



With one week left before the scheduled end of the 2011 Session on May 6, House and Senate budget negotiators are hammering away late into the night on the state’s roughly \$70 billion budget. State law requires the budget to be finished and on legislators’ desks at least three days before a vote is taken. So if the “final” budget is not available by late Tuesday, the Session will have to be extended or legislators will have to return to Tallahassee at a later date to act on the budget. Among the thorniest issues to be resolved are spending on health care and Medicaid.

One item that did get settled late Friday night was an overhaul of the state’s employee retirement plan. Starting July 1, public employees will have to contribute three percent of their salaries into the plan. The retirement age for rank-and-file public employees will increase, as will the retirement age for those enrolled in the “special risk” class such as firefighters and police officers.

In other news, a major overhaul of the state’s growth management laws, which was passed by the House on April 21 (HB 7129), was rolled into a budget “conforming” bill (SB 2156) by House and Senate leaders on Friday. Because these bills cannot be amended on the House and Senate floor, this unusual and controversial move will force legislators to either vote “yes” on the bill and accept the sweeping growth management legislation or vote “no” and effectively reject the overall state budget. This measure would dramatically reduce the state’s role in growth management oversight and shift almost all of this responsibility to local government, while at the same time making it more difficult for citizens and advocacy groups to challenge development plans.

Environmental groups took another hit on Friday night when the House spent a total of seven minutes amending and voting on legislation (HB 991) that would streamline or eliminate many environmental permitting requirements, make rock mining projects easier, and reduce the ability of local governments to enforce environmental regulations.

At this point, thousands of bills have been filed for consideration by the 2011 Florida Legislature, many of which would impact the construction industry. Beyond the bills that we are actively trying to pass, like the AGC-priority bills discussed below, AGC must also determine the impact of dozens of other bills and decide to support, oppose, or amend them as warranted. Outlined below is an ever-expanding list of major bills and issues on which AGC is pursuing the interests of Florida’s general contractors during the 2011 Session here in Tallahassee.



## PRIORITY

STATE CONSTRUCTION MANAGEMENT  
SB 2126 – Senate Budget Committee

STATUS: **PENDING**  
AGC POSITION: **AMEND/MONITOR**

In the aftermath of the controversy here in Tallahassee over the new courthouse for the First District Court of Appeals, which was dubbed the “Taj Mahal” in the press, movement by the legislature to impose new constraints on the state’s management of building construction was almost inevitable.

Action on this front during the first few weeks of the committee process was rather limited, but the Senate Budget Committee rolled out a long series of proposed committee bills (“PCB’s”) on March 28 as part of its budget deliberations. Among these bills was PCB 7138, which would make major changes to the state’s management of building construction.

Most notably, a very troubling provision was inserted into the bill at the request of the Department of Financial Services, the intent of which was to prohibit the state’s use of a construction management entity for any project with a value over \$2 million.

AGC immediately intervened to remove this ill-conceived provision, which was amended out of the bill by the Senate Budget Committee on April 1. Ironically, after the authority of the state to hire construction management entities was questioned several years ago, AGC was the primary mover behind successful legislation to ensure that the state would continue to have the option of using construction management services.

Several items of note that remain in the bill, which has now been designated as SB 2126:

- Requires the standards for use of a state building to include an analysis of the cost per square foot of the constructed space, less the amount of space necessary for the public, compared to the number of employees projected to work in the building.
- The Department of Management Services must adopt new standards for materials and components used in the construction of a state building that will expressly consider the cost compared to durability and the long-term cost savings as compared to the up-front cost. Aesthetics may also be considered, but more so in the public access areas of a state facility. Any use of a material or component that does not meet these new standards must include written justification and an analysis of the cost versus the benefits.
- If the actual cost of any component of a building is less than the anticipated cost, the difference must be used to reduce the overall construction cost and may not be used for purchases that were not included in the approved plan.
- Incorporates internal furnishings of state facilities into the budgeting process, provides a definition of “art,” and provides criteria for what can be purchased for decorating facilities.

This bill is now the subject of ongoing negotiations between the House and the Senate in the “budget conference” process.



