Florida A.G.C. Council, Inc.

LEGISLATIVE REPORT

2012 Regular Session of the Florida Legislature

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IT'S OVER!! The 2012 Regular Session of the Florida Legislature concluded at 11:59 p.m. on Friday, March 9. Out of 2,052 bills and resolutions filed for consideration during the Session, only 292 ultimately passed both the House and the Senate.

But the fun is not really over, because the Legislature will be back in town over the next two weeks to redraw Florida Senate district boundaries – part of the exercise in "redistricting" that happens every 10 years following the federal census. On the final day of the 2012 Session, the Florida Supreme Court released its opinion invalidating eight of the 40 Senate districts, as well as the numbering system for seats that would allow some senators to enjoy up to 10 years in office despite the usual 8-year term limits. By contrast, the Court held that the new Florida House districts passed constitutional muster.

Also on the final day of the Session, the Legislature fulfilled its annual constitutional responsibility to pass a state budget, adopting a $70 billion spending plan for fiscal year 2012-13. The budget will make significant cuts to health care and to state universities. In keeping with Governor Scott's call for a significant spending increase in K-12 education, the budget also includes increased spending on public schools, although this increase will not offset the cuts made last year.

On the revenue side of the ledger, several tax cuts favored by Governor Scott made it through the Legislature last week. On state corporate income taxes, legislators approved a doubling of the exemption, from $25,000 to $50,000, which will take nearly 4,000 more businesses off the tax rolls.

The Legislature also moved to increase the exemption from tangible personal property taxes -- taxes levied on business inventory and equipment -- from $25,000 to $50,000. Under this measure (HJR 1003), local governments would lose more than $20 million per year statewide and about 156,000 businesses, or almost half of the entities paying the tax, would be removed from the tax rolls. The measure would also give cities and counties the authority to enact even larger cuts in the future. HJR 1003 will appear as a proposed constitutional amendment for voter approval on the November ballot.

AGC was also active on unemployment compensation taxes, with the Legislature passing a significant reduction that will save employers $830 million during the next 2½ years. The bill (HB 7027) would allow businesses to use a lower wage base when calculating unemployment compensation taxes -- $8,500 instead of the $8,000 that would have taken effect this year. It would also extend, from three years to five years, the amount of time businesses have to replenish the state's unemployment benefits fund, which was depleted during the recession and has yet to recover amid high unemployment. The state has been borrowing money from the federal government to continue paying benefits to unemployed workers.

This legislation is expected to reduce the minimum tax rate for 2012 from $171.70 per employee down to $121.60 per employee. While this is a nearly 30% reduction, employers at the minimum rate will still have to pay a rate nearly 69% higher than this year's minimum rate of $72.10 per employee. For employers at the maximum tax rate, the tax will be $432 per employee instead of $459 per employee.

Beyond these broader issues of taxation and government spending, thousands of bills were filed for consideration by the 2012 Florida Legislature, many of which would have impacted the construction industry. Beyond the bills that we are actively trying to pass, AGC must also 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 bills and issues on which AGC pursued the interests of Florida's general contractors during the 2012 Session here in Tallahassee.

PRIORITY

STREAMLINING PAYMENT ON PUBLIC PROJECTS **STATUS: PASSED**
SB 1202 - Sen. Ellyn Bogdanoff (R - Ft. Lauderdale) **AGC POSITION: SUPPORT**
HB 897 - Rep. George Moraitis, Jr. (R - Ft. Lauderdale)

Some government entities, in particular local governments and colleges, routinely require the contractor on a bonded construction project to provide the government entity with the following as a condition of making progress payments and final payment: (a) bond waivers/releases from all subcontractors, sub-subcontractors, and suppliers; and/or (b) waivers and releases of any claim for payment against the government entity. It is often very difficult to secure these waivers/releases in a timely fashion from suppliers and sub-subs, which results in unnecessary delays in processing payments, preventing all participants in the construction process from receiving the funds they need to pay their bills and to make payroll in a very challenging economic environment.

Importantly, these waivers and releases serve no legitimate purpose, because: (a) the very reason the contractor's payment bond is put in place is to guarantee payment to subs, sub-subs, and suppliers and remove the government entity from payment disputes among these parties; (b) the government's property is not at risk because public property cannot be the subject of a lien, pursuant to section 713.01(26); (c) subs, sub-subs, and suppliers have no contract with the government entity and thus no legal claim against the government entity; and (d) government entities generally enjoy sovereign immunity against any equitable claim by subs, sub-subs, and suppliers.

