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MO-1

## MISSOURI LEGISLATIVE UPDATE

*Spring Break just ended in the Missouri legislature. As in Kansas, budget woes dominate statehouse debate. The Missouri General Assembly finds itself needing to reconcile nearly \$1 billion difference in Governor Nixon's budget that was presented in January and decreasing state revenue collections. A balanced budget must be passed by May 7<sup>th</sup>. After last year's budget cuts, the task of finding additional areas in which to reduce spending is becoming increasingly hard. According to legislators, next year's budget could be even worse.*

*Despite the budget focus, many bills of concern to the building construction industry are being considered. What follows are brief overviews of some of the bills that we are monitoring and on which we are offering input.*

### MECHANICS' LIEN LEGISLATION BACK THIS YEAR

Continuing from last year, diverse groups across the state would like to see changes made in Missouri's mechanics' lien statutes. The first bill, [SB 867](#), sponsored again by Senator Rob Mayer from southeast Missouri, includes the following changes:

- Only lien waivers that release rights to the extent of payment received by the claimant in exchange for the waiver are enforceable
- It extends the designer's lien to 3 acres rather than one
- Attorneys' fees, interest and costs shall be levied against the property charged with the lien
- It does away with the "just and true account" currently required of subcontractors in Missouri
- This act requires the court to appoint a referee in all cases and the costs are split

Another bill, [SB 934](#), sponsored by Senator John Griesheimer of Washington, MO, is attempting to add notice requirements. Its filing was recommended by the Missouri Land Title Association in St. Louis. Title insurance companies aren't willing to insure against unreleased liens and banks cannot resell related loans without the insurance. [HB 2058](#), sponsored by Representative Jon Diehl from St. Louis, is the companion bill. Specifics of the bills include:

- Most importantly, the bill requires notices of intent to perform prior to commencement of work (from original contractors) and notices of commencement of work within 10 days of actually starting work (from subcontractors)
- Notices would be given in the county of the project in the Recorder of Deeds office
- Persons failing to record either notice or whose names are not accurately identified in either notice waive their lien rights
- Pertains to residential construction, but "residential" is broadly defined to include condominiums, townhomes and mixed use developments of any size

[SB 935](#), also sponsored by Senator John Griesheimer, modifies the law relating to priority in mechanics' lien rights. Currently, when an individual does work on property subject to an existing deed of trust, the lien claimant's interest is superior to the holder of the existing deed as to the buildings, erections, and improvements. This act reverses the order, so the deed of trust would be superior.

Many different groups are weighing in on these bills, and amendments continue to be proposed. Staff has been involved in discussions going back two years now. Our position: the Kansas City Chapter, AGC strongly opposes the inclusion of attorneys' fees in mechanics' lien claims. If changes are made to the lien statutes, we would like to see those changes only pertain to residential construction of 4 units or less. We do not advocate requirements that mandate contractors and suppliers to act in order to retain their lien rights that they already have. However, if the state legislature deems changes are needed, we would be a proponent of an efficient and transparent system that gives notice of projects and potential lien claimants. Such a system could include the use of a web-based construction registry.

Staff will continue to work with the other Missouri AGC chapters to follow this legislation.

## **TAX CREDIT PROGRAMS DEBATED**

Another issue that continues from last year is the tax credit debate. This debate has been centered on the senate side of the General Assembly and is being driven by a small handful of senators. They believe the creation and issuance of tax credits in Missouri has gotten out of hand. They would like to see most of the tax credit programs re-evaluated, many sunsetted and all new appropriations of tax credits go through the appropriation's process. With the backdrop of a troubled economy and the mandate of a state balanced budget, more senators are inclined to consider their arguments.

The Builders' Association has followed the Historic Preservation Tax Credit Program the closest. Last year we weighed in on numerous occasions to save the program and continue it as it has been operated. As the dust settled at the end of last year's legislative session, the program did get capped, but the cap was at the high level of 2008's issuance. This year we continue to weigh in on the discussions. Last week, The Builders' Association and the Kansas City Chapter of the AIA jointly signed a letter expressing our wishes that the program continue as it was legislated last year. The letter was sent to the leadership in the House and Senate, the chair and vice chair of the economic development committees in both chambers and the Lieutenant Governor (he also serves as president of the Senate).

Two Senate bills have been filed to initiate the debate on tax credits. The first bill is [SB 584](#), sponsored by Senator Matt Bartle from the Kansas City area. This bill requires mandatory review and sunset of certain tax credit programs. The second bill is [SB 728](#), sponsored by Senator Jason Crowell from southeast Missouri. This bill requires appropriations for allocations of state tax credits. Both bills were read on the floor and assigned to a favorable committee, the Governmental Accountability and Fiscal Oversight Committee. Surprisingly, both measures were voted down in committee. This is a hopeful sign for proponents of the Historic Preservation Tax Credit.

Even though these bills have died, the issue is far from over (especially during this budget crisis). The provisions of these bills could be placed within other legislation as the session progresses. Staff will continue to watch this closely and sustain the dialogue with legislators.