## PRIORITY

SUNSHINE LAW & PUBLIC PROCUREMENT

SB 2090 – Senate Gov’t Oversight Committee

HB 7223 – House Gov’t Operations Subcommittee

STATUS: **PENDING**  
AGC POSITION: **SUPPORT**

Continuing an issue we began working on in 2010, AGC wants to temporarily shield bid documents from inspection by competitors in order to eliminate the unfair advantage that would arise from such disclosures during the public bid process for construction services. The bill will clarify that sealed responses received by an agency in response to an invitation to bid, request for proposals, or invitation to negotiate are temporarily exempt from the state’s public records requirements, which generally mandate that all documents in the possession of an agency be made available for public inspection.

Importantly, the bill will also exempt from the state's open meeting requirements those meetings at which vendors make oral presentations as part of the competitive procurement process. Because it creates exemptions from the state's "Sunshine Law" requirements, this bill will require a two-thirds vote of the members of both houses of the Legislature in order to pass.

HB 7223 passed the House on April 28 on a vote of 113-0. SB 2090 is currently stuck in the Senate Budget Committee, and we are working on getting the bill withdrawn so that it can be heard on the Senate floor.



## PRIORITY

### DESIGN PROFESSIONAL LIABILITY

**SB 288** - Sen. Joe Negron (R - Palm City)

**HB 605** - Rep. Greg Steube (R - Sarasota)

**STATUS: DEFEATED (FOR NOW)**

**AGC POSITION: OPPOSE**

As you may recall, the architects and engineers championed a bill in 2010 to limit their malpractice liability. Under current law, individual design professionals are personally subject to malpractice claims, regardless of what the contract between the employing design firm and the project owner or general contractor may provide regarding limitations on the design firm's contractual liability, required insurance coverages, etc.

The bill would have granted immunity to individual design professionals and eliminated all malpractice claims with respect to damage to the project itself. A breach of contract action, subject to the liability limitations and insurance requirements of the contract, would control all questions of liability for such damages caused by faulty design work. For damages arising from personal injuries or from collateral property damage, a professional malpractice claim against a design professional would still exist.

The bill was amended during the course of the 2010 Session to: (a) make clear that only the owner would be cut off from bringing a malpractice claim; (b) condition removal of the design professional's malpractice liability on the design firm maintaining the insurance coverages specified in their contract; and (c) prohibit any contract provision that would limit the design professional's liability in a manner inconsistent with the contract's insurance requirements.

In 2010, SB 1964 passed the Senate (33-4) and passed the House (111-2). Ultimately, however, Governor Crist was convinced to veto the bill.

The same bill was resurrected in the 2011 Session as SB 288 and HB 605.

In a remarkable development on March 9, after lobbying by AGC, other construction groups, condo associations, real estate lawyers, and trial lawyers, SB 288 was voted down in the Senate Judiciary Committee on a vote of 4-8.

While it is doubtful that this bill will be resurrected in the 2011 Session, AGC will have to remain on the look out over the next few weeks for amendments seeking to accomplish the same objective on other bills.



## PRIORITY

### UNEMPLOYMENT COMP. REFORMS

**SB 728** - Sen. Nancy Detert (R - Venice)

**HB 7005** - Econ. Development & Tourism Subcomm.

**STATUS: PENDING**

**AGC POSITION: SUPPORT**

Bottom Line: Recognizing that higher unemployment compensation (UC) taxes are inevitable due to the state's chronically high unemployment rate, AGC *supports* comprehensive reforms to the UC system that will minimize the tax burden on employers (so that they can create more jobs), focus the system on getting the unemployed back to work, and ensure that available tax revenues are used to pay benefits only to workers who are unemployed through no fault of their own. AGC *opposes* an increase in the maximum UC tax rate on employers, which would disproportionately affect the construction industry in light of the recent economic downturn. AGC has been successful to date in fighting off a proposed increase in the maximum tax rate from 5.4% to 6.4%, which would have cost employers **\$70 per employee** per year.