UPDATE: AGC secured language in the two referenced bills to prohibit government entities from using missing waivers/releases as an excuse to delay payments. Due to concerns raised by the Florida Surety Association, AGC conditioned this streamlining measure on the contractor obtaining the consent of its surety. HB 897 passed the House on February 23 and the Senate on March 9. The bill will go to the Governor in the next few weeks.

PRIORITY

REQUIRING PUBLIC BID OPENINGS **STATUS: PASSED**

SB 1202 - Sen. Ellyn Bogdanoff (R - Ft. Lauderdale) **AGC POSITION: SUPPORT**
HB 897 - Rep. George Moraitis, Jr. (R - Ft. Lauderdale)
SB 704 - Sen. Mike Bennett (R - Bradenton)
HB 651 - Rep. Daniel Davis (R - Jacksonville)

In 2011, AGC was successful in renewing and refining a state law that temporarily shields bid documents from inspection by competitors in order to eliminate the unfair advantage that would arise from such disclosures during the bid process on public projects. For the same reason, the bill also exempted from the state's open meeting requirements those meetings at which vendors make oral presentations as part of the bid process.

Several local governments around the state are misinterpreting the 2011 law and using it as an excuse to avoid opening hard bids in a public meeting and announcing bidder names and prices. Of course, such public bid openings have been routinely conducted throughout the state for many years, and the 2011 bill made no changes in law that would prohibit this practice. Among other reasons, public bid openings are important as they allow contractors to determine if they are likely recipients of contract awards. Delays in receiving this information can result in the contractor's bonding capacity unnecessarily being tied up on bids they have no likelihood of winning.

UPDATE: AGC put language in the referenced bills to place an affirmative duty on government entities to conduct public bid openings and announce bidder names and prices. HB 897 passed both chambers of the Legislature and will go to the Governor in the next few weeks. SB 704 passed several days earlier and has already gone to the Governor, who has until March 23 to sign the bill, veto it, or let it become law without his signature.

PRIORITY

PREEMPTING LOCAL CRANE REGULATION **STATUS: PASSED**

SB 992 - Sen. Mike Bennett (R - Bradenton) **AGC POSITION: SUPPORT**
HB 521 - Rep. Frank Artiles (R - Miami)

Construction cranes are currently regulated under federal rules adopted by OSHA. OSHA conducted a thorough and exhaustive review of these rules over the last few years in an effort to better protect against crane hazards, in consultation with many of the most knowledgeable engineering, construction, and safety experts in the nation and in the world. This review culminated in new rules setting forth comprehensive and detailed new regulations applicable to construction cranes and their operators.

Construction cranes are routinely transported across city, county, and state lines, making uniform federal regulation of such equipment and its operators essential to commerce, to Florida's economic competitiveness, and to minimizing construction costs in our state.

Several local governments, however, most notably Miami-Dade County, have enacted or considered additional regulations on the operation of construction cranes and the certification of crane operators. The Miami-Dade County crane ordinance was successfully challenged by a consortium of construction groups, including the South Florida Chapter of AGC, in light of the ordinance's conflict with federal law and OSHA regulations.

As in years past, this bill would prohibit local governments from enacting any ordinances pertaining to cranes or hoisting equipment, in deference to federal OSHA regulations.

UPDATE: HB 521 passed the House on February 23. SB 992 had passed through one of its three committees, but its future was in doubt due to tensions between the original bill sponsor (Sen. Charlie Dean, R – Inverness) and Senate leadership. In the closing weeks of the Session, the bill sponsors were switched and AGC was able to help get the bill withdrawn from its remaining committees and considered on the Senate floor. The Senate ultimately passed HB 521 on March 8. The bill will go the Governor in the next few weeks.

PRIORITY

PROCUREMENT OF "CM" SERVICES **STATUS: FAILED**
SB 246 - Sen. Mike Bennett (R - Bradenton) **AGC POSITION: OPPOSE**
HB 155 - Rep. Fred Costello (R - DeLand)

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 last year, bills were filed to insert price back into the initial selection criteria. This year, the bills were retooled somewhat to allow a public owner to use, at its discretion, a two-stage "best value" selection process. In the first stage, an agency would evaluate firms using the

qualifications-based criteria established in current law. In the second stage, an agency would consider costs, with this factor comprising no more than 50% of the firm's total score. The bill was opposed by AGC, architects, engineers, etc.

