



BUILD UP!

NORTH AND SOUTH CAROLINA BUILDING DIVISIONS NEWSLETTER

CAROLINAS AGC – FALL 2009 (SEPTEMBER 21)

GOVERNMENT RELATIONS

Tough economic times notwithstanding, Carolinas AGC has good news for the construction industry concerning the recently ended sessions of the state legislatures in both Carolinas with your lobbyists work in:

2009 NC LEGISLATIVE HIGHLIGHTS

- Getting through the legislature a bill that, effective Jan. 1, 2010, will prevent the N.C. Department of Revenue from continuing to apply the franchise tax to overbillings. Without CAGC's action here, the construction industry would have been assessed for tens of millions of dollars in unfair new taxes in coming years.
- Exempting construction from a new statute of repose that, effective Oct. 1, 2009, will increase from 6 to 12 years in North Carolina. Such liability, had CAGC not been involved, would have added the threat of lawsuits and untold liability and legal bills to your company's bottom line.
- Helping pass legislation that authorizes counties to hold referenda to raise local sales taxes to support public transportation and congestion relief. This is extremely significant in that, for the first time, the General Assembly is allowing local counties to raise transportation funds.
- Putting together a wide-ranging coalition of construction industry, local governments and public schools interests that successfully opposed legislation that would have allowed Public Private Partnerships to seek unsolicited bids for public construction work. This legislation, as originally written, would have eliminated the traditional public bidding system on many jobs at a time when there already is limited opportunity to do public construction work because of limited funding.
- Organizing a diverse industry coalition that was able to prevent from moving, as written, proposed legislation that otherwise would have upended the lien system on private construction work. Without CAGC's intervention here, the bill, as originally written, would have forced general contractors, subcontractors and suppliers to have to cover themselves by making a mad dash to the courthouse to file liens every time property was sold, or they thought the property might be sold, prior to receiving their final payment.
- Helping lobby for successful legislation that allowed the N.C. Turnpike Authority to sell \$750 million in bonds for Triangle Expressway projects. With CAGC helping to educate lawmakers about the ripple effect of construction investments and extremely low construction prices, lawmakers approved turnpike, UNC and other construction funding that totaled over \$1.2 billion this year (more details below).
- Defeating or weakening legislation to allow local governments to increase dramatically the amount of work they could do with their own forces. For example, Mecklenburg County wanted to raise the force account limit from \$125,000 to \$850,000, but we were able to reduce that to \$300,000 and only involve limited construction work over a short time frame. In addition, CAGC single-handedly defeated a bill that would have allowed the Town of Holly Springs to negotiate with one bidder on building, highway and utility work projects. Without CAGC's action on these and other numerous bills, many counties and

municipalities could have banded together to increase work done by public owners on a statewide basis – at the expense of the private construction industry and open, competitive bidding.

- Working successfully with a business coalition, led by the State Chamber, to oppose legislation on the Senate floor that would have resulted in very harsh penalties concerning e-verification, including loss of business. CAGC also worked with other business lobbyists to oppose successfully bills that would have allowed state employees to have collective bargaining rights, a precedent-setting step that could have spilled over to business and industry.
- Ensuring that a penny hike in the sales tax did not affect bids submitted or contracts entered into before the temporary sales tax hikes took effect. Before Sept. 1, the sales tax was 4.75 percent. The tax rate for sales made from Sept. 1, 2009 to Sept. 30, 2009 will be 5.5 percent. The rate will be 5.75 percent from Oct. 1, 2009 until the legislation sunsets on July 1, 2011.

Specifically, the new law says that it "does not apply to construction materials purchased to fulfill a lump-sum or unit-price contract entered into or awarded before the effective date of the increase or entered into or awarded pursuant to a bid made before the effective date of the increase when the construction materials would otherwise be subject to the increased rate of tax..."