Florida's businesses and out-of-work residents continue to face financial hardship due to the state's economic conditions. In 2010, the Department of Revenue reported that 75,832 employers went out of business. Florida's unemployment rate has remained at or near 12 percent for the past year. These conditions have placed unprecedented stress on the unemployment system, causing the UC Trust Fund to become insolvent in August 2009. Since that time, Florida has borrowed over \$2 billion from the federal government to pay benefit claims. Despite successful AGC-supported efforts in the legislature to minimize the impact of these extraordinary conditions on Florida's construction employers, unemployment taxes have nonetheless increased substantially, from \$8.40 per employee in 2009 to \$72.10 per employee in 2011 for employers paying at the minimum tax rate.

This year, Governor Scott and the Republican leadership in the Senate and House appear committed to making some comprehensive and long overdue reforms to the state's UC system. Of course, the question that remains to be answered is what specific reforms will end up being acceptable to the Senate, the House, and Governor Scott.

The Republican-dominated House took early and decisive action on this issue, passing its UC reform bill (HB 7005) on a party-line vote on the third day of the 2011 Session. Closely aligned with Governor's Scott's UC reform proposals, HB 7005 would enact sweeping changes: (a) reducing the maximum number of weeks a person can receive UC benefits from 26 weeks to 20 weeks; (b) reducing the number of benefit weeks even further if the state unemployment rate is below 9 percent; (c) requiring those receiving benefits to go through a skills review; and (d) making it harder for workers dismissed for cause to qualify for benefits. The measure also alters the tax structure and should result in many employers getting some relief on recently announced UC tax hikes, with the reduction estimated at approximately \$18 per employee in 2011.

Meanwhile, the Senate UC reform bill, SB 728, started out with a very troubling provision -- an increase in the maximum UC tax rate from 5.4% to 6.4%. This increase would have amounted to employers at the maximum tax rate paying an extra \$70 per employee per year. AGC actively opposed this provision because of its disproportionate impact on the construction industry, where the economic downturn has forced layoffs and resulted in many construction employers paying UC tax at the maximum rate. AGC was successful in getting this provision amended out of SB 728 on February 22 in the Senate Commerce and Tourism Committee.

SB 728 is otherwise similar to HB 7005, with the exception that it does not currently include any reduction in benefit weeks for unemployed workers. As a result, SB 728 would likely provide employers with no significant reduction in UC taxes.

While HB 7005 passed the House on March 10 on a vote of 81-38, SB 728 is presently being held up in the Senate Budget Committee as negotiations continue with the House over the proposed reduction in benefit weeks for unemployed workers. The Senate appears reluctant to go along with this reduction.



# PRIORITY

## IMMIGRATION ENFORCEMENT

**SB 2040** – Senate Judiciary Committee

**HB 7089** – House Judiciary Committee

**STATUS: PENDING**

**AGC POSITION: MONITOR/AMEND**

Bottom Line: After a string of unsuccessful bills on this issue in prior years, the Legislature is once again actively considering a statewide requirement that all employers use the federal “E-Verify” system to check the immigration status of new hires. If a bill is adopted in 2011, AGC wants to ensure that each employer will be responsible for checking its own employees (i.e., the general contractor will not be responsible for checking subcontractor employees), that adequate liability protections for employers are in place, and that any special requirements placed on contractors doing business with public entities are manageable.

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.

Bills requiring employers (or subsets of employers like state contractors) to use the E-Verify system have been introduced for several years now but have made little progress in the legislature. After a series of committee hearings leading up to the 2011 Session, both the House and the Senate Judiciary Committees advanced legislation to put such a requirement into law, although neither bill goes nearly as far as the highly controversial legislation enacted recently in Arizona.

SB 2040 requires all employers to screen new hires on or after January 1, 2012. HB 7089 requires employers with 100 or more employees to screen new hires on or after July 1, 2012, with all other employers required to screen new hires on or after July 1, 2013. The House bill would also require a contractor with a public entity to obtain and maintain certifications from its subcontractors that they do not employ or contract with unauthorized aliens. If the contractor knows that the subcontractor is doing so or is not using the E-Verify system to screen new hires, the contractor is required to terminate the subcontract. Likewise, if the public entity knows that the contractor is violating its obligations in this regard, the prime contract must be terminated and the contractor is barred from all public contracts for one year.

