Florida A.G.C. Council, Inc.
LEGISLATIVE REPORT

2018 Regular Session of the Florida Legislature

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In a rare Sunday meeting, the Florida House and Senate finally passed an $88.7 billion budget for the state fiscal year beginning July 1 and concluded the 2018 Session at 4:16 p.m. The extension of the session into Sunday was required because the House and Senate could not agree on several budget items in time to vote on the budget by the scheduled end of the session on Friday. Under the Florida Constitution, the budget must be finished and on lawmaker's desks for a minimum of 72 hours before a vote can occur.

In total, 3,250 bills were filed for the 2018 Session, as were 2,721 amendments to those bills. Of the 200 bills that passed both chambers, 34 were Senate bills, and 166 were House bills. This was the lowest number of bills passed since at least 2000.

In addition to finishing the state budget, the Florida Legislature on Sunday also passed a $171 million tax cut package, which includes various sales tax holidays and tax cuts aimed at hurricane recovery.

During the 2018 Session, we tracked a total of 152 bills that would have had some impact on the construction industry. Beyond the bills that AGC actively tried to pass, AGC also had to determine the impact of dozens of other bills and decide to support, oppose, or amend them as warranted.

Outlined below is a summary of the major bills and issues on which AGC pursued the interests of Florida's general contractors during the 2018 Session here in Tallahassee.

PRIORITY

REFORMS TO CONSTRUCTION BOND PROCESS — **STATUS: DID NOT PASS**

SB 908 - Sen. Greg Steube (R - Sarasota) — **AGC POSITION: SUPPORT**

HB 723 - Rep. Stan McClain (R - Ocala)

On large construction projects, both public and private, it is common for the owner to require the general contractor (GC) to post both a performance bond (guaranteeing the GC's completion of the project) and a payment bond (guaranteeing the payment of subcontractors, sub-subs, suppliers, and laborers). Often, one or more of the subs will also be required to post a performance bond, guaranteeing the sub's completion of its work on the job. The referenced AGC-backed bills would accomplish the following:

- Help streamline the payment process and avoid costly litigation: Where a subcontractor has failed to pay a sub-sub or supplier for its work or materials, the sub-sub or supplier is required to provide a notice of nonpayment to the GC and the payment bond surety, giving the GC the ability to look into the matter and get the sub-sub or supplier paid. Unfortunately, this notice states nothing more than the amount allegedly due. While the GC typically seeks supporting documentation, it is frequently not supplied, and it is not required to be supplied, until the sub-sub or supplier files a lawsuit. Further, such notices will often stop or slow down payments by the owner (affecting everyone on the project), may impact the GC's bonding capacity, and are often prepared haphazardly and sometimes fraudulently. The proposed bill would:

    - Require the notice to be verified (under oath) and subject the filer to penalties for fraudulent or willfully exaggerated notices, like similarly important documents under the lien/bond laws, ensuring sub-subs and suppliers use due care in preparing the notice.

    - Require sub-subs and suppliers to wait until one routine payment cycle on the job is complete (45 days) before filing a notice of nonpayment, so notices are not filed until a real payment problem exists. This waiting period already exists for payment bonds on public projects.

    - Require supporting documentation to be supplied to the GC along with the notice.

- Allow a GC to recover attorney's fees under a subcontractor's performance bond: All parties to the construction process, including the owner, are entitled by law (s. 627.756) to attorney's fees in an action brought under a bond, except for an action brought by a GC under a subcontractor's performance bond. When this law was last amended almost 25 years ago, subcontractor performance bonds were more unusual, but they are now commonplace. When a sub defaults, the GC must quickly hire an alternate sub to do the work, typically at greater expense and with resulting construction delays. The GC should not be singled out and denied attorney's fees when they are forced to file an action against a sub's performance bond, compounding the GC's losses.

- Ensure that conditional payment bonds are properly recorded for the benefit of subs and suppliers: Some payment bonds are "conditional," guaranteeing payment to subs and suppliers only to the extent the GC has been paid by the owner. Like all bonds, they have to be filed in the county's land records. Sometimes, however, owners neglect to file the bond, depriving subs and suppliers of notice. The proposed bill would allow the GC to remedy such an oversight by filing the bond, and it would clarify that the terms of the bond control and cannot be converted into a common law bond by a failure to file.

