



BUILD UP!

NORTH AND SOUTH CAROLINA BUILDING DIVISIONS NEWSLETTER

CAROLINAS AGC – SUMMER 2008

NC LEGISLATURE APPROVES \$1.5 BILLION FOR CONSTRUCTION

CAGC Has Strong Short Session: The N.C. General Assembly adjourned its short session just before 5 p.m. on Friday, July 18, after approving about \$1.5 billion for construction work, including 1,500 additional prison beds, UNC system and state building, and funding for new toll projects. The long session will convene Jan. 28, 2009, with infrastructure funding, particularly transportation, continuing to be Carolinas AGC's top goal.

The short session had plenty of good news for the construction industry. Lawmakers reduced the annual \$172 million transfer out of the highway trust fund to the general fund. CAGC helped lead successful efforts to crack down on job site vandalism and defeat pro-union legislation concerning collective bargaining rights. The construction industry association also was a lead player in the successful defeat of immigration bills that would have posed harsh penalties on employers.

CAGC helped a business coalition amend legislation that otherwise would have caused liability problems for the construction industry concerning convicted sexual predators working on school construction sites. And, at CAGC's request in the closing hours of the Legislature, lawmakers put in a study bill, for legislative committee members to consider, the issue of how franchise taxes are now being applied to the construction industry – a costly new revenue development that CAGC thinks unfairly forces contractors to be taxed for over billings. Here are some legislative highlights:

\$1.5 Billion Construction Package:

- \$857,463,944 approved for state and UNC system work at the 16 campuses. The funds are financed with bonds and certificates of participation (COPs), not requiring voter approval.
- \$129,082,062 for general fund revenues for similar projects, paid with cash instead of borrowing.
- \$69,839,238 for repairs and renovations for state and UNC system projects.
- \$401,499,000 for UNC system self-liquidating projects, financed through dormitory and other fees.

Before legislators approved the large funding package, CAGC helped educate lawmakers about the value of construction to the economy. Legislative leaders, in successfully moving the construction funding legislation, said the \$857.5 million package alone would generate 20,000 construction-related jobs and \$85 million in taxes. It's unusual for such a large construction package to be approved in the short session, which is mainly held to fine-tune the budget. To see a CAGC breakdown of how the \$1.5 billion will be spent, click on www.cagc.org/contractors_bldg/ and look at the first item under announcements.

- CAGC actively lobbied successfully for budget, or so-called gap, funding as well as toll enforcement authorization legislation which will allow the N.C. Turnpike Authority to move forward with four projects: the Triangle Expressway, the Monroe Bypass, the Gaston Parkway and the mid-Currituck Sound Bridge.
- CAGC lobbied successfully for legislation, which takes effect on Dec. 1, 2008, that makes vandalism at job sites involving more than \$5,000 a class-1 felony.
- CAGC worked with a business coalition in defeating legislation with severe penalties concerning mandatory E-verification of new employees. The bill called for loss of a business license for an employer cited after the first violation involving hiring illegal aliens. In a related matter, the CAGC Board of Directors on July 11 directed NC staff to participate,

after we were invited, in a coalition of business and community leaders that will educate North Carolina citizens about the importance of immigrants to business and also make recommendations on the issue concerning public policy.

- CAGC was the only association involved with legislation in limiting the amount of force account work that local government can be involved with concerning construction. Specifically, CAGC was able to prevent possible statewide legislation from moving that would have raised the force account work ceiling (now \$50,000 for labor and \$125,000 for labor and materials). Instead, the single bill that was approved only applies to a limited number of projects over a short time frame for Winston-Salem and Asheboro, with that force account ceiling being up to \$300,000. Some local governments across the state wanted that ceiling to be up to \$500,000. CAGC was successful in not only keeping the increased ceiling low for the two municipalities, but in preventing the local bill approved from taking effect statewide. Modifying or killing local bills is difficult to do.
- CAGC helped lead efforts in keeping in place open, competitive bidding for a number of local and UNC system construction projects.
- CAGC was successful in exempting building, utility and highway general contractors from new legislation requiring certified irrigation contractors for some construction.
- CAGC was a leader in a coalition that defeated proposed legislation that would have given state employees collective bargaining rights and have union dues taken from some workers' paychecks. CAGC worked with a business coalition to educate, at a breakfast meeting last month in the Legislature, about half of the 170 state lawmakers about what union involvement would mean for business, including the construction industry.
- CAGC helped improve legislation involving stormwater runoff in 20 coastal counties. The legislation overrides very stringent rules adopted earlier this year by the Environmental Management Commission.

