



BUILD UP!

NORTH CAROLINA BUILDING DIVISION NEWSLETTER SPECIAL LEGISLATIVE EDITION

CAROLINAS AGC – AUGUST 10, 2007

The NC General Assembly adjourned its long session last week with some great news – approval of more than \$1.1 billion for state construction projects, giving all counties ability to get more funding for building, capping retainage and defeating bad bills sought by unions and trial lawyers.

A Carolinas AGC analysis shows that lawmakers approved \$1,120,973,000 for state construction projects -- \$599,292,072 for capital projects, \$100 million for water and sewer, \$145 million for UNC and state repairs and renovations, and \$276,681,000 for UNC system self-liquidating projects (paid with dormitory and other fees). For a breakdown with project details, CAGC members may go to: http://www.cagc.org/advocacy/files/nc_general_assembly_approves.cfm.

The 6 ½-month session -- which ended at 10:36 p.m. on August 2 -- put the state on the biggest spending spree since the late 1990s and hiked the budget to a record \$20.7 billion. Lawmakers also approved -- as recommended by the Partnership for North Carolina's Future, of which CAGC is a leading member -- giving the 100 counties the option of holding referendums with voters to consider increasing the land transfer or sales taxes to help with public school and other infrastructure needs. The land transfer move came despite fierce opposition from real estate agents and homebuilders.

Still, badly needed new funding sources for transportation fell apart just before adjournment, despite a hard-fought battle by CAGC with a transportation coalition. And landfill costs for construction and demolition will rise. The short session begins May 13, 2008, with the possibility that a special session could be held before concerning transportation needs, though that appears questionable.

CAGC lobbyists -- NC Building Director Dave Simpson and NC Highway-Heavy Director Berry Jenkins -- helped lead efforts to achieve many of the association's top goals. Some of those accomplishments include:

- Retainage reform: Local and state government -- such as school boards and municipalities -- no longer will be able to withhold more than 5 percent retainage on building and utility projects. After the halfway point, if the job is going satisfactorily, the public owners cannot withhold more than 2.5 percent retainage. Some specialty trades that are 100 percent complete with their work at the halfway point will get early release of retainage. General contractors also will be protected from early release through a last-minute provision CAGC negotiated. The new law takes effect Jan. 1, 2008 (more info below).
- CAGC was the only organization involved in the successful outcome of about a dozen bills that otherwise would have gutted the competitive bidding process for building and utility work on some public school and local government construction work.
- CAGC also was the only organization that was involved in eliminating provisions from two bills that would have allowed for reverse auction bidding on some public school and local government work.
- CAGC helped kill union-supported legislation that would increase collective bargaining rights.
- CAGC helped improve a bill that would have tied up the civil jury trial selection and defeated bills that would have banned Nextel use that was not hands free in vehicles, allowed counties to adopt a hodgepodge of discrimination ordinances, and, if trial lawyers

had their way, would have watered down good existing laws concerning the statute of repose and related liability.

- Helped defeat a bill that otherwise could have had high risks and lots of paperwork for the construction industry to ensure that sexual predators are not allowed on public school property.
- Limit environmental issues: CAGC supported several successful bills to reduce costs associated with environmental impacts and to limit authority of environmental regulatory agencies to implement expensive requirements.
- Helped lead successful efforts to convince the UNC system to back off from a section of a bill that could have severely restricted which material and equipment vendors could do business with the 16 campuses.
- House passage of legislation, which is still alive for the short session, to make it a class-one felony for vandalism of more than \$5,000 at construction job sites. In addition, legislation also strongly supported by CAGC was approved by the Legislature to crack down on theft of copper and other metals.
- Successfully opposed proposed legislation by architects and engineers that would make it extremely difficult for the construction industry to take legal action against them for faulty design or other possible litigation.

Tax Consequences: Like the initial House budget plan but unlike the Senate-approved budget proposal, a quarter-penny sales tax increase, first adopted in 2001 as a temporary increase, will stay. But a quarter percentage point increase on the income tax for high earners will sunset at the end of the year.

