

As of Monday, April 26, 2010, we have five more days left in the 2010 legislative session. A total of 2,475 bills have been filed, and 80 have passed the Legislature. You can expect that number to grow by about 200 by the end of this week.

This session has been relatively quiet on construction issues. Not much activity on workers' comp, licensure, lien law, and other usual issues. Even without much to report on our key issues, there has been much to do. We have spent a fair amount of time chasing shadows and ghosts, both of which count as real when the Legislature is in town.

For now, this report is a snapshot in time as we go into the last week of session – the most dangerous and hopeful time.

We still have in play the following:

FLORIDA BUILDING CODE LEGISLATION – CS/CS/CS/CS/HB 663 by Gary Aubuchon (R-Cape Coral) passed the House on Monday. After that, it traveled to the Senate where it should be paired up with the Senate companion, CS/CS/SB 648 by Mike Bennett (R-Bradenton). SB 648 is still in its last committee, but we are told it will be withdrawn, and then available to be heard by the full Senate. This is a large bill with many components, and hopefully we have finished up the last of many amendments just before it passed the House. We will provide a detailed summary if the bill passes.

LOCAL GOVERNMENT PROMPT PAY – This bill, CS/HB 1157 by Eric Eisnaugle (R-Orlando), passed the House on Monday and traveled to the Senate. The Senate companion, CS/CS/SB 1056 by Carey Baker (R-Eustis), was moved to the Senate floor on Monday so that HB 1157 is ready to pass the Senate. It should pass on Wednesday. The legislation clarifies/strengthens some terms, including “agent” (requiring that one be identified in advance as the contact on a contract), “payment request” and “proper invoice” (specifying that requirements be included in the contract), authority for the contractor to send an overdue notice with a set time in which the government entity must reject or it is deemed approved, punch list provisions, and firm provisions relating to retainage. If the bill is approved by the governor, the effective date will be October 1, 2010.

CONSTRUCTION LIEN LAW – This legislation should NOT pass this session, but we will not know for sure until after session ends. The House version, HB 693 by Scott Plakon (R-Longwood), has not moved at all which *should* mean it cannot pass the House, but stranger things have happened. On the Senate side, CS/SB 1048 by Carey Baker (R-Eustis) passed the Senate on Thursday, April 22. This legislation is somewhat better than as originally filed, but it still has some problem areas, and, as complicated as is the lien law, it would be so much better to try to make one set of thoughtful changes that would last for a number of years.

WORKERS' COMPENSATION – The session started with companion bills SB 1448 by John Thrasher (R-Jacksonville) and HB 757 by Mike Weinstein (R-Orange Park) that threatened to create an exemption from carrying Florida workers' compensation coverage for companies that operate in other states because of a California reciprocity provision. This was at the request of one or two pro football teams in Florida (relating to employees other than the players). That may have been good for these teams, but it would have been awful for all other employers in Florida as it would have created a very large loophole (one we essentially closed in 2003). Once the sponsors understood that, they pulled back, and there has been no activity in this area all session – until today.

Representative Pat Patterson (R-DeLand) filed an amendment to CS/CS/SB 2044 (relating to property insurance) to address the issue of workers' compensation benefits due firefighters, correctional officers, and other such public employees. This amendment was withdrawn, but it did create a little drama.

PROPERTY INSURANCE – It is still too early to know the status and fate of this legislation. With a rate deregulation effort (no longer on the table), this has been the subject of great controversy during most of the session. The bills that are being considered by the full House and Senate are CS/CS/SB 2044 by Garrett Richter (R-Naples) and CS/CS/HB 447 by Bill Proctor (R-St. Augustine). SB 2044 has passed the Senate and is close to passing the House. HB 447, on the other hand, has been brought up and postponed by the House five times in the last six days. With about 90 amendments filed in the House on SB 2044, it has taken up a lot of House floor time. Among other things, this legislation includes some provisions requiring property owners to use insurance proceeds for actual repairs (some require repair before payment), including evidence of work completed. If the legislation passes, this may mean more work for us.

EMPLOYEE LEASING COMPANIES – CS/SB 2046 by Garrett Richter (R-Naples) passed the Senate on April 23, now it is up to the House to take action, and it seems the House is ready to do that – the bill should pass on Wednesday. The changes are relatively minor (dealing with required notification on change of ownership and licensure penalties for failure to renew) and do not affect construction employers.

