



MELINDA S. GENTILE

**For More Information
Please Contact**

Melinda S. Gentile
mgentile@pecklaw.com
305.358.2600

2018 Legislative Changes Affecting the Construction Industry

The 2018 Florida Legislative Session recently concluded and a number of important construction-related House Bills (HB) and Senate Bills (SB) were presented during the Session. Florida Governor Rick Scott has 15 days to act on the legislation once each Bill has passed the House and Senate. Bills signed by the Governor go into effect on July 1, 2018, unless indicated otherwise. These Bills may impact General Contractors and Construction Managers in a number of ways, not the least of which is the period of time that a cause of action may be initiated for the design, planning or construction of an improvement.

BILLS BECOMING LAW IN 2018

HB 875: Relating to Limitations of Actions Other Than for the Recovery of Real Property. This bill passed both the House and the Senate and was approved by the Governor on March 23, 2018. This bill becomes effective on July 1, 2018.

This bill amends Florida Statute § 95.11 (3) (c) to extend the time to file counterclaims, cross-claims, or third-party claims up to one year beyond the current statutes of limitations or repose in an action based on the design, planning, or construction of an improvement in real property. Counterclaims, cross-claims, or third-party claims can be filed up to one year after the filing of the “triggering” pleading in actions based on design, planning, or construction of an improvement to real property even if the claims would otherwise be time barred. Claims have to arise out of the same conduct, transaction, or occurrence set out in the triggering pleading. This bill allows more time to address issues that arise once a complaint or other “triggering” pleading has been filed.

This amendment applies to causes of action that commence on or after July 1, 2018. It allows for any counter, cross or third-party claim in response to a pleading filed prior to July 1, 2018 to be commenced before July 1, 2019.

HB 1013: Relating to Daylight Saving Time. This bill passed both the House and the Senate and was approved by the Governor on March 23, 2018. This bill becomes effective on July 1, 2018.

This bill creates the “Sunshine Protection Act.” It states the intent of the Florida Legislature to have Florida remain on Daylight Savings Time (“DST”), making it the year round standard time for the entire state. The observance and adoption of uniform standard time, and DST within the United States, falls under the control of the federal government via The Uniform Time Act of 1966 (15 U.S.C. §§ 260-267 (2017)). Therefore, although the Florida legislature has passed the Sunshine Protection Act, the effectiveness of the bill will not initiate until the U.S. Congress amends 15 U.S.C § 260 (a) through the passage of HR 5278, making daylight savings time permanent for the State of Florida. On March 14, 2018, HR 5278 was referred to the House Committee on Energy and Commerce; there has been no

additional activity on HR 5278. If passed, this bill may affect the work-day hours as they are defined in a particular contract.

SB 7026: Relating to Public Safety, specifically the “Marjory Stoneman Douglas High School Public Safety Act.” This bill passed both House and the Senate and was approved by the Governor on March 9, 2018, effective immediately.

As a result of the tragic mass shooting at Marjory Stoneman Douglas High School in Parkland, Florida, on February 14, 2018, the legislature rushed to establish various gun control and public safety laws. This bill provides in part the following:

- Raises the minimum age to purchase and/or own a firearm from the age of 18 to 21.
- Requires a three day waiting period for all firearms, or until a background check is complete, whichever is later.
- Prohibits a person who has been deemed mentally disabled, or who has been committed to a mental institution, from owning or possessing a firearm until the court orders otherwise.
- Institutes the process of “risk protection orders” which temporarily prohibit/prevent a person who is at high risk of harming themselves or others the ability to possess/access firearms.
- Requires a district school board or governing body to allow the law enforcement agency or agencies that are designated as first responders to the school’s or districts’ campus, to tour the campuses once every three years and to document any recommended changes to school safety emergency issues based on the tour. This is considered “Safety in Construction Planning.”
- This bill was included in this Legislative Alert because it has the potential to cause the school district to make infrastructure revisions to existing schools or new design criteria for future school construction, which will directly impact our construction industry.

2017 Federal Tax Cuts and Jobs Act: In addition to the above mentioned legislation, we would like to also address the 2017 Federal Tax Cuts and Jobs Act (“Tax Reform Act”) and the positive impact it may have on the construction industry. The Tax Reform Act provides a decrease in the corporate tax rate from 35% to 21%, which will benefit construction companies that are set up as C-Corporations. Qualifying owners of construction companies that are set up as sole proprietorships and S-Corps (pass-through entities where the business profit passes directly through to the owners and are taxed on the owners’ individual income tax return at their individual tax rate) will be entitled to a 20% deduction of their “qualified business income” on their individual returns. In addition, Contractors can now use the “complete contract” accounting method, instead of the “percentage-of-completion” accounting method for construction contracts, meaning income is reported only when the contract is complete or substantially completed. Private bond financing keeps its tax-free status, which we expect to translate

into more funds for the public construction sector. The 2017 Federal Tax Cuts and Jobs Act has the potential to effect construction companies and individuals on many different levels.

Bills that Failed to Pass the 2018 Legislative Session

Although the following bills did not pass the 2018 legislature, they did grab the attention of the Construction industry and are therefore worth mentioning.

