

July 16, 2010
MO-3 (Session overview)

MISSOURI 2010 LEGISLATIVE WRAP-UP

The Second Regular Session of the Ninety-Fifth General Assembly ended on May 14th. All in all, it was a fairly quiet five months. Many bills were filed, but very few actually passed both legislative chambers. In the final week of the session (really the last day), the construction industry was affected by some legislation the Builders' staff had been following all year. It appeared that bills dealing with mechanic's liens, drug testing on public projects, construction bidding standards and tax credit reform (to name a few) would die and leave the issues for another session. Legislation relating to mechanic's liens and drug testing did find passage, though (details below).

As mentioned in previous Legislative Bulletins, the budget woes drove nearly all debates in the Missouri statehouse, not dissimilar to many other statehouses around the country. Next year's budget will be even worse. The federal stimulus funds have run out. Consequently, Missouri starts with an immediate \$987 million shortfall next year (the amount equal to the federal stimulus payment). The 2011 session won't be fun for lawmakers.

Coinciding with this Legislative Bulletin is the special session called recently by Governor Jay Nixon. Missouri lawmakers failed in the last few weeks of session to pass a manufacturing tax credit bill aimed at retaining jobs at the Ford plant in Claycomo, Missouri. This legislation, called the Missouri Manufacturing Jobs Act, was sponsored by Representative Jerry Nolte from Gladstone. The special session turned a little heated with a revival of the tax credit debate. After a several hour filibuster and a removal of a committee chair by the President Pro Tem of the Senate, the measure passed.

What follows are brief overviews of some of the significant bills we monitored over the last session and on which we offered input. Please let staff know if you have any questions.

MECHANICS' LIEN LEGISLATION PASSED

The debate over changes to Missouri mechanic's lien law has been intense over the last two years. It started with discussions around commercial building construction. Most notably, proponents wanted to add attorney's fees to a lien. After several meetings, discussions broke down. Bills were filed to address these changes, but they stopped moving. Then this year [HB 2058](#), sponsored by Representative Jon Diehl from St. Louis, was filed. The bill states that it only pertains to liens on residential real property. While this is technically correct, its language includes apartment buildings, condominiums and mixed-use developments. Specifics of the bill 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, particularly from St. Louis, weighed in on this current bill. Staff was 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 follow this issue, and also closely watch the new law's implementation.

TAX CREDIT PROGRAMS DEBATED, BUT STALL

Similar to the mechanics' lien discussions, another issue that continued 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 progressed over the session, Governor Jay Nixon became sympathetic to the views of tax credits opponents. He held a press conference about three or four weeks before the session ended 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.

The session ended without a consensus. Even the Missouri Manufacturing Jobs Act failed to pass, which offered tax incentives to Ford and other manufacturers in the state, which paved the way for the special session. Eventually, that bill did pass in the special session, but tax credits in Missouri remain an unresolved and heated topic for lawmakers. With the unprecedented shortfall in the upcoming 2011 fiscal year budget, something has to give. The system of tax credits in Missouri seems certain to change this next year.

POLITICAL SUBDIVISION CONSTRUCTION BIDDING STANDARDS FAIL

Senator Ryan McKenna filed [SB 729](#) which aimed to create the "Political Subdivision Construction Bidding Standards Act." This legislation set minimum advertising and bidding standards throughout the state. In the end, the bill failed to pass.

Its language did not affect local or state political subdivisions that already had competitive bidding requirements which are the equivalent of or stricter than what this legislation prescribes. The most interesting piece of this legislation was 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 was 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 had questions. Additionally, OA was instructed to develop and maintain the repository at no cost to the state. SB 729 had a threshold of contracts of \$6,000 or more.

Later in the session, [HB 2218](#), Charlie Denison's bill, was proposed as an alternative to SB 729 by the AGC of Missouri. This bill more succinctly created minimum bidding standards statewide. It had a higher \$10,000 threshold and it lacked the OA repository language. It had a hearing on March 30th, but stalled after that.

In the end, language from both bills was placed in other pieces of legislation that became huge omnibus bills that contained language on numerous subjects. These bills, specifically [SB 580](#) and [HB 1290](#), subsequently stalled themselves due to unrelated issues like red light cameras. With the session winding down, further attempts were made to put this language on additional pieces of legislation that seemed to be moving. The session ended with no consensus on this language.

DRUG TESTING PROGRAM NOW REQUIRED ON SCHOOL PROJECTS

This was one of two significant bills staff was following that passed this legislative session (the other was mechanics' lien legislation). This bill, [HB 1543](#), was sponsored by Representative Maynard Wallace, a former educator from rural Missouri. The legislation dealt with several specific topics all relating to elementary and secondary education. As the bill progressed during the session, drug testing program language was added. Essentially, the legislation requires the Office of Administration (OA) to issue regulations for contractors or subcontractors on public works construction projects at public schools which require them to establish and implement a random drug and alcohol testing program. Any program must be administered by a certified laboratory and must require notification to the employer and employee of the results of any positive drug and alcohol test. The school district must be notified of the action taken to protect the safety of the students as a result of a positive test. The employer on the public works project must pay for the costs of the program.

Staff will be working closely with OA and its Division of Facilities Management, Design and Construction (FMDC) on developing the rules that will guide this new statute. The Construction Industry Substance Abuse Program (CISAP), co-founded by The Builders' Association, will be the model used by staff in guiding state personnel writing the regulations.

OTHER LEGISLATION OF NOTE

Crane Safety Legislation: As reported in previous legislative bulletins, [SB 764](#) was filed by Senator Tim Green from St. Louis. The legislation established crane safety standards in Missouri and required employers to register every two years with the Department of Labor and Industrial Relations (and pay a fee). This bill died in committee.

Women's and Minority Business Enterprises: [HB 2445](#) required reciprocity between the City of Kansas City and the Office of Administration on behalf of the State of Missouri for the certification of

women and minority business enterprises; however, the reciprocity could not preclude an applicant from paying any application fees associated with the certification process. This legislation did not pass.

Construction of State Buildings: [HJR 77](#) was sponsored by Representative Chris Kelly from Columbia. The bill proposed 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 could be allocated for construction other than for higher education. The bonds could be issued over time by the State Board of Fund Commissioners and would 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 allowed 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 would 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 watched this session 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.