<u>UPDATE</u>: On January 26, SB 246 was defeated in the Senate Regulated Industries Committee on a 3-7 vote. This action removed the bill from further consideration in the Senate. As a result, HB 155 never received a committee hearing in the House.

As anticipated, however, the sponsor of SB 246 (Senator Mike Bennett) did not give up on the issue. On March 2, he managed to put an amendment similar to SB 246 onto a different bill (SB 1626 re: State Contracting, discussed below). AGC worked with the design professionals, and we were successful in removing that amendment on the Senate floor before SB 1626 passed in that chamber. SB 1626 ultimately did not pass in the House.

PRIORITY

<u>IMMIGRATION ENFORCEMENT</u> **STATUS: FAILED**
SB 1638 – Sen. Thad Altman (R - Melbourne) **AGC POSITION: OPPOSE/AMEND**
HB 1315 – Rep. Gayle Harrell (R - Port St. Lucie)

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.

While making the case that the "benefits" of an E-Verify mandate do not justify its cost to employers, AGC's further goal is to ensure that each employer would be responsible for checking its own employees (i.e., the general contractor would not be responsible for checking subcontractor employees), that adequate liability protections for employers would be in place,

and that any special requirements placed on contractors doing business with public entities would be manageable.

The referenced bills would require all employers to screen new hires on or after January 1, 2013. A contractor with a public entity would have to obtain and maintain certifications from its subcontractors that they do not employ or contract with unauthorized aliens. If the contractor knew that the subcontractor was doing so or that it was not using the E-Verify system to screen new hires, the contractor would be required to terminate the subcontract. Likewise, if the public entity knew that the contractor was violating its obligations in this regard, the prime contract would be terminated and the contractor barred from all public contracts for one year.

UPDATE: 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. Neither of the referenced bills was ever scheduled for a committee hearing, and the issue was not taken up during the 2012 Session.

PRIORITY

PUBLIC-PRIVATE PARTNERSHIPS **STATUS: FAILED**
SB 576 - Sen. Mike Bennett (R - Bradenton) **AGC POSITION: SUPPORT**
HB 337 - Rep. Trudi Williams (R - Ft. Myers)

Public-private partnerships are contractual agreements formed between a public agency and a private sector entity that allow for greater private sector participation in the delivery and financing of public buildings and infrastructure projects. Through these agreements, the skills and assets of each sector, public and private, are shared in delivering a service or facility for the use of the general public. In addition to the sharing of resources, each party shares in the risks and rewards potential in the delivery of the service or facility.

This bill creates the Florida Public-Private Partnership Act to provide a formal structure under which local and regional government entities may enter into public-private partnerships to construct public buildings and infrastructure projects.

Notably, although the bill is supported by the Associated Builders & Contractors, it originally contained a provision specifically authorizing a public agency to use the private entity's willingness to employ local contractors and residents on the project as a bid evaluation criterion. This provision was later removed from the bill.

UPDATE: HB 337 passed the House on March 5, but SB 576 did not make it through all of its committees. On March 9, the Senate concluded its business for the 2012 Session without taking up the bill.

PRIORITY

BACKGROUND CHECKS ON SCHOOL CONTRACTORS **STATUS: FAILED**
SB 1610 - Sen. Charlie Dean (R - Inverness) **AGC POSITION: SUPPORT**
HB 1059 - 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.

UPDATE: HB 1059 passed the House on February 29, but SB 1610 did not make it through all of its committees due to tensions between the bill sponsor and Senate leadership. On March 9, the Senate concluded its business for the 2012 Session without taking up the bill.

PRIORITY

WORKERS' COMP / DRUG BENEFITS **STATUS: FAILED**
SB 668 - Sen. Alan Hays (R - Umatilla) **AGC POSITION: SUPPORT**
HB 511 - 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.

Prescription drug repackagers are licensed by the Department of Business and Professional Regulation. 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 new, higher AWP than the original manufacturer's AWP.

