



FROM THE HALLS OF THE CAPITOL A REPORT FROM TALLAHASSEE



AGC Alabama Northwest Florida Section

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2018 Pre-Session Legislative Report

Lawmakers Prepare for an Early Start to the 2018 Session

The Florida Legislature wrapped up its fifth and final interim committee week in early December, leading into the 2018 legislative session which begins on January 9. Committees continued to hear reports and a few bills as they prepared for the 60-day session, but it should be noted how few bills have been heard during the interim committee weeks. Typically, the election year session sees less activity; however, with additional turmoil taking place in Tallahassee, the expectations for what will pass in 2018 are low.

What Senate Decorum?

The Florida Senate has always prided itself on being the upper chamber that conducts itself in proper, appropriate and polite behavior. In less than a year, Senate decorum lays tattered and torn on the chamber floor as three senators have been forced to resign.

It all started last April with **Senator Frank Artiles** being forced to resign his Senate seat after an expletive rant-filled tirade directed at fellow senators became public.

A few months later in October, **Senator Jeff Clemens**, the incoming Florida Senate Democratic leader, abruptly resigned after admitting to an extramarital affair with a lobbyist.

As this pre-session report is being written, one of the most powerful senators – chair of the appropriations committee and a gubernatorial candidate – resigned one day after a Special Master released two reports citing allegations of sexual misconduct with female staffers and lobbyists and possible public corruption and extortion. **Senator Jack Latvala** continues to deny any

wrongdoing even as he submitted his letter of resignation to **Florida Senate President Joe Negron**.

With this latest resignation, it will leave the 40-member Senate with only 38 members when the gavel drops on January 9 signaling the start of session. **Senator Annette Taddeo** was elected in a special election to replace **Frank Artiles**. Special elections will have to be held to **replace Jeff Clemens** and **Jack Latvala**; meaning that both Senate Districts 31 and 16 will have no representation in the Senate during the 2018 Legislative Session. One can only hope that with the **Latvala** affair behind us the Senate will be able to conduct the peoples' business without further distractions.

The 2017-2018 Constitution Revision Commission

While the Florida Legislative Session takes place, the Constitution Revision Commission (CRC) will also be continuing its work. They will hold committee meetings in Tallahassee throughout January and early February followed by public hearings in various locations around the state in February and March and then additional meetings to finalize proposals. CRC proposals that pass the CRC must be filed with the Secretary of State by May 10, 2018 in order to appear on the November ballot. I will continue to monitor the work of the CRC and will report any developments of significance to the AGC Alabama Northwest Florida Section.

Preserving Lien Rights

There are no bills currently filed to eliminate or diminish lien rights to subcontractors and material suppliers, but I know that the House continues studying the issue for the speaker which remains an issue on his list of priorities during his final year as speaker. I am carefully watching the work of the speaker's Select Committee on Hurricane Response and Preparedness, Careers and Competition Subcommittee and full Commerce Committee. The Select committee held a lien law workshop this past October. If the speaker chooses to put forth legislation, these committees are likely where it will happen.

Construction Bonds

(HB 723 by /CS/SB 908 by Steube)

This legislation has been the subject of conference calls during the month of December with interested members of the Construction Coalition. As filed, some construction stakeholder groups have serious concerns and are opposed to this legislation. Most objectionable, the bill would require a notice of nonpayment to be verified under oath and have **ALL** documents substantiating the claim as attachments. The bill also has provisions that would gut the current protections when a payment bond is conditional. Stakeholders will be working hard to either resolve their concerns or kill this legislation.

STATUS: **HB 723** has been referred to the House Careers & Competition Subcommittee; Civil Justice & Claims Subcommittee; and Commerce Committee. **CS/SB 908** has been referred to the Senate Judiciary Committee; Community Affairs Committee; and Rules Committee.