RECYCLING – CS/CS/SB 570 by Lee Constantine (R-Altamonte Springs) began as a bill loaded with mandates, including some for construction and demolition debris (C&D), to achieve certain percentages for recycling. In response, the House generated HB 7243 by Trudi Williams (R-Ft. Myers) with goals, not mandates. SB 570 was adjusted to reflect the same goals as those in the House bill. However, one or two companies that recycle C&D waste testified that it would be better to have mandates, so we expected an effort to do this. We asked that there be no mandate unless recycling can be done for less than what it costs us right now for disposal. After some back and forth, the bill has been modified to mandate C&D recycling if it is “economically feasible” as will be decided in a rule developed by the Department of Environmental Protection. It appears this is as good as we can get it. HB 7243 passed the House Monday, and the Senate appears ready to take it up and pass it too (but we need to still watch for amendments – the interest in making our lives difficult is still there). The bill also contains a directive for the Florida Building Commission to “develop recommendations that increase residential and commercial recycling and composting, and strongly encourages the use of recyclable materials and the recycling of construction and demolition debris.” If the bill makes it all the way to law, the immediate effective date will be July 1, 2010 with a variety of dates in the future for rates of recycling for various types of materials (not just C&D debris).

DESIGN PROFESSIONAL LIABILITY LIMITATION – CS/SB 1964 by Joe Negrón (R-Palm City) and HB 701 by Steve Precourt (R-Orlando) propose to limit tort liability for design professionals (architects, engineers, landscape architects, and surveyors and mappers). We have succeeded in getting some limitation on this (mostly through requirements to carry insurance), but the expected impact is not clear yet. This legislation has been on a real fast track (greased), and it looks like it will pass. SB 1964 did pass the Senate on April 16, and HB 701 is on the House calendar. We expect the House to pass SB 1964 on Wednesday.

AUTOMATIC SERVICE CONTRACT RENEWAL – This perennial legislation, CS/SB 1332 by Charlie Justice (D-St. Petersburg) and CS/HB 751 by Charles McBurney (R-Jacksonville), has come up for several years. Early last week, we succeeded in adding two amendments to the Senate version that would exempt construction contractors and allow the customer to waive the requirements (the second amendment was supposed to be an alternative if the first one did not pass, but they were both adopted). The success was short lived with HB 751 (without these amendments) passing both the House and Senate Monday. The quick summary is that this legislation places limits on service contracts with automatic renewal provisions. If you use this type of service contract, you will want to check on the results of this legislation before July 1, 2010.

ENERGY – This topic has been as firm as Jell-O for most of the session, and it is still like that. It appears that legislation creating the “PACE” (property-assessed clean energy) program will pass in either CS/HB 7179 Steve Precourt (R-Orlando) or CS/SB 2322 by Mike Bennett (R-Bradenton). The idea with this legislation is to allow local governments to provide up-front financing for certain types of “qualifying improvements” to real property, including energy conservation, energy efficiency, renewable energy, and wind resistance. Property owners repay the local governments through special assessments imposed on property tax bills. The legislation specifies that for work that requires a license, the property owner must use a properly licensed contractor – good provision. HB 7179 passed the House Monday, and is now in the Senate. The Senate measure, SB 2322 is on the Senate calendar and the legislation can pass the Legislature as early as Wednesday. If the bill passes and is approved by the governor, it will become law right away, and it will be worth our close review right away – this could be a very good thing for us.

The House’s “energy bill” found in CS/HB 7229 by Steve Precourt (R-Orlando) was worked over for at least two hours today on the House floor and eventually passed the House on a vote of 83 to 34 (with some delay because the vote count was uncertain). It is now in the Senate, and we can expect some time to be spent on it there.

OWNER/BUILDER EXEMPTION – Last week, Representative Chris Dorworth (R-Heathrow and real estate investor) filed an amendment to DBPR’s bill HB 713 (dealing with DBPR provisions not especially of interest) to expand the owner/builder exemption to commercial and residential rental or lease properties. Thanks to Representative Gary Aubuchon, we succeeded in getting the amendment withdrawn.

TORT REFORM – HB 689 by Gary Aubuchon (R-Cape Coral), relating to the standard for slip and fall injuries, was approved by the governor on April 14, 2010.

If you have any questions or would like a copy of any of the bills listed here (or other ones), please contact Cam Fentriss by e-mail at afentriss@aol.com, by telephone at 850-222-2772, or by fax at 850-894-0502.