



BUILD UP!

NORTH AND SOUTH CAROLINA BUILDING DIVISIONS NEWSLETTER

CAROLINAS AGC – AUGUST 3, 2006

BUSS MEETING IS A BIG SUCCESS

This year's BUSS (Building, Utility, Subcontractor-Specialty) Divisions Meeting, held July 20-23 at the Myrtle Beach Marriott Resort at Grande Dunes, was a big success with a record registration of 225. Special thanks to **Building Division Chairman Keith Wayne of Wayne Brothers, Inc.**, and **acting Vice Chairman Mark Hood of Hood Construction Co., Inc.**, for doing an outstanding job in leading one of our best meetings ever.

Please mark your calendars for upcoming important meetings: The CAGC Convention will be **Jan. 25-28, 2007 at the Marriott Frenchman's Reef in St. Thomas, Virgin Islands, and passports are required.** Our next BUSS meeting will be **July 19-22, 2007 at Wild Dunes Resort, Isle of Palms, S.C.**

N.C. LEGISLATURE HAS GREAT NEWS FOR CONSTRUCTION INDUSTRY

The N.C. General Assembly ended its 11 ½ week session early on July 28 with surprisingly good news for the construction industry, including approving \$2.2 billion toward building, highway and utility work, setting aside nearly \$3 million for tax credits for abandoned mills renovations, keeping the current gas tax in place and discontinuing the annual transfer of \$195 million in highway funds for other uses.

Carolinas AGC also helped lead efforts in the so-called short session to defeat or water down unexpected bills that would have undermined public bidding laws, such as allowing the City of Fayetteville to get into the construction business at the expense of utility contractors and eliminating all public bidding laws for the New Hanover Regional Medical Center. After six weeks of negotiations, CAGC was successful in getting major amendments to protect the construction industry concerning lease-back legislation for public schools construction that otherwise would have been enacted with or without the association's involvement.

CAGC helped defeat a bill that would have posed significant risks for the construction industry by changing surety laws and joined a business coalition in successfully shortening the length of a proposed moratorium on construction and demolition landfills. Lawmakers also approved cuts in the sales tax and tax for upper-income wage earners.

Biennium Details: The session began on May 9 and ended at 1:10 a.m. on July 28 after the lieutenant governor and House speaker ordered the brass doors of each chamber opened so they could each drop a handkerchief to adjourn the Legislature until the long session begins on January 24, 2007. Lawmakers filed a record number of 926 bills in the House and 772 in the Senate, for a total of 1,698 bills introduced in the short session. Bills filed for the legislative biennium totaled 4,685.

The second year of the two-year cycle followed a 2005 session in which CAGC was successful in helping to enact legislation to crack down on construction site theft, reduce workers' comp claims being paid to employees who cause accidents on job sites after abusing alcohol or drugs, and passage of Garvee bond legislation allowing the N.C. Department of Transportation to obtain \$900 million in advance federal funding.

CAGC N.C. lobbyists -- N.C. Building Director Dave Simpson and N.C. Highway-Heavy Director Berry Jenkins -- were involved in the outcome of 190 bills in the short session. Highlights were:

* Promoting passage of more than \$2.2 billion in construction work, including \$650 million in debt, called Certificates of Participation (COPs), for eight construction projects through mid-2010. Those projects include expansion of the N.C. Museum of Art, construction of a new public health laboratory, secondary data recovery center, Central Prison hospital and replacement mental hospitals in Morganton and Goldsboro. Also approved were \$560 million for emergency reserves and construction repairs, \$206 million for other building projects, \$400 million for new highway projects and about \$800 million for UNC System projects, including \$61 million for an N.C. State University Engineering Complex Building III, which CAGC staff and members successfully pushed for strongly.

For a detailed look at appropriated capital projects and projects funded with special indebtedness in the 2006-07 budget, a list begins on page 112 through page 116 on this link:

<http://www.ncleg.net/sessions/2005/budget/2006/budgetreport6-30.pdf>

For a look at the capital projects approved in the UNC Self Liquidating Bill, go to:

<http://www.ncga.state.nc.us/Sessions/2005/Bills/Senate/HTML/S1809v4.html>.

* Working with a business coalition to reduce from 18 months to a year a moratorium on new landfills, including construction and demolition landfills, to give the state time to examine the issue of "mega-landfills" where solid waste is brought into North Carolina from other states.

* Not opposing a rental car tax hike for Charlotte that will help provide funding toward a \$1.5 billion downtown Charlotte construction and revitalization effort.