The bill revises requirements for determining the amount of reimbursement for prescription medications of claimants by providing that the reimbursement amount is the same

for repackaged or relabeled drugs as for non-repackaged drugs. The bill expressly prohibits the price of repackaged or relabeled drugs from exceeding the amount that would otherwise be payable had the drug not been repackaged or relabeled.

NCCI has estimated that the bill would reduce workers' compensation premiums by 2.5%.

UPDATE: Although these bills advanced through several committees, the outcome for this legislation was always in considerable doubt due to heavy lobbying by drug repackaging companies. Despite an effort in the closing days of the 2012 Session to amend this language onto another bill dealing with the workers comp certificate-of-exemption process (HB 307), the House and Senate concluded their business for the 2012 Session without taking up this legislation.

PRIORITY

BAN ON WAGE PROTECTION ORDINANCES **STATUS: FAILED**
SB 862 - Sen. David Simmons (R - Altamonte Springs) **AGC POSITION: SUPPORT**
HB 609 - Rep. Tom Goodson (R - Titusville)

Miami-Dade County recently passed a local ordinance to regulate "wage theft," which is defined as the underpayment or nonpayment of wages earned. The ordinance was heavily backed by unions. It 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. The Miami-Dade ordinance is currently the subject of a legal challenge. Palm Beach County has considered a similar ordinance.

The Miami-Dade ordinance sets up a local quasi-judicial process through which wage claims can be reported and processed, but without any of the due process protections that would be afforded in a court of law. Moreover, the ordinance gives the county a financial incentive to rule against employers – if the employer is found liable, then the employer must pay for all the costs of the proceeding. By contrast, there is no cost to an employee who files a claim that turns out to be baseless.

Of course, numerous federal and state laws already address issues of wage protection and the unfair treatment of workers. Laying 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.

The referenced bills were filed to preempt local governments from passing wage protection ordinances. In 2011, the House passed a similar bill on an 83-25 vote, but not before the bill was amended to allow the existing Miami-Dade County ordinance to remain in place. The Senate bill never got far enough to trigger a vote by the full Senate, however, due to opposition from some Miami-Dade senators.

UPDATE: Despite hard lobbying by Miami-Dade County, local governments, unions, and worker advocates, HB 609 passed the House on February 29. In response to concerns

raised by several legislators, the bill was amended to create a limited statewide cause of action for unpaid wages – a claim that would be brought in circuit court. While Democrats tried to place a number of amendments on the bill, including one to allow the existing Miami-Dade County ordinance to remain in place, all of these amendments were defeated.

On the other side of the Capitol, SB 862 had a much tougher time getting through the second of its three committees -- the Senate Judiciary Committee, chaired by Senator Anitere Flores (R - Miami). Chair Flores has always been a friend of AGC, but, as in 2011, she was lobbied hard by Miami-Dade County not to advance this bill. Nonetheless, the bill was heard in her Committee on February 20. Despite an amendment to create a limited statewide cause of action for unpaid wages (as in HB 609), Senator Flores once again pushed her own amendment to preserve the existing Miami-Dade County ordinance. As the amendments were being sorted out, the Committee ran out of time. While Senator Flores indicated she might allow the bill to be withdrawn from her Committee, this withdrawal never occurred.

In the end, despite a last ditch effort in the House to amend the bill language onto another bill (HB 971), the Senate ultimately concluded its business for the 2012 Session without taking up this legislation.

PRIORITY

BAN ON LOCAL BID PREFERENCES **STATUS: FAILED**
SB 1460 - Sen. David Simmons (R - Altamonte Springs) **AGC POSITION: SUPPORT**
HB 673 - Rep. Jason Brodeur (R - Sanford)

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 construction project in which payment is to be made in whole or in part from funds appropriated by the state.

AGC's experience has been that, while a legislator will often oppose local bid preferences in the abstract, that legislator often changes his or her 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 that jurisdiction support the bid preference. Of late, this legislation has also run up against a significant "Buy Florida" sentiment in the Legislature arising from the state's high unemployment rate.

UPDATE: As in years past, the competing interests described above grew more vocal throughout the Session and ultimately slowed this bill to a halt. HB 673 was amended in committee to provide that the ban on local bid preferences would apply only when 10% or more of a construction project is funded using state capital outlay funds. Ultimately, however, the House and Senate concluded their business for the 2012 Session without taking up this legislation.