UPDATE: SB 908 moved successfully through one of its three committees, where we removed the requirement that supporting documentation must accompany a notice of nonpayment. This was a provision we anticipated would receive strong objections from subcontractors and material suppliers. Unfortunately, the bill ultimately made no progress in the House, which also had the effect of halting its forward momentum in the Senate. Notably, the bill's first committee

of reference in the House was chaired by the owner of a plant nursery, who would naturally be more aligned with the material suppliers. As such, the bill did not pass in 2018, but we always knew this legislation would probably be a two-year project. We are already making preparations for the 2019 Session. We did actively seeking out other 2018 bills that might serve as vehicles on which we could place a portion of this AGC-backed legislation. In fact, we were successful in placing the provision allowing a general contractor to recover attorney's fees under a subcontractor's performance bond onto an omnibus insurance bill (SB 748). In the final days of the session, however, we were blocked from getting this provision onto the companion House bill (HB 465), which was the bill that actually passed.

PRIORITY

PERSONAL LIABILITY OF CONTRACTORS **STATUS: DID NOT PASS**
SB 604 - Sen. Greg Steube (R - Sarasota) **AGC POSITION: OPPOSE**
HB 89 - Rep. Ross Spano (R - Riverview)

Current law establishes licensing procedures and regulatory duties for the construction industry. A construction contractor is allowed to operate and perform work in the construction industry as a business organization. A fundamental characteristic of a business organization is that the owners, members, or agents are generally not personally liable for damages related to work performed by the organization absent evidence of fraud.

The construction licensing law requires a contractor, whether operating personally or as a business organization, to carry public liability insurance and property damage insurance. For example, a general contractor must have at least $300,000 in public liability coverage and $50,000 in property damage coverage.

This bill provides that when a construction contractor operating as a business entity is required to carry public liability insurance and property damage insurance but fails to do so, the individual contractor would be personally liable for any damage that would have otherwise been covered under the policy, up to the required limits.

UPDATE: AGC led the opposition against this very bad bill and was the only group to testify against the bill when it was heard in the House Civil Justice & Claims Subcommittee back in November. Since that time, we met multiple times with the House sponsor, Rep. Spano, as well as with the Senate sponsor, Sen. Steube, to voice AGC's opposition to imposing personal liability on the contractor under these circumstances. At the same time, we offered to support increased fines for contractors who fail to carry the required insurance. Ultimately, due to AGC's opposition, HB 89 was not heard in either of its two remaining committees, and SB 604 was never heard in any of its three committees. As such, the bill did not pass. We also closely monitored all construction-related bills throughout the session to ensure this legislation did not get tacked onto another bill as an amendment.

PRIORITY

STATUTE OF REPOSE **STATUS: PASSED**

SB 536 - Sen. Kathleen Passidomo (R - Naples) **AGC POSITION: SUPPORT**

HB 875 - Rep. Tom Leek (R - Daytona Beach)

This bill relates to the statute of limitations (4 years) and statute of repose (10 years) for actions based upon the design, planning, or construction of an improvement to real property. Currently, the trigger for commencement of the limitations and repose periods under Florida law is the latter of:

- The 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.

During the 2017 Session, in response to an adverse court case, a bill was passed to better define the date of "completion of the contract" as 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."

In 2018, there is a renewed push to pursue an original part of the 2017 bill, which would have made clear that punch-list and warranty work cannot operate to delay the start of the limitations or repose periods and thereby extend them. The trial lawyers have insisted on conditioning this clarification on whether the underlying work was properly permitted and the subject of a final certificate of occupancy. AGC has been working closely with the Florida Home Builders Association on this bill.

The bills also extends the statute of limitations for a construction defect to allow counterclaims, cross-claims, and third-party claims to be brought up to one year after the pleading in the underlying action is served. The Rules of Civil Procedure require a party to assert all counterclaims, cross-claims, and third-party claims within a maximum of 20 days of the pleading triggering the claim.

UPDATE: HB 875 passed the House on Feb. 21, and it ultimately passed the Senate on the last Friday of the 2018 Session. The bill will go to Governor Scott for his action sometime in the next few weeks.

PRIORITY

CLOSING OUT OPEN/EXPIRED BUILDING PERMITS **STATUS: DID NOT PASS**
SB 1322 - Sen. Bobby Powell (D - West Palm Beach) **AGC POSITION: OPPOSE**
HB 1077 - Rep. Ben Diamond (D - St. Petersburg)

These bills would create several alternatives for closing out a building permit that has remained open for a significant period of time without activity. While AGC does not oppose this concept, if well designed and uniformly applied, AGC does object to the part of the bill that would subject a contractor to discipline for "failing to properly close any permit or satisfy any applicable permit requirement," because the circumstances under which a permit remains open and is not closed out are frequently beyond the contractor's control. For similar reasons, AGC is also concerned about a provision in the bill that would authorize a local building official to refuse to accept new building permit applications from a contractor who holds more than a specified number of expired or inactive permits.

