

July 22, 2011
MO-3 (Session overview)

MISSOURI 2011 LEGISLATIVE WRAP-UP

The First Regular Session of the Ninety-Sixth General Assembly has concluded. A total of 1,461 bills were introduced (1,028 in the House and 433 in the Senate). Only 153 bills passed both chambers and were delivered to the Governor.

It depends on your perspective, of course, but for most observers, the 2011 session was unproductive. A lot of work went into achieving very little. Going into the session, the number one priority for lawmakers was to create jobs. Economic development legislation was to play a dominate role in that effort, but nothing of significance was passed. Tax credit reform still dominated the debate, particularly in the Senate, and with no real agreement on the issue all related economic development initiatives stalled.

Other hot topics during the session included Right To Work legislation, prevailing wage and project labor agreement (PLA) changes, Callaway nuclear plant II construction permits and workers' compensation fixes. All of these items failed to obtain passage.

The session, though, did bring about a new congressional redistricting map that was eventually passed over the Governor's veto. Passage of an unemployment insurance bill also was accomplished. Last, and most significant to the Builders' Association membership, was the addition of new statute language that reduces state taxes for Midwest Builders' Casualty.

This week, Governor Nixon and the Republican House and Senate leaders announced a breakthrough on the impasse surrounding tax credits and economic development. The Governor has announced his intention to call a special session, coinciding with the normal veto session in September, to pass an economic development package.

What follows are brief overviews of some of the significant bills monitored over the last session and on which input was offered.

CHANGE TO MISSOURI RETALIATORY TAX LAW WILL BENEFIT MEMBERS

We are very pleased to report that a Builders' Association sponsored amendment to Missouri's workers' compensation "retaliatory tax" statute was included in [HCS SS SCS SB 132](#) which was signed into law by Governor Nixon on July 7th. This important change will mean lower costs for Midwest Builders' Casualty Mutual Company (MWBC) moving forward.

While MWBC provides workers' compensation coverage for work done in many states, most written premiums are for work performed in Missouri and Kansas, with the larger portion written in Missouri. Retaliatory taxes are used as an equalization mechanism to account for differing tax rates between states in which a carrier is operating in and the one in which they are domiciled. The formula for calculating retaliatory taxes is somewhat complicated to begin with and is further complicated by different assessments and different assessment rates between states. The state of Kansas, for example, charges an assessment to each insurance carrier, pool and self-insured company writing workers' compensation premiums based upon the amount of each individual company's paid losses during a calendar year together with an

administrative fund assessment of 2.79% and a 1% Second Injury Fund Assessment. The Missouri Department of Insurance has required MWBC to include these assessments in calculating the Missouri Retaliatory Tax filing and, since the basis for this assessment is not based on written premiums, the department has required Midwest Builders' Casualty to use Missouri paid losses for the same calendar period to determine the assessment amount. Because the paid losses are greater in Missouri than in Kansas, the amount of the assessment has been larger. And, since there is no similar Missouri assessment rate to compare the Kansas rate to, Missouri has charged the full amount. This unfair result has been remedied by our amendment to SB 132.

ECONOMIC DEVELOPMENT PACKAGE IN STORE FOR SPECIAL SESSION

In separate announcements this week, the Governor and House and Senate Republican leaders held press conferences pronouncing that an economic development legislative package has been agreed to by House and Senate leaders. The Governor has announced his intention to call a special legislative session, which would coincide with the normal veto session held in September.

The session was described early on as dedicated to job creation and economic development. With strong feelings on tax credits still brewing, practically all of the economic development initiatives and job creation efforts came to a standstill. A handful of legislators in the Senate have been demanding reform to all the tax credit programs in the state, stating the programs are out of control and diverting precious dollars. House leaders favored the current programs and did not believe changes were needed. At the end of the session, a deal was almost put together, but time ran out. Legislators have been working the last two months to come to a compromise to allow major initiatives to move forward.

The legislative press conference and the Governor's address were given in very broad terms with little specifics. A proposed bill has not been circulated. From discussions with different groups, the following items should be included in the legislative package.

- Creation of an Aerotropolis Tax Credit for St. Louis' Lambert Airport;
- Establishment of the Missouri Science and Innovation Reinvestment Act (MOSIRA);
- Sales Tax Exemptions for Data Centers;
- Tax Amnesty Provisions that are intended to assist in collecting unremitted tax revenue;
- and
- Reductions to Historic Preservation and Low Income Housing Tax Credits.

The Builders' Association has long opposed changes to the Historic Preservation and Low Income Housing Tax Credits that would negatively affect those programs. Staff understands that Historic Tax Credits will be cut in half (capped at \$80 million from the previous cap of \$140 million a year). Low Income Housing Tax Credits would be limited to \$130 million/year, down from approximately \$190 million/year. In addition, both credits could not be combined, and both would be sunsetted in seven years unless legislators renewed them. Staff will continue to watch this effort closely as specifics become available and a bill takes shape.

WORKERS COMP LAW CHANGES LEFT UNRESOLVED

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. Certainteed Corp., et al.* eliminated exclusive remedy protection, subjecting employers to tort suits in claims involving occupational diseases. Legislation proposed this session in both chambers sought to remedy these changes that hit at the foundation of the Workers Comp system in Missouri. The Builders' Association was supportive of these legislative fixes.