Few pieces of legislation have generated as much intense and emotional public debate as these two bills, which routinely draw “standing-room only” crowds. The Senate Budget Committee was poised to take up SB 2040 several times over the past few weeks, but ended up announcing to the throngs of protesters that consideration of the bill would be postponed.

This week brought two unusual developments. First, SB 2040 was abruptly withdrawn from the Senate Budget Committee and scheduled to be heard on the Senate floor on or about Monday, May 2. This move will have the effect of

avoiding much of the direct confrontation between senators and protesters that otherwise might have developed in the committee meeting room. Second, it was announced that SB 2040 will now be handled by Senator J.D. Alexander (R - Lake Wales) instead of Senator Anitere Flores (R - Miami). While Senator Flores has been shepherding the bill for weeks, she has expressed misgivings about some components of the bill and some of the other immigration enforcement proposals under discussion.

On the House side, the Economic Affairs Committee took up HB 7089 on April 14 and passed it out on an 11-7 vote, after adding some important civil liability protections for employers using the E-Verify system. HB 7089 is now ready for consideration by the full House, but the House is not likely to act until they see what comes out of the Senate.



## PRIORITY

### LIMITING LOCAL BUSINESS TAXES

**SB 582** - Sen. Nancy Detert (R - Venice)

**HB 311** – Rep. Ken Roberson (R - Port Charlotte)

**STATUS: PENDING**  
**AGC POSITION: SUPPORT**

Under current law, a county or municipality may impose a “local business tax” for the privilege of engaging in or managing a business within its jurisdiction. On October 13, 2010, the Attorney General issued an opinion (AGO 2010-41) providing that a local government choosing to impose this tax on businesses within its jurisdiction must also impose the tax on each and every employee who is engaged in or manages that business.

The bill seeks to reduce or eliminate the impact of this Attorney General Opinion, specifying that individual who engages in or manages a business as an employee is not required to pay a local business tax. The bill makes clear that an employee does not include an independent contractor, and it would use the same factors as in the workers’ compensation insurance law to determine independent contractor status. The bill, however, preserves any local business taxing schemes that otherwise complied with the law and existed prior to October 13, 2010 (the date of the Attorney General opinion).

HB 311 passed the House on April 28 (116-0). SB 582 was withdrawn from its last committee stop, so it is now available for action on the Senate floor.



## PRIORITY

### PROCUREMENT OF “CM” SERVICES

**SB 276** - Sen. Mike Bennett (R - Bradenton)

**HB 135** - Rep. Fred Costello (R - DeLand)

**STATUS: PENDING**  
**AGC POSITION: OPPOSE**

The “Consultants’ Competitive Negotiation Act” (s. 287.055) allows public entities to procure services within the practices of architecture, engineering, landscape architecture, and surveying and mapping, as well as construction management and project management services, through a competitive qualifications-based selection process.

Once firms are ranked based upon their qualifications, the public entity conducts negotiations with the top-ranked firm, during which fees are a negotiated item. If the public entity and the top-ranked firm cannot come to an agreement, then the public entity may terminate those negotiations and begin negotiations with the second-ranked firm (and so on) until an agreement satisfactory to the public entity is reached.

The CCNA process, formally 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 services, e.g., compromising public safety, stifling innovative design and construction solutions, etc.

This bill would insert price back into the initial selection criteria, removing the essential reasons that the CCNA was created in the first place. The bill would also allow a public entity to reopen negotiations with a firm upon terminating negotiations with another. The bill is opposed by AGC, architects, engineers, etc.

SB 276 was amended on February 8 to remove the provision allowing price to be included in the initial selection criteria. The provision allowing for reopening of negotiations was left in the bill. HB 135 has not yet been heard in any committee.



## PRIORITY

### BAN ON WAGE PROTECTION ORDINANCES

**SB 982** - Sen. Jim Norman (R - Tampa)

**HB 241** - Rep. Tom Goodson (R - Titusville)

**STATUS: PENDING**  
**AGC POSITION: SUPPORT**

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 is considering 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 2011 bill would preempt local governments from passing wage protection ordinances. While SB 982 got through one committee, the second stop for this bill was the Senate Judiciary Committee, chaired by Senator Anitere Flores (R - Miami). While Chair Flores has always been a great friend to AGC, she was lobbied very hard by Miami-Dade County not to hear the bill. As a result, SB 2040 never advanced through her Committee.