PRIORITY

GAMING / DESTINATION RESORTS **STATUS: FAILED**

SB 710 - Sen. Ellyn Bogdanoff (R - Ft. Lauderdale) **AGC POSITION: SUPPORT**

HB 487 - Rep. Erik Fresen (R - Miami)

One of the most publicized and hotly contested bills of the 2012 Session, SB 710 creates the Department of Gaming Control and the State Gaming Commission and authorizes the Commission to award up to three "destination resort" licenses. The holders of these licenses may offer casino gaming in their resort facilities. The Commission may not award a resort license to any entity until the voters in that county approve a referendum allowing casino gaming

The bill establishes criteria for the award of destination resort licenses, including a minimum investment of $2 billion in the development and construction of each resort. Applicants for resort licenses must pay a $1 million application fee for background investigations plus a one-time fee of $125 million dollars. Thereafter, licensees must pay an annual license fee of $5 million. Resort licensees must pay a 10 percent gross receipts tax on all gaming revenues and gaming may be conducted 24 hours per day, 365 days per year.

The bill also creates an opportunity for pari-mutuel facilities located in the same counties as resort licensees to offer casino gaming, provided county voters pass a specific referendum authorizing casino gaming at the pari-mutuel facilities. In Miami-Dade and Broward Counties, however, a pari-mutuel facility licensed to operate slot machines prior to July 1, 2012, may begin offering casino gaming as soon as a resort licensee opens in one of those counties, without the need for a separate referendum.

The bill provides that no new pari-mutuel permits may be issued and revokes any dormant pari-mutuel permit that did not conduct a full schedule of live racing or games prior to January 15, 2012.

The bill lowers the tax rate on slot machine gaming at pari-mutuel facilities from 35 percent to 10 percent. Any pari-mutuel facility throughout the state could conduct slot machine gaming if the county where the facility is located approves slot machine gaming by voter referendum prior to December 31, 2014. However, no new slot machine licenses may be issued until a resort licensee begins operating gaming. In addition, slot machine licensees outside of Miami-Dade and Broward counties may not begin gaming until after July 7, 2015.

Finally, the bill authorizes and regulates so-called "internet cafes" that offer game promotions using electronic or video displays. Under the bill, each such establishment must register with the department, pay a per-terminal fee, and comply with specified requirements. Local governments may further regulate the electronic game promotions and may prohibit the conduct of future electronic game promotions.

UPDATE: On February 3, HB 487 stalled in its first committee in the more conservative Florida House and was never scheduled for another hearing. SB 710 passed successfully through one of its three committees, but it was never heard again in light of the House's lack of interest in advancing the gaming issue. The House and Senate concluded their business for the 2012 Session without taking up this legislation.

CONSTRUCTION BONDS & LIENS **STATUS: PASSED**
SB 1202 - Sen. Ellyn Bogdanoff (R - Ft. Lauderdale) **AGC POSITION: SUPPORT**
HB 897 - Rep. George Moraitis, Jr. (R - Ft. Lauderdale)

Current law requires any person who enters into a contract of over $200,000 with the state, a county, a city, a political subdivision, or other public authority for the construction, completion, or repair of a public building, to deliver a payment and performance bond issued in favor of the public owner by a state-authorized surety insurer. The bill:

- Requires the surety's bond number to be listed on the front page of the bond.

- Specifies that any provision in a payment bond which limits or expands the duration of a bond, or which adds a conditions precedent to the enforcement of a claim against the bond, is unenforceable.

- Replaces mailing by clerk of court with service by the contractor or the contractor's attorney who records a notice of contest of claim against the payment bond.

- Prohibits commencing payments to the contractor until the contractor provides the public authority with a certified copy of the recorded bond.

With respect to construction liens and payment bonds on private projects, the bill:

- Creates a provision in the construction lien law relating to effective notice where a lessor has an interest in specific premises on a parcel of land.

- Requires that all lienors including those hired directly by the owner must be served with a notice of termination of a notice of commencement;
- Provides additional information (i.e. description of the project) which must be included in a demand for a copy of contract or statements of account.

- Gives claimants additional time to serve required notices when a payment bond is not recorded before commencing construction.

- Makes several changes to mirror proposed changes related to bonds on public projects.

The bill also contains AGC-priority provisions discussed at the beginning of this Report that: (a) streamline the payment process on public projects; and (b) require government entities to open hard bids at a public meeting and announce bidder names and prices.