UPDATE: Due to the opposition of AGC and other construction groups, neither of these bills was ever heard in committee and therefore did not pass. The House sponsor of this bill, Rep. Diamond, has asked AGC to lead an effort to work on this issue with all of the interested parties in advance of the 2019 Session.

PRIORITY

ATTORNEY'S FEES ON LIEN & BOND CLAIMS **STATUS: DID NOT PASS**
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 historically been the only construction group publicly opposed to this proposed change in the law. AGC closely monitored all construction-related legislation throughout the 2018 Session to ensure that this bad attorney's fee provision did not get amended onto another bill.

PRIORITY

MANDATORY LIEN/BOND WAIVER FORMS **STATUS: DID NOT PASS**
Possible Amendment **AGC POSITION: OPPOSE**

This year, material suppliers continued to express 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 closely monitored all construction-related legislation throughout the 2018 Session to ensure that this bad provision did not get amended onto another bill.

PRIORITY

NOTICE-AND-CURE PROCESS (CH. 558 REFORM) **STATUS: DID NOT PASS**
SB 680 - Sen. Kathleen Passidomo (R - Naples) **AGC POSITION: SUPPORT**
HB 759 - Rep. Jay Trumbull (R - Panama City)

Where a property owner alleges that there is a defect in construction or design work performed on the property, chapter 558 of the Florida Statutes requires the owner to notify the contractor or design professional of the defect. The property owner must allow the contractor or design professional to inspect the alleged defect and offer to fix the problem, or pay damages, before suit is filed.

This bill changes the pre-suit process to:

- Require the property owner or an authorized representative to personally sign any notice of claim and any notice of acceptance or rejection of a settlement offer.
- Require a contractor or design professional receiving a notice of claim to serve notice on any contractor, subcontractor, or other party that he or she reasonably believes is responsible for a defect specified in the notice of claim.
- Require consultants retained by the property owner to be physically present to identify the location of the alleged construction defect during any contractor inspection.
- Require the property owner or an authorized representative to serve a written request for mediation prior to rejecting a settlement offer.
- Add that the statute of limitations for a construction defect claim is tolled for up to thirty days after mediation is waived or an impasse is declared.

<u>UPDATE:</u> HB 759 moved successfully through only one of its two committees, and SB 680 was never heard in committee, so this legislation did not pass during the 2018 Session. AGC will be working with other construction stakeholders to bring this legislation back for the 2019 Session.

PRIORITY

<u>POSTING OF BUILDING PERMIT AND INSP. FEES</u> **STATUS: DID NOT PASS**
SB 1144 - Sen. Keith Perry (R - Gainesville) **AGC POSITION: SUPPORT**
HB 725 - Rep. Jayer Williamson (R - Pace)

This bill requires the governing body of a county or city to post its building permit and inspection fee schedules and an annual building permit and inspection utilization report on its website. This report must include a breakdown of the local government's direct and indirect costs incurred to administer its various functions under the Florida Building Code, including plans review, inspections, permit processing, etc., as well as data on the number of permits requested and issued, number of inspections and re-inspections, personnel numbers and salary and employee benefit costs, and revenue from various sources. The bill also requires the local government to update the report before making any adjustment to its fee schedule.

<u>UPDATE:</u> HB 725 passed unanimously in the House on Feb. 14. SB 1144 moved successfully through all of its committees, but it was never considered by the full Senate. As such, this bill did not pass during the 2018 Session. While there was an effort to amend these provisions onto an unrelated affordable housing bill (SB 1328) late in the Session, this attempt was ultimately unsuccessful because the Senate never took up and voted on the bill in question.

PRIORITY

<u>TAX-EXEMPT PURCHASES BY CONTRACTORS</u> **STATUS: DID NOT PASS**
SB 1108 - Sen. Dana Young (R-Gainesville) **AGC POSITION: SUPPORT**
HB 715 - Rep. Tom Leek (R-Daytona Beach)

While items of tangible personal property are generally exempt from sales tax when purchased by a local government or school district, this exemption does specifically extend to the sale of tangible personal property made to contractors employed by the local government or school district when such tangible personal property goes into or becomes part of a public project owned by the local government or school district, unless specific procedures are strictly followed. This often presents major problems for a contractor who faces a sales tax audit after the project is complete, only to find out that the local government failed to follow the required procedures.

This bill would allow a governmental entity to authorize the contractor or subcontractor to use the governmental entity's certificate of entitlement for the direct purchase of tangible personal property that will go into or become a part of a public project owned by the governmental entity. The governmental entity would have to simply issue a letter of authorization to the contractor or

subcontractor specifying the instances in which the contractor or subcontractor may use the governmental entity's certificate of entitlement to the exemption.