Direct Purchases of Tangible Personal Property by Contractors

(HB 715 by Leek/ SB 1108 by Young)

These ABC supported bills would streamline the direct purchase process by allowing governmental entities to authorize contractors and subcontractors to use their certificate of entitlement to purchase materials tax exempt. It would also allow them to negotiate who assumes responsibility for the delivered materials.

STATUS: HB 715 has been referred to the House Oversight, Transparency & Administration Subcommittee; Ways & Means Committee; and Government Accountability Committee. **SB 1108** has been referred to the Senate Community Affairs Committee; Appropriations Subcommittee on Finance and Tax; and Appropriations Committee.

Use of Wireless Communications Devices While Driving/Texting While Driving

(SB 72 by Garcia/HB 121 by Slosberg, Stark/HB 33 by Toledo/CS/SB 90 by Perry)

For the first time, there is a reasonable chance the legislature will create a primary offense for texting while driving. **Speaker Corcoran** has publicly announced his support for **HB 33** by **Representative Jackie Toledo**. The bill would make a violation of the statute a primary offense, and would also require the officer to inform the vehicle operator they have the right to decline a search of their cell phone. The phone could not be searched or seized without a warrant. **CS/SB 90** by **Senator Keith Perry** is similar but not identical. It has already passed its first Senate committee. It requires fines collected to be deposited into the Emergency Medical Services Trust Fund. Two other bills were filed on this issue but were withdrawn prior to introduction.

STATUS: HB 33 has been referred to the House Transportation and Infrastructure Subcommittee; and Judiciary Committee. **CS/SB 90** has been referred to the by Senate Communications, Energy, and Public Utilities Committee; Transportation Committee; Appropriations Subcommittee on Transportation, Tourism, and Economic Development; and Appropriations Committee. The bill passed the Senate Communications, Energy, and Public Utilities Committee on Tuesday, October 24 on a vote of 7-1. The bill now goes to the Senate Transportation Committee. **HB 121** was withdrawn prior to introduction. **SB 72** was withdrawn prior to introduction.

Actions Against Contractors without Required Insurance Coverage

(HB 89 by Spano/SB 604 by Steube)

These identical bills are the result of an actual case **Representative Spano** had where a contractor's insurance coverage specifically excluded condominium work. The bills would pierce the corporate veil and make a contractor personally liable if they knowingly failed to carry the public liability insurance and property damage insurance required by s. 489.115 or knowingly performed work that was specifically excluded from such policies. The House Bill passed out of its first committee during committee weeks but not without opposition from contracting groups and lots of questions from committee members.

STATUS: HB 89 has been referred to the House Civil Justice and Claims Subcommittee;

Careers and Competition Subcommittee; and Judiciary Committee. The bill unanimously passed the House Civil Justice and Claims Subcommittee on Thursday, November 8 on a vote of 14-0. The bill now goes to the House Careers and Competition Subcommittee. **SB 604** has been referred to the Senate Regulated Industries Committee; Judiciary Committee; and Rules Committee.

Electrical Contractors

(HB 295 by Mercado/SB 446 by Gibson)

These bills amend state law to require a journeyman electrician to supervise installation of 77 volts or more on all commercial or industrial projects. Currently, there is a 50,000-square foot threshold before this requirement kicks in. Historically, contractor groups have opposed this union initiative.

STATUS: **HB 295** has been referred to the House Careers and Competition Subcommittee; Local, Federal and Veterans Affairs Subcommittee; and Commerce Committee. **SB 446** has been referred to the Senate Regulated Industries Committee; Community Affairs Committee; and Rules Committee.

Florida Building Commission

(HB 299 by McClain)

This bill would reduce the membership of the Florida Building Commission from its current 27 members to 11, removing many industry representative seats on the Commission. The bill was agendaed to be heard in October but was temporarily postponed. This is very controversial, and a Senate companion has not yet surfaced.