On the other side of the Capitol, HB 241 passed the House on April 29 (83-25), but not before being amended to allow the existing Miami-Dade County ordinance to remain in place.



## PRIORITY

### REDUCTION IN STATE ROAD FUNDS

**SB 2000** – Senate Budget Committee

**HB 5001** – House Appropriations Committee

**STATUS: PENDING**  
**AGC POSITION: AMEND/OPPOSE**

The House budget included a proposed \$300 million “sweep” of the trust fund used to pay for road building projects across the state. DOT has indicated that this cut will delay at least \$500 million worth of projects in the five-year DOT work plan and may delay as much as \$900 million worth of projects. The Senate budget contained no such sweep of road funds.

Budget negotiations between the House and Senate have now whittled this trust fund reduction down to about \$150 million.

**“PAYCHECK PROTECTION” RE: UNION DUES**

**SB 830** - Sen. John Thrasher (R - Jacksonville)

**HB 1021** - Rep. Chris Dorworth (R - Lake Mary)

**STATUS: PENDING**  
**AGC POSITION: SUPPORT**

This bill prohibits public employers from deducting labor union dues, assessments, fines, penalties, or special assessments from the wages of public employees. Unless an employee has executed a written authorization, the bill prohibits a union from using any such funds paid by a public or private employee for the purpose of making political contributions or expenditures and provides for a refund of such funds in specified circumstances. The bill also prohibits a union from requiring employees to authorize political contributions and expenditures as a condition of membership.

HB 1021 passed the House on March 25 on a vote of 73-40. SB 830 was heard in its final committee on April 15, at which point it was amended to allow payroll deduction for public employee union dues but to prohibit the payroll deduction of any funds to be used for purposes of political activity. The bill is now available for consideration on the Senate floor, but its future appears uncertain at best as a growing number of Republicans have expressed reservations about the bill.

**LIENS RE: TENANT IMPROVEMENTS**

**SB 1196** - Sen. Ellyn Bogdanoff (R - WPB)

**HB 941** - Rep. George Moraitis (R - Ft. Lauderdale)

**STATUS: PENDING**  
**AGC POSITION: MONITOR/AMEND**

In *Everglades Electric Supply, Inc. v. Paraiso Granite, LLC*, 28 So.3d 235 (4th DCA 2010), the landlord, instead of recording each of the numerous leases on its property in the county clerk’s office, decided to record a statutorily-authorized notice that all of the leases on its property contained language prohibiting liens for tenant improvements. In this case, every lease for the property contained a prohibition against liens, although with variations in terms. The notice, however, recited lease language that differed from the actual language in the lease in question.

The court held that current law requires the landlord’s notice to contain the specific prohibitory language used in the lease. Since the notice in this case did not do so, the court decided that the notice was defective and a lien could attach to the landlord’s property. Thus, when a landlord seeks to prohibit liens for tenant improvements, the landlord must now either: (a) record each lease (or a short-form of the lease); or (b) use the same prohibition language in every lease and use that same language in the recorded notice.

The bill, which is backed by the Real Property Section of the Florida Bar, is a product of negotiations among attorneys who represent landlords, lenders, and construction interests. The bill remedies the problems created by the court case by allowing the landlord to record a notice advising that all or a majority of the leases on the property expressly prohibit liens for tenant improvements.

The bill allows a contractor or lienor involved in tenant improvements to serve a written demand on the landlord for a copy of the lease provision prohibiting liability for tenant improvements. A landlord who fails to supply the lease provision within 30 days of the demand, or who provides a false or fraudulent copy, renders the property subject to lien unless the lienor had actual notice that the property was not subject to liens for tenant improvements.

SB 1196 passed the Senate on April 29 (38-0). HB 941 was heard in its final committee on April 12 and is now available for consideration on the House floor. Both bills have been amended to remove troublesome language that would have prevented a lien if the lienor had “constructive” notice that the property was not subject to liens for tenant improvements.

