without regard to the date final payment is made" and the legislation applies to causes of action that accrue on or after July 1, 2017. This bill will next be sent to the Governor for action. Gov. Scott will have 15 days to act on the legislation following receipt from the Legislature.

PRIORITY

<u>COMMUNITY REDEVELOPMENT AGENCIES</u> – UPDATE **STATUS: DIED**
HB 13 – Rep. Jake Raburn (R-Valrico) **AGC POSITION: OPPOSE**
SB 1770 – Sen. Tom Lee (R-Brandon)

HB 13 and SB 1770 make changes to the requirements for operating community redevelopment agencies and prohibit the creation of new community redevelopment agencies after July 1, 2017. These bills, encouraged by abuses of some CRAs in Miami-Dade County which were the subject of a recent Grand Jury Investigation, seek to make significant reforms to the CRA system and require more accountability and transparency to address those concerns by:

- Requiring the governing board members to underdo annual ethics training;
- Requiring each CRA to use the same procurement and purchasing processes as the creating county or municipality;
- Expanding the annual reporting requirements for CRAs to include audit information and performance data, and to publish data on the agency website;
- Providing that moneys in the redevelopment trust fund may only be spent pursuant to an annual budget adopted by the board of commissioners of the CRA;
- Requiring a CRA created by a municipality to provide its proposed budget to the board of county commissioners for the county in which the CRA is located; and
- Requiring counties and municipalities to include CRA data in their annual financial report.

HB 13 was referred to three committees and SB 1770 was referred to four committees.

<u>UPDATE</u>: HB 13 successfully passed all three committees of reference, but was amended during the hearing in the Government Accountability Committee. The changes HB 13 in the committee did the following:

- *Allowed for the creation of new CRAs after October 1, 2017, by special act of the legislature;*
- *Authorized the local governing body which created the CRA to set the amount of funding each taxing authority is required to contribute to the redevelopment trust fund between 50 and 95 percent of the tax increment;*
- *Required the audit report to contain a finding by the auditor determining whether the CRA complied with limitations on the use of the redevelopment trust fund assets; and*
- *Provided that the audit requirement applies to CRAs with revenues or total expenditures and expenses in excess of $100,000.*

HB 13 was placed on the House Special Order Calendar for full hearing by the entire House for April 25, 2017.

SB 1770 successfully passed the Senate Community Affairs Committee, chaired by the bill sponsor, on April 3, 2017 by a vote of 5 to 3. SB 1770 was heard in the Senate Appropriations Subcommittee on Transportation, Tourism, and Economic Development on April 18, 2017 and was unfavorably reported with a vote of 2 to 5. SB 1770 is currently pending reconsideration and is unlikely to pass as SB 1770.

SB 177 and HB 13 were postponed and withdrawn from consideration following the end of the Regular Session on May 5, 2017. HB 13 was sent to the Senate in Messages and referred

to the Senate Community Affairs and Appropriations Committees. At the time HB 13 was referred to Senate Committees, the Senate Community Affairs Committee was not scheduled to meet again. These proposals are likely to return again in an upcoming Session, but were not successful this year.

PRIORITY

ATTORNEY'S FEES ON LIEN & BOND CLAIMS – UPDATE **STATUS: DIED**
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 only construction group vocally opposed to this proposed change in the law. During the run-up to the 2017 Session, material suppliers again initiated a discussion on this topic. While AGC offered a possible compromise on one of the issues raised in the material suppliers' proposal, no agreement could be reached on their broader agenda. AGC will have to remain vigilant throughout the Session to ensure that this very bad attorney's fee provision does not get amended onto a construction-related bill.

PRIORITY

MANDATORY LIEN/BOND WAIVER FORMS - UPDATE **STATUS: DIED**
Possible Amendment **AGC POSITION: OPPOSE**

This year, material suppliers also expressed an interest in pushing for a change in the law that would mandate the use of statutorily-prescribed forms for the waiver of a lien/bond claim by a subcontractor or supplier. Currently, the relevant statutes provide a suggested waiver form and require that the actual waiver used must be "substantially" similar to this form. The material suppliers wanted to require the use of that statutory form and expressly declare any additional terms and conditions unenforceable.