* Successfully opposing [Senate Bill 1887](#), which, if approved, would have eliminated all public bidding statutes for the New Hanover Regional Medical Center in Wilmington, another bill that would have caused a ripple effect for the construction industry. Please thank [Rep. Danny McComas, R-New Hanover](#), for his strong opposition to this bill.

* Successfully opposing [HB 2793](#), which would have posed significant risks for the construction industry by allowing individual sureties and irrevocable letters of credit, instead of traditional bonds, for some small businesses. Public owners also opposed the bill, saying it would be costly for them and would slow construction projects.

* Not supporting lien falsification legislation which, as initially drawn, would have posed unfair risks for contractors including making them liable for possible treble damages when there were no grounds for such action. CAGC offered proposed amendments to the sponsor of [HB 1516](#), Rep. Mitch Setzer, R-Catawba, who, because of the complexity of the matter, agreed to revisit the issue next year.

* Not supporting unsuccessful legislation, proposed by designers, that would have required anyone proposing to file suit against a designer to have to get from another designer a certification that the potential suit was not frivolous. The bill, as proposed, would have been costly, time-consuming and risky for the construction industry.

* CAGC assisted the N. C. Turnpike Authority in obtaining legislative authority to toll a section of unopened I-540 in Wake County in order to strengthen their financial package for two toll road projects estimated at about \$750-\$800 million in construction value that could be let to contract in 2007. These two projects are adjacent to the section of I-540 to be tolled. While certain hurdles still exist for these projects, they could be the test for judging the future of toll facilities across North Carolina.

* Promoting badly needed funding for transportation, public schools and university construction, water and sewer infrastructure, and land conservancy, currently estimated at \$5 billion. That figure only includes \$1 billion of an estimated \$9 billion public schools need. CAGC will continue work in coming months with a coalition supporting the use of \$5 billion in bonds for these needs.

* Enacting legislation that gives tax credit for refurbishing historic but largely vacant textile mill buildings. The legislation, [HB 474](#), offers tax credits of 30 percent or 40 percent for qualified expenditures for renovations costing at least \$3 million if the building has been at least 80 percent vacant over the past two years.

* Leading efforts to amend successful legislation proposed by the public schools allowing private developers to acquire land, oversee construction and lease back schools to the public school systems

over up to 40 years. CAGC was successful after six weeks of negotiations to include in the legislation -- which otherwise would have passed with or without CAGC input -- language which calls for public advertisement for the project and bids, open and competitive bidding and award of bids, accessibility to liens and an irrevocable letter of credit that the developer must post for at least 5 percent of the total project cost. The statewide bill also includes a five-year sunset, when the bill will expire on July 1, 2011, a provision that the public schools unsuccessfully opposed.

[SB 2009](#), as originally proposed, did not call for competitive bidding, public advertising or public opening of bids. It also did not require lien or bond rights to protect laborers and materialmen on construction projects and, as initially proposed, the bill would remain in effect forever once it became law. A Wake County school system official said the lease-back method would be used on about 10 percent of the school construction projects there.

After the bill was introduced, CAGC and some of its members contacted key legislative leaders to express concerns about the bill. A leading senator said before a key committee vote that the bill was solidly supported by legislative leaders because of the lack of available funding for public schools construction and that it would be approved this summer by the N.C. General Assembly, meaning that the construction industry's only option was to improve the bill as much as possible at a time when many public schools must be built.

In helping to analyze the bill, CAGC used its N.C. Bar Association-Construction Section/CAGC Joint Committee to evaluate the wide-ranging ramifications of the measure and to recommend changes to the bill which, for the most part, were included in the final version of the bill.

Because private developers do not have access to bonds, based on what some CAGC surety members told CAGC, CAGC was successful in getting new language added to the bill that would require the developer to post an irrevocable letter of credit to protect materialmen and laborers on the job. The approved bill requires competition for bids, a major point that CAGC was successful in achieving, as well as other protections to the construction industry, including:

"(e) Additional Requirements Regarding Construction Services. – A private developer is required to seek competition and minority business participation in connection with all construction work under this section in accordance with the following provisions:

A private developer shall either (i) solicit bids from prime contractors for all construction work under this section or (ii) select a construction manager at risk through a qualification based process in which case the selected construction manager at risk shall solicit bids from all of its prime contractors for all construction work under this section...

A private developer or its construction manager at risk shall publicly advertise at least 30 days in advance of the bid date in a newspaper having general circulation within the geographic areas served by the local board of education, shall open bids publicly, and shall award each contract to the lowest responsible, responsive, and prequalified bidder, taking into consideration quality, performance, the time specified in the bids for performance of the contract, the cost of construction oversight, time for completion, compliance with G.S. 143-128.2, and any other factors deemed appropriate by the private developer and the local board of education and included in the bid solicitation. A private developer or its construction manager at risk shall enter into the construction contracts directly with the successful bidder."

