

2003 LEGISLATIVE SESSION – WEEK 3

Keep the TRUST in Trust Fund

Transportation
Revenues
Used
Strictly for
Transportation

FTBA MAJOR ISSUES:

BUDGET – The House and Senate have both released versions of their budgets and implementing bills. We are currently reviewing them and will report soon on their contents.

STTF DIVERSION BILL

HB 1305 by Rep. Greg Evers (R-Milton) diverts \$ 51.2 million from the STTF over the next 5 years. The first year impact is \$5 million and it increases to cap at \$13.4 million annually. The nexus of the diversion is that this is a portion of the gas tax collection from gas sales from boaters at marinas and should be used for marine/boating activities. This money is on top of the \$8.8 million already diverted to DEP. The proponents of the bill do not take into account monies spent by FDOT on boat-related activities such as bridge tenders, moveable bridge maintenance costs, maintenance of bridge fender systems, and construction of high-level bridges to benefit boaters. FDOT estimates these costs to exceed \$20 million annually.

This bill could be heard Wednesday afternoon (March 19th) in the House Natural Resources Subcommittee on Public Lands and Water Resources. The agenda has not been posted yet.

Ask for a NO vote on HB 1305 when it is heard before the Subcommittee on Public Lands and Water Resources because of the negative impact on the State Transportation Trust Fund. Also mention over \$20 million annually spent from STTF to benefit boaters.

The members of the Subcommittee Public Lands and Water Resources Subcommittee:

Rep. Joe Pickens, Chairman (R-Palatka) pickens.joe@myfloridahouse.com

Rep. Richard Machek, Vice Chairman (D-Delray Beach) machek.richard@myfloridahouse.com

Rep. Phillip Brutus (D-Miami) brutus.phillip@myfloridahouse.com

Rep. Charlie Dean (R-Inverness) dean.charles@myfloridahouse.com

Rep. Andy Gardiner (R-Orlando) gardiner.andy@myfloridahouse.com

Rep. Will Kendrick (D-Carrabelle) Kendrick.will@myfloridahouse.com

Rep. Ken Littlefield (R-Zephyrhills) littlefield.ken@myfloridahouse.com

Rep. Mitch Needelman (R-Palm Bay) needelman.mitch@myfloridahouse.com

Rep. Frank Peterman (D-St. Petersburg) peterman.frank@myfloridahouse.com

Rep. Dave Russell (R-Spring Hill) Russell.dave@myfloridahouse.com

To view a copy of HB 1305, please click below:

<http://www.myfloridahouse.com/BillSearch.aspx?BN=1305&BT=&Mbr=&Yr=2003>

PREQUALIFICATION – Last year we were able to pass legislation that said if you were prequalified and eligible to bid work with FDOT that you were deemed prequalified with counties and expressway authorities. Some how city work slipped through the cracks.

HB 1373 by Rep. Reagan (R-Sarasota) will probably be heard this Wednesday. The agenda has not been posted yet. Our language will be included in a Senate Transportation bill that has not yet been filed. **Position: SUPPORT**

HIGH SPEED RAIL – While discussions continue on the proposals, the Governor is considering putting this, along with the class size amendment, back on the ballot with financial information available for the voters. We will keep you updated.

OTHER ISSUES OF INTEREST:

TRUCKING -- HB 503 sponsored by Rep. Ed Jennings (D-Gainesville) would increase the current penalty of five cents per pound for vehicles that exceed weight restrictions. The fine would increase to 7.5 cents per pound for those vehicles that are 6,001 to 10,000 pounds over weight; it would then jump to 10 cents per pound for any amount over 10,000 pounds. A vote on the bill was not taken the 1st week of session and has not been rescheduled.

WORKERS' COMPENSATION – Numerous legislators are proposing major reform on this issue. The House Select Committee on Workers' Compensation released their draft recommendations. In addition to many issues, the committee is recommending that exemptions for sole proprietors and independent contractors be prohibited in both commercial and residential construction, but that an exemption be available for up to 3 officers of a single corporation. Other issues

GENERAL CONSTRUCTION BILLS:

Tax on State Construction Contracts Position: OPPOSE

HB 313 by Rep. Irv Slosberg (D-Boca Raton)

SB 1452 by Sen. Skip Campbell (D-Tamarac)

Requires contractors on state construction projects to remit 1 percent of the contract value to the state to fund salaries to hire new teachers pursuant to the class size amendment. Neither bill has been scheduled for a hearing.

Owner/Contractor Controlled Insurance Programs Position: SUPPORT

HB 1087 by Rep. Don Brown (R-DeFuniak Springs)

SB 718 by Sen. Steve Wise (R-Jacksonville)

Prohibits all OCIP programs. Interested groups are continuing to work with representatives from insurance companies and local governments on a compromise that might include limiting OCIP's to single project over \$75 million and requiring either 15 years of completed operations coverage or a provision that the contractor's liability ends when the coverage ends. This bill DOES NOT affect FDOT – OCIP's cannot be done on FDOT projects.

