

MISSOURI LEGISLATIVE UPDATE

The Missouri legislature is on its last week in the 2010 session. With an unprecedented decline in state revenue, the budget has remained the primary focus. Lawmakers are required to have the appropriation bills finally passed by May 7th. Surprisingly, this year they completed the budget early by a week. The \$23.3 billion FY 2011 budget is now in the hands of Governor Jay Nixon, including nearly \$460 million in spending cuts from the budget proposal the governor originally presented back in January. He is expected to scrutinize the budget presented to him line by line.

With the budget bills completed, the time left before the required May 14th adjournment is free for debate and compromise on any bills of interest still awaiting approval. This extra time can be good and bad. Issues like mechanics' liens, bidding standards and tax credits remain in the mix. These and many other bills of interest to the building construction industry are still open for consideration. 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

As reported in the last legislative bulletin, a handful of bills propose changes to Missouri's mechanics' lien statutes. [SB 867](#), sponsored by Senator Rob Mayer from southeast Missouri, adds attorneys' fees, interest and costs to the lien, among other changes. This bill stalled in committee in February.

[SB 935](#), 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. This bill also stalled in committee in February.

Another bill, [SB 934](#), also 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
- The bill pertains to residential construction, but "residential" is broadly defined to include condominiums, townhomes and mixed use developments of any size

Many different groups continue to weigh in on these bills, and amendments have been 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.

Representative Jon Diehl's bill, HB 2058, is the vehicle on which this issue will live or die this session. The legislation has already passed the House (by vote on April 22nd of 141 AYES and 7 NOES), voted to pass in the Senate General Laws committee and now sits ready to be brought up by the full senate. The legislation was altered slightly in the senate, so an affirmative vote on the senate floor would then mean the House would need to concur with the changes or they would need to call a conference committee to iron out the differences. This bill has developed some momentum over the last month, so anything can happen. The bill must be decided upon by the end of next week, though. Staff will be watching this discussion closely.

TAX CREDIT PROGRAMS DEBATED

Similar to the mechanics' lien discussions, 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 issuances 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.

As the debate has progressed this session, Governor Jay Nixon became sympathetic to the views of tax credits opponents. He held a press conference about three or four weeks ago with educators behind him at the podium exclaiming that tax credits were taking crucial dollars from education in our state. The leadership in the House then held their own press conference later the same day saying economic development in Missouri was in many cases facilitated by the tax credit programs, that these programs should not be dismantled without some careful consideration and that tax credit programs helped rather than hindered education in the state. The Governor went on to introduce his own proposal (through the state's Department of Economic Development) in [HB 2399](#), sponsored by Rep. Steve Hobbs. This legislation would essentially organize all of the state's tax credit programs into six categories and cap total credits at 70% of their 2009 level. In addition, the Department of Economic Development would be given much flexibility and discretion with administering tax credits in the state.

The Builders' Association has followed the Historic Preservation Tax Credit Program the closest, along with the low income housing tax credit program. For the hearing held on HB 2399 on April 6th before the House Job Creation and Economic Development Committee, staff, along with two Builders' Association members, presented testimony against any changes to the two programs. The hearing room was packed. Many House members were skeptical of the legislation that was presented. The hearing concluded without a vote and HB 2399 stalled at that point.

Since that hearing, though, the discussion has continued. The governor is preparing another proposal for the legislature. He definitely wants some reform (reductions). The House doesn't, though, and the Senate is trying to work within its membership to develop some consensus. There is one week left. The battle is not over, but the clock is ticking. Staff continues to follow this closely.

POLITICAL SUBDIVISION CONSTRUCTION BIDDING STANDARDS

Senator Ryan McKenna 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. 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 (FMDC) is under this office. The central repository is intended 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. SB 729 has a threshold of contracts of \$6,000 or more. The bill is stalled in the Senate.

[HB 2218](#), Charlie Denison’s bill, was proposed as an alternative to SB 729 by the AGC of Missouri. This bill more succinctly creates minimum bidding standards statewide. It has a higher \$10,000 threshold and it lacks the OA repository language. It had a hearing on March 30th, but has been at a standstill since then.

Since those original bills were filed and the legislative session has progressed, the language from both bills has been placed in other pieces of legislation that have become huge omnibus bills that contain language on numerous subjects. These bills, specifically [SB 580](#) and [HB 1290](#), are now stalling themselves due to unrelated issues like red light cameras. With the session winding down quickly, further attempts have been made to put this language on additional pieces of legislation that seem to be moving. At this juncture, though, it appears this language will not pass this year.

OTHER LEGISLATION OF NOTE

Crane Safety Legislation: As reported in the last legislative bulletin, [SB 764](#) was 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). This bill is dead.

Women's and Minority Business Enterprises: [HB 2445](#) requires reciprocity between the City of Kansas City and the Office of Administration on behalf of the State of Missouri for the certification of women's and minority business enterprises; however, the reciprocity cannot preclude an applicant from paying any application fees associated with the certification process. This legislation probably will not pass this session.

Construction of State Buildings: [HJR 77](#) was sponsored by Rep. Chris Kelly from Columbia. The bill proposes a constitutional amendment authorizing the General Assembly to issue up to \$800 million in bonds to fund higher education improvements, construction, landscaping, and land purchases. No more than \$250 million of the proceeds can be allocated for construction other than for higher education. The bonds may be issued over time by the State Board of Fund Commissioners and will mature within 25 years from the date of issuance. This legislation died in committee.

Expedited Bid Process for State Purchasing Contracts: [SB 901](#) was sponsored by Senator Jim Lembke. This act allows the Commissioner of Administration to waive competitive bid and competitive proposal requirements for state purchasing contracts and expedite the process when the contract is under 10 million dollars, the duration is under 12 months, and waiving the requirements would save the state 5% or more on the contract. Notice shall be provided and information relating to the contract shall be given to the auditor, the minority and majority leadership of the General Assembly and the chair of the appropriations and budget committees 30 days before signing the contract. Such contracts shall not be extended unless necessary to afford adequate time for carrying out the competitive bid process. This legislation died in committee.

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. We also encourage you to contact your elected representatives on these pieces of legislation and other issues important to you and your business.