## **\$800 MILLION BOND PROPOSAL FOR HIGHER EDUCATION**

Representative Chris Kelly from the Columbia area has filed [HJR 77](#) which upon voter approval of a constitutional amendment, the General Assembly would be authorized to issue up to \$800 million in bonds to provide funding for the construction or rebuilding of buildings for higher education, including community colleges. A list of projects is circulating (please contact Allen Dillingham at 816-595-4121 or [adillingham@buildersassociation.com](mailto:adillingham@buildersassociation.com) if you would like a copy). These projects are targeted at institutions across the entire state.

The Builders' Association is supporting this bill to spur construction spending in the state. It has a high hurdle as a constitutional amendment; both the General Assembly and the voters of the state have to

approve it. As of now, the joint resolution has not even been assigned to a committee. Staff will remain hopeful as we continue to follow and weigh in on this proposal.

## **POLITICAL SUBDIVISION CONSTRUCTION BIDDING STANDARDS**

Senator Ryan McKenna has filed [SB 729](#) which creates the “Political Subdivision Construction Bidding Standards Act.” This legislation sets minimum advertising and bidding standards throughout the state. It does not affect local or state political subdivisions that already have competitive bidding requirements which are the equivalent of or stricter than what this legislation prescribes. Details of the legislation are below.

- If a political subdivision is not covered by a specific federal, state, or local law that is equivalent or stricter in its requirements, it shall comply with the advertising and bidding requirements outlined in this act when soliciting bids and awarding contracts of \$6,000 or more
- Contract for construction shall be advertised in advance of the acceptance of bids
- Bids shall be advertised through publication in a central repository developed by the Office of Administration or for a minimum of two days in an area newspaper
- Contract shall be awarded to the lowest and best bidder
- Under no circumstances shall construction contracts for any political subdivision be awarded in violation of certain requirements, including opening bids in advance of the advertising deadline, accepting bids that are unwritten, accepting bids after the advertised deadline, and failing to hold bids confidential
- A person submitting a bid, or who would have submitted a bid except for violations, may seek equitable relief and monetary damages for monetary losses
- Electronic bidding shall be allowed if it meets the standards of confidentiality
- This act authorizes the metropolitan sewer district (MSD in St. Louis) to enter into design-build contracts for projects that exceed \$1,000,000

The most interesting piece of this legislation is the creation of a central repository within the Office of Administration (OA). OA is the operation and management agency for Missouri state government; facilities maintenance, design and construction are under this office. The central repository is planned to be a full listing of every public works project in the state. The listed public works project would just include basic information. Interested bidders would have to contact the stated public body if they have questions. OA shall develop and maintain this repository at no cost to the state.

Staff has been working with the other Missouri AGC chapters to follow this legislation. Information gathering discussions have occurred with the bill's sponsor.

## **CRANE SAFETY STANDARDS**

[SB 764](#) has been filed by Senator Tim Green from St. Louis. The legislation establishes crane safety standards in Missouri and requires employers to register every two years with the Department of Labor and Industrial Relations (and pay a fee). The details follow:

- The director of the Department of Labor and Industrial Relations shall designate crane operators, signal persons, riggers (individuals who attach loads to cranes), and crane operator trainees as safety sensitive positions
- Employers who employ these individuals are required to have a drug and alcohol free workplace and substance abuse policy. These policies must include certain mandatory drug testing, prohibition on employees working while under the influence of alcohol, drugs, or a controlled substance, and a prohibition on the use, possession, or manufacture of any unlawful drug or use of alcohol while at work

- Employers are required to ensure that individuals who operate cranes meet training requirements, pass a written test, demonstrate proficiency in operating the specific type of crane, pass a practical skills examination, and demonstrate specific knowledge of crane operations, or an employer may accept a crane operator certification from certain national certification programs
- Crane operators must also provide medical documentation to their employer and pass a substance abuse test. Employers must ensure crane operators are tested every five years
- Employers are required to ensure that all the hardware, equipment and means used to safely attach a load to a crane (i.e. rigging) are used in accordance with manufacturer limitations and requirements and individuals who rig loads with hardware and equipment used to attach a load to a crane (i.e. riggers) have received training appropriate to the level of work they perform
- Employers are required to ensure that an initial inspection is done of all new and altered cranes and that daily and annual inspections are also conducted. Employers are required to maintain inspection and maintenance records and make all records available to the director or the director's representative for review
- Written training records for each crane operator, signal person, rigger, and crane operator trainee must be maintained in the employer's principal office in Missouri for five years
- The director of the department is authorized to issue civil damages up to \$200 for each violation of this act and seek injunctions to stop certain violations. Damages for violations of this act go to the Crane Safety Enforcement Fund.

This legislation has been referred to the Senate General Laws Committee. It has not been scheduled for a hearing.

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To see a complete list of bills The Builders' Association is watching in Missouri, please click on the following links.

[Missouri House](#)  
[Missouri Senate](#)

As always, if you have questions about any of the pieces of legislation above, or would like us to look into a bill not listed, please contact Allen Dillingham, Government Affairs Director for The Builders' Association, at 816-595-4121 or [adillingham@buildersassociation.com](mailto:adillingham@buildersassociation.com). We also encourage you to contact your elected representatives on these pieces of legislation and other issues important to you and your business.