- **SB 1582/HB 7085**: Permit Fee Transparency
 - This bill would have required public entities to post their permit and inspection fee schedules and building permit budget reports on their websites as a means of explanation for how the permit fee was reached.
- **SB 1108/HB 715**: Owner Direct Purchase Process
 - This bill would have allowed a public entity owner to assign the direct purchasing of supplies to a contractor on the job, through use of that entity's Certificate of Entitlement of Exemption for certain tangible personal property that would become part of a public works project.
- **HB 1251/SB 1642**: Florida Construction Workforce Task Force
 - Requiring the Department of Education (DOE) and Department of Economic Opportunity (DEO) to create and submit to the Governor and Legislature by July 1, 2019, a plan to implement the recommendations by the Florida Construction Task Force. The proposed recommendations involved:
 - Expanding the definition of Local Education Agency ("LEA") to include private training organizations, labor unions, and trade associations
 - Creating a legislative study to consider the appropriateness of moving apprenticeship programs from DOE to DEO
 - Requiring DOE to recognize the National Center for Construction Education and Research curriculum as being eligible for high school and college credits, as well as state supported scholarships
 - Providing additional state Career Technical Education support for K-12 programs
 - Allowing for alternate instructor certification process through DOE that doesn't require certification through an LEA
- **SB 680/HB 759**: Construction Defect Claims

This bill would have provided additional requirements for notices of claim, inspections, and notices of acceptance or rejection of settlement offers. This bill

would have allowed an authorized representative of a claimant to act on behalf of the claimant, if the claimant is a business entity. This bill would have changed the pre-suit process by:

- Requiring property owner, authorized representative of property owner's business entity, or a representative acting on behalf of an individual property owner to sign any notice of claim, notice of acceptance or rejection of a settlement offer.
- Requiring property owner, authorized representative of property owner's business entity, or a representative acting on behalf of an individual property owner to serve written request for mediation prior to rejecting any settlement offer.
- Requiring a contractor or design professional who receives a notice of claim to serve notice on any contractor, subcontractor or other party that they reasonably believe is responsible for each defect specified in the notice of claim.
- Requiring consultants retained by property owner for construction defect claim to be physically present during any inspection to identify the location of the construction defect.
- Providing a means for the selection of a mediator.
- Providing that the statute of limitations for construction defect claim is tolled for up to thirty days after mediation is waived or an impasse is declared.
- **HB 7061/SB 1384/ SB 1396:** Increasing Jurisdictional Limits of County Courts and adjusting the filing fee structure for County and Appellate courts

This bill would have increased the county court jurisdictional amount in controversy to \$50,000. Therefore county court cases with a value between \$15,001 and \$50,000 would be subject to the same filing fees as current circuit court cases. Also, it would adjust the appellate filing fee structure for cases valued between \$15,001 and \$50,000 on appeal from the County Court to match the current appellate filing fee structure.

- **SB 904/HB 599:** Lis Pendens

This bill would have clarified that a Notice of Lis Pendens precludes the enforcement of liens or other interest against a property sold at a judicial sale until the instrument transferring title has been recorded. If it had passed, this bill would have amended the Lis Pendens statute, F.S. 48.23.

- **SB 908/ HB 723:** Construction Bonds

This bill would have amended the steps required before a contractor, subcontractor, or material supplier could issue a notice of nonpayment. It would have required the following:

- A verified written notice of nonpayment be served
- That a claimant or lienor who serves a fraudulent notice of nonpayment be deprived of rights under a bond.
- Amended various attorney fee provisions as it relates to construction bonds, providing that a provision relating to attorney’s fees applies to certain suits brought by contractors.

- **HB 299:** Florida Building Commission

This bill would have reduced the number of members on the Commission from 27 to 11. It would have also amended the qualifications for the architect and electrical contractor members of the Commission.

- **HB 711/SB 1388:** Pre-Apprenticeship and Apprenticeship Programs

This bill would have created the Earn and Learn Grant Program with the Department of Education. It would have provided requirements for pre-apprenticeship programs receiving grant funds and established the Task Force on Apprenticeship Expansion with the Department of Employment Opportunity.

- **HB 89/ SB 604:** Actions Against Contractors without Required Insurance Coverage

Contractor failing to carry required insurance coverage would have been personally liable for damages that would have been covered by such insurance.

As always, we are pleased to share insights and updates related to legal issues of interest with clients and friends of the Firm. Our records reflect that the recipient of this message is not a European Union “Data Subject” as defined by the General Data Protection Regulation (GDPR), enacted on May 25, 2018. If you are or consider yourself to be a Data Subject under the EU’s GDPR, kindly email Jennifer Papantonio at JPapantonio@pecklaw.com or Lori Rosenberg at LRosenberg@pecklaw.com right away. The GDPR requires that all European Union Data Subjects provide explicit consent in order to continue to receive our communications.

The information provided in this Client Bulletin does not, nor is it intended to, constitute legal advice. Readers should not take or refrain from taking any action based on any information contained in this Client Bulletin without first seeking legal advice.