UPDATE: HB 715 was workshopped in one committee, but no committee ever heard SB 1642. As AGC has experienced in the past when tackling this thorny issue, the bill was tagged right out of the gate with a significant state fiscal impact ($350-$400 million annually), which doomed any chance it had to advance in the 2018 Session. The issue may come back in some form in 2019.

PRIORITY

WORKERS COMPENSATION REFORM **STATUS: DID NOT PASS**
SB ____ - None filed **AGC POSITION: SUPPORT**
HB 7009 - House Commerce Committee

Florida courts have recently found multiple parts of the state's workers' compensation laws unconstitutional in the areas of carrier-paid attorney fees for injured workers, time limits on temporary wage replacement benefits (i.e., indemnity), and the right of an injured worker to pay for their own attorney. For these and other reasons, the Office of Insurance Regulation (OIR) ordered a rate increase of 14.5%, effective December 1, 2016. OIR has also more recently ordered an unrelated 9.5% rate decrease, effective January 1, 2018, based on claims data that does not reflect the impact of these judicial decisions.

HB 7009 would have made a number of changes to the state's workers' compensation laws, including:

- Allows a Judge of Compensation Claims (JCC) to award an hourly fee that departs from the statutory percentage based attorney fee schedule if the statutory fee is less than 40 percent or greater than 125 percent of the hourly rate customarily charged in the local community by defense attorneys, with the JCC determining the relevant facts. If the departure fee is allowed, the JCC determines the hourly rate, not to exceed $150 per hour, using statutory factors and the number of necessary attorney hours.

- Provides that the injured worker is responsible for any remaining attorney fees if required by their retainer agreement; the retainer agreements must be filed with the JCCs, but are not subject to JCC approval.

- Allows insurers to uniformly reduce premiums by no more than 5 percent, if they file an informational-only notice within 30 days, subject to regulatory oversight.

- Requires a good faith effort by the claimant and their attorney to resolve disputes prior to filing a petition for benefits; mandates a specified notice regarding attorney fees be signed by the claimant; increases the requirements applicable to petitions for benefits; eliminates carrier paid attorney fees for services occurring before the filing a petition; attaches attorney fees 45 days, rather than 30 days, following the filing of a petition; requires a JCC

to dismiss a petition for lack of specificity, without prejudice, within 10 days or 20 days, depending upon whether a hearing is required.

- Increases total combined temporary wage replacement benefits (TTD/TPD) from 104 weeks to 260 weeks.

- Fills a benefit gap that happens when TTD/TPD ends, but the injured worker is not at overall maximum medical improvement and/or no overall permanent impairment rating.

- Eliminates the charge-based reimbursement of health care facility outpatient medical care in favor of reimbursing them at 200 percent (unscheduled care) and 160 percent (scheduled surgery) of Medicare. If no Medicare fee exists, then current reimbursement standards apply, which are incorporated into statute.

UPDATE: Based on the House's prior consideration of a materially identical bill in 2017, HB 7009 was introduced by the House Commerce Committee for the 2018 Session and advanced directly to the House floor for a vote, bypassing the usual multi-committee review process. The House passed the bill on January 12, 2018 – the fourth day of the 2018 Session – by a vote of 74-30. The Senate, however, never expressed any interest in considering workers' compensation legislation during the 2018 Session, and no bills paralleling HB 7009 were ever filed. The state's business interests ultimately decided to stand down in pushing this legislation in 2018, in the hopes that further development of attorney's fee and claims data over the next 10-12 months may put us in a position to achieve better legislative results in 2019.

PRIORITY

ELECTRICAL JOURNEYMAN REQ'TS **STATUS: DID NOT PASS**
SB 446 - Sen. Audrey Gibson (D - Jacksonville) **AGC POSITION: OPPOSE**
HB 295 - Rep. Amy Mercado (D - Orlando)

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 change this provision to allow a county or city to require one electrical journeyman to 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.

UPDATE: AGC determined that it had to oppose this change in law. The decision on how any particular job should be staffed should be left to the electrical contractor and should not be further dictated by an individual county or city. This bill was never heard in any House or Senate Committee and did not pass. AGC closely monitored all construction-related legislation throughout the 2018 Session to ensure that this bad bill did not get amended onto another piece of legislation.

OTHER BILLS OF INTEREST:

APPRENTICESHIP PROGRAMS IN HIGH SCHOOL **STATUS: PASSED**
SB 856 - Sen. Bill Montford (D - Quincy) **AGC POSITION: SUPPORT**
HB 577 - Rep. David Silvers (D - West Palm Beach)

To receive a standard high school diploma a student must successfully complete a combination of core-curricula courses, e.g., English language arts, mathematics, science, social studies physical education and fine or performing arts, speech and debate, or practical arts. Students may use career education courses to satisfy high school graduation credit requirements.