- Amending proposed legislation, which still did not move this year, that would have required contractors to submit with their bids on public work extensive documentation on a new category of military veteran participation.
- Helping defeat bills that: would have forced employers to garnish wages of employees who have not paid credit card and other debt; would have placed higher taxes on development; and would have forced commercial contractors to pay for what would have been a new and separate residential panel of the State Building Code Council.
- Helping restore more than \$22 million that the House proposed to cut from vocational education that would have included construction training.
- Helping restore funding cuts proposed for the N.C. Department of Labor's Apprenticeship and Training Bureau.

CONSTRUCTION PROJECT FUNDING APPROVED

Before adjourning, lawmakers approved more than \$1.2 billion toward construction, including about \$750 million for the Triangle Expressway as well as:

UNC System Projects:

Appalachian State University: Cone Residence Hall Renovation - \$12,085,300
Kidd Brewer Stadium Improvements - \$19,068,000

East Carolina University: Dining Facilities Improvements - \$1,400,000
Residence Hall Improvements and Expansions - \$11,000,000

Elizabeth City State University: Residence Hall Fire Sprinkler System Installations - \$1,115,600

North Carolina A&T State University: Graduate Engineering Center - \$4,100,000

North Carolina State University: West Lot Parking Deck - \$21,850,000
Centennial Campus Enterprise Services Building - \$3,600,000
Athletic Facilities Renovations and Expansion - \$11,500,000
Dining Facilities Improvements - \$5,000,000
NC State Creamery Building - \$4,100,000
Carmichael Complex Improvements - \$7,400,000

The University of North Carolina at Chapel Hill:
Residence Hall Fire Suppression Sprinkler System - \$7,266,000

Carolina Inn Renovation - \$10,000,000
Dean Smith Student Activity Center Renovation/Expansion - \$7,500,000

The University of North Carolina at Charlotte: Parking Facilities Expansion - \$5,000,000
Partnership, Outreach, and Research for Accelerated Learning Building - \$35,000,000

The University of North Carolina at Greensboro:
Guilford and Mary Foust Residence Hall Renovations - \$4,527,000

The University of North Carolina at Pembroke: West Hall Replacement - \$36,331,300

The University of North Carolina at Wilmington:
Dining Facilities Renovations and Expansion - \$5,000,000

Western Carolina University: Bookstore Renovation - \$2,048,300

State Agency Projects:

Additions and Renovations to Armories - \$9,303,442
Tactical Unmanned Aerial Systems Facility - \$6,746,000
Armstrong Hatchery Lower Raceway Replacement - \$1,725,000
New Coldwater Fish Hatchery Construction - \$7,900,000
Gastonia Armory Renovation and Expansion - \$1,100,000
Museum of History Chronology Exhibit (Phase 2B) - \$1,200,000

For a more detailed look at this funding information, go to:
http://www.cagc.org/advocacy/files/capital_funding09-10.cfm.

Bills Tracked: For a list, click on: [Bills tracked by CAGC in the 2009-10 Session of the NC General Assembly](#) or go to:
www.cagc.org/login.cfm?ReturnUrl=%2fadvocacy%2flocked%2fLegislative_Tracking_2009.pdf.

2010 Legislative Outlook: The short session will begin May 12, 2010 and should last about three months or so. Issues that CAGC will be involved with will include the state budget picture, trying to secure additional infrastructure funding, Public Private Partnerships and other variations to the state's public bidding laws, e-verification and immigration issues, collective bargaining, environmental and lien laws. Issues CAGC will oppose will include bills supported by unions and trial lawyers.

For a complete look at the NC Legislative Report, click on: [2009 NC Legislative Report](#) or go to:
http://www.cagc.org/login.cfm?ReturnUrl=%2fadvocacy%2flocked%2fNC_legis_report09.cfm.

2009 SC LEGISLATIVE HIGHLIGHTS

Despite the session-long focus on federal stimulus funding, it was still a good legislative session for contractors in South Carolina. Your lobbyists in South Carolina helped pass the bills we needed to pass, positioned ourselves to address important legislative proposals in 2010, amended several bills that would have negatively impacted our members, and tracked hundreds of bills of interest to the industry.