By the Numbers: CAGC monitored nearly 300 of 3,644 bills introduced, many of which will be eligible for the short session. In the 113 legislative days this year, 337 bills and 68 joint resolutions were passed.

Three legislators resigned – former House Speaker Jim Black, D-Mecklenburg, after a federal corruption conviction; David Almond, a Republican from Stanly County, after a personal complaint was filed against him; and Ed Jones, a Halifax County Democrat, resigned his seat in the House to become a senator. Only one Republican legislator – Sen. Fletcher Hartsell of Cabarrus County – voted for the state budget. Two legislators – Reps. Thomas Wright, D-New Hanover, and Mary McAllister, D-Cumberland – are involved in continuing State Board of Elections hearings involving finance irregularities. There are 68 Democrats and 52 Republicans in the House; 29 Democrats and 21 Republicans in the Senate.

Special Thanks Are in Order for CAGC Members: During the long session, dozens of CAGC members made hundreds of contacts with many of the 170 state lawmakers concerning the state's infrastructure crisis and the retainage issue. CAGC recently set up a very easy to use system, available at www.cagc.org, in which members can type in their zip codes and quickly email legislators concerning legislative alerts CAGC sent out during the session.

In addition, CAGC and its members exceeded our \$100,000 pledge in helping to raise funds for the Partnership for North Carolina's Future, a wide-ranging coalition of public owners, business leaders, environmentalists and others. The partnership (www.ncfuturenow.org) focused on a media campaign, largely through television and newspaper markets across the state, to encourage constituents to contact their lawmakers about the need for them to approve funding sources, including local referendums for land transfer or sales taxes, for infrastructure needs.

CAGC appreciates greatly the following members who helped us break the \$100,000 threshold with contributions to the partnership: J. H. Allen, R. L. Casey, C. T. Wilson, Rodgers Builders, Clancy & Theys, D. S. Simmons, New Atlantic Contracting, Shelco, Beam Construction and Faulconer Construction Co., Inc.

Lee Construction Co. of the Carolinas, Mountain Creek Contractors, Crowder Construction Co., State Utility Contractors, T. A. Loving Co., Sanford Contractors, PLT Construction, Dane

Construction, Inc., B.R.S., Inc., Blythe Development Co., Knauff Insurance, William Quinn and Prestress of the Carolinas. In addition, Carolinas Ready Mixed Concrete Association made a very generous pledge.

The partnership, of which CAGC was a member of the Executive Committee, put together a television blitz, which began May 29, following a news conference on May 23 at the N.C. General Assembly to launch the effort. The partnership placed full-page ads in newspapers across the state identifying key Democratic senators who had opposed the land transfer tax, encouraging them to give local counties the option to hold referendums to vote on the issue.

The partnership also was successful in strongly encouraging Gov. Mike Easley to hold a news conference to urge lawmakers to resist strong pressure from real estate agents and homebuilders and instead approve the local referendums. The effort was a success. A number of counties currently are eyeing putting the land transfer tax on the November 2007 ballot. County commissioners estimate that the 0.4 percent increase on the land transfer tax would generate \$311 million annually if approved by voters in the 100 counties. Other issues CAGC was involved with included:

- Successful DOT Design Build legislation, which CAGC supported, to continue the authority for NC DOT to use this process in delivering its program.
- Successful defeat of proposed legislation that would raise the threshold on public work from \$300,000 to \$500,000 concerning when payment and performance bonds are required, a proposal that would have caused risks for contractors.
- Supported legislation that could cut paperwork without having significant tax consequences concerning construction equipment rental.
- Supported successful legislation, in the budget, that CAGC testified in favor of to give the NC Department of Insurance more funding for additional inspectors to expedite the public construction process. CAGC also worked with a business coalition to minimize employee mental health costs that would be borne by employers.
- Unsuccessful attempts by CAGC, with a business coalition, to block legislation that lawmakers approved to provide more stringent regulation of new landfills, including adding a \$2-per-ton statewide disposal tax to pay for cleanup of old landfills, increase setback requirements to protect streams and require computer manufacturers to develop plans to keep electronics from ending up in landfills.
- CAGC was heavily involved in SB 1245, the retainage bill, including amending the legislation to ensure that general contractors do not have to unfairly shoulder some of the financial burden as a result of early release of some trades packages that are 100 percent complete at the halfway point of a job – structural steel, piling, caisson and demolition, as well as any other early-release trades specified in the bid documents. Keith Coltrain of Elmore & Wall provided invaluable assistance in helping to ensure that this bill protected the interest of the entire construction industry. To view the bill, click on [SB 1245](http://www.ncga.state.nc.us/Sessions/2007/Bills/Senate/HTML/S1245v5.html) or go to: www.ncga.state.nc.us/Sessions/2007/Bills/Senate/HTML/S1245v5.html
- CAGC did not pursue legislation in the long session concerning the double payment issue in which contractors sometimes unfairly must pay twice for labor and materials after lower-tier subcontractors or suppliers do not pay people under them. CAGC is still working to develop a consensus on how to mitigate this problem. Also, legislation did not move in the long session concerning the state building code, the international code and the makeup of the State Building Code Council.

Briefly: A provision in the budget bill requires that 20 percent of any designated vehicle parking area, except for covered or multi-level areas, must be of porous pavement structure to allow water runoff into underlying soil, an issue CAGC did not oppose, as many members said it would be a good market activity. Concerning appointments, Paul Boney, a Wilmington architect, and James Driscoll, a Lumberton mechanical contractor, were appointed to the State Building Commission for three-year terms expiring on June 30, 2010. A studies bill that was approved authorizes the NC Department of Administration to use up to \$1.5 million to study the issue of disparities in awarding

state contracts to minority-owned and women-owned businesses. Legislation also was successful in calling for more uniform statewide standards for HUB (Historically Underutilized Businesses).

Legislation died that called for “restroom equity” in requiring more facilities for women. Legislation also was passed that will require the NC Licensing Board for General Contractors to make special note of master homebuilders that meet additional educational criteria. The board appears amenable to accommodating CAGC in similar designations for general contractors if the idea is pursued. Finally, CAGC will continue to monitor next year a Senate-passed bill that involves breach of contracts.

CAGC 2007 PAC CONTRIBUTIONS GROW

Special thanks to the dozens of CAGC members who have contributed to our PAC so far this year. They are:

John Richard Adkins, New Atlantic Contracting; Doug Allen, J. H. Allen, Inc.; Scott Allen, J. H. Allen, Inc.; Ronald Atkinson, Atkinson Infrastructure, Inc.; Robert E. Barnhill, III, Barnhill Contr. Co.; Jesse Allen Barnhill, Jr., Barnhill Contr. Co.; Robert E. Barnhill, Jr., Barnhill Contr. Co.; Brad Barringer, B. R. S., Inc.; Scott Bengel, Shelco, Inc.; B. E. Benson, Benson Const. Inc.; Jonathan Bivens, S. T. Wooten Corp.; Tom Bordeaux, Bordeaux Const. Co., Inc.; Kevin Burns, R. E. Burns & Sons Co., Inc.; William Capehart, Blythe Const. Co.; Sandra Carlisle-Carroll, ES&J Enterprises, Inc.; A. G. Carter, III, Graka Builders; Edison Cassels, Edison Foard, Inc.; Penn Cassels, Jr., Edison Foard, Inc.; Andrew Clark, Clark Pavement Marking, Inc.

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For those wishing to contribute, please make checks payable to NC Construction Industry PAC, Attention: Dave Simpson, and mail to P. O. Box 30998, Raleigh, NC 27622-0998.

Quote of the Day: *“Courage is what it takes to stand up and speak; courage is also what it takes to sit down and listen.”* - Winston Churchill

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