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MISSOURI LEGISLATIVE UPDATE

Spring Break has passed in the Missouri legislature and legislators are back to work on numerous issues that could significantly affect the state. The budget has maneuvered through the House with relative ease and now awaits a more confrontational senate. Unemployment Insurance and Workers Compensation bills have been proposed to shore up deficiencies in both programs. Prevailing Wage and Project Labor Agreement legislation has been introduced to limit the use of both. Tax credits are again at center stage, and Right to Work bills have been debated in the Senate.

Those and many other bills of concern to the building construction industry are being considered. What follows are brief overviews of some of the more significant bills that we are monitoring and on which we are offering input.

STATE TAX CREDITS STILL UNDER SEIGE

Last year's firestorm that occurred around Missouri's tax credit programs was not resolved and continues this year in the legislature. The debate still emanates from a handful of senators who believe strongly that the state cannot get on solid ground financially without first controlling and reducing the tax credit "burden" on the state's treasury.

Several bills, mostly in the senate, have been filed this year. [SB 280](#) is the lead bill in this area. Filed by Senator Chuck Pergason, this legislation modifies provisions of Missouri tax credit programs in accordance with recommendations made by the Missouri Tax Credit Review Commission Report. Governor Nixon convened the tax credit commission last year to provide a recommendation on what the state should do with these programs. Many people believed he weighted the commission with too many educators; the debate has pitted educators against developers in a zero sum game, which it clearly is not. Significant changes in SB 280 that would affect Builders' Association members include capping the low income housing tax credit at \$80 million and reducing the time the credits are usable to five years; capping historic preservation tax credits at \$75 million annually and prohibiting the stacking of historic preservation tax credits with neighborhood preservation tax credits or low-income housing tax credits; sun-setting several of the programs after 2014 and 2015 and repealing a few others. The historic preservation tax credit and the low income housing tax credit are slated to sunset after August 28th, 2015.

Other bills include:

[SB 185](#)- Pergason: This act sunsets all tax credit programs which are not currently subject to the Missouri Sunset Act, effective January 1, 2013. This bill has been referred to the Senate Ways and Means and Fiscal Oversight Committee and has stalled there.

[SB 256](#)- Kraus: This bill repeals eight of the smaller tax credit programs. It was referred to committee on February 17th and has stalled since.

[SB 258](#)- Kraus: Under current law, the Department of Economic Development is prohibited from issuing more than one hundred forty million dollars in historic preservation tax credits in any single fiscal year for projects which will receive more than two hundred and seventy-five thousand dollars in total tax credits. This bill, beginning fiscal year 2013, and each fiscal year thereafter, would prohibit the Department of Economic Development from issuing more than seventy-five million dollars in historic preservation tax credits annually. Projects which would receive less than two hundred seventy-five thousand dollars in tax

credits will be subject to the seventy-five million per year dollar cap. This act also prohibits the department from issuing more than fifty thousand dollars in historic preservation tax credits per project for non-income producing residential rehabilitation projects. Non-income producing residential rehabilitation projects involving a subject property with a purchase price in excess of one hundred fifty thousand dollars will be ineligible for tax credits. The act also prohibits the stacking of historic preservation tax credits with neighborhood preservation tax credits or low-income housing tax credits. It was referred to committee on February 17th and has stalled.

[SB 259](#)- Kraus: This act subjects several tax credit programs to two-year, four-year and six-year sunset schedules. The historic preservation and low income housing tax credits would expire after six years under this proposal. It also was referred to committee on February 17th and has stalled since then.

[HB 905](#)- Zerr: This legislation is designed to enact the recommendations made by the business community to the Tax Credit Review Commission's Historic Tax Credit Sub-Committee via their [report](#) and subsequently recommended to the Tax Credit Review Commission. It also contains language which will help in processing and working with the Department of Economic Development on tax credit issuance. The bill has just been filed. We support this bill and will be watching it closely.

