



Construction Industry Makes Impact in Tallahassee

The 2021 Legislative Session was like no other we have ever seen. Legislating during an ongoing and unprecedented pandemic meant that the policies and procedures surrounding how we interacted with the Capitol was going to be very different. No access to some buildings and limited access to others certainly changed how we engaged, but it never stopped us from getting our message through.

We are thrilled to announce that ABC of Florida and the entire construction industry had a very successful session.

ABC Priorities that PASSED

House Bill 53 – Public Works Projects (Rep. DiCeglie/Senator Brodeur) **ABC BILL**

This legislation was our top priority in that it seeks to ensure a more open and competitive process on public works project. The legislation applies to any public project, state or local, with a price tag of \$1 million or more, that is funded with at least \$1 of state funding. The legislation ensures that contractors licensed to do work in the state can compete on work statewide and that they cannot be subject to overly specific or restrictive pre-bid mandates relating to hiring, wage and benefit, training, and geographic location. As Florida continues to work to rebuild our economy, it is important that our marketplace be as competitive as possible for the companies in Florida seeking work.

House Bill 1059 – Construction Permits (Rep. Will Robinson/Senator Boyd) **with ABC REQUEST**

This legislation was a priority out of the House Business and Professions Subcommittee. ABC of Florida had the opportunity to participate in a panel discussion on the topic of Permit Reform during the pre-session committee weeks. ABC Member Holly Loeffler of Moss Construction testified to one of our most recent concerns – Building Departments requiring copies of private contracts between the General Contractor and the Owner and their subcontractors as a requirement of securing a permit. Private contracts contain competitive and proprietary information that should not be subject to public records requests. House Bill 1059 includes in it a prohibition on this behavior.

What else does it do? It establishes a series of required best practices from posting all required types of permits and to allowing online submissions with attachments and online payments. Additionally, this legislation would require fee reductions or reimbursement. This is a great piece of legislation and ABC appreciates the opportunity to participate on the panel and to have our request included in the legislation.

House Bill 1507 – Workforce Related Programs and Services (Rep. Yarborough/Senator Albritton) with ABC Request

This massive reform effort was a top initiative for Speaker Chris Sprowls and seeks to overhaul how the current workforce education processes work in Florida. The main goal is to create a one-stop shop information resource of available services to Floridians seeking workforce education opportunities, supportive services, and Pre-Apprenticeship/Apprenticeship programs. ABC had a bill on Apprenticeship and Pre-Apprenticeship programs (HB 175/SB 508) that would have increased transparency and accountability in current DOE practices relating to Apprenticeship. HB 1507 includes our goals, but on a much broader scale.

ABC Priorities that Didn't Make It

House Bill 21/SB 270 – Relating to Construction Defects (Rep. Andrade/Senator Perry)

This legislation was a collaborative effort amongst many industry groups on both the residential and commercial side. Chapter 558 was originally meant to serve as an alternative dispute resolution process whereby owners and contractors to address alleged claims of defects on a project without immediately involving their respective attorneys and insurance carriers. While there is agreement that the existing statute is broken, there is no consensus amongst industry members, including within ABC of Florida, as to how to best address current issues relating to the statute.

The bill proposed to do the following:

- Amend the definition of material violation;
- Require use of existing warranties;
- Require owner to allow the defect to be fixed if the offer is made;
- Require attestation by the owner that they have personal knowledge of the defect;
- Require parties to opt-in to the 558 process; and
- Require notice to mortgagee or assignee that a 558 claim has been filed and whether repairs have been offered or made to the property.

Other Industry Bills that Passed

Senate Bill 378 - Payment for Construction Services (Senator Bradley/Rep. DiCeglie)

This legislation enhances the statutory interest rate for public and private parties that fail to make required payments for certain construction labor, services, and material. This legislation applies on both public and private projects and also imposes penalties on public entities that pay late.

House Bill 735 – Preemption of Local Occupational Licensing (Rep. Harding/Senator Perry)

This legislation expressly preempts the licensing of occupations to the state and supersedes any local government licensing of occupations. However, any licensing of occupations adopted prior to July 1, 2021, will continue to be effective until July 1, 2023, at which time it will expire. Any licensing of occupations authorized by general law is exempt from the preemption.

