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6/15/10 *

AGC OF MISSOURI
KEY BILLS - POST-SESSION REPORT
2nd Regular Session
 95th **General Assembly, 2010**

IMPACT ON TRANSPORTATION

HB 1444 Jones, Tim (R/Eureka) Requires certain public governing bodies to hold a public meeting and to allow public comment four business days prior to voting on certain issues.

TAFP: This bill enacts a requirement that any city or county or any entity created by these political subdivisions provide four business days notice before voting on implementation of a tax increase or creation of a transportation development district or community improvement district. The political subdivision must also hold a public meeting to allow for comment. Any challenge to compliance with notice requirements must be filed within 30 days.

Effective: August 28, 2010

Status: 5-25-10 Sent to the Governor

HB 1458 Thomson (R/Maryville) Exempts motor fuel used to operate school buses transporting students for educational purposes from the motor fuel tax.

School bus is defined to include motor vehicles “either publicly or privately owned, used to transport students to and from school . . .” (302.010 RSMo). Buses operated by contractors to school district or operated by a school district would be covered. Department of Revenue is to promulgate rules on the exemption.

Establishes the “Joint Committee on Recovery Accountability and Transparency” to audit and investigate use of public funds including contracts under the American Recovery and Reinvestment Act (ARRA) of 2009. The scope of the Committee would include MoDOT ARRA and regularly funded projects.

A similar bill was vetoed in 2009.

Status: 1-7-10 H Read second time

HB 1469	Wallace (R/Thornfield)	Exempts motor fuel used to operate school buses transporting students for educational purposes from the motor fuel tax and requires a uniform motor fuel tax exemption claim process.
		See HB 1458.
		Status: 1-7-10 H Read second time
HB 1529	Munzlinger (R/Williamstown)	Exempts motor fuel used to operate school buses transporting students for educational purposes from the motor fuel tax.
		See HB 1458.
		Status: 1-7-10 H Read second time
HB 1595	Dugger (R/Hartville)	Revises the definition of “project” as it relates to industrial development corporations to include the construction, extension, and improvement of public roads.
		Status: 5-25-10 Sent to the Governor
HB 1695	Stevenson (R/Webb City)	Changes the laws regarding driving while intoxicated.
		Status: 6-2-10 Signed by the Governor
HB 1788	Parson (R/Bolivar)	Changes the laws regarding the circulation of petitions.

Provisions include:

- Qualifications of petition circulators:
 - Citizen of US and Missouri resident;
 - Not convicted of forgery in Missouri or another state.
- Prohibits payment of petition circulators *“based on the number of signatures obtained.”*
 - *“Signatures collected by a petition circulator paid on a per signature basis shall not be counted.”*
 - *“This subsection shall not be construed to prohibit compensation for collection of signatures on an initiative or referendum petition that is not based on the number of signatures obtained.”*
- Signatures collected by a circulator prior to registration with the Secretary of State shall not be counted.
- Affidavit required of petition circulator including *“that I have not accepted and will not accept compensation for signatures based on the number of signatures obtained . . .”*
- Makes knowingly signing a name on a petition other than the person’s own name a Class One election offense.
- Makes above provisions effective January 1, 2011.

- Requires a deposit of \$500 for each “sample sheet” of a petition filed with the Secretary of State. Provides for refund if petition is certified.

HB 1788 also includes provisions pertaining to petitions to decrease local taxing authorities tax rates.

HCS/HB 1788: Provisions requiring \$500 deposit for early “sample sheet” is removed. Also removes provisions relating to local taxing authorities.

Status: 5-3-10 S Not heard in Senate-Financial/Gov. Org. and Elections

HB 1868 Scharnhorst (R/Manchester) Removes the Director of the Forms Management Unit as a voting member of the State Records Commission and replaces him or her with the Commissioner of the Office of Administration.

Includes the transfer of powers and duties of the State Water Patrol to a Division of Water Patrol within the State Highway Patrol. The Highway Patrol Superintendent will appoint the Director of the Water Patrol Division. County Sheriffs are also charged with serving certain search warrants on behalf of the Water Patrol. The Water Patrol is funded from General Revenue and the Highway Patrol is required to account for spending from General Revenue and dedicated highway funds. The same bill also allows the Superintendent of the Highway Patrol to appoint one additional major, nine new captains, eight new lieutenants and ninety-nine additional patrolmen by raising the limits in current law.