STATUS: **HB 299** has been referred to the House Careers and Competition Subcommittee; and Commerce Committee. The bill was Temporarily Postponed by the House Careers and Competition Subcommittee on Wednesday, October 25. The bill passed the House Careers and Competition Subcommittee on Wednesday, November 15 on a vote of 10-4. The bill now goes to the House Commerce Committee, its last committee reference.

Impact Fees

(HB 697 by Young/CS/SB 324 by Young)

These Florida Home Builders Association supported bills are an attempt to rein in the assessment and collection of impact fees. The Senate Bill was heard in December in the Community Affairs Committee and substantially amended. Although the original bills simply delayed the collection of impact fees to issuance of the certificate of occupancy, the amended Senate Bill changes that date to issuance of the permit and puts a myriad of requirements on the collection of impact fees including a requirement that they be used for the benefit of the residents of the project and not to pay existing debt.

STATUS: **HB 697** has been referred to the House Community Affairs Committee; Appropriations Subcommittee on Finance and Tax; and Appropriations Committee. The bill is scheduled to be heard by the House Community Affairs Committee on Tuesday, December 05 at

10:00 a.m. **CS/SB 324** has been referred to the Senate Community Affairs Committee; Appropriations Subcommittee on Finance and Tax; and Appropriations Committee. The bill unanimously passed the Senate Community Affairs Committee on Tuesday, December 5 on a vote of 6-0. The bill now goes to the Senate Appropriations Subcommittee on Finance and Tax.

Statute of Limitations for Actions Relating to Real Property Improvement

(HB 875 by Leek; SB 536 by Passidomo)

Bills passed in recent years on this issue remain controversial, and these ABC-supported bills are an attempt to resolve those issues and clarify the statute. In addition to technical tweaks, the bills establish a time for filing cross-claims and counterclaims and clarify that work performed after issuance of a certificate of completion or certificate of occupancy does not extend the time for filing an action.

STATUS: **HB 875** has been referred to the House Civil Justice & Claims Subcommittee; Agriculture & Property Rights Subcommittee; and Judiciary Committee. **SB 536** has been referred to the Senate Judiciary Committee; Community Affairs Committee; and Rules Committee.

Construction Defect Claims

(HB 759 by Trumbull/SB 680 by Passidomo)

This legislation is an attempt to rein in construction defects claims. It requires claimants to personally sign claims, settlement documents, etc. and to be present at inspections. It requires a rejection of settlement to be accompanied by a demand for mediation and to explain why the settlement offer was not considered adequate and sets various time periods and deadlines.

STATUS: **HB 759** has been referred to the House Civil Justice & Claims Subcommittee; and Judiciary Committee. **SB 680** has been referred to the Senate Judiciary Committee; Commerce and Tourism Committee; and Rules Committee.

Opened and Expired Building Permits

(HB 1077 by /SB 1322 by Powell)

These bills would add failing to properly close any permit or satisfy any applicable permit requirement to the list of violations for which the Construction Industry Licensing Board can discipline a contractor. These bills are 15 pages full of new requirements defining expired permits, setting forth procedures for completion of open permit projects that have not been inspected or closed, addressing changing contractors and requiring a notice to all permit applicants about permit and inspection requirements. The bill allows local governments to enforce other local restrictions that are not inconsistent and/or add additional permit closure requirements.

STATUS: **HB 1077** was filed in the House on Thursday, December 21, 2017. **SB 1322** was filed in the Senate on Thursday, December 21, 2017.

Regulatory Reform-Licensing

(HB 1041 by Plakon; SB 1114 by Brandes)

These bills specify licenses that can be obtained after certain specified time periods have lapsed since the conviction or determination of guilt. The professions included are cosmetology and barbers, construction contractor in the subtrades and specialty contractors and nursing assistants. The bills allow a person to apply to the respective board for a declaratory statement as to whether they are eligible for licensure and create procedures and time periods.