These bills allow a student to use credit earned upon completion of a DOE-registered apprenticeship or pre-apprenticeship program to satisfy the credit requirements for fine or performing arts, speech and debate, or practical arts.

UPDATE: HB 577 passed unanimously in the House on Feb. 14, and the bill passed the Senate on the final Friday of the 2018 Regular Session. The bill will go to Governor Scott for his action sometime in the next few weeks.

SUPERMAJORITY VOTE FOR STATE TAXES OR FEES **STATUS: PASSED**
SB 1742 - Sen. Kelli Stargel (R - Lakeland) **AGC POSITION: MONITOR**
HB 7001 - House Ways and Means Committee

This bill proposes an amendment to the Florida Constitution that would provide that no state tax or fee may be imposed, authorized, or raised by the legislature except through legislation approved by two-thirds of the membership of each house of the legislature. The bill requires that any such proposed state tax or fee must be contained in a separate bill that contains no other subject. The bill also specifies that the proposed amendment would not apply to any tax or fee imposed by, or authorized to be imposed by, a county, municipality, school board, or special district.

The amendment proposed in the bill would take effect on January 8, 2019, if approved by 60% of the voters during the 2018 general election or an earlier special election.

UPDATE: HB 7001, which was a priority of Governor Scott and House Speaker Corcoran, was heard in a single committee and then moved to the House floor. The House passed the bill on January 25 by a vote of 80-29. This bill was later passed by the Senate on March 5 by a vote of 25-13. The measure will be put before Florida voters for their consideration during the 2018 general election.

WETLANDS/DREDGE-AND-FILL PERMITTING **STATUS: PASSED**
SB 1402 - Sen. David Simmons (R - Longwood) **AGC POSITION: SUPPORT**
HB 7043 - House Natural Resources & Public Lands Subcomm.

Section 404 of the Clean Water Act (CWA) provides the principle federal protection for wetlands. Under the CWA, no person may discharge dredge or fill materials into navigable waters without a permit. The United States Army Corps of Engineers (Corps) administers the section 404 dredge and fill permitting program (program), while the United States Environmental Protection Agency (EPA) provides oversight.

Part IV of chapter 373, F.S., establishes Florida's wetland regulatory program. The Environmental Resource Permit (ERP) program administers permits for dredging and filling in all wetlands and other surface waters, including state waters not subject to federal jurisdiction. The ERP program also regulates activities that affect the flow of water across the surface of the land, such as stormwater.

States may assume administration of the program from the federal government. Assumption allows states to process permit applications, issue permits, and monitor permitted activities on behalf of the federal government. A state's permitting criteria must be at least as stringent as federal criteria and must follow federal permitting procedures. The ERP program requirements are substantially similar to the federal requirements and could be used to administer the program.

This bill authorizes DEP to assume administration of the program, pending EPA's approval. State assumption would streamline, but not merge, the current state and federal permitting processes. The bill also authorizes DEP to delegate administration of the state administered program to water management districts or other governmental entities seeking such authority.

UPDATE: HB 7043 passed the House on Feb. 21 by a vote of 112-2. The Senate subsequently passed this bill on March 8 by a vote of 35-1. The bill will go to Governor Scott for his action sometime in the next few weeks.

COMMUNITY REDEVELOPMENT AGENCIES **STATUS: DID NOT PASS**
HB 17 - Rep. Jake Raburn (R - Valrico) **AGC POSITION: OPPOSE**
SB 432 - Sen. Tom Lee (R - Brandon)

The Community Redevelopment Act authorizes counties and municipalities to create community redevelopment agencies (CRAs) as a means of redeveloping slums and blighted areas. CRAs are controlled by a governing board that either is composed of members of the local governing body creating the CRA or commissioners appointed by the local governing body. CRAs operate under a community redevelopment plan that is approved by the local governing body. CRAs are primarily funded by tax increment financing, calculated based on the increase of property values inside the boundaries of the CRA.

A Miami-Dade County grand jury issued a report in 2016 after "learning of several examples of mismanagement of large amounts of public dollars" by CRAs. The report found that some CRA boards were "spending large amounts of taxpayer dollars on what appeared to be pet projects of elected officials" and "there is a significant danger of CRA funds being used as a slush fund for elected officials." In the event funds were misused, the report found that the Act lacked any accountability and enforcement measures.