Effective: August 28, 2010.

Status: 5-25-10 Sent to the Governor

HB 2097 Dixon (R/Springfield) Modifies various provisions relating to billboards.
Relates to non-conforming billboards and local regulations.

HCS/HB 2097: (Returned from Rules Committee)

Status: 4-13-10 H Voted do pass as substitute from House-Transportation

HB 2111 Faith (R/St. Charles) Establishes the Missouri State Transit Assistance Program.

Creates a fund to assist local transit providers with operating and capital costs. Funds are appropriated from General Revenue and distributed by MoDOT on a specified formula.

SCS/HB 2111: Converted to “Omnibus Transportation Bill” in Senate Committee. Provisions of interest include:

- One license plate, except commercial motor vehicle owners may obtain two plates.
- High Occupancy Vehicle (HOV) lanes may be converted by MoDOT to High Occupancy Toll (HOT) lanes.

- Repeals arbitration of tort claims against MoDOT by plaintiffs.
- Text messaging ban for all ages.
- Increases penalties for truck violations of left lane restrictions in St. Charles County.
- Original Missouri State Transit Assistance bill. Appropriations from general revenue.

Status: 4-27-10 S Set on the Senate Calendar

HB 2198 Parson (R/Bolivar) Modifies provisions of the Motor Vehicle Franchise Practices Act.
SCS/HCS/HB 2198

Status: 5-25-10 Sent to the Governor

HJR 56 Emery (R/Lamar) Proposes a constitutional amendment replacing the individual and corporate income tax and sales and use tax with a fair sales tax on retail sales of a new tangible property and taxable services.

Repeals state corporate and individual income taxes and existing sales taxes and replaces it with a “gross receipts” type sales tax on all goods and services, including real property. There are exceptions for “fabrication” and investments. Presumably the “fair tax” would apply to motor fuel in addition to the current per gallon tax and motor vehicle sales. The Missouri Department of Revenue has rulemaking authority to implement the new tax.

Critics argue the proposal would increase the tax burden on businesses compared to individuals. Critics also argue that the “fair tax” may raise taxes for the majority of Missouri taxpayers.

Status: 4-22-10 H Voted do pass as substitute from House Ways and Means

HJR 63 Parson (R/Bolivar) Proposes a constitutional amendment increasing the percentage of required voter signatures in each of two-thirds of the Congressional districts before a petition can be placed on the ballot.

Requires 15% of legal voters in two-thirds of Congressional districts rather than 8% as under current law for Constitutional amendments. For statutory measures the signature requirement is increased from 5% to 10%.

HCS/HJR 63: The HCS also increases the number of Congressional districts in which the initiative must qualify from two-thirds of Congressional districts to all Congressional districts.

HCS/HJR 63 (Perfected): The requirement for 15% of legal voters was dropped through floor amendment. Therefore, the bill just increases the requirement to qualify an initiative petition from two-thirds of Congressional District to all Congressional Districts.

Status: 4-29-10 H Reported do pass House-Fiscal Review

- HJR 78 Smith, Jason (R/Salem) Proposes a constitutional amendment requiring three-fifths majority vote to amend the constitution.
- HJR 78 (Perfected): Requires any future Constitutional Amendment proposed by the General Assembly or by initiative to be approved by a three-fifths majority (60%). However, any measure adopted between November 1, 2001 and November, 2010 may be repealed by a simple majority (50%).
- So if transportation advocates propose a future measure to amend sections in the Constitution enacted by Amendment 3 in 2004 and the new ballot measure received 55% of the vote, Amendment 3 provisions would be repealed, but the new provisions would not be enacted.
- Status:** 5-13-10 S Meeting set, Senate-Financial/Gov. Org. and Elections
- SB 746 Griesheimer (R/Washington) Imposes various billboards standards to billboards adjacent to Interstate 70 and Interstate 44 during periods of interstate construction.
- Upon the Highway Commission’s approval of funding construction or reconstruction of Interstate 70 or Interstate 44, the outdoor advertising rules in effect on August 27, 1999 are reinstated. Upon that date a moratorium is imposed on the issuance of permits for new sign structures. Owners of existing signs may reset such signs and shall “receive compensation representing the actual cost to erect the existing sign.” After completion of the I-70 or I-44 project the moratorium on new signs would be lifted. Costs for resetting existing signs would be paid from highway funds.