House Bill 337 – Impact Fees (Rep. DiCeglie/Senator Gruters)

The legislation makes a number of changes to existing law relating to: impact fee credits and when they must be issued, clarifications of what impact fees may be charged and subsequently used for, caps the rate of increase and clarifies the process for increasing fees, clarifies that fees may not be applied retroactively, and requires audits of fees collected and what they were used for.

Senate Bill 912 – Land Use and Development (Senator Albritton/Rep. Michael Grant)

Florida's State Emergency Management Act, currently provides that a state of emergency issued by the Governor for a natural emergency tolls the period remaining for a party to exercise rights under certain permits and other authorizations for the duration of the state of emergency, plus an additional six months. The emergency tolling and extension afforded by this statute currently applies to the expiration of a development order issued by a local government, a building permit, and an environmental resource permit. This legislation specifies additional permits and authorizations that may be tolled and extended during a state of emergency. These include consumptive use permits and development permits and development agreements. The bill applies retroactively to any declaration of a state of emergency issued by the Governor for a natural emergency since March 1, 2020. Under this retroactive application, existing permits and authorizations added by the bill may receive the emergency tolling and extension for the state of emergency declared in response to the COVID-19 pandemic.

House Bill 401 – Building Code (Rep. Fetterhoff/Senator Perry)

The bill:

- Allows a substantially affected person to petition the Commission for a non-binding advisory opinion on whether a local government regulation is an improper amendment to the Building Code, and establishes a process for such petitions;
- Allows the Commission to issue an "errata to the code" to list demonstrated errors in provisions contained within the Building Code;
- Requires the Commission to adopt rules for approving product evaluation entities in addition to the ones already listed and approved in current law;
- Clarifies that the Commission may suspend product evaluation entities;
- Clarifies that local government entities may use private providers for their own construction projects;
- Provides that a local government may use excess funds generated by Building Code enforcement for the construction of a building or structure that houses the local government's building department or provides training programs for building officials, inspectors, or plans examiners;
- Provides that excess funds used to construct such a building or structure must be designated for such purpose by the local government and may not be carried forward for more than four years; and
- Prohibits a local government from requiring a contract between a builder and an owner as a condition to apply for or obtain a building permit.

Bills ABC Opposed

House Bill 1131 – Relating to University Construction FAILED

This legislation would repeal the required use of CCNA on university construction projects and allow the Board of Governors to develop new procurement policies and practices. The bill eliminated the opportunity to negotiate and allowed price to be a factor.

This is the second year in a row that ABC of Florida has testified in opposition to this effort, has educated legislators on why this policy shift would be a disaster, and offered to work with bill proponents if they wanted to engage in a comprehensive policy discussion about whether CCNA needs to be reviewed, revisited, or updated.

House Bill 473/Senate Bill 622 – Relating to Liens and Bonds FAILED

This legislation would have:

- Modified the notice of commencement and notice of nonpayment forms.
- Prohibited anyone from requiring a person to sign a waiver or release of lien or a waiver of right to claim against a payment bond that is different from the statutory form in exchange for payment unless the person is required to do so under a direct contract he or she signed.
- Provided that any provision in a waiver or release of lien or in a waiver of right to claim against a payment bond that is not related to the waiver is unenforceable unless the party signing the waiver agreed to such terms under a direct contract.
- Authorized construction liens to be placed on private leasehold interests on public property.
- Allowed general or building contractors providing construction or program management services to claim construction liens for such services.
- Authorized a lienor to record one claim of lien for services or materials provided under multiple direct contracts under specified conditions.
- Required an owner to serve a notice of termination on anyone not in privity with the owner who timely served a notice to owner after the notice of termination was recorded.
- Changed when a notice of termination must be recorded and served, and when such notice is effective. Modifies service requirements for various notices and other documents required or authorized by the construction lien law.
- Authorized a subcontractor, laborer, or material supplier intending to make a claim against a payment bond to serve the surety with a copy of the notice of nonpayment, instead of an original document.
- Specified that the methods for discharging a lien may also be used to release a lien, in whole or in part.
- Modified the requirements for recording a satisfaction of lien with the clerk's office.
- Entitled the prevailing party in an action to enforce a lien transferred to a security to recover his or her reasonable attorney fees and costs.