



2013 Legislative Session Pre-Session Report to the NACM Improved Construction Practices Committee

DEBORAH E. LAWSON & R. BRUCE KERSHNER, ICPC LOBBYISTS

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The Political Climate

We are fast approaching the start of the 2013 Legislative Session. March 5, 2013 will mark the official start of the 60 calendar day Session with 'Sine Die' set for Friday, May 3, 2013. Since the Organizational Session in November, Florida's elected officials have been holding interim committee meetings. During that time, our lawmakers have received their committee assignments, heard presentations from various state agencies, set priorities for the 2013 Legislative Session and, of course, filed bills for the upcoming session. To date, 1003 bills have been filed between the House and Senate. We expect that number to nearly double by the time we get to the bill filing deadline on opening day.

The Florida Legislature looks very different this year. Term limits and redistricting have contributed to a significant turnover in the Florida Legislature, which welcomes 59 new lawmakers — including members who shifted chambers. Florida's 120 member House has 44 new members; and in the 40 member upper chamber, the Senate has fifteen freshmen, twelve of them coming over from the House and one, Senator Tom Lee (R- Brandon), returning after a six-year hiatus.

Florida will be led by two dynamic leaders for the next two years. Senate President Don Gaetz (R-Niceville) and House Speaker Will Weatherford (R-Wesley Chapel). The two have joined together to announce a joint legislative agenda for the upcoming session. Will this amicable relationship last? Only time will tell. Most of us in the process have not yet forgotten the 2011 Session train wreck between Speaker Dean Cannon and President Mike Haridopolos which began similarly but ended in an ugly meltdown.

Major Issues of the Day

The general theme in Tallahassee for the 2013 Session is to make job creation a priority. Issues that will be in the forefront include implementation of the federal *Affordable Care Act*, which will include an expansion of Florida's Medicaid Program, and *Work Plan Florida*, a five-point plan identified by the Senate President and House Speaker. The five-point plan includes ethics reform, campaign finance reform, higher education reform, changes to the state pension plan, and a review of election procedures that is sure to include additional early voting opportunities. You will also hear about prohibitions on texting while driving. To date, at least six bills have already been filed to deal with this issue.

Of course, the only requirement Florida legislators have each year is to pass a balanced annual budget. For the first time in five years, the State of Florida is on track to have a financial surplus. The Governor wants to increase corporate income tax exemptions and institute additional sales tax exemptions for

manufacturing. He has also promised to give state workers a small pay increase. Allocation of the anticipated increase in funding will consume much of the session.

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Legislative Issues

CONSTRUCTION LIENS

HB 889 by Fasano; SB ____ by Joyner 

This legislation is an attempt by the sponsors to address constituent issues by changing warnings on forms – yet again – and requiring residential contractors to provide owners with a notarized affidavit listing all persons or companies owed money. The bill would eliminate the improperness of payment made after expiration of a Notice of Commencement and change warnings on multiple forms in an effort to encourage owners to file NOC’s. There is really nothing in this proposed legislation that can be fixed. The ICPC will strongly oppose it and preliminarily has word that both ABC and the Florida Bar Construction Law Committee will also be opposed.

LIENS ON REAL PROPERTY BY GOVERNMENTAL OR QUASI-GOVERNMENTAL ENTITIES

HB 671 by Wood; SB 670 by Ring



These bills are identical to bills filed in previous sessions on behalf of the Real Property Section of the Florida Bar and require government liens to be recorded in the public records and to include the property owner's name, tax or parcel I.D. number and property description in order to be valid against creditors or subsequent purchasers of the property.

FRAUDULENT LIENS



HB _____; SB 112 by Dean

This legislation imposes criminal penalties for the filing of fraudulent liens on real property. It is supported by law enforcement and prosecuting attorneys. We worked with Senator Dean last year, and he willingly incorporated language exempting out construction liens which are already addressed in Chapter 713. A substantial rewrite of this bill has been in the process for several weeks, and we have weighed in on behalf of the ICPC to insure the same language is included in any subsequent versions of the bill.

"CONCRETE MASONRY PRODUCTS RESEARCH, EDUCATION & PROMOTION ACT"

HB 703 by Davis; SB 944 by Grimsley



Identical to bills filed last year, these bills are supported by many of our friends in the concrete and masonry industries. They would pave the way for the industry to create a "masonry check off program" which would allow imposition of an industry wide assessment on sales. The funds collected would be used to promote concrete and masonry products. Legislative approval is required in order to avoid antitrust violations. The big obstacle here is the issue of "no new taxes – no new fees" that is the mantra of Florida's Republican Legislature.

PUBLIC-PRIVATE PARTNERSHIPS

HB 85 by Steube; SB 84 by Diaz de la Portilla; SB 238 by Flores



These bills create a framework for the creation of public-private partnerships for the construction or upgrade of facilities by private entities which are used predominately for a public purpose. The bills require public entities to develop and adopt guidelines governing procedures and criteria for the selection of projects and public-private agreements including payment and performance bond requirements, provide for financing from private sources and public entities, and provide for the applicability of sovereign immunity for public entities with respect to qualified projects. Similar bills were filed last year but were overshadowed by other issues that took precedence. The industry hopes these bills will help to move forward public construction projects and create construction jobs in our state.