The bill, as initially proposed, would have applied to the eight major school systems in the state, which would constitute the bulk of the construction work employed by this method if local school systems decided to use it. However, in Senate Finance, Sen. Fletcher Hartsell, R-Cabarrus, said that smaller school systems should have an option to use the method if they want to, adding that it would take a long time, particularly for smaller systems with limited staff, to determine how to implement the complex lease-back method. His amendment was successful.

Please thank these co-chairs of the Senate Finance Committee: [Sen. David Hoyle, D-Gaston](#), and [Sen. John Kerr, D-Wayne](#), both strong supporters of the construction industry's efforts in improving this bill.

* Protecting utility contractors by exempting them from successful legislation concerning certification of on-site wastewater contractors and amending legislation that would have allowed the City of Fayetteville to gear up to do utility work and drop the public bidding laws for utility work. The measure, [House Bill 2040](#), was amended by CAGC and it keeps in place open, competitive

bidding. Please thank [Rep. Rick Glazier, D-Cumberland](#), and [Rep. Margaret Dickson, D-Cumberland](#), for their support of CAGC's amendments and for placing a sunset on the bill, which applies to one large annexed area.

Double Payment and Related Issues: CAGC did not pursue legislation in the short session concerning double payment where prime contractors unfairly have to pay twice for the same work or materials after paying first-tier subs and suppliers, who in turn do not pay lower-tier subs and suppliers, who then seek payment from contractors by filing claims against their payment bonds. A studies bill carried over from last year and approved by lawmakers this year includes this issue.

CAGC did not pursue legislation in the short session because CAGC-led efforts were unsuccessful in striking a consensus on the issue from representatives of all segments of the construction industry. About 35 representatives of the construction industry met, at the request of CAGC, before the short session without reaching consensus on a solution. CAGC will continue to explore with the entire construction team possible solutions to the double payment problem, taking into consideration the many points of view on this issue and many related issues such as retainage, falsification of lien waivers and prompt payment.

Retainage: CAGC staff met on June 1 with the Office of the Governor to begin efforts to draft legislation for the long session of the N.C. General Assembly limiting retainage to no more than 5 percent on all public building projects in North Carolina, and no retainage when the job is halfway completed, and calling for line-item release, prior to beneficial occupancy, of such items as structural steel, piling, caisson, demolition, rough grading and utility first-tier trade subcontractors.

Complete Legislative Report: The full report is being posted at: <http://www.cagc.org/advocacy>.

SOUTH CAROLINA LEGISLATION

South Carolina recently wrapped up the 2005-2006 legislative sessions and a complete summary of the sessions is at: http://www.cagc.org/advocacy/locked/SC_legis_report0506.cfm. Below are just a few of the highlights that took place in 2005 and then in 2006:

In 2005, the first year of the two-year session, we were successful in passing a **Tort Reform** bill that reduced the statute of repose from 13 to 8 years, amended the joint and several liability laws to allow defendants to be held liable for only their portion of the costs, amended the change of venue law to reduce jury shopping in SC and amended the law to make both plaintiffs and attorneys liable for filing a frivolous lawsuit. We were also successful in working with several other groups to ensure the passage of a **Pathways to Prosperity** bill that would allow students to choose career paths sooner rather than later. Elementary schools will be required to provide career awareness programs; middle schools must develop specific study plans; and by 10th grade, students will begin charting career paths. And, we were also involved with the passage of a bill that reduced **Retainage** on state projects from 5% to 3 ½ %. This bill was a compromise that was agreed to after the Specialty Trades Coalition filed a bill to eliminate all retainage held on state jobs.

During the 2006 session, we were not as successful with the passage of a comprehensive **Workers' Compensation** bill as we were with the passage of tort reform the year before. As a matter of fact, after the House passed bill limited the eligibility for Second Injury Fund (SIF) claims to loss of limb, loss of sight, and ruptured disk; eliminated the AMA guidelines; and gutted the repetitive trauma language, we asked the Senate to sit on the bill to avoid passage. We will be working on similar changes when the session returns January 2007. We were successful in passing a **Right to Cure** bill that allows 90 days to reach agreement on any defects found, but it also extends the statute of repose by 120 days if the claimant has a claim and gives the notice within the appropriate time frame to bring suit. And, we were just as successful in helping to defeat **Immigration** legislation that would have required contractors to monitor and verify info on all new employees -- in effect policing immigration for the government.

***QUOTE OF THE QUARTER:** "Stress is an option."*

- John Miller, keynote speaker at last month's BUSS meeting in Myrtle Beach.

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