Thanks to Allen Douglas, Executive Director, Florida AGC Council for the updates on the following general Construction-related bills:

CONTRACT ENFORCEMENT - UNLICENSED CONTRACTORS

[House Bill 1277](#) by Representative Jeff Kottkamp (R - Cape Coral)

[Senate Bill 1382](#) by Senator Charlie Clary (R - Destin)

Recent court decisions have held that a prime contract is unenforceable where a single subcontractor fails to obtain or maintain proper licensure. Pending cases include a dispute over the obligation of a surety to honor a performance bond where a subcontractor's license had lapsed during the course of a project.

This bill clarifies that only the contract of the unlicensed contractor or subcontractor is unenforceable, that licensure is determined at the time of contract execution, that unlicensed contractors have no lien or bond rights, that sureties of unlicensed contractors have continuing obligations, and that the bill is retroactive in nature if passed into law. AGC Supports.

MANDATORY PUBLIC CONSTRUCTION BOND FORM

[House Bill 485](#) by Representative Dave Murzin (R - Pensacola)

[Senate Bill 1986](#) by Senator Jim Sebesta (R- St. Petersburg)

Current law states that a public construction bond form "may be substantially in the form" set forth in the statutes. In a recent decision, a court held that the bond form differed substantially from the statutory form, and therefore was a common law bond rather than a statutory bond. In addition, the court ruled that notice requirements set forth in the statute were not enforceable under a common law bond. AGC supports.

INDEMNITY FOR OTHERS NEGLIGENCE / SUBCONTRACTOR FAILURE TO PROVIDE INSURANCE

[House Bill 1235](#) by Representative Donald Brown (R - DeFuniak Springs)

[Senate Bill 2284](#) by Senator Michael Bennett (R-Sarasota)

Prohibits contract provisions requiring one party to indemnify another for the other parties negligence. Requires payment to subcontractors for work performed even if the subcontractor fails to obtain insurance required by the subcontract.

AGC Position: Supportive of provision related to indemnity. Adamantly opposed to provision related to a subcontractors failure to obtain required insurance.

CONSTRUCTION LIEN LAW

[House Bill 1719](#) by Representative Charles Dean (R - Inverness)

[Senate Bill 2458](#) by Senator Nancy Argenziano (R-Crystal River)

The bill requires mandatory contract language warning the owner of the possibility of having to pay twice. It limits the amount of the lien to the amount owed by the owner to the contractor at the time the lien is filed. It requires a statutory affidavit form to inform the owner that all potential lienors have been paid in full, or provide a list of potential lienors and the amounts they are owed. It also requires contracts between lenders & owners to contain clauses providing owners with the option to be endorsers of checks on construction. Finally, it requires a state attorney or prosecutor to notify the Department of Business and Professional Regulation when filing against a contractor. AGC is OPPOSED to this bill.

Comments: This bill is the result of numerous homeowners having liens filed against their properties when a contractor failed to pay the subs and suppliers, forcing the owners to pay twice for the same materials and services.

PROMPT PAYMENT / RETAINAGE ON PUBLIC PROJECTS

[House Bill 1169](#) by Representative Ron Reagan (R - Sarasota)

[Senate Bill 1724](#) by Senator Michael Bennett (R-Sarasota)

Applies Local Government Prompt Payment Act to all public entities, mandating payment from owner to contractor within 25 days after receipt of payment request. Mandates payment by contractor to subcontractor within 10 days after receipt of payment from owner. Mandates 50% reduction in retainage after 50% completion. Allows contractor to request 50% of retainage held. Allows contractor to continue withholding higher retainage on subcontractors. Mandates one official punchlist, with other punchlists considered warranty work. Upon completion of punchlist and submission of payment request, mandates owner make final payment within 25 days. Prohibits claim against payment bond for purposes of retainage for 60 days after owner receives final payment request. AGC Supports.

You can contact members of the Florida Legislature by using the [blue](#) links below.

TO CONTACT MEMBERS OF THE FLORIDA HOUSE OF REPRESENTATIVES:

<http://www.myfloridahouse.com/Legislators.aspx>

TO CONTACT MEMBERS OF THE FLORIDA SENATE:

<http://www.flsenate.gov/Legislators/index.cfm?Chamber=Senate&Submenu=1&Tab=Legislators>

PLEASE REMEMBER TO SEND IN YOUR LEGISLATIVE CONTACT SHEET.

We really need to know who you can contact on industry issues. Things happen quickly in Tallahassee during session. A personal call or email from you can make all the difference in a vote. We just need to know your contacts. PLEASE fax it in!

For further information regarding the Florida Legislature, please click on the links below:

Florida Senate: www.flsenate.gov

Florida House of Representatives: www.myfloridahouse.com