Historic preservation tax credits and low income housing tax credits have helped develop many projects across the state. The historic preservation tax credit program has been cited as a model for other states. Builders' Association staff is monitoring this issue area closely and lobbying for their continued viability in Missouri. With the legislative session nearing the end, much attention will be focused on what other (maybe unrelated) bills any of the language mentioned above could be added to. Stay tuned.

WORKERS COMP LAW CHANGES

Over last summer, the Missouri Court of Appeals' decision in *Robinson v. Hooker* found an employee was responsible for injuries to a co-worker within the course and scope of employment. Also, a St. Louis trial court decision *Gray v. A.W. Chesterton, et al. and Cicerelli v. Certaineed Corp., et al.* eliminated exclusive remedy protection, subjecting employers to tort suits in claims involving occupational diseases. Legislation proposed this session in both chambers seeks to remedy these changes that hit at the foundation of the Workers Comp system in Missouri. The Builders' Association is supportive of these legislative fixes. The active bills are:

[SB 8](#)- Goodman: At this time, this bill seems to have the most momentum. It has passed the Senate and now sits in the House Rules Committee. The bill affirmatively states that occupational diseases are covered under workers' compensation laws. This act also ensures that co-employees shall be released from liability for all workplace injuries under the workers' compensation system except when they engage in an act that intentionally caused or increased the risk of injury. In addition, toxic exposure is defined as an exposure to chemicals, dusts, particulates, fumes, mists, fibers, solvents, vapors, radiation, or other substances or other materials that, when ingested, consumed, inhaled, or absorbed are sufficient to cause disease, death, mutations, cancer, deformities, or reproductive abnormalities in humans. In cases where occupational disease is caused by toxic exposure, there shall be no subrogation rights for employers.

[HB 434](#)- Nolte: Representative Jerry Nolte from Gladstone originally looked to remedy the change in co-employee liability by filing [HB 91](#). That bill's language has now been rolled into HB 434. In summary, HB 434 requires co-employees to be released from liability for negligence in performing the non-delegable duty of an employer to provide a safe workplace when the negligence contributes to another employee's personal injury or death unless the employee engaged in an intentional act that purposefully and dangerously caused or increased the risk of injury. This proposed legislation is a simple change to workers comp law by only remedying the co-employee liability issue. Currently, this bill has passed the House and sits in the Judiciary and Civil and Criminal Jurisprudence Committee in the Senate.

[HB 162](#)- Fisher: This proposed legislation specifies that every employer who is subject to the workers' compensation provisions of Chapter 287, RSMo, must be liable to furnish compensation for the personal injury or death of an employee by occupational disease arising out of and in the course of the employee's employment. An employer or his or her employee will not be liable for any injury or death for which compensation is recoverable under the provisions of Chapter 287. Like HB 434, this bill has passed the House and sits in the Judiciary and Civil and Criminal Jurisprudence Committee in the Senate.

RIGHT TO WORK DEBATED

Right To Work was a topic that surfaced prior to the beginning of this legislative session. Originally, legislators were saying they would consider the subject as part of a larger debate on state competitiveness and economic development. They said this year would be a year of education on the topic. This quickly changed when Senate President Rob Mayer mentioned Right To Work three times in his opening session address. Quickly thereafter, Senator Luanne Ridgeway from Clay County filed [SB 1](#). This bill bars employers from requiring employees to become or refrain from becoming a member of a labor organization or pay dues or other charges required of labor organization members as a condition of employment. Employers who do so commit a class C misdemeanor. Prosecuting attorneys and the Attorney General are charged with investigating complaints. SB 1 was subsequently merged with [SB 206](#), which contains the same language.

The other version of the Right To Work bill language was found in [SB 109](#). This bill, filed by Senator Jason Crowell, uses the same language as SB 1, but adds one paragraph at the end that submits this issue and particular language to the voters of the state in August 2012.

SB 109 has stalled in committee. SCS/SBs 1 & 206 has moved the farthest. It had a hearing in the Senate in front of a packed committee room in February and then later that month was debated on the Senate floor. After a relatively short period of time, the debate was ended and the bill was placed on the informal calendar. It has been sitting there ever since with no indication of further floor action.