## **RESIDENTIAL BUILDING PERMITS**

**SB 580** - Sen. Steve Oelrich (R - Gainesville)

**HB 407** - Rep. Keith Perry (R - Ocala)

**STATUS: PENDING**  
**AGC POSITION: SUPPORT**

This bill provides that a local building official may not require, as a condition of issuance of a residential building permit, the inspection of any portion of a building or structure that is not directly related to the construction, erection, alteration, modification, repair, or demolition of the building or parcel for which the permit is sought.

HB 407 passed the House on April 20 (114-2). SB 580 is scheduled to be heard on the Senate floor on May 2.

## **BAN ON LOCAL BID PREFERENCES**

**SB 574** - Sen. Stephen Wise (R - Jacksonville)

**HB 427** - Rep. John Tobia (R - Melbourne)

**STATUS: PENDING**  
**AGC POSITION: SUPPORT**

Retooled from last year's bill on this issue, the 2011 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.

Neither of these bills has made any progress through committees in the 2011 Session. The bill is effectively "dead" for this session.

## **LIQUIDATED DAMAGES IN STATE CONTRACTS**

**SB 1314** - Sen. J.D. Alexander (R - Lake Wales)

**HB 939** - Rep. Ben Albritton (R - Bartow)

**STATUS: PENDING**  
**AGC POSITION: MONITOR**

This bill has been advanced for several years now by Senator Alexander, the chairman of the Senate Budget Committee. The bill is intended to enhance the authority of the Legislature over agency expenditures. In its earlier versions, the bill prohibited an agency from entering into a contract that would require the state to pay liquidated damages for a breach or early termination of the contract, unless the Legislature specifically authorized the agency to commit funds for this purpose.

When this issue was first raised during the January 2009 Special Session, AGC voiced its concerns about the general liquidated damages prohibition and its implications for state construction work. The current version of the bill has been modified to generally allow liquidated damages, but the bill would specifically prohibit clauses in state contracts:

- Requiring the state to pay liquidated damages or early termination fees when the breach or early termination was caused by the Legislature's decision to provide less than full funding for the contract during the fiscal year.

- Requiring the state to pay interest, other than interest required by the prompt payment law, when a delay in payment was due to the agency's lack of sufficient budget authority to pay the underlying obligation in the current fiscal year.

This bill is now the subject of ongoing negotiations between the House and the Senate in the “budget conference” process.

### **EMPLOYEE BACKGROUND CHECKS**

**SB 146** - Sen. Chris Smith (D - West Palm Beach)

**HB 449** - Rep. Dwayne Taylor (R - Daytona Beach)

**STATUS: PENDING**  
**AGC POSITION: MONITOR/AMEND**

The continuation of a bill from 2010, this legislation focuses on encouraging the employment of persons with criminal records. One troublesome provision in the bill, however, makes material changes to section 768.096, which deals with the circumstance in which an employee assaults and injures another person, resulting in a lawsuit against the employer by the injured party. Under the cited law, if the employer in this situation conducted a prescribed “background investigation” on the employee, then the employer would enjoy a presumption that it did not negligently hire the employee in question.

Currently, an employer conducting such a background investigation gets to choose from among the five different options below (one of which is a criminal background check) -- performing any one of the five satisfies the background investigation requirement.

- Obtaining a criminal background investigation on the prospective employee;
- Making a reasonable effort to contact references and former employers;
- Requiring the prospective employee to complete a job application form that includes questions concerning whether he or she has ever been convicted of a crime or sued in a civil action for intentional tort;
- Obtaining a check of the driver's license record of the prospective employee if relevant to the work to be performed;
- or
- Interviewing the prospective employee.

The bill changes the statute to require the employer to perform all five of these options in order to qualify for the presumption (changing the current “or” to “and”). The bill also adds new requirements on what an employer performing the now-mandatory criminal background check must do with that information to qualify for the presumption.

On March 9, after objections were raised by AGC and others in the business community, the offending provision was removed from SB 146 in the Senate Criminal Justice Committee. This same provision was removed from HB 449 on March 29. SB 146 passed the Senate on March 24 and was amended by the House and passed on April 27. The amended bill is now on its way back to the Senate for further consideration.

