

Florida/Caribbean ARCHITECT

Official Journal of the Florida Association of the American Institute of Architects | Spring 2016



AIA
Florida

2016 Florida Legislative Session Wrap-Up

VICKI LONG, CAE, HON. AIA, AIA FLORIDA EXECUTIVE VICE PRESIDENT



Issues that impact the architectural profession are seldom (OK, never) the BIG six o'clock evening news stories nor are they listed as priorities in the governor's State of the State opening address to legislators. That doesn't mean they aren't important to the life, health, safety and welfare of the citizens of Florida. They just don't garner the attention of the media and the public at large. That's why it can be difficult to gain traction with, and the attention of, legislative leadership for our not-so-headline-making but oh-so-necessary legislative proposals.

That is also why the annual AIA Florida Legislative Day is vital to the success of legislative measures supported by AIA Florida. This year, there was a great turn out of AIA Florida leadership, citizen architects and architecture students who "took to the hill" to lobby state senators and representatives. In addition to the meetings held with legislators, members were briefed in the governor's cabinet room, they received a tour of the Florida House of Representatives chambers, where a mock session was held, and they closed the day with a legislative reception at AIA Florida headquarters. Video highlights from the event are posted on www.aiafla.org for viewing.

This year there were 1,650 bills filed in the legislature yet a mere 272 were passed.

After much wrangling and dozens of amendments, CS/CS/CS HB535 by Rep. Dane Eagle (R-Cape Coral) along with companion bill SB704 by Sen. Travis Hutson (R-Palm Coast) finally passed. The legislation, among other important changes, adds an architect and an engineer to the panels designated to review interpretations of the Florida Building Code and the Florida Accessibility Advisory Code for Building Construction. The amendment was recommended by the AIA Florida Codes and Standards Technical Advisory Council (C-STAC). Interestingly, a move was made to change the code cycle from three to six years but was thwarted since it would've put Florida out of sync with the rest of the



Members of AIA Florida Southwest and AIA Gulf Coast along with Florida architecture students pose for a photograph with Rep. Dane Eagle (R-Cape Coral) during 2016 AIA Florida Legislative Day. Left to right: Pietro Mendonca, AIAS; Ana McIntosh, AIAS; Rep. Eagle; Joyce Owens, AIA, RIBA; Steve Panzarino, AIA; Lisa Hess, AIA; and Jerry McQueen, AIAS.

world on code adoption. An early draft of the bill amended the advanced building code education requirements but the change was eventually removed. The bill was signed by the governor, and the new law will become effective July 1, 2016. Members are encouraged to read the entire bill at www.flsenate.gov/Session/Bill/2016/0535 to see the myriad other changes made to the code this year.

CS/HB273 by the House Government Operations Subcommittee and SB390 by Sen. Wilton Simpson (R-New Port Richey)

are a legislative cure to the burgeoning cottage industry of predatory lawsuits in Florida. Recently firms have fallen victim to these schemes when an individual comes to a firm and requests documents related to a public project. If unsuspecting staff doesn't comply immediately, the firm is slapped with a lawsuit alleging noncompliance with a public records request. The predators then offer to settle out of court for a few thousand dollars. Such scams have mostly been perpetrated against engineering firms doing transportation work, but any design professional engaged in public work is at risk.

The new law requires that a public agency contract for services includes a statement in large, boldface type with contact information for the public agency's custodian of public records (records custodian) and instructing the contractor to contact the records custodian concerning any questions the contractor may have regarding the contractor's duties to provide public records relating to the contract.

The legislation amends Chapter 119, Section 0701, of the Florida Statutes and mitigates design firms' exposure to litigation from deceitful requests for documents related to public agency clients. The legislation provides language for engineers and architects to include in their contracts as prescribed below:

(a) The following statement, in substantially the following form, identifying the contact information of the public agency's custodian of public records in at least 14-point boldfaced type:

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT ... (telephone number, e-mail address, and mailing address)....