As our members expect, Carolinas AGC is the leading advocate for the construction industry on issues ranging from economic development to the environment. We spend our time at the statehouse influencing the policies that are in the best interest of the contracting community. Below are examples of the work that took place on your behalf during this year's legislative session.

Special Inspection Legislation: Fortunately, Gov. Mark Sanford allowed [S. 268](#), the Special Inspections legislation, to become law even if it was without his signature. This bill creates a statewide registry for special inspectors through the Building Codes Council, under the Department of Labor, Licensing and Regulation (LLR). LLR will use current staff to set up the registration process and publish a list of registrants on their website so that owners and contractors will know who is certified as a Special Inspector in South Carolina. Carolinas AGC coordinated with other special interest groups to draft a bill that would streamline this process, sought out sponsors, had the bill filed in the Senate by Sen. Glenn McConnell and in the House by Rep Bill Sandifer, and testified in favor of the legislation in both chambers.

Landfill Regulations: At the beginning of the session, a bill was filed that would place a two-year moratorium on the construction and expansion of all landfills in the state, including construction and demolition (C&D) landfills. At the time this bill was filed, the S.C. Department of Health and Environmental Control (DHEC) was already working with a stakeholders' group to revise the state's landfill regulations. After holding a public hearing in the Senate and taking testimony for over three hours, senators amended the bill.

Carolinas AGC testified in opposition to the bill and to moratoriums in general, but at the very least requested an exemption for C&D landfills. The Senate agreed to the request by Carolinas AGC and amended the bill as such. The Senate also agreed to hold the amended bill in committee to give DHEC and the stakeholder's group time to complete their work on the regulations.

Upon completing their work, DHEC and the stakeholders group approved landfill regulations that significantly decreased the amount of out-of-state waste coming into the state. This decrease was the criteria set by the Senate. Once the regulations were amended, the legislature took the proposed moratorium bill off the table. During the last week of the session, legislators approved the modified regulations which went into effect the first of June. Legislation mandating a moratorium on landfills, both MSW and C&D, is now moot with the approval of the regulations.

Building Energy Efficiency Standard Act: Prior to adjourning, the legislature gave final approval and Gov. Sanford signed into law a bill that would require local building officials to be responsible for enforcing energy standards. As amended and approved, the bill will require compliance with the 2006 IECC which is the current standard for commercial contractors. It also changed the term "local enforcement agency" throughout the bill to "local building official," which was a change needed to update the law to reflect current industry standards. However, there was one exception to this wording change in the original version of the bill when it was filed.

Carolinas AGC offered two amendments to the bill, both of which were approved. The first changed the term "any person or party" to the "local building official" in the one section that was not already changed. This change mandates that the local building official is the **one** person able to issue an injunction on the sale, delivery, use, occupancy, erection, alteration, or installation of a building covered by this chapter, not any person or party who feels a building might not meet energy standards. The second change clarified that any projects which had already received the proper permits, prior to the passage of the bill, were not subject to the new requirements.

School Construction Bond Measure Approved: In the waning hours of the legislative session, legislators were able to push through a measure that would allow school districts in South Carolina to apply for a piece of up to \$320 million in federal stimulus funds for construction and renovation projects. The bill allows districts to apply for the funds through the State Department of Education, the agency responsible for issuing the interest-free bonds. The new bond category was created in the federal stimulus legislation, but state legislation was needed to give the Department authority to dole out the money. As approved, it allows bondholders to receive a federal tax credit equal to the interest they would otherwise receive.

A federal provision specifies how the funds are dispersed and automatically allows Charleston County to obtain \$13.5 million and Greenville County to collect \$15 million. The remaining \$131 million will be split among the other districts, with 60 percent of that money specifically allocated for rural schools. Roughly the same amounts are expected for next year as well.

In-State Preference Legislation: During the last week of the session, legislators reached an approval on state preference legislation. S. 116 specifically provides a preference to resident design service. Under this change in the law, 'Design services' is defined as an architect-engineer, construction management, or land surveying services as defined in Section [11-35-2910](#) and awarded pursuant to Section [11-35-3220](#). 'Resident' is defined as a business that employs, either directly or through consultants, an adequate number of persons domiciled in South Carolina to perform a majority of the design services involved in the procurement.