### **BAN ON “PROJECT LABOR AGREEMENTS”**

**SB 1352** - Sen. Alan Hays (R - Umatilla)

**HB 923** - Rep. Charles Van Zant (R - Palatka)

**STATUS: PENDING**  
**AGC POSITION: SUPPORT**

“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.

The 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.

SB 1352 made it through only one committee. HB 923 was never heard in any committee. The bill is effectively “dead” for this session.

**ELECTRICAL JOURNEYMAN REQ'TS**  
**SB 838** - Sen. Stephen Wise (R - Jacksonville)  
**HB 607** – Rep. Mike Weinstein (R - Jacksonville)

**STATUS: PENDING**  
**AGC POSITION: OPPOSE**

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 have removed this provision and replaced it with a statewide requirement that one electrical journeyman must be present on any industrial or commercial new construction site when electrical work in excess of 77 volts is being performed.

AGC opposed 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.

SB 838 made it through only one committee. HB 607 was never heard in any committee. The bill is effectively “dead” for this session.

**BUILDING CODES / BUILDING SAFETY**  
**SB 396** - Sen. Mike Bennett (R - Bradenton)  
**HB 849** - Rep. Daniel Davis (R - Jacksonville)

**STATUS: PENDING**  
**AGC POSITION: MONITOR/AMEND**

As there is almost every year, yet another bill is making its way through legislative committees in 2011 to make a series of changes to the law surrounding the Florida Building Code.

At this point, it appears that the bill will end up with the following provisions:

- Adds the International Green Construction Code (IGCC) to the definition of “sustainable rating program” for green building programs.
- Exempts the building code from ratification by the Legislature.
- Specifies that products advertised or sold as providing hurricane, windstorm, or impact protection from wind-borne debris must have product approval for such purpose.

- Adds definition and scope of work for “glass and glazing contractor” to Chapter 489.
- Florida-specific amendments to the foundation code would remain effective only until adoption of the new edition of the Florida Building Code every third year. If an expired amendment is resubmitted through the code adoption process, the amendment must be accompanied by evidence or data demonstrating why the amendment is needed in Florida and whether the amendment was considered for inclusion in the foundation code. If the proposed amendment was addressed in the international code in a substantially equivalent manner, the Florida Building Commission may not include the proposed amendment in the foundation code.

Both HB 849 and SB 396 have navigated the committee process successfully and are awaiting a vote by their respective chambers.

### **OUT-OF-STATE EMPLOYERS & WORKERS’ COMP**

**SB 1286** - Sen. Mike Bennett (R - Bradenton)  
**HB 723** - Rep. Mike Weinstein (R - Orange Park)

**STATUS: PENDING**  
**AGC POSITION: MONITOR/AMEND**

This bill, sought by the state’s National Football League and National Hockey League teams, would exempt out-of-state employers and employees temporarily doing work in Florida from most provisions of Florida’s workers’ compensation insurance laws if the employer furnishes workers compensations insurance under the laws of its home state. This exemption would only apply, however, if the home state in question extended similar reciprocity to Florida employers. For this purpose, “temporary” means the employee is working for no more than 10 consecutive days or no more than 25 total days during a calendar year.

In response to construction industry concerns, the bill has now been modified to significantly limit its scope. Both bills have successfully navigated through their committees and are ready for consideration by the full Senate and House.

### **CRANE REGULATION**

**SB 612** - Sen. Greg Evers (R - Crestview)  
**HB 1057** - Rep. Frank Artiles (R - Miami)

**STATUS: PENDING**  
**AGC POSITION: SUPPORT**

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 2011 bill would prohibit local governments from enacting any ordinances regulating cranes or crane operators, in deference to the federal OSHA regulations. The bill would also adopt statewide standards for certain construction cranes with respect to hurricane preparedness and communications. These are the aspects of the Miami-Dade

County crane ordinance that the federal district court held were outside the purview of OSHA's regulations and thus not preempted.

To date, this bill has not been heard in any committee. The bill is effectively "dead" for this session.