The legislation also requires a request for public records relating to a contract for services be made directly to the contracting public agency. If the public agency determines it does not possess the records, it must immediately notify the contractor, and the contractor must provide the records or allow access to the records within a reasonable time. A contractor who fails to provide the records to the public agency within a reasonable time may be subject to certain penalties.

The requirement that each contract for services requires the contractor to transfer its public records to the public



Sen. Greg Evers (R-Milton) poses with AIA Florida Northwest members Victoria Williams, AIA; Tiffany Castricone, AIA; and FAMU architecture student, Joemeko Culmer, AIAS.

agency upon termination of the contract has been repealed. Instead, the contract must address whether the contractor will retain the public records or transfer them to the public agency upon completion of the contract.

The bill was approved by the governor on March 8, 2016, and became effective immediately.

Bills addressing public-private partnerships (3Ps) successfully navigated the system. SB124 by Sen. Greg Evers (R-Pensacola), and companion bill HB95 by Rep. Greg Steube (R-Sarasota), clarify procurement processes in unsolicited proposals involving architecture, engineering or landscape architecture to ensure the public trust in procurement agreements. The bill ensures that unsolicited proposals for 3P projects are reviewed for adequacy and scope by design professionals procured under FS 287.055 (CCNA). Additionally, SB 126/ HB 97 created a public records limited exemption for unsolicited proposals. The governor has already approved the legislation, and it becomes effective July 1, 2016.

The Department of Business and Professional Regulation (DBPR) pursued

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SINCE THE HURRICANES OF 2004 AND 2005, FLORIDA ARCHITECTS HAVE PREPARED THEMSELVES TO BE THE “GO-TO” CADRE OF VOLUNTEERS FOR POST-DISASTER SAFETY ASSESSMENTS.

legislation in a self-described attempt to reduce regulation and reduce taxes (fees) for certain professions. As originally filed, the bill needed several tweaks to be palatable for the AIA Florida advocacy team. The bill deleted the requirement for certificates of authorization and accompanying fees of \$125 biennially for firm registration and instead allowed for a firm “qualifier.”

The bill also gave the Board of Architecture and Interior Design (BOAID) the ability to deny a qualifier if the applicant had been named in a past disciplinary action. The advocacy team worked to assure the language would be permissive only and that the board would have leeway to approve a qualifier should an applicant, for example, simply have received a letter of guidance or been involved in a previously resolved issue.

Legislative Day Success

KIM HEADLAND, AIA, AIA FLORIDA VICE PRESIDENT, ADVOCACY CHAIR



As the 2016 AIA Florida vice president chairing the Advocacy Committee, I would like to give my sincere thanks to the many individuals who came together to make this year's legislative efforts a success. Our committee got to work at a fast and furious pace, beginning with Legislative Day on January 26. We were able to hit the ground running thanks to the hard work of last year's committee, chaired by Greg Burke, AIA, and the flawless efforts of Vicki Long, CAE, Hon. AIA, and AIA Florida staff. Vicki made certain we didn't miss a beat, ensuring several key wins for architects around the state.

Much gratitude to the AIA Florida Board, AIA Florida members and Citizen Architects who went to Tallahassee in January to speak

with legislators on behalf of the profession. These efforts are critical to our organization's success, personalizing the message and making important local connections with state legislators.

As always, legislators look forward to receiving the AIA Florida “blueprint,” which artfully highlights our main issues for the legislative session. A very special thanks to Amanda Rosenfield, Assoc. AIA, who designed this year's “blueprint,” beautifully depicting significant architecture from around Florida. Amanda even signed copies for a few lucky legislators and members!

Being relatively new to the inner workings of the AIA Florida Advocacy Committee, I truly appreciate the hard work and dedication of this year's committee members: Brad Schiffer, AIA (CSTAC chair); Jim Anstis, FAIA; Donald Gray, Assoc. AIA; Pat Hoy, AIA; Steve Jernigan, FAIA; Michael Lingerfelt, FAIA; Rick Logan, AIA; Larry Maxwell, AIA; Joyce Owens, AIA; Steve Panzarino, AIA; Ignacio Reyes, AIA; Alex Silva, AIA; and Kelly Wieczorek, AIA. These 2016 Advocacy Committee members have already spent countless hours sharing their valuable time and expertise reviewing proposed rule changes, bill amendments and longstanding policy — often on very short notice as hot issues arose!