Even though this issue developed some momentum early in the session, its progress has slowed considerably. All of the action has been in the Senate. Even though identical legislation has been filed in the House, leadership there does not want to spend time on the subject without a passed version from the Senate. Consequently, it does not appear any Right To Work legislation will pass the legislature this year.

PREVAILING WAGE UNDER ATTACK

Changes to the state's prevailing wage statutes also have been proposed in both legislative chambers. Representative Barney Fisher has filed two bills, HB 320 and HB 828. A companion bill to HB 320 has been filed in the Senate, Senator Munzlinger's SB 176. They are detailed below.

[HB 320](#)- Fisher: This bill was passed by the House Workforce Development and Workforce Safety Committee in mid-March. It has stalled since then. The legislation proposes several significant changes to Missouri's prevailing wage law. These changes are outlined below.

- (1) Revises the definition of "locality" for the purposes of determining the prevailing wage for an occupational title to mean the county in which the work is performed. Currently, locality may encompass two or more counties adjacent to the one in which the construction is to be performed if there is not enough skilled workmen for the job;
- (2) Revises the definition of "prevailing hourly rate of wages" to be the average rate of wages paid within the locality and removes the provision which allows for the consideration of wage rates established by collective bargaining agreements;

(3) Removes the requirement that contributions by a contractor or subcontractor be irrevocably made to a trustee or third person and requires that the contributions be to a fund, plan, or program to qualify as part of the prevailing wage calculation;

(4) Specifies that the prevailing hourly rate of wages in a particular locality will be the median hourly estimated wage for the construction and extraction occupational code most closely resembling the occupational title as published in the latest United States Bureau of Labor Statistics by the Metropolitan and Non-Metropolitan Area Occupational Employment Wage Estimate or the median hourly wage estimate for occupational code 47-0000 in the construction and extraction occupational code if the Department of Labor and Industrial Relations is unable to determine the prevailing hourly rate for a particular occupational title by means of wage surveys;

(5) Specifies that when the department finds a violation of the provisions regarding prevailing wages, it will provide a notice of violation to the employer instead of a notice of penalty and removes the provision specifying that a prevailing wage penalty will not be due until 45 days after the date of the notice of the penalty;

(6) Prevents the department from initiating an administrative, civil, or criminal action against an employer if the employer pays back wages prior to the department initiating an action to enforce a monetary penalty;

(7) Removes the provision allowing the prevailing wage for each title to be annually adjusted due to fluctuations in wages in a collective bargaining agreement;

(8) Removes the provision requiring certain contractor and subcontractor signage on motor vehicles and other motorized equipment used in connection with the project; and

(9) Removes the provision imposing a term of imprisonment for up to six months for a person violating any provision regarding prevailing wages.

[SB 176](#)- Munzlinger: This bill is a companion bill to Fisher's HB 320 mentioned above. Its language is identical to HB 320.

[HB 828](#)- Fisher: This bill makes significant changes to Missouri's prevailing wage statutes, but it also annuls a court ruling that was handed down this past summer. This bill:

(1) Revises the definition of "construction" as it relates to the provisions regarding prevailing wages on public works projects to include only new construction, enlargement, or major alteration. Currently, it includes construction, reconstruction, improvement, enlargement, alteration, painting and decorating, or major repair;

(2) Revises the definition of "maintenance work" by removing the exclusion of the replacement of an existing facility and including the restoration of the material condition or operation or the painting or repainting of an existing facility;

(3) Defines "major alteration" as an alteration or structural change to an existing facility which increases the size, type, or extent of the facility; and

(4) Abrogates the ruling in *Utility Service Co., Inc. v. the Department of Labor and Industrial Relations and the Labor and Industrial Relations Commission of Missouri*.

The AGC chapters across the state have been working together to broaden the definition of "maintenance" found in this bill, but have been unsuccessful. As it stands now, the legislation only applies prevailing wage to new construction and excludes any work which does not increase the size, type or extent of the facility.