UPDATE: HB 897 passed the House on February 23 and the Senate on March 9. The bill will go to the Governor in the next few weeks.

ENVIRONMENTAL REGULATION **STATUS: PASSED**

SB 716 - Sen. Mike Bennett (R - Bradenton) **AGC POSITION: SUPPORT**

HB 503 - Rep. Jimmy Patronis (R - Panama City)

This bill makes numerous changes related to development, construction, operating, and building permits; permit application requirements and procedures; programmatic general permits and regional general permits; and permits for certain projects. Among other things, the bill:

- Extends for an additional two years any building permit, local development order, DEP permit, and water management district permit due to expire from January 1, 2012 - January 1, 2014, if the holder notifies the issuing agency in writing by December 31, 2012. When coupled with extensions granted by law over the past few years, the total extension can be for no more than four years. No permit renewal fees may be collected in conjunction with these permit extensions.

- Prohibits a county or municipality from conditioning the approval for a development permit on an applicant obtaining a permit or approval from any other state or federal agency.

- Specifies that terms and conditions for coastal construction permit applications must be set forth by rule.

- Prohibits DEP from issuing guidelines that are enforceable as standards without going through rulemaking.

- Provides conditions under which DEP is authorized to issue permits in advance of the issuance of incidental take authorizations as provided under the Endangered Species Act.

- Exempts a municipality from showing extreme hardship for sale, transfer, or lease of sovereignty submerged lands in the Biscayne Bay Aquatic Preserve, and allows dredging and filling for the purpose of creating a waterfront promenade.
- Expands the use of internet-based self-certification services for certain exemptions and general permits.

- Requires action on certain permit applications within 60 days of receipt of last timely requested material

- Precludes state agencies from delaying action because of pending approval from other local, state, or federal agencies.

- Provides for the DEP to obtain an expanded state programmatic general permit from the federal government for certain activities in waters of the U.S. governed by the Clean Water Act and Rivers and Harbors Act.

- Provides expedited permitting for any inland multimodal facility receiving and/or sending cargo to and/or from Florida ports.

- Requires the DEP to establish reasonable zones of mixing for discharges into specified waters.

- Provides a general permit for a surface water management system under 10 acres may be authorized without agency action.

- Provides for the creation of regional action teams for expedited permitting for certain businesses.

UPDATE: HB 503 passed the House on March 23 and the Senate on March 8. The bill will go to the Governor in the next few weeks.

RESIDENTIAL CONSTRUCTION WARRANTIES **STATUS: PASSED**
SB 1196 - Sen. Mike Bennett (R - Bradenton) **AGC POSITION: SUPPORT**
HB 1013 - Rep. Frank Artiles (R - Miami)

There is a common law implied warranty of fitness and merchantability related to the purchase of improved real estate purchased from the builder. This common law implied warranty applies to buildings and other improvements which are affixed to the real property, as opposed to fixtures that can be removed from the real property without damage to the premises.

A recent DCA court decision expanded the common law implied warranty of fitness and merchantability to off-site improvements, such as roads and drainage areas within a subdivision. The DCA opinion is contrary to a previous Florida Supreme Court opinion.

This bill provides that there is no cause of action in law or equity available to a purchaser of a home or to a homeowners' association based upon an implied warranty of fitness and merchantability or habitability for damages to offsite improvements. The bill does not alter or limit the existing rights of purchasers or homeowners' associations to pursue any other cause of action arising from defects in offsite improvements based upon contract, tort, or statute, including statutory condominium warranties.

UPDATE: HB 1013 passed the House on February 23 and the Senate on March 8. The bill will go to the Governor in the next few weeks.

ELECTRONIC FILING OF CONSTRUCTION PLANS **STATUS: PASSED**
SB 600 - Sen. Mike Bennett (R - Bradenton) **AGC POSITION: SUPPORT**
HB 387 - Rep. Larry Ahern (R - St. Petersburg)

This bill authorizes building code administrators or building officials to accept electronically transmitted construction plans and related documents for permit approval purposes.

UPDATE: HB 387 passed the House on February 3 and the Senate on March 3. The bill will go to the Governor in the next few weeks.