The law requires that a business responding to an invitation involving design services shall submit a certification with its response stating whether the business is a resident for purposes of the procurement. Submission of a certification under false pretenses is grounds for suspension or debarment. Also, an award to a nonresident of a contract involving design services must be supported by a written determination explaining why the award was made to the selected firm. There is also a requirement that in an evaluation conducted pursuant to Section [11-35-3220](#), a

resident firm must be ranked higher than a nonresident firm if the agency selection committee finds the two firms otherwise equally qualified. Gov. Sanford vetoed this bill, but the legislature overrode his veto by a vote of 88-15 in the House and 33-10 in the Senate.

State Ports Authority: On the last day of the session, legislators gave final approval to legislation that will restructure and stabilize the State Ports Authority (SPA). The bill mandates that the SPA create 5- and 20-year long-range development and financial plans, prohibits the governor from removing port board members at-will, and calls for the sell of a portion of the land on Daniel Island, which the SPA owns, with proceeds of the sale remitted to the SPA.

Gov. Sanford vetoed the bill because he said it would make the SPA less accountable to the public and to the governor while increasing the influence of the legislature. Legislators overrode the governor's veto because they didn't want the governor to have the power to hire and fire at will.

Carolinas AGC and many other members of the business community supported the so-called port bill because it is important for the SPA to be run more like a business. Allowing this governor -- or any future governor -- to hire and fire at-will, on a board that needs long-term board members as well as a CEO to provide for economic growth and stability, is not what we feel is in the best interest of future development of the SPA. The board members that serve on this board should be able to serve without fear of political retribution.

Card Check Legislation: The full Senate was not able to take action on [H. 3305](#), the card check legislation, during the last week of session because of objections to the bill by Sens. Robert Ford and Phil Leventis. The bill, filed by Rep. Eric Bedingfield and passed by the House, is a constitutional amendment that would protect the rights of workers in South Carolina to vote by secret ballot.

The legislation was filed in an effort for South Carolina to be proactive should Congress move forward with the federal card check legislation. An exemption amendment, similar to 14B, which allows states such as South Carolina to maintain its right to work status, will be offered during the debate on the federal card check bill. That amendment would allow states that have or are in the process of passing an amendment such as H. 3305 an exemption to maintain the right to a secret ballot. This bill will be carried over to next year.

Constitutional Amendment Regarding EFCA: The legislature adjourned for the year without giving [H. 3222](#) final approval. This is a resolution urging South Carolina's congressional delegation to oppose the federal Employee Free Choice Act (EFCA). While the title of the federal legislation makes it sound like a positive piece of legislation, the impact of the bill could be devastating to South Carolina. H. 3222 states that the federal law, also referred to as the "card check" bill, is detrimental to the rights of South Carolina workers and encourages the delegation to support worker freedom by opposing the federal bill. Sens. Phil Leventis and Robert Ford placed objections on the bill once it reached the Senate floor, which blocked final consideration by the Senate. This bill will also be carried over to next year.

Tort Reform Legislation Hits Snag: Since the passage of a comprehensive tort reform package in 2005 which included, among other things, a reduction in the statute of repose from 13 to 8 years, trial lawyers have found several loopholes in the law which we had hoped to close with the passage of a new tort reform bill filed very early in this year's session.

For example, in just four short years plaintiff lawyers have started using a possible building code violation as a way to get an exemption from the 8-year statute of repose. While we do not believe that was the intent by the General Assembly, some judges have already made such a ruling. In addition to several other changes, S. 350 is an attempt to clarify the intent of the law by clearly spelling out that a violation of the building code does not constitute fraud, gross negligence or recklessness and should have no impact on the statute of repose.