UPDATE: After seeking member input, AGC decided to oppose this suggested statutory change, because it would eliminate the general contractor's ability by contract to require additional waiver terms or to "pass through" additional waiver terms insisted upon by the owner or lender. AGC continues to closely monitor all construction-related bills to ensure that this proposal does not make it onto a piece of legislation.

PRIORITY

ATTORNEY'S FEES for CONTRACTOR PURSUING SUBCONTRACTORS PERFORMANCE BOND - UPDATE **STATUS: 2018**
Possible Amendment **AGC POSITION: SUPPORT**

In commercial construction projects (and in some residential projects), it is common for the owner to require the general contractor to post both a "performance bond," which guarantees the contractors satisfactory completion of the project, as well as a "payment bond," which guarantees the proper payment of subcontractors, sub-subs, suppliers, and laborers on the job. In many circumstances, the owner and/or general contractor will also require that some or all of the subcontractors post a performance bond, guaranteeing satisfactory completion of the subcontractor's work on the project.

Under section 627.756, all of these parties are statutorily entitled to attorney's fees in any action brought against one of these bonds, except for an action brought by a general contractor against the performance bond of a subcontractor.

Section 627.756 was last amended almost 25 years ago. While subcontractor performance bonds were more unusual at that time, they have become increasingly common in commercial construction. Although claims by a general contractor against a subcontractor's performance bond are infrequent, they do occur. When they do, it is because the subcontractor has defaulted and failed to perform under its subcontract. Such a default requires the contractor to quickly remedy the situation by hiring an alternative subcontractor to do the work, typically at greater expense and with resulting construction delays that add even more expense.

Respectfully, there is simply no principled reason why general contractors should be singled out and denied attorney's fees when they are forced to file an action against a subcontractor's performance bond. This inability to recover attorney's fees compounds the increased expenses that the general contractor is forced to incur when a subcontractor defaults.

UPDATE: We were unable to find a legislative proposal to amend this issue onto this year. We will continue to work with stakeholders and legislators as we advocate to adopt this language in Florida Statutes in the future.

PRIORITY

LOCAL REGULATION PREEMPTION – UPDATE **STATUS: DIED**
SB 1158 - Sen. Kathleen Passidomo (R – Naples) **AGC POSITION: MONITOR**
HB 17 - Rep. Randy Fine (R - Melbourne)

These bills prohibit counties, municipalities, and special districts from engaging in specified actions regulating commerce, trade, or labor, unless there is a specific general law passed by the Florida Legislature directing such action. While these bills are not identical, and are not currently "related" in the legislative database, they were requested by the same proponent, the Florida Retail Federation. The premise is to limit the ability of local governments to implement and enforce ordinances which negatively impact businesses. These bills would be

effective July 1, 2017 and would also require that any regulation adopted prior to July 1, 2017, without general law authority, expire no later than July 1, 2020.

UPDATE: HB 17 passed the first committee of reference, the House Careers and Competition Subcommittee by a vote of 9 to 6. It will next be heard in the House Commerce Committee. SB 1158 received four committee references and was not placed on a committee agenda.

HB 17 and SB 1158 were postponed and withdrawn from consideration following the end of the Regular Session on May 5, 2017.

PRIORITY

PUBLIC WORKS PROJECTS – UPDATE **STATUS: PASSED**
SB 534 - Sen. Keith Perry (R – Gainesville) **AGC POSITION: SUPPORT**
HB 599 - Rep. Jayer Williamson (R - Pensacola)

These bills create s. 255.0992, F.S., relating to public works projects and define "political subdivision," "public works project," and "public works." These bills prohibit the state or a political subdivision, in which 50% or more of the project is funded with state-appropriated funds, to require a contractor, subcontractor, or material supplier or carrier engage in public works or public works projects:

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

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

UPDATE: HB 599 successfully passed the full House on April 19, 2017 by a vote of 77 to 40. HB 599 was then sent to the Senate "In Messages" and referred to three committees, the Senate Community Affairs Committee, Governmental Oversight and Accountability Committee, and the Appropriations Committee.