Continuing a legislative effort begun in 2017, the above bills filed for the 2018 Session are a direct result of the grand jury report. Specifically, HB 17 seeks to increase the accountability and transparency of CRAs by:

- Requiring CRA boards to undergo four hours of ethics training annually;
- 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;
- Providing that moneys in the redevelopment trust fund may only be expended pursuant to an annual budget adopted by the CRA and only for those purposes specified in current law beginning October 1, 2018;
- Authorizing the county or city creating the CRA to adjust the level of tax increment financing available to the CRA;
- Requiring a CRA created by a city to provide its budget and any amendments to the board of county commissioners; and
- Requiring counties and cities to include CRA data in their annual financial report.

The bill provides that the creation of new CRAs on or after October 1, 2018, may only occur by special act of the Legislature. It provides for the eventual phase-out of existing CRAs at the earlier of the expiration date stated in the agency's charter or on September 30, 2038, with the exception of those CRAs with any outstanding bond obligations. However, phase-out may be prevented if a supermajority of the governing board of the relevant county or city vote to retain the CRA. The bill provides a process for the Department of Economic Opportunity to declare a CRA inactive if it has reported no revenues, no expenditures, and no debt for three consecutive fiscal years.

<u>UPDATE</u>: HB 17, which is a priority of House Speaker Richard Corcoran, was referred to only a single committee, where it passed back in November. The full House took up and passed the bill on January 12 by a vote of 72-32. SB 432 passed successfully through just one of its three committees, but it differed from HB 17 in several material respects. Most notably, SB 432 did not contain the provisions of HB 17 requiring a special act of the Legislature to create any new CRA on or after October 1, 2018, nor the provisions mandating the phase-out of existing CRAs no later than September 30, 2038, absent a supermajority vote of the governing board of the county or city. Later in the Session, the House placed the core provisions of HB 17 onto another bill relating generally to local governments (HB 883), but the Senate refused to take up and vote on this bill in the final days of the Session.

ASSIGNMENT OF INSURANCE BENEFITS **STATUS: DID NOT PASS**
SB 1168 - Sen. Greg Steube (R - Sarasota) **AGC POSITION: MONITOR**
HB 7015 - House Judiciary Committee

An insured may sign over the rights to benefits under a property insurance policy to a third party through an "assignment of benefits." This assignment allows the third party, or assignee, such as a water extraction company, a roofer, or a plumber, to stand in the shoes of the insured and seek direct payment from the insurance company for repairs made to the covered property. The Office of Insurance Regulation reports concerning trends in the use of assignments of benefits in property insurance and projects recurring significant annual rate increases of as much as 10% and the potential for insurers to discontinue writing polices within certain areas of the state.

HB 7015 establishes requirements related to the execution, validity, and effect of such an assignment agreement, requiring it to:

- Be written;
- Include a 7-day period within which the insured may rescind the assignment;
- Include an estimate of services;
- Require notice to the insurer upon execution of an assignment agreement; and
- Require notice to the insured regarding the legal implications of an assignment agreement.

HB 7015 prohibits certain fees and the altering of policy provisions relating to managed repairs. The bill also transfers to the assignee certain duties under the insurance contract that are a prerequisite for filing a lawsuit and limits an assignee's ability to recover certain costs directly from the insured. If an assignee intends to file suit against an insurer based on a claim filed pursuant to an assignment agreement, the bill requires the assignee give the insurer notice at least 10 business days before filing suit.

If the parties fail to settle and litigation results in a judgment, HB 7015 provides the exclusive means for either party to recover attorney fees, conditioning fees on the extent to which the amount of the judgment differs from the insurer's pre-suit settlement offer.

SB 1168 contains many similar provisions, but it does not contain the limitations on attorney fees. The bill is generally considered to be friendlier to insureds and those receiving assignments of benefits.

UPDATE: Based on the House's prior consideration of a materially identical bill in 2017, HB 7015 was introduced by the House Judiciary Committee for the 2018 Session and advanced directly to the House floor for a vote, bypassing the usual multi-committee review process. The House passed the bill on January 12, 2018 – the fourth day of the 2018 Session – by a vote of 82-20. SB 1168 moved through two of its three committees, but the bill ultimately did not pass the Senate during the 2018 Session.

IMPACT FEES – LIMITATIONS AND TIMING **STATUS: DID NOT PASS**
SB 324 - Sen. Dana Young (R - Tampa) **AGC POSITION: SUPPORT**
HB 697 - Rep. Mike Miller (R - Orlando)

Impact fees are imposed by local governments to fund infrastructure needed to expand local services to meet the demands of population growth caused by development. The impact fee ordinances enacted by a county, municipal, or special district must meet certain minimum statutory criteria, but the various types of impact fees for different infrastructure needs, the calculation of the amount due, and the timing of collecting these fees currently is at the discretion of each local government.

