



MELINDA S. GENTILE

2017 Legislative Changes Affecting the Construction Industry

The 2017 Florida Legislative Session recently concluded, and a number of important construction-related House Bills (HB) and Senate Bills (SB) were presented during the Session, most notably SB 204/HB 377. 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.

The following construction-related Bills passed in both the House and Senate and will become law if approved by the Governor.

Senate Bill (SB) 204/House Bill (HB) 377: Relating to the Statute of Repose for causes of action based on design, planning or construction of an improvement to real property. This bill passed both the House and the Senate and was approved by the Governor on June 14, 2017. This bill becomes effective on July 1, 2017.

This bill amends Florida Statute § 95.11 (3) (c) by specifying the date of completion of a construction contract for the purposes of determining limitations on the cause of action. It provides that “the completion of the contract for purposes of the statute of repose and the statute of limitations for design, planning or construction defects is the later of the date of final performance 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.” This amendment applies to causes of action that accrue on or after July 1, 2017. See Peckar & Abramson Client Alert, New Law Impacting Florida’s Statute of Repose, [HERE](#).

House Bill (HB) 599/Senate Bill (SB) 534: Relating to Public Works Projects. This bill passed both the House and the Senate and was approved by the Governor on June 14, 2017. The bill becomes effective on July 1, 2017.

This bill creates Florida Statute § 255.0992, which in effect does the following:

- Defines the term “Political Subdivision” to mean a separate agency or unit of local government created or established by law or ordinance and the officers thereof, including but not limited to a: county, city, town, municipality, department, commission, authority, school district, taxing district, water management district, board, public corporation, institution of higher education, or other public agency or body thereof authorized to expend public funds for construction, maintenance, repair, or improvement of public works.
- Defines the term “Public Works Project” to mean an activity of which 50% or more of the cost will be paid from state-appropriated funds that were appropriated at the time of the competitive solicitation and which consists of the construction, maintenance, repair, renovation, remodeling, or improvement of a building, road, street, sewer, storm drain, water

Please Contact

Melinda S. Gentile
mgentile@pecklaw.com
305.358.2600

system, site development, irrigation system, reclamation project, gas or electrical distribution system, gas or electrical substation, or other facility, project, or portion thereof that is owned in whole or in part by any political subdivision.

As it relates to Public Works Projects, the bill provides:

1. Except as required by federal or state law, the state or any Political Subdivision (as defined above), that contracts for a Public Works Project **may not** require a contractor, subcontractor, material supplier or carrier engaged in the project to do the following:
 - Pay employees a predetermined amount of wages or prescribe any wage rate;
 - Provide employees a specified type, amount, or rate of employee benefits;
 - Control, limit, or expand staffing; or
 - Recruit, train, or hire employees from a designated, restricted, or single source.
2. State or a Political Subdivision that contracts for a Public Works Project may not prohibit a contractor, subcontractor, material supplier or carrier from submitting a bid on the project if that individual is otherwise qualified to do the work described. However, this does not apply to vendors that have been convicted of a public entity crime or been found to have committed discrimination (these individuals or entities can be prohibited from submitting bids).

The prohibitions listed above apply only to Public Works Projects which receive 50 percent or more of state-appropriated funds that were appropriated at the time of the competitive solicitation.

The bill does not apply to contracts executed by the Department of Transportation under Chapter 337, Florida Statutes.

House Bill (HB) 727/Senate Bill (SB) 1398: Relating to Accessibility of Places of Public Accommodation and conformity with the American with Disabilities Act (ADA). This bill passed both the House and the Senate and was approved by the Governor on June 23, 2017. The bill becomes effective on July 1, 2017.

This bill creates Florida Statute § 553.5141 which in effect will do the following:

- Allow qualified experts in the ADA to advise and provide certain inspections for places of public accommodation. Qualified experts as defined by the bill means, “a person who is licensed as an engineer, general contractor, building contractor, building code administrator, building inspector, plans examiner, interior designer, architect, landscape architect, or a person who has been recognized by a federal court as an expert in Title III of ADA or prepared a Title II of the ADA remediation plan accepted by a federal court.”
- Owners that have had their public places inspected by an expert may submit a Remediation Plan or Certificate of Conformity from the expert to the Department of Business and Professional Regulation (DBPR).