SB 534 successfully passed the full Senate Appropriations Committee on April 20, 2017 by a vote of 11 to 7. SB 534 was then placed on the Senate Calendar and awaits placement on the Senate Special Order Calendar during the final two weeks of the 2017 Legislative Session.

HB 599 successfully passed the Senate on April 28, 2017 by a vote of 20 to 17. This bill will next be sent to Governor Scott for action. Gov. Scott will have 15 days to act on HB 599 following receipt of the bill.

PRIORITY

PREJUDGMENT INTEREST – UPDATE **STATUS: DIED**
SB 334 - Sen. Greg Steube (R-Lakewood Ranch) **AGC POSITION: OPPOSE**
HB 469 - Rep. Shawn Harrison (R – Tampa)

SB 334 and HB 469 provide for the award of prejudgment interest relating to awards of damages, including costs for litigation. Both bills, as filed, apply the provision of prejudgment interest to all claims of action. This is a major shift in Florida Statutes and has been staunchly opposed by a broad coalition of business, insurance and industry groups. These bills have been proposed at the request of the Florida Justice Association, the state association representing the plaintiffs' trial bar.

UPDATE: SB 334 and HB 469 have each received hearings and have been amended throughout that process. One of the major amendments was to limit the adoption to only economic damages and not punitive damages. Both bills passed the first committees of reference prior to the start of the 2017 Legislative Session.

On March 9, 2017, SB 334 was heard in the Senate Rules Committee, the final committee of reference, and was amended to permit judicial discretion for the award of prejudgment interest. Following adoption of that amendment, the bill was Temporarily Postponed (TP'd). Following the bill being TP'd, the Senate Rules Committee scheduled SB 334 for rehearing on March 29, 2017. SB 334 was amended to only permit prejudgment interest for economic damages as a result of personal injury. This amendment, sponsored by Sen. Bradley and Sen. Galvano, was seen as a way to limit the impact of this legislation. SB 334 is on the Senate Calendar, but has not yet been placed on the Special Order Calendar.

HB 469 was last heard on February 23, 2017 in the House Civil Justice & Claims Subcommittee and never received notice for a hearing in the House Judiciary Committee.

SB 334 and HB 469 were defeated this year. HB 469 and SB 334 were postponed and withdrawn from consideration following the end of the Regular Session on May 5, 2017. We expect the proponents to return next year with similar proposals and will continue to work against these bad bills.

PRIORITY

CH. 558 REFORM - UPDATE **STATUS: DIED**
SB 1164 - Sen. Kathleen Passidomo (R-Naples) **AGC POSITION: SUPPORT**
HB 1271 - Rep. Jay Trumbull (R–Panama City)

These bills provide reforms to the statutory notice-and-cure process to promote the resolution of disputes while minimizing the litigation costs and attorney's fees. Specifically, these bills make changes to s. 558.004, F.S., to require that a claimant, and not the claimant's attorney or agent, sign the notice of claim, and only permits attorney's fees to be awarded should there be a contract or agreement in place which anticipates and allows for the award of attorney's fees. These bills require that a claimant be present for the inspection, that all parties must be served with a copy pf the notice of claim, and require that claimants must serve a written demand for mediation prior to rejecting an offer to settle.

UPDATE: HB 1271 received three committee references March 10, 2017 and was first heard on March 28, 2017 in the House Civil Justice & Claims Subcommittee. Following a unanimous vote, the committee reference to the House Careers & Competition Subcommittee was removed and HB 1271 now awaits hearing in the House Judiciary Committee. HB 1271 was heard by the House Judiciary Committee and received unanimous support. HB 1271 was placed on the House Calendar and awaited placement on the House Special Order Calendar.

SB 1164 was heard last month in the Senate Judiciary Committee, the first of three committee references, and was Temporarily Postponed on April 19, 2017.