Real Estate Transfer Tax: Homebuilders and Realtors did not succeed this year in getting through the House a Senate-passed bill that would give counties the option to have local referenda to consider whether to impose a higher real estate transfer tax for infrastructure improvements. The bill, if approved, would have struck down legislation approved by lawmakers last year. CAGC, as a leading member of the Partnership for North Carolina's Future, has supported local options for real estate transfer taxes, sales taxes and other means to help provide funding for badly needed infrastructure improvements for building, transportation, and water and sewer needs at a time when both Carolinas face an infrastructure crisis.

Appointments: CAGC was successful in supporting the following appointments: John M. Thompson of J.M. Thompson Construction Co., Raleigh, reappointed to the State Building Commission for a term expiring on June 30, 2011; and Donnie W. Brewer of Rivers and Associates, Greenville, reappointed to the Environmental Management Commission for a term expiring on June 30, 2010. CAGC also supports the successful appointment, effective Jan. 14, 2009, of Rep. Drew Saunders of Mecklenburg County to the North Carolina Turnpike Authority for a term expiring on January 14, 2013.

Breach of Contract: CAGC supported successful legislation on this issue. Previously, on a project exceeding two years, the contractor could have been put in a situation where he or she would be forced to file a civil action even before the project was over in order to protect the contractor's rights. This legislation offers some relief by giving the contractor an extra 90 days following the substantial completion to initiate the civil action if the suit would have otherwise been barred by the two-year statute of limitations.

Over Billings: Just before lawmakers adjourned, CAGC, at the request of our Board of Directors on July 11, was successful in getting legislation through the General Assembly concerning over billings for the construction industry. The legislation authorizes a study of the issue, with a report back to lawmakers next year-- a move that will put CAGC in a better position to negotiate the issue with the N.C. Department of Revenue.

Contractors who perform an average of \$10 million or more of construction work in a year must identify revenues as a contract progresses to completion on the percentage-of-completion (PC) method. This includes general contractors, prime contractors and subcontractors. A contractor must

determine, by tax law, whether the contractor over billed or under billed on every contract involving a project being performed in at least in two calendar years (i.e., December 2008 and January 2009).

By definition, an over billing represents billings in excess of work actually performed or materials supplied at that point. An under billing represents less revenue received by the contractor from the owner than actual work performed or materials supplied at that point. Generally, because of the nature of construction work and the uncertainty of construction schedules, over billings or under billings will occur. Recently, the N.C. Department of Revenue has begun assessing franchise taxes for such over billings. If, for example, a contractor billed the owner \$1,000,000 yet had only earned \$900,000 under the PC method, then DOR now has begun assessing a franchise tax on the \$100,000 over billed in addition to continuing to apply the franchise tax to the \$900,000 that involves earnings. Because the owner already has paid the contractor the \$1,000,000, the problem here is that the \$100,000 that has not yet been spent by the contractor represents a liability for work or materials that the contractor must pay for at a later date to subcontractors and suppliers. CAGC believes that the tax on the overbillings amounts to a contractor unfairly having to pay additional taxes on liabilities which can be substantial and in addition to the income tax.

2009 Legislative Issues: Topping CAGC's issues next year will be increased infrastructure funding. Legislative leaders tell CAGC that a multi-billion-dollar infrastructure bond referendum is likely to be on the November 2009 ballot for voters across the state to consider. Other issues that will surface will involve, immigration, environmental and stormwater runoff bills, the drought, design-build and other alternative systems for public work, correcting the franchise tax inequities for the construction industry, workers' comp and combating legislation supported by unions and trial attorneys.

SOUTH CAROLINA GOVERNMENT RELATIONS

The 2008 Legislative Session wrapped up June 5 and then legislators returned June 25 to take final action on several bills that were vetoed by Gov. Mark Sanford. CAGC actively lobbies members of the legislature on the pros and cons of industry-related legislation on behalf of our members. Below are the highlights of the year's legislative session:

Alternative Delivery Methods Legislation: During the first week of the session, Gov. Sanford signed S. 282 http://www.scstatehouse.net/sess117_2007-2008/bills/282.htm, a bill that would amend the current procurement code in South Carolina by expressly stating in the code that alternative delivery methods such as Design Build, Construction Management at Risk, and Design Build Finance Maintain are allowed to be used to procure state construction projects. The bill does not require the use of these methods and still maintains the Design Bid Build procedure as the default method; but it states that other methods are available and if the State Engineer approves the use of an alternative method, then that method can legally be used in South Carolina.

Landfill Legislation: In an interesting turn of events, a bill was filed this year that would place a statewide moratorium on construction and demolition (C&D) landfills after an administrative law judge overturned a DHEC (Department of Health and Environmental Control) decision disallowing a new C&D landfill in Anderson County. CAGC actively lobbied against the legislation because of the precedent such a bill would set. Fortunately, the members of the Medical Affairs Committee agreed that the legislation would create a bad precedent and voted 18-3 to recommit S. 1173 http://www.scstatehouse.net/sess117_2007-2008/bills/1173.htm back to subcommittee, thus killing the bill.