STATUS: **HB 1041** was filed in the House on Tuesday, December 19, 2017. **SB 1114** has been referred to the Senate Regulated Industries Committee; Commerce and Tourism Committee; and Rules Committee.

Regulatory Reform-Red Tape Reduction Act

(HB 791 by M. Diaz/SB 1268 by Perry)

These bills would create the Red Tape Reduction Advisory Council under the Executive Office of the Governor, consisting of members appointed by the Governor, House Speaker and Senate President. A baseline for the number of administrative rules in existence on January 1, 2019 would be established and an agency could not adopt an additional rule without repealing an existing rule. The council shall: (a) Annually review the Florida Administrative Code to determine whether any rules are duplicative or obsolete, are especially burdensome to businesses within the state, disproportionately affect businesses with fewer than 100 employees or disproportionately affect businesses with annual revenue below \$5 million. If the council determines that a rule meets at least one of these criteria and can be repealed or amended with minimal impact on public health, safety and welfare, the council shall recommend repealing or amending the rule.

STATUS: **HB 791** has been referred to the House Oversight, Transparency & Administration Subcommittee; Appropriations Committee; and Government Accountability Committee. **SB 1268** was filed in the Senate on Friday, December 15, 2017.

Annual Business Organization Reports and Fees

(HB 373 by M. Grant/SB 1228 by Hukill)

These bills would change the annual corporate reporting to bi-annual reporting.

STATUS: **HB 373** has been referred to the House Oversight, Transparency & Administration Subcommittee; Ways & Means Committee; and Government Accountability Committee. **SB 1228** has been referred to the Senate Commerce and Tourism Committee; Appropriations Subcommittee on Transportation, Tourism, and Economic Development; Appropriations Committee.

Business Filings

(HB 661 by M. Miller/CS/SB 610 by Young)

These bills would require the Department of State to create a notification program by December 31, 2018 to combat the fraudulent filing of business and corporate documents. Each time a

document is filed, an email notice to the business would be required. The Senate Bill has already passed two committees. The House Bill has not yet been heard.

Status: **HB 661** has been referred to the House Oversight, Transparency and Administration Subcommittee; Transportation and Tourism Appropriations Subcommittee; and Government Accountability Committee. **CS/SB 610** has been referred to the Senate Commerce and Tourism Committee; Appropriations Subcommittee on Transportation, Tourism, and Economic Development; and Appropriations Committee. The bill unanimously passed the Senate Commerce and Tourism Committee on Monday, November 13 on a vote of 7-0. The bill unanimously passed the Senate Appropriations Subcommittee on Transportation, Tourism, and Economic Development on Thursday, December 7 on a vote of 9-0. The bill now goes to the Senate Appropriations Committee, its last committee reference. The bill now goes to the Senate Appropriations Committee, its last committee reference.

Notaries Public

(HB 771 by J. Grant/SB 1042 by Brandes)

These bills would create new sections of statute with respect to electronic notarization. They allow an individual and witnesses to appear “in person” via computer audio-video communication technology and specify detail as to validations, forms and other requirements.

STATUS: **HB 771** has been referred to the House Civil Justice & Claims Subcommittee; Transportation & Tourism Appropriations Subcommittee; and Judiciary Committee. **SB 1042** has been referred to the Senate Judiciary Committee; Governmental Oversight and Accountability Committee; and Rules Committee.

Theft

(HB 713 by Donalds and Alexander/SB 928 by Bracy)

These bills would raise the current threshold for what is considered grand theft and a third-degree felony from the current \$300 threshold to \$1,500. Theft of less than \$1,500 would be considered petit theft. They remove some specific items from the statute including theft of materials from a designated and posted construction site. The bills would also change provisions relating to repeat offenders to add the requirement that the increased penalties only apply to adult offenders.

STATUS: **HB 713** has been referred to the House Criminal Justice Subcommittee; Justice Appropriations Subcommittee; and Judiciary Committee. **SB 928** has been referred to the Senate Criminal Justice Committee; Judiciary Committee; and Rules Committee.