HB 1271 and SB 1164 were postponed and withdrawn from consideration following the end of the Regular Session on May 5, 2017. We will continue to advocate for reforms to the statutory notice-and-cure process.

PRIORITY

CCNA REFORM – UPDATE **STATUS: DIED**
HB 789 - Rep. Charlie Stone (R-Ocala) **AGC POSITION: OPPOSE**

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.

Like past years, HB 789 was filed to insert price back into the initial selection criteria. HB 789 amends the current CCNA process to replace the competitive negotiation phase with a best value selection process. Under the new process, each contractor firm selected as one of the most qualified during the competitive selection phase must submit a compensation proposal for the proposed work. The agency requesting the competitive selection, must evaluate the compensation proposal, the information provided during the selection phase, and any other information to make a best value selection. The bill provides that compensation may not exceed 50 percent of the total weight of the published evaluation criteria and permits an agency may reject any or all submissions received in response to a public announcement for a project. The bill was opposed by AGC, architects, engineers, etc.

UPDATE: HB 789 never received a Senate companion and was scheduled for the first of two committees of reference in the House, the House Oversight, Transparency & Administration Subcommittee for March 13, 2017. HB 789 was not considered on March 13th and was finally heard on March 28, 2017 and successfully voted out of committee by a vote of 10 to 5. HB 789 never received a hearing in the final committee of reference, the House Government Accountability Committee.

HB 789 was postponed and withdrawn from consideration following the end of the Regular Session on May 5, 2017.

PRIORITY

E-VERIFY – UPDATE **STATUS: DIED**
HB 443 - Rep. Joe Gruters (R-Sarasota) **AGC POSITION: OPPOSE**

The federal Immigration Reform and Control Act of 1986 made it illegal for any U.S. employer to knowingly:

- Hire, recruit, or refer for a fee an alien knowing he or she is unauthorized to work;
- Continue to employ an alien knowing he or she has become unauthorized; or
- Hire, recruit, or refer for a fee any person (citizen or alien) without following the record keeping requirements of the Act.

Employees are required to present documents to their employers that establish both the worker's identity and eligibility to work, and employers are required to complete a federal "I-9" form for each new employee hired.

In 1996, Congress enacted legislation creating three pilot programs to test electronic employment eligibility verification systems. Of these three programs, what is now known as the

"E-Verify" system was chosen to provide an automated link to federal databases to help employers determine employment eligibility of new hires and the validity of their Social Security numbers. The E-Verify system is free to employers and is available in all 50 states.

After a string of unsuccessful bills in prior years, the Legislature is once again considering a statewide requirement that all employers use the federal "E-Verify" system to check the immigration status of new hires. HB 443, as introduced, requires private employers to use the E-Verify system to verify employment eligibility and prohibits an employer from knowingly or intentionally employing unauthorized aliens. HB 443 requires government agencies regulating companies to develop and implement rules to enact use of the E-Verify system by their respective industries. Industry groups, including AGC, have opposed this legislation as an overly burdensome and unnecessary requirement for private enterprise.

In prior years, few pieces of legislation generated as much intense and emotional public debate as bills dealing with immigration, which routinely drew "standing-room only" crowds.

UPDATE: HB 443 never received a Senate companion and received three committee references. This bill has not been heard or placed on a committee agenda at this time and the first committee of reference, the House Careers & Competition Subcommittee, is not scheduled to meet for the remainder of the Legislative Session. It is expected that HB 443 will not pass this year.

HB 443 was postponed and withdrawn from consideration following the end of the Regular Session on May 5, 2017.

PRIORITY

BUILDING CODES & WORKFORCE - UPDATE **STATUS: PASSED**
HB 1021 – Rep. Bryan Avila (R-Miami) **AGC POSITION: SUPPORT**

As reported during our last Council meeting, workforce and apprenticeship remain a major problem for the construction industry. The construction industry continues to see a shortage of skilled workers and has seen a lack of entry of new employees. Following the inclusion of funding in last year's FY 2016-2017 FY Budget, the Construction Workforce Taskforce met and worked during the interim. The taskforce was asked to address the following concerns:

- Address the critical shortage of individuals trained in building construction and inspection.
- Develop a consensus path for training the next generation of construction workers in the state.
- Determine the causes or the current shortage of a trained construction industry work force and address the impact of the shortages on the recovery of the real estate market.
- Review current methods and resources available for construction training.
- Review the state of construction training available in K-12 schools.