ELECTRICAL JOURNEYMAN REQ'TS **STATUS: FAILED**
SB 78 - Sen. Stephen Wise (R - Jacksonville) **AGC POSITION: OPPOSE**
HB 683 – Rep. Steve Perman (D - Boca Raton)

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: Neither of these bills received a committee hearing. The House and Senate concluded their business for the 2012 Session without taking up this legislation.

BUILDING CONSTRUCTION & INSPECTION **STATUS: PASSED**
SB 704 - Sen. Mike Bennett (R - Bradenton) **AGC POSITION: SUPPORT**
HB 651 - Rep. Daniel Davis (R - Jacksonville)

A bill is filed almost every year making changes to the laws surrounding the Florida Building Code, and this year is no exception. At present, SB 704 includes the following provisions of note:

- Authorizes building code administrators or building officials to accept electronically transmitted construction plans and related documents for permit approval purposes.

- Expand the definition of "contractor" to include those persons or businesses that contract to demolish any residence or building. Currently, contractor licensure to demolish buildings and residences only applies when these particular structures are over three stories tall.

- Increases the current $500 maximum civil penalty a local governing body may levy against an unlicensed contractor to $2,000.

- Changes how certain Florida Building Code permit fee surcharges are allocated.

The bill also contains AGC-priority provisions discussed earlier in this Report that: (a) require government entities to open hard bids at a public meeting and announce bidder names and prices; and (b) preempt local regulation of cranes.

UPDATE: SB 704 passed the Senate on March 2 and the House on March 5. The bill has already gone to the Governor, who has until March 23 to sign the bill, veto it, or let it become law without his signature.

METAL THEFT **STATUS: PASSED**
SB 540 - Sen. Chris Smith (D - West Palm Beach) **AGC POSITION: SUPPORT**
HB 885 - Rep. Clay Ford (R - Pensacola)

This bill is intended to help combat the increasingly frequent theft of valuable metals. The bill regulates both secondhand dealers and secondary metals recyclers; requires that secondary metals recyclers maintain and daily transmit an electronic record of all the previous day's purchase transactions to the appropriate law enforcement official; revises the timeframe that secondary metals recyclers are required to maintain purchase transaction records; modifies the acceptable forms of payment and outlines time restrictions relating to purchase transactions of regulated metals property; and provides that the regulation of regulated metals property is preempted to the state except with respect to ordinances enacted prior to March 1, 2012.

UPDATE: HB 885 passed the House on March 5 and the Senate on March 9. The bill will go to the Governor in the next few weeks.

CONTINUING EDUCATION APPROVAL **STATUS: PASSED**
SB 1252 - Sen. Dennis Jones (R - Seminole) **AGC POSITION: SUPPORT**
HB 887 - Rep. Clay Ingram (R - Pensacola)

Continuing education courses and course providers for contractors and other regulated professions currently must be approved by their individual governing boards – a process that has caused considerable administrative burden and undue delay. This bill would shift the primary responsibility for course and provider approval to DBPR, with DBPR referring an application to the board only if DBPR determines that the application requires expert review or should be denied.

UPDATE: HB 887 passed the House on February 23 and the Senate on March 9. The bill will go to the Governor in the next few weeks.

BAN ON "PROJECT LABOR AGREEMENTS" **STATUS: FAILED**
SB 794 - Sen. Alan Hays (R - Umatilla) **AGC POSITION: SUPPORT**
HB 719 - 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: SB 794 made it through two of its three committees, but HB 719 never received a committee hearing. The House and Senate concluded their business for the 2012 Session without taking up this legislation.

BAN ON LOCAL GOV'T SELF-PERFORMING WORK **STATUS: FAILED**
SB 1186 - Sen. Alan Hays (R - Umatilla) **AGC POSITION: SUPPORT**
HB 825 - 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 were strongly opposed by local governments.

UPDATE: Neither of the bills received a committee hearing. The House and Senate concluded their business for the 2012 Session without taking up this legislation.

ELIMINATING LOCAL BUSINESS TAXES **STATUS: FAILED**
SB 760 - Sen. Alan Hays (R - Umatilla) **AGC POSITION: SUPPORT**
HB 1063 – Rep. Marlene O'Toole (R - The Villages)

Under current law, a county or municipality may impose a "local business tax" under Chapter 205, Florida Statutes, for the privilege of engaging in or managing a business within its jurisdiction.