DESIGN PROFESSIONALS INDEMNITY



HB 575 by Passidomo; SB 286 by Negrón

These bills are similar to previous endeavors on the part of the architects and engineers. You may recall that a similar bill passed several years back but was vetoed by then Governor Charlie Crist at the urging of the construction industry. This year, the architects have scored by getting the Senate Appropriations Chair to sponsor their bill, which received its first Senate hearing on February 6 and soared through the

KEY - Support Bill



Oppose Bill:



Monitoring Bill:



committee without a single “NO” vote. The bills would provide that contracts executed by a business entity may specify that individual architects, interior designers, landscape architects, engineers, and surveyors may not be held liable for negligence in the performance of professional services provided under those contracts so long as the damages are economic only and do not extend to persons not a party to the contract. The design firm would have to carry professional liability insurance under the applicable contract. These bills have a very good chance of passage this year.

PREEMPTION OF LOCAL SICK LEAVE ORDINANCES

HB ____ by Precourt; SB 726 by Simmons



These bills will preempt to the state the regulation of personal or family medical leave and prohibit local ordinances governing the same. In light of efforts by two Florida counties to impose these local regulations, this is an important bill for construction and all other Florida businesses.

PREEMPTION OF LOCAL PREFERENCE ORDINANCES

HB 307 by Tobia; SB 684



These bills preempt local governments, community colleges and universities from giving a local preference in the award of contracts, including construction contracts, to state certified contractors if any state funds are used for the project.

LOCAL BIDS AND CONTRACTS FOR PUBLIC WORKS

HB 687 by McBurney; SB 602 by Hukill



Local governments succeeded in stalling this legislation last year, but the sponsors want to make this a priority for 2013. These bills eliminate the catch-all statutory exception that local governments abuse to self-perform construction projects. No more tweaking the statute so local governments can drive a bus through it, just get it done and eliminate the exception.

FLORIDA BUILDING CODE

HB ____ by Davis; SB ____ by Simpson



The usual building code bill with various code issues is expected to pop any day now. The list of issues includes septic tank size, exemption from the national fire sprinkler code, and HVAC provisions. In addition, there are separate bills rewriting the Florida Fire Code, requiring carbon monoxide alarms in school facilities, and requiring 10-year batteries in smoke alarms. We will report as issues develop.

BACKGROUND SCREENING FOR CONTRACTORS ON SCHOOL GROUNDS

HB 21 by Perry; SB 318 by Grimsley



Let's hope this is the year to fix the Jessica Lunsford Act. These bills would require the Department of Education to create a uniform, statewide identification badge to be worn by non-instructional contractors signifying that a contractor has met background screening requirements; providing that the identification badge shall be recognized by all school districts; and requiring the department to determine a uniform cost a school district may charge a contractor for receipt of the identification badge.

KEY -

Support Bill



Oppose Bill:



Monitoring Bill:



DEO STUDY OF LOCAL LICENSURE AND TAXATION

HB 121 by Combee; SB 670 by Brandes



These bills require the Department of Economic Opportunity to conduct an assessment of all local governments in Florida and to collect data on all locally imposed taxes, fees and licenses that are imposed on businesses in their jurisdiction. The ultimate goal of this study is to accumulate this wealth of information and make it easily accessible in one location on the web. The sponsors want to shine a light on the degree to which Florida's local governments are "business friendly" and thus whether unnecessary layers of taxation, fees and regulations make doing business in Florida more difficult than it needs to be. We are working with the sponsors to move this important legislation forward and are specifically interested in the results of such a study on fees for building permits, impact fees, and categories of local specialty licenses.

Non-Legislative Issues

In addition to legislative issues, we are working on a number of executive branch issues for the ICPC.

FLORIDA DEPARTMENT OF REVENUE

We are preparing a request for a formal written Technical Assistance Advisory (TAA) from the Department of Revenue confirming their prior informal nonbinding interpretation that suppliers will not be in violation of Department Rules if invoices are addressed to the public entity purchasing materials, c/o the contractor.

FLORIDA DEPARTMENT OF TRANSPORTATION

We are working with the Florida DOT and the Florida Transportation Builders Association to upgrade the online bond information provided by the DOT for all DOT projects. We have requested more consistent, complete and up-to-date information as well as the ability to download copies of the actual bonds from their site.

FLORIDA ASSOCIATION OF COURT CLERK'S & COMPTROLLERS

We are continuing our dialogue with this association to improve the indexing of recorded documents and the search capabilities.

Conclusion

We have summarized the above bills for the ICPC, identifying them as the issues of primary importance to our members. We are tracking hundreds of bills on behalf of the ICPC and would be happy to provide you with any additional information upon request. For copies of bills, staff analyses, or other tracking information, access www.Flhouse.gov on the web.

We thank the ICPC for the opportunity to once again represent them before the Florida Legislature and Executive Branches of government. For additional information please contact us at deborahlawson@comcast.net or rbkershner@att.net.