Shortly after the tort bill was filed in the Senate this session, a subcommittee was appointed to take action on the bill. Sen. Larry Martin, who is the primary sponsor of the bill, was appointed to chair the subcommittee. Also appointed was Sen. Tom Davis, a co-sponsor of the bill and a real estate attorney; Sen. Lee Bright, a trucking executive who campaigned for tort reform during his first run for the SC Senate in 2004; Sen. Luke Rankin, a Republican Trial Lawyer; and Sen. Brad Hutto, a Democrat Trial Lawyer. Unfortunately, the subcommittee only held one meeting this session before eventually deciding to carry the bill over to next year. The subcommittee has already set meeting

dates during the legislative interim so that this bill will be ready to move forward when the legislature returns in January.

State Budget: The General Assembly passed the Fiscal Year 2009-2010 general appropriation bill amid a great deal of controversy over federal stimulus funds, huge budget cuts, decreased revenue, and increasing unemployment numbers. The budget they approved utilizes a fiscal year 2008-2009 general fund revenue base of \$5.9 billion and \$398,764,684 in fiscal year 2009-2010 “new” recurring general fund revenues. The budget also includes \$348 million in federal stimulus funding. Since the legislature included the federal dollars to balance the state’s budget, instead of using the federal funds to pay down debt, as Gov. Sanford urged, Sanford vetoed the budget bill. Legislators quickly overrode his veto of the budget, thus forcing Sanford to accept the stimulus funds he had adamantly opposed accepting all session long.

Governor Sues Legislature; Requests Funds: Prior to the legislature adjourning for the year, Sanford filed a lawsuit against the members of the legislature for voting to require him to accept the disputed \$700 million in federal stimulus dollars. Sanford opted to file the suit in federal court rather than state court. In his suit he asked the court to affirm his authority to control when, or even if, he will accept the \$700 million available to South Carolina.

By the end of May, Sanford formally requested the \$700 million in federal monies. He said repeatedly that he would not draw down the money unless the court told him he had to. After months of public arguments between the governor and members of the legislature and the filing of three different lawsuits, the State Supreme Court ruled unanimously that Sanford must accept the federal money. Thus, the dispute over the acceptance of the money ended and Sanford, on May 29, signed the paperwork to allow the money to come into the state and also withdrew his federal lawsuit to block the funds.

In the End: A lot of time, money and energy were wasted this session as legislators and Gov. Sanford continued with their on-going and very public power struggle. Unfortunately, the focus shifted dramatically just weeks after the legislature adjourned with an amazing amount of national media coverage of Sanford’s disappearance, reappearance, and then shocking announcement of an extramarital affair. While many in the political world continue to push for Sanford’s resignation, he vows to serve out the remaining 18 months of his term in office.

For a complete look at the SC Legislative Report, click on: [2009 SC Legislative Report](http://www.cagc.org/advocacy/locked/SC_legis_report09.cfm) or go to: http://www.cagc.org/advocacy/locked/SC_legis_report09.cfm.

BUSS MEETING IN HILTON HEAD WAS SUCCESSFUL

The 2009 Building-Utility-Subcontractor/Specialty Contractor Divisions Meeting was held July 9-12, 2009 at the Westin Hilton Head Resort & Spa. The meeting, centered on economic survival, drew 220 attendees and included Attorney Mark Stublely of Ogletree Deakins and Steve Gennett leading a discussion concerning union developments that centered on “How to Be a Pro-Employee Employer.”

Thurl Bailey, who was on N.C. State's national championship basketball team under Jim Valvano, was the keynote speaker. The Building Division meeting offered a presentation on a construction photography program that uses extensive photographing throughout the progress of a job to document what work was done. Mark your calendar for next year’s BUSS Meeting – Wild Dunes Resort, Isle of Palms, S.C., on **July 22-25, 2010**.

Quote of the Quarter: *“There’s no way that filling out bidding documents should be more complicated than building the project.”*

- Chuck Wilson, C.T. Wilson, Durham, past chair of Carolinas AGC’s Board of Directors, at an Institute of Government panel discussion this month discussing why public owners need to keep alternates and unit prices out of bidding documents.