Workers' Compensation

(HB 7009 by Commerce Committee and Burgess)

This House Bill passed out of the Commerce Committee in early November and now sits on the House Calendar. There are currently no Senate Bills addressing these issues. When the bill was heard, the business community sat silent as there is a strong feeling that the bill doesn't do nearly enough to resolve the issues we are facing with respect to attorneys' fees. The bill repeals caps put in place in 2003, requires the existing medical reimbursement panel to move to annual

adoption of maximum reimbursement allowances, extends timeframes in which employees may receive certain workers' compensation benefits and in which a carrier must notify a treating doctor of certain requirements and revises provisions relating to retainer agreements and awarding attorney fees. It also allows the Judge of compensation claims to deny a claim if the claimant or claimant's attorney did not make a good faith effort to settle the claim out of court.

STATUS: **HB 7009** passed the House Commerce Committee on Tuesday, November 14 on a vote of 18-8. The bill now goes to the House Calendar.

Property Insurance (Assignment of Benefits (AOB))

(HB 7015 by Trumbull/SB 62 by Hukill/SB 256 by Farmer/SB 258 by Farmer/SB 1168 by Steube)

HB 7015 encompasses the only proposal coming from the House on this issue. It passed out of the Commerce Committee on November 11 and now sits on the House calendar. The various Senate Bills are different attempts to address AOB. Several, including **Senator Farmer's** and **Steube's** bills, prohibit attorney fees and costs paid by a property insurer under an AOB from being included in the property insurer's rate base or used to justify a rate increase or rate change. Each of the bills contains a mix of different provisions but consistent is allowing AOB under certain conditions, giving the assignor/property owner the option to rescind the assignment within seven days but be responsible for payment of work performed prior to the rescission, notifying the property insurer within a specified period of time that benefits have been assigned and itemizing the services to be performed. Although the House Bill sits on the calendar, the Senate has yet to hear any of these bills.

STATUS: **HB 7015** passed the House Judiciary Committee on November 14 on a vote of 13-5. The bill now goes to the House Calendar. **SB 62** has been referred to the Senate Banking and Insurance Committee; Appropriations Committee; and Rules Committee. **SB 256** has been referred to the Senate Banking and Insurance Committee; Appropriations Committee; and Rules Committee. **SB 258** has been referred to the Senate Banking and Insurance Committee; Appropriations Committee; and Rules Committee. **SB 1168** has been referred to the Senate Banking and Insurance Committee; Judiciary Committee; and Rules Committee.

Small Business Participation in State Contracting

(SB 114 by Campbell)

This is the same legislation filed for several years by **Senator Campbell**. It would require state agencies to break contracts into smaller pieces to allow for smaller contractors to bid. It would require 35% of the agencies contracts to be awarded to small contractors, and it would prohibit requiring bonds for contracts under \$500,000. This is legislation we have opposed and will continue to do so. At present, there is no House companion bill.

STATUS: **SB 114** has been referred to the Senate Governmental Oversight and Accountability Committee; Appropriations Subcommittee on General Government; and Appropriations Committee.

Permit Fees

(HB 725 by Williamson/SB 1144 by Perry)

The bills require governing body of local governments to post their permit and inspection fee schedules and link to annual building permit and inspection utilization report on its website. It also provides reporting requirements.

STATUS: **HB 725** has been referred to the House Local, Federal and Veterans Affairs Subcommittee; Careers and Competition Subcommittee; and Government Accountability Committee. **SB 1144** has been referred to the Senate Community Affairs Committee; Appropriations Subcommittee on Finance and Tax; and Appropriations Committee.

To view and print the above bills from this week's Legislative Report, please go to either www.floridahouse.gov or www.flsenate.gov. Other legislative information can be found by going to www.leg.state.fl.us. If you have any questions or need additional information, please contact me at rbkershner@att.net.