This bill has now passed the House and has been second read in the Senate and referred to the Senate Small Business, Insurance and Industry Committee. This bill doesn't have time on its side, but it is moving nonetheless. The Builders' Association is opposed to these changes to prevailing wage and staff will continue to follow this closely.

PROJECT LABOR AGREEMENTS DISCUSSED

Legislation proposed this session aims to bar the usage of Project Labor Agreements on all public construction projects in the state. Currently, contracts for public construction are barred from containing provisions that require or prohibit the parties from entering into agreements with labor unions on the project or discriminate against parties for doing so when the project is funded by greater than 50% of state funds. New legislation states the same requirements shall apply to contracts funded in any amount with public funds. It defines "public funds" to include funds belonging to the state, any agency of the state or any instrumentality or political subdivision thereof. It also redefines "project labor agreement" to apply to agreements for projects of agencies and instrumentalities of the state.

Companion bills with identical language have been filed. Rep. Barney Fisher introduced [HB 319](#). This bill has been voted do pass out of a House committee, but has stalled there. Senator Brian Munzlinger introduced [SB 175](#). This bill has been passed out of a Senate committee favorably and now sits on the informal calendar.

At this time, both bills do not seem to have the support to get them to the Governor's desk.

OTHER BILLS OF INTEREST

Congressional redistricting: [SB 68](#) is the bill that is being debated to alter the congressional district lines in Missouri. The House passed their version overwhelmingly, and with bipartisan support, many weeks ago. The Senate also passed their version. Lately, both chambers have been in conference to put together a compromise bill. This has proven unsuccessful to date and everybody is waiting to see what happens.

\$800 million bond issue for building construction in Missouri: [HJR 9](#) filed by Rep. Chris Kelly proposes, upon voter approval, a constitutional amendment authorizing the General Assembly to issue up to \$800 million in bonds to provide funding for the construction of state buildings, facilities, and projects for purposes other than higher education and for rebuilding higher education institution buildings including no less than 15% of the proceeds to be allocated to public community colleges for land acquisition; construction or purchase of buildings; and planning, furnishing, equipping, and landscaping the improvements and buildings. No more than \$250 million of the proceeds can be allocated for construction other than for higher education. Rep. Kelly introduced something similar last year. It will not pass again this year.

Callaway II power plant: This could be the largest economic development project in the history of Missouri. It is being held up by two senators (Senators Rob Mayer and Jason Crowell) in southeast Missouri. New language recently was added to [SB 48](#) to get this moving. This bill has now passed the Senate and is just getting started in the House. Stay tuned...

Unemployment benefits: The Senate finally passed legislation allowing Missouri to receive federal funds for extended unemployment benefits ([HB 163](#)). Currently, the Missouri Department of Labor pays unemployment claims for the first 26 weeks of unemployment and then the federal government picks up the bill for the remaining 53 weeks. The Senate's bill allows the State of Missouri to use federal stimulus money for the funding of an additional 20 weeks of unemployment compensation. To allow for the state to accept these federal funds, a compromise reduced the number of weeks the Missouri Department of

Labor would pay unemployment benefits to 20 weeks—at which point an extension would be filed with the federal government for continued support if unemployment has continued. This compromise will reduce the cost of Unemployment Insurance to employers by over \$100 million annually.

Political Subdivision Construction Bidding Standards Act: Senator Ryan McKenna filed [SB 249](#) and Rep. Charlie Denison filed [HB 566](#) this year. They are continuing their effort from last year. The two pieces of legislation are similar in that they aim to create a uniform project advertising and bidding standard across the state. HB 566 is now stuck in a House committee and SB 249 was just voted to pass from a Senate committee. At this time, their prospects do not look bright.

Many topics of concern to the construction industry and businesses in general have been debated this session. As the session winds down (last day is May 13th), the horse trading really can take off. Bills (or issues) that seem dead can suddenly become resurrected. Staff will continue to follow the bills listed above and others and will report changes in the next legislative bulletin.

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.