- Address training issues relating to building code inspectors to increase the number qualified inspectors.

The taskforce report, and any accompanying documentation, can be found at the following link: Construction Workforce Taskforce

The report has been presented in both the House and Senate and we anticipate seeing some workforce related proposals included in legislation, as well as in budget bills. AGC continues to remain committed to helping increase the workforce and will continue to advocate for additional opportunities for apprenticeship, including additional funding from surplus funds from industry licensing fees.

UPDATE: HB 1021 successfully passed both the Senate and House and was one of the final bills to pass on the final day of the Legislative Session. Included in HB 1021 is language directing the Florida Department of Education and the Florida Department of Economic Opportunity to work together to develop a plan to implement the recommendations of the Construction Industry Workforce Task Force. The plan must be provided to the Task Force by the Department of Education on or before July 1, 2018. HB 1021 also requires CareerSource Florida, Inc. to develop and submit a plan for training programs to the Task Force to implement the recommendations from the report. This plan is also due to the Task Force on or before July 1, 2018.

In addition to these provisions, HB 1021 became the bill that includes almost all of the construction industry related proposals that were successful. HB 1021 includes the final contents, discussed above in SB 7000/HB 901, to amend the process of how we amend and update the Florida Building Code. The language requires that the Florida Building Commission update an amended Florida Building Code every 3 years through the review of numerous International codes, copy written and published by the International Code Council or the National Fire Protection Association. At a minimum, the Commission must adopt updates to maintain eligibility for federal funding and discounts from the National Flood Insurance Program, the Federal Emergency Management Agency, and the United States Department of Housing and Urban Development. In addition, the Florida-specific provisions to the Florida Building Code will no longer sunset upon adoption of new codes. Amendments to the Florida Building Code by the Florida Building Commission must be voted on by at least a two-thirds vote of the members present at a Commission meeting.

HB 1021 also includes language to help with the shortage of building code administrators, building officials, building code inspectors, or plans examiner. HB 1021 permits contracting with individuals to serves in those capacities to help with a shortage the county or municipality may be experiencing. HB 1021 also outlines the required certifications, courses, or internships the Florida Building Code Administrators and Inspectors Board may accept for those respective positions.

HB 1021 awaits action by Governor Scott. Gov. Scott, following receipt of HB 1021 from the Legislature, will have 15 days to act on this legislation. There are a number of opponents working to ask for a veto of HB 1021 due to concerns relating to insurance costs. Opponents

have hired former Craig Fugate, the former Director of FEMA, to lobby Gov. Scott and the Florida Department of Emergency Management to encourage a veto. The construction industry continues to advocate that Gov. Scott approve this legislation over opponents' objections.

MISCELLANEOUS ITEMS OF INTEREST

PROCUREMENT TASK FORCE - UPDATE **STATUS: DIED**
HB 1281 - Rep. Ben Albritton (R-Wauchula) **AGC POSITION: MONITOR**
SB 1540 – Sen. Jeff Brandes (R-St. Petersburg)

These bills create the Statewide Procurement Efficiency Task Force within the Department of Management Services (DMS). These bills are moving through the process and look like they will pass. Initially, the task force included 3 positions from the "business community." That was changed this past week to specifically require one general contractor on the new task force. This is a positive change and will include a meaningful voice from the building industry.

UPDATE: HB 469 and SB 334 were postponed and withdrawn from consideration following the end of the Regular Session on May 5, 2017.