Of the handful of bills filed, Senator Jack Goodman's [SB 8](#) was the driving legislation. The bill affirmatively stated that occupational diseases are covered under workers' compensation laws. This act also ensured 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 was 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.

To the disbelief of many, this legislation became tied up in the last hours of session and failed to win passage. Builders' staff will continue to work with legislators and business organizations this next session to help insure such a critical fix is accomplished.

RIGHT TO WORK DEBATED, BUT LEFT TO DIE THIS SESSION

Right To Work surfaced as an issue in the Missouri Senate early in the session. Senator Luann Ridgeway filed [SB 1](#) right out of the gate. It was soon merged with [SB 206](#), filed by Senator Chuck Purgason. Shortly thereafter, Senator Jason Crowell offered [SB 109](#) which included the same language, but submitted the issue to the voters of the state for an August 2012 election.

After some debate in committee for SCS/SBs 1 & 206, and then on the Senate floor, the issue remained dormant on the informal calendar. All of the debate on this issue occurred in the Senate. Even though identical legislation was filed in the House, leadership there did not want to spend time on the subject without a passed version from the Senate. It has not been apparent in discussions if Right To Work will remain on the agenda for next year.

NO PREVAILING WAGE CHANGES THIS YEAR

Bills in both chambers were filed to change how prevailing wage is defined and applied in Missouri. Representative Barney Fisher filed two bills, [HB 320](#) and [HB 828](#). A companion bill to HB 320 was filed in the Senate, which was Senator Brian Munzlinger's [SB 176](#).

In summary, these bills revised the definitions of "construction" and "maintenance work"; changed the method by which prevailing wages are determined each year via the Annual Wage Order; required notice of penalty letters be replaced by notice of violation letters with a 45 day penalty due date; prevented the Department of Labor 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; removed the provision allowing the prevailing wage for each title to be annually adjusted due to fluctuations in wages in a collective bargaining

agreement; removed signage requirements; eliminated the provision imposing a term of imprisonment for up to six months for a person violating any provision regarding prevailing wages and abrogated the ruling in *Utility Service Co., Inc. v. the Department of Labor and Industrial Relations and the Labor and Industrial Relations Commission of Missouri*.

Representative Fisher's HB 828 ended up moving the furthest; it passed the House and had a hearing in the Senate.

The AGC chapters across the state worked together to oppose these changes and even supplied alternate language (the new language was not accepted). Staff expects these prevailing wage changes to surface again next session.

NO CHANGES TO PROJECT LABOR AGREEMENTS IN MISSOURI

Companion bills with identical language were filed by Representative Barney Fisher ([HB 319](#)) and Senator Brian Munzlinger ([SB 175](#)). Along with Right To Work and prevailing wage, project labor agreement legislation received some debate time in the legislature this session. The above mentioned bills stalled rather quickly, though, and died this session. Neither bill advanced out of its original chamber.

Specifically, the Project Labor Agreement legislation proposed this session would have barred 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. This 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.

As with prevailing wage, there is a good chance that public project labor agreements will be the focus of proposed legislation next session.

OTHER BILLS OF INTEREST

Missouri franchise tax is phased out: [SB 19](#), sponsored by Senator Eric Schmitt and handled in the House by Representative Jerry Nolte, capped corporate franchise tax liabilities at the amount of each corporation's tax liability for the 2010 tax year. If a corporation did not have a corporate franchise tax liability in 2010 because such corporation was not doing business within the state or did not exist, such corporation's franchise tax liability is capped at the amount of such corporation's franchise tax liability for its first full-year of existence. Beginning January 1, 2012, the corporate franchise tax rate will be gradually reduced over a five year period until it is completely phased-out. Effective January 1, 2016, no corporate franchise tax will be imposed. Governor Nixon already has signed this bill into law.

New congressional districts are drawn over Governor's veto: One of the biggest jobs before the legislature this year was redrawing the congressional district lines. Since Missouri's population did not grow as fast as other areas in the country (particularly areas south and

southwest), the state lost a congressional seat. Consequently, boundary lines needed to be redrawn into eight districts from the nine previously. Both chambers passed their version of the new map fairly easily, but squabbled a little when they needed to compromise on a single map. Eventually, a compromise was reached, but then the Governor vetoed it. With time left in the session, though, both chambers voted successfully to override the Governor's veto. The following [map](#) is now finalized. The bill that was passed was [HB 193](#).

\$800 million bond issue for building construction in Missouri: [HJR 9](#) filed by Rep. Chris Kelly proposed, 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 could be allocated for construction other than for higher education. Rep. Kelly introduced something similar last year. It did not obtain much support and died.

Callaway II power plant: This would be the largest economic development project in the history of Missouri. A dispute among two senators in southeast Missouri, though, held up deliberations. The enabling legislation, found in [SB 207](#), was left unresolved. This topic was talked about as a candidate for a special session, but that does not seem likely now.

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 continued their effort from last year. The two pieces of legislation were similar in that they tried to create uniform project advertising and bidding standards across the state. A late agreement made passage of this language possible until the Missouri Press Association dropped their support (due to advertising notices in newspapers becoming optional). Staff would expect this legislation to resurface next year.

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.