As a means of stimulating economic development, the referenced bill is intended to eliminate local business taxes entirely, perhaps with a phase-out over a period of years. The bill is opposed by local governments, which do not want to lose this source of tax revenue.

UPDATE: Due to the fiscal impact to local governments, both bills stalled in their first committees of reference. The House and Senate concluded their business for the 2012 Session without taking up this legislation.

ASSESSMENT ON MASONRY UNITS **STATUS: FAILED**
SB 412 - Sen. Mike Bennett (R - Bradenton) **AGC POSITION: MONITOR**
HB 403 - Rep. Matt Caldwell (R - Ft. Myers)

This bill creates the Florida Concrete Masonry Council, Inc., as a nonprofit corporation operating as a direct-support organization of the Florida Building Commission. The council may levy an assessment of 1 cent per concrete masonry unit that is produced and sold by a manufacturer in the state if the imposition of the assessment is approved by referendum of the state's concrete masonry manufacturers. The proceeds of the assessment would be used to fund the activities of the council, which include strengthening the market position of the concrete masonry industry in this state and in the nation, maintaining and expanding domestic and foreign markets, and expanding the uses for concrete masonry products.

UPDATE: SB 412 progressed through several committees, but HB 403 was never heard in any committees. The House and Senate concluded their business for the 2012 Session without taking up this legislation.

STATE CONTRACTING **STATUS: FAILED**
SB 1626 - Sen. Don Gaetz (R - Destin) **AGC POSITION: MONITOR**
HB 1409 - Rep. Ben Albritton (R - Bartow)

This measure initially set up a conflict between Gov. Rick Scott and state Chief Financial Officer Jeff Atwater over how to improve the state's purchasing policies. The bill would increase the CFO's authority over state contracting, giving the Department of Financial Services (DFS) the authority to set procurement rules for state agencies. This task is currently performed by the Department of Management Services (DMS), which is an agency under the governor's supervision.

In his first year in office, Governor Scott persuaded legislative leaders to drop a plan to override former Gov. Crist's veto of a measure that would have transferred DMS oversight from the governor to the full Cabinet.

The bill initially proposed a wide-ranging revamp of state purchasing procedures as well as new safeguards, such as requiring the department to create a payment system to ensure the state is not paying vendors that are not living up to the terms of their contracts and allowing DFS to create requirements under which state agencies would have to submit some of their contracts for review and approval.

Some of the changes Atwater sought, such as a requirement that contracts include clear performance standards and scopes of work, do not currently exist in state law. The bill would also require state agencies and eventually local governments to post contract amounts and other details online.

According to the CFO's office, a review of 364 state contracts found that more than a quarter of them — 96 contracts worth nearly $430 million — were somehow deficient in that they lacked a clear scope of work, performance standards, or financial penalties for failing to meet those standards.

Governor Scott has stated that he is already scrutinizing state contracts along with DMS Secretary Jack Miles, who recently tendered his resignation. He has also taken the position that, because the CFO serves the role of state auditor, this role should be kept separate from the authority to set rules governing the purchasing process.

Ultimately, this 42-page rewrite of state contracting laws was dramatically narrowed to a 7-page measure creating a new purchasing information system and allowing information about state contracts to be made available online.

UPDATE: SB 1626 passed the Senate on March 8. While HB 1409 progressed through several committees, the House ultimately concluded its business for the 2012 Session without taking up this legislation.

WORKERS' COMP EXEMPTION PROCESS **STATUS: PASSED**
SB 1428 - Sen. Chris Smith (D - West Palm Beach) **AGC POSITION: MONITOR**
HB 941 - Rep. Doug Holder (R - Sarasota)

Under Florida law, corporate officers can elect to be exempt from workers' compensation coverage requirements. Individuals who make such election are not considered "employees" for premium calculation purposes and are not eligible to receive workers' compensation benefits if they suffer a workplace injury. In the construction industry, corporate officers and members of LLCs who are at least 10% owners of the corporation or LLC may elect to be exempt.

The bill, backed as a cost-saving measure by the state's Division of Workers' Compensation, allows for the electronic submission of exemption applications, with streamlined reporting requirements. The bill also provides that all certificates of election to be exempt issued on or after January 1, 2013, are valid for 2 years from the effective date stated on the certificate.

UPDATE: HB 941 passed on March 9 and will go to the Governor in the next few weeks.