ADA COMPLIANCE - UPDATE **STATUS: PASSED**
HB 727 - Rep. Tom Leek (R-Daytona) **AGC POSITION: SUPPORT**
SB 1398 – Sen. Linda Stewart (D-Orlando)

These bills create an opportunity for general contractors, among others, to act as "qualified experts" for purposes of inspecting premises for ADA compliance, as well as an incentive for business owners to get their premises inspected by potentially diminishing the threat of attorney's fees in any subsequent ADA lawsuit. These bills, aimed at curbing lawsuits from drive-by lawyers, create a pathway to stop frivolous lawsuits and file remediation plans or certificates of authority with the Department of Business and Professional Regulation (DBPR). In addition, this bill requires DBPR to establish a public website with a registry of remediation plans and certificates of conformity, notices the public that companies that filed remediation plans or certificates of conformity are in compliance with the ADA, and requires courts to consider ADA expert reports to determine if plaintiff filed a claim in good faith and whether the plaintiff is entitled to attorney's fees in lawsuits involving alleged ADA violations.

UPDATE: HB 727 passed the House and Senate unanimously and will next be sent to Governor Scott for action. Gov. Scott will have 15 days following receipt to act on this legislation and we will encourage the approval of this legislation, which helps protect Florida businesses from frivolous lawsuits.

MEDICAL MARIJUANA - UPDATE **STATUS: DIED**
HB 1397 - Rep. Ray Rodrigues (R-Estero) **AGC POSITION: MONITOR**
SB 406 – Sen. Rob Bradley (R-)

Many of you have expressed concerns over how the implementation of the Constitutional Amendment regarding Medical Marijuana will impact the business community. There are numerous bills that have been filed; however, HB 1397 and SB 406 are the two that are the respective chambers' priority pieces of legislation. Both bills include provisions which address some of the unresolved questions regarding the use of medical marijuana in the workplace. I am including the language below so that you will be aware of the two different provisions in the legislative proposals currently:

> **SB 406 (Bradley) - (g)** - This section does not limit the ability of an employer to establish, continue, or enforce a drug-free workplace program or substance abuse policy. Notwithstanding any other provision of law, this section does not require an employer to accommodate the ingestion of marijuana in any workplace or any employee working while under the influence of marijuana. Notwithstanding any other provision of law, this section does not create a cause of action against an employer for wrongful discharge or discrimination.
>
> **HB 1397 (Rodrigues) - (14) APPLICABILITY.** - This section does not limit the ability of an employer to establish, continue, or enforce a drug-free workplace program or policy.

The language included in SB 406 is more complete and limits liability for employers. We will advocate for the inclusion of that language in HB 1397 and will continue to update you as these proposals advance.

UPDATE: The House and Senate continued to debate these bills until the end of the 60th day of the Regular Session. There were various provisions in which the House and Senate disagreed; however, we were able to have the House adopt the language regarding employer requirements for workplace use and prohibit any causes of action in relation to lack of accommodations for employees.

HB 1397 and SB 406 were postponed and withdrawn from consideration following the end of the Regular Session on May 5, 2017.

TAX EXEMPTION FOR NEW CONSTRUCTION - UPDATE **STATUS: PASSED**
HB 7109 - Rep. Jim Boyd (R-Bradenton) **AGC POSITION: MONITOR**
SB 1320 – Sen. Kelli Stargel (R-Lakeland)

HB 7109 is the Conference Committee Report and Conforming Bill for the 2017 tax cut package. This bill includes language to exempt "building materials, the rental of tangible personal property, and pest control services used in new construction located in a rural area of opportunity" from taxes if used for new construction, if an owner, lessee or lessor can demonstrate to the Department of Economic Opportunity (DEO) that the requirements of this section of law have been met. To qualify for the tax exemption, the general contractor must provide a sworn statement, under the penalty of perjury, outlining the specified exempt goods and services, the actual cost of the exempt goods and services, and the amount of sales tax paid

in this state on the exempt goods and services, and states that the improvement to the real property was new construction.

<u>UPDATE:</u> HB 7109 was successfully voted on by the House and Senate during the budget conference process. Gov. Scott will have 15 days following receipt of the bill to act on this legislation.

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