Garnishment Bill Recommitted: Another bill that was recommitted back to committee, thus sealing its fate as well, was the so-called garnishment bill. As drafted, H.4368, http://www.scstatehouse.net/sess117_2007-2008/bills/4368.htm would allow outstanding student loan debt to be garnished by employers. CAGC felt this was placing additional burdens on businesses by making them debt collectors.

Administrative Procedures Act: CAGC lobbyists -- along with lobbyists for the ports, manufacturers, realtors, homebuilders, utilities and farmers -- successfully worked together the last month of the session on H. 4328 http://www.scstatehouse.net/sess117_2007-2008/bills/4328.htm, a bill that added an automatic stay for construction and stormwater permits, codified a standard to lift the automatic stay and added a time limit for the hearing and decision on any motion to lift the stay. Amending the current law was an attempt to keep an automatic stay from being used as a weapon to halt economic development and growth by allowing anyone to stop a project on multiple occasions and delay economic development for significant periods of time. The proposed amendment puts the discretion in the hands of administrative law judges, elected by the General Assembly, as opposed

to an environmental group with \$250. The bill was enrolled for ratification with less than an hour to go in the session and was signed into law by the governor.

Illegal Immigration: During the last week of the session Gov. Sanford signed H. 4400 http://www.scstatehouse.net/sess117_2007-2008/bills/4400.htm, the immigration reform bill, into law and praised lawmakers for enacting such a tough immigration bill for South Carolina. As approved, the bill creates civil, record-keeping violations of between \$100 and \$1,000 for each employee not verified. For a first offense, a business could escape the fine by verifying said employees within 72 hours of being notified of the violation. However, if an investigation reveals an employer knowingly hired illegal workers, their business license can be suspended for between 10 and 30 days for a first offense and up to five years for a third offense. It would cost an employer \$1,000 to have its license reinstated.

Additionally, the bill deems falsifying documents a felony, punishable by up to five years in prison; bans illegal immigrants from attending public colleges and being awarded state scholarships; makes it a felony to transport or harbor illegal workers; and allows workers who have been fired to sue their former employers if they are replaced by illegal workers. Even though the bill was signed by Sanford, it does not go into effect until July 1, 2009 for all private employers of 100 or more employees. For employers with 100 or fewer employees, it goes into effect July 1, 2010.

Fire Sprinkler Legislation: When legislators returned to Columbia June 25 to take action on bills that had been vetoed by Sanford, they overrode his veto on the fire sprinkler bill, H. 4470 http://www.scstatehouse.net/sess117_2007-2008/bills/4470.htm, by a vote of 109-0 in the House and 43-0 in the Senate. The bill became law. As approved, the bill would allow property owners a property tax credit equal to 25 percent of the cost of the sprinkler system and an additional 25 percent in state tax credits.

Copper Theft Legislation: H. 4930 http://www.scstatehouse.net/sess117_2007-2008/bills/4930.htm, the copper theft bill, was signed into law by Sanford during the last week of the session. This bill was a compromise that was reached by CAGC and several other interested groups such as scrap metal dealers, Electric Co-ops, Progress Energy, AT&T, Homebuilders, Sheriff's Association, the Municipal Association and the Association of Counties. The legislation defines penalties for persons caught stealing copper and also increases the regulation on the scrap metal dealers who buy copper.

NOMINATE NOW FOR 2008 PINNACLE AWARDS

The most prestigious recognition in the Carolinas construction industry honors member firms for either their performance as a company in the past year, or for a specific project:

“Best Project” Awards

Best Building Project
Best Highway-Heavy Project
Best Utility Project

“Best Company” Awards

Best General Contractor
Best Subcontractor/Specialty Contractor
Best Supplier/Service Company

In seconds you can nominate any CAGC member firm (except your own) for a Best Company Award, or nominate any project for a Best Project Award (including projects your own firm worked on). [Submit your nominations now- deadline is August 31!](#) The presentation of the Pinnacle Awards will be celebrated during the Carolinas AGC Annual Convention in January at The Breakers in Palm Beach, Florida. [Get more information on the Pinnacle Awards.](#)

DID YOU KNOW?

Coming next week for all GC members: your own online company plan room in IBuild, where you control bidders' access to all your private or public work -- FREE!

Dave Simpson, NC Building
Division Director
P. O. Box 30998, Raleigh, NC
27622
(919) 781-3270, ext. 5724
dsimpson@carolinasagc.org



www.cagc.org

Leslie B. Hope, SC Building
Division Director
P. O. Box 1868, Columbia, SC
29202
(803) 799-5380, Ext. 5515
lhope@carolinasagc.org