We are also very grateful for J. Michael Huey, Hon. AIA, and his Gray Robinson staff: Todd Steibly, Jessica Love and D. Ty Jackson. Mike and his team have been dedicated to AIA Florida and our advocacy efforts for more than 40 years, working tirelessly behind the scenes providing year-round legislative guidance and lobbying efforts on our profession's behalf.

Finally, a sincere thank you to our bill sponsors and the associated industries who worked with us closely on several important issues this year:

- Rep. Steube (R-Sarasota), Sen. Evers (R-Milton): 3P bills
- Rep. Eagle (R-Cape Coral), Sen. Hutson (R-Palm Coast): Building Code bill
- Rep. Perry (R-Gainesville), Sen. Stargel (R-Lakeland): statute of repose
- House Government Operations Subcommittee/Sen. Simpson (R-New Port Richey): predatory lawsuits
- Florida Engineering Society, Associated Builders and Contractors of Florida

Looking forward to many more regulatory successes in the remainder of the year to come!

Sincerely,
Kim Headland, AIA
AIA Florida Vice President, Advocacy Chair

Originally the bill included terms like “bidder” and even attempted to hold a licensed qualifying agent for a business organization jointly and severally liable with the business organization for any damages resulting from the action of the business organization. AIA Florida issues were worked on throughout session and during numerous meetings. Unfortunately for DBPR, the bill became a “train” of other issues in the waning hours of session. Amendments even vaguely related to the bill were being added from greyhound racing to homeowners associations and liens. The time consuming amendatory process couldn’t beat the tic-toc of the legislative timeclock, so the bill died on the final day of session. Members should be aware that all proposals must be tracked and massaged to get the best result for our licensees. A tremendous amount of time and energy was spent on this bill only to see it sink under its own weight as time simply ran out.

Another good bill that didn’t make final approval was a clarification to the statute of repose. As members will recall, the 10-year statute of repose begins to run from “the date of actual possession by the owner, the date of the issuance of a certificate of occupancy, the date of abandonment of

construction if not completed, or the date of completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is latest.” FS 95.11(3)(c). Unfortunately, the Fifth District Court of Appeals in the case of *Cypress Fairway Condo v. Bergeron Construction Company* determined the completion of contract means completion of obligation to pay. As a result, it could be interpreted that refusal to make final payment could extend both the statute of limitations and the statute of repose indefinitely, or even infinitely, to allow time for owners to file suit for latent construction defects.

In response, HB 297 by Rep. Keith Perry (R-Gainesville) and SB 316 by Sen. Kelli Stargel (R-Lakeland) clarified what the term “completion of the contract” meant, defining it as the last day during which the professional engineer, registered architect or licensed contractor furnishes labor, services or materials, excluding labor and services relating to the correction of previously performed work. The bill sailed through the House but never saw the light of day in the Senate. This legislation will remain a priority for AIA Florida in 2017.

Another limitation of liability issue has been an ongoing bone of contention AIA Florida has wrestled with for over a decade. Since the hurricanes of 2004 and 2005, Florida architects have prepared themselves to be the “go to” cadre of volunteers for post-disaster safety assessments. With Michael Lingerfelt, FAIA, in the lead, more than 500 Florida/Caribbean architects and engineers have been trained on the California Safety Assessment Program and have earned its SAP certification. However, while imminently qualified, our licensees have virtually no indemnity from liability in Florida to conduct these reviews.

The advocacy team attempted to amend “Good Samaritan” bills that were moving through the process this year to include immunity for these volunteers. However, legislative leadership asked that we start fresh in 2017 as a standalone issue.

By chance, Floridians have not been hit by a major storm in years. However, if meteorologists’ prognostications prove correct, our luck might be changing this summer. Let’s hope this time “the weather man gets it wrong,” and we have another disaster-free year. ■

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