- Remediation Plan must include the following:
 - Date that the public place was inspected;
 - Reasonable amount of time (no more than 10 years) to complete a remediation plan;
 - Name of the ADA expert or person that inspected the public place;
 - Specific remedial measures that the public place intends to undertake;
 - The anticipated date of initiation and completion for each remedial measure that the public place agreed to undertake;
 - The ADA expert's proof of qualification; and
 - A statement in writing by the ADA expert attesting that the information contained in the remediation plan is accurate.
- ADA Certificate of Conformity is valid for 3 years and must include the following:
 - Date that the public place was inspected;
 - The name of the ADA expert or any other person who inspected the public place;
 - The ADA expert's proof of qualification; and
 - A statement in writing by the ADA expert attesting that the information contained in the certificate of conformity is accurate.
- Requires that the DBPR establish and maintain a public website which provides a registry of Certifications of Conformity and Remediation Plans. This creates a public record as the information, including expert reports that indicate businesses are not in compliance with the ADA, will be available to the public.
- Provides that in any lawsuit in the state that alleges a violation of Title III of the ADA, the court must consider any Remediation Plan or Certificate of Conformity filed with the DBPR by the public place before the lawsuit:
 - To determine if the plaintiff's complaint was filed in good faith; and
 - To determine if the plaintiff is entitled to attorney fees and costs.

House Bill (HB) 7109/Senate Bill (SB) 1320: Relating to Tax Exemption for New Construction. This bill passed both the House and the Senate and was approved by the Governor on May 25, 2017. This bill becomes effective on July 1, 2017.

- This bill creates a sales and use tax exemption for the purchase of building materials, pest control services, and the rental of tangible personal property used in new construction in Rural Areas of Opportunity (RAO), which is defined as a rural community or a region comprised of rural communities, designated by the Governor, that has been adversely affected by an extraordinary economic event, natural disaster, or severe or chronic distress. An area can also be designated as an RAO if there presents a unique economic development opportunity of regional impact. The exemption is in the form of a refund of taxes paid and is capped at \$10,000 per parcel. In order to qualify for the exemption, taxpayers (owner, lessee or lessor) of the new construction must submit an application to Florida's Rural Economic Development Initiative (REDI) and a sworn statement from the general contractor that built the new construction.

- The bill provides a tax exemption from ad valorem taxes on inventory. The definition of inventory now includes “construction and agricultural equipment weighing 1,000 pounds or more that is returned to a dealership under a rent to purchase option and held for sale to customers in the ordinary course of business.”

House Bill (HB) 1021: Relating to Florida Building Code (“FBC”). This bill passed both the House and the Senate and is awaiting the Governor’s approval. If approved, this bill becomes effective July 1, 2017.

The bill provides that the Florida Department of Education (DOE) and the Florida Department of Economic Opportunity (DEO) work together to create a plan to implement the recommendations of the Construction Industry Workforce Taskforce (CIWT) as it relates to the shortage of skilled construction industry workers. The DOE and DEO must present the plan to the CIWT on or before July 1, 2018. In addition, CareerSource Florida (CSF) must create a plan to fund construction training programs (using existing federal funds) recommended by the CIWT. The CSF plan has to be provided to CIWT on or before July 1, 2018.

The bill provides that every three years the Florida Building Commission (FBC) update the Florida Building Code through review of the international codes published via the International Code Council or the National Fire Protection Association. Amendments to the Florida Building Code by the FBC must be voted on by at least two-thirds vote of members present at the meeting and the Code must be adopted by rule.

In order to address the shortage of building code administrators, building officials, building code inspectors or plan examiners, the bill provides for contracting with persons that are not employees of the local jurisdiction to perform building official and building inspection services. It outlines the required certifications, courses and/or internships that Florida Building Code Administrators and Inspectors Board may accept.

The information provided in this 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 Bulletin without first seeking legal advice.