These bills prohibit local governments from collecting impact fees at any time prior to issuing a building permit. The bill codifies the requirement for impact fees to bear a rational nexus both to the need for additional capital facilities and to the expenditure of funds collected and the benefits accruing to the new construction. Local governments will be required to designate the funds collected by the impact fees for acquiring the capital facilities to benefit the new residents. Impact fees collected by a local government may not be used to pay existing debt or pay for prior approved projects unless such expenditure has a rational nexus to the impact generated by the new construction.

The bills restrict the timing of collecting impact fees, but they do not restrict the amount of revenue local governments may raise nor require they expend additional amounts.

UPDATE: HB 697 passed the House on March 1. SB 324, however, stalled on the Senate floor. Sen. Young tried to amend the substance of the legislation onto three other bills (SB 1348, HB 883, and HB 987), but these efforts were unsuccessful, and none of these bills ultimately passed anyway. As such, this legislation did not pass during the 2018 Session.

AFFORDABLE HOUSING **STATUS: DID NOT PASS**
SB 1328 - Sen. Keith Perry (R - Gainesville) **AGC POSITION: SUPPORT**
HB 987 - Rep. Bob Cortes (R - Altamonte Springs)

The recent impact of Hurricanes Irma and Maria have exacerbated the significant need for affordable housing in Florida. The bill revises several key provisions of law and creates additional processes to expedite the creation of affordable housing in the state. The bill also creates the Hurricane Housing Recovery Program and the Recovery Rental Loan Program to expedite the creation of additional affordable housing in response to the needs created by the recent hurricanes. With regard to the development of affordable housing, the bill creates new provisions encouraging the use of local and state government-owned surplus lands and expediting local government permitting.

UPDATE: HB 987 passed the House on March 1, but the Senate never took up or voted on the bill, so this legislation did not pass during the 2018 Session.

FLA. CONSTRUCTION WORKFORCE TASK FORCE **STATUS: DID NOT PASS**
SB 1642 - Sen. Keith Perry (R - Gainesville) **AGC POSITION: MONITOR**
HB 1251 - Rep. Elizabeth Porter (R - Lake City)

As you know, the construction industry continues to see a shortage of skilled workers and has seen a lack of entry of new employees. In 2016, the Legislature created the Construction Industry Workforce Taskforce (CIWT) to address the critical shortage of individuals trained in building construction and inspection. The CIWT submitted a final report to the Governor, the President of the Senate, and the Speaker of the House of Representatives, on January 27, 2017, which included ten recommendations. The taskforce report can be found at the following link: Florida Construction Workforce Taskforce.

In 2017, the Legislature passed and the Governor signed into law HB 1021. HB 1021 required the Department of Education (DOE), in conjunction with the Department of Economic Opportunity, to develop a plan to implement the CIWT's recommendations, and submit the plan to the CIWT by July 1, 2018. HB 1021 also implemented some of the CIWT's recommendations related to building code enforcement professionals, and required CareerSource Florida Inc., to create a plan to fund construction training programs recommended by the CIWT using existing federal funds and provide the plan to the CIWT by July 1, 2018.

This referenced 2018 bill provides that DOE must submit a plan to implement five of the CIWT's ten recommendations and submit it to the Governor, Speaker of the House, and the President of the Senate, by July 1, 2019.

UPDATE: HB 1251 moved through only one of its three committees. SB 1642 was never heard in committee and was never considered by the Senate, so this legislation did not pass during the 2018 Session.

PROCUREMENT TASK FORCE **STATUS: DID NOT PASS**
SB 368 - Sen. Jeff Brandes (R - St. Petersburg) **AGC POSITION: MONITOR**
HB 111 - Rep. Ben Albritton (R - Bartow)

These bills create the Statewide Procurement Efficiency Task Force within the Department of Management Services (DMS) to evaluate the effectiveness and value of state and local procurement laws and policies to the taxpayers of this state, determine where inconsistencies in such laws and policies exist, and submit a report by July 1, 2019. The final report of the task force must include, at a minimum, recommendations for consideration by the Legislature that promote procurement efficiency, streamline procurement policies, establish best management practices, and encourage increased use of state term contracts. Of the fourteen members of the Task Force, one must be a general contractor and one must be a professional engineer.

UPDATE: HB 111 was never heard in committee. SB 368 moved through just two of its three committees. As such, this legislation did not pass during the 2018 Session.

TRANSP. SYSTEM SURTAX (MIAMI-DADE COUNTY) **STATUS: DID NOT PASS**
SB 688 - Sen. Rene Garcia (R - Hialeah) **AGC POSITION: MONITOR**
HB 243 - Rep. Bryan Avila (R - Hialeah)

In addition to the state sales and use tax, section 212.055 authorizes counties to impose nine local discretionary sales surtaxes. Among these is a 1% surtax called the "Charter County and Regional Transportation System Surtax." This bill requires each county meeting a particular definition -- currently only Miami-Dade County -- to use the proceeds of this surtax only for the following purposes (to the extent not prohibited by contracts or bond covenants in effect on July 1, 2018):

- The planning, design, engineering, and construction of fixed guideway rapid transit systems.
- The acquisition of right-of-way for fixed guideway rapid transit systems, provided that the current owner of the right-of-way is a willing seller or lessor.
- The purchase of buses and other capital costs for a bus system.
- The payment of principal and interest on bonds previously issued related to fixed guideway rapid transit systems or bus systems.
- As security by the governing body of the county to refinance existing bonds or to issue new bonds for the planning, design, engineering, and construction of fixed guideway rapid transit systems or bus systems.

Additionally, the bill specifically prohibits such a county from using the surtax proceeds for non-transit purposes.

UPDATE: HB 243 passed the House on Feb. 21 by a vote of 106-7. SB 688 moved through just two of its three committees and was never heard by the full Senate. As such, this legislation did not pass during the 2018 Session.

MEDIATION **STATUS: DID NOT PASS**
SB 1034 - Sen. Greg Steube (R - Sarasota) **AGC POSITION: MONITOR**
HB 1043 - Rep. Larry Metz (R - Groveland)

Current Florida law authorizes courts to order parties to mediation conducted according to the Florida Rules of Civil Procedure. Under the rules, an insurance carrier representative attending mediation must have authority to settle up to the lesser of the policy limit or the plaintiff's last demand. Under the bill, however, the insurance carrier representative must only have authority to settle up to the insurer's reserve on the claim (generally a lesser amount), but the representative must have immediate access to a person who has authority to settle up to the lesser of the policy limits or the plaintiff's last demand.

The bill also authorizes a circuit court, upon a party's motion, to compel lienholders or other interested nonparties to attend a mediation conference.

Finally, the bill sets forth what may be in a mediator's report to a court regarding the result of a mediation process. If no agreement is reached in mediation, the report may say only that no agreement was reached. This is more restrictive than the current rule, which permits additional information to be included if the parties consent. In the case of a partial or complete agreement, the current rules require the mediator to report to the court the existence of the agreement "without comment." The bill would change this rule in the context of a partial agreement, permitting the report to list, if applicable, any claims or parties that were eliminated from the litigation by virtue of the partial agreement.

UPDATE: These bills became the subject of significant opposition, and neither was ever heard in a committee. As such, this legislation did not pass during the 2018 Session.

FLORIDA CORPORATE INCOME TAX **STATUS: PASSED**
SB 502 - Sen. Kelli Stargel (R - Lakeland) **AGC POSITION: MONITOR**
HB 7093 - House Ways & Means Committee

Florida imposes a 5.5 percent tax on the taxable income of corporations and financial institutions doing business in Florida. Florida uses federal taxable income as a beginning point to calculate the corporate income tax owed to Florida. Florida updates its utilization of the federal Internal Revenue Code by annually passing legislation that adopts the Code as it exists on January 1 of a given year. This process ensures the Florida tax code reflects any relevant changes to the Internal Revenue Code that were made during the prior year.

While the changes on the federal level are typically minimal, this year there are major changes to the Internal Revenue Code stemming from the passage by Congress of the Tax Cuts and Jobs Act and the Bipartisan Budget Act of 2018. The acts make numerous significant changes to the taxation of corporations, some of which will reduce federal taxable income for many Florida taxpayers, including granting accelerated deductions for expensing and depreciation of capital assets put into service after September 27, 2017. By fiscal year 2020-21, the combined effect of the changes from the two federal acts are expected to result in higher federal taxable income for Florida corporate income taxpayers in the aggregate, though by an unknown amount.

The referenced bill updates the Florida corporate Income Tax Code by adopting the Internal Revenue Code as in effect on January 1, 2018. However, similar to the state legislation in 2009, 2011, and 2013, the bill does not allow payers of the Florida corporate income tax to utilize the accelerated capital asset depreciation deductions allowed for federal tax purposes. Instead, the bill requires taxpayers to spread the amount of the accelerated deductions provided by federal law changes over a seven year period. For fiscal years 2018-2019 through 2020-2021, the bill requires permanent, downward adjustments of the Florida corporate income tax rate following each year, if actual collections exceed currently forecasted collections during those years by certain amounts.

UPDATE: HB 7093 originally passed the House on March 5 by a vote of 75-35. After a series of amendments on the final Thursday and Friday of the Session, the House and Senate ultimately passed the bill on Friday. The bill will go to Governor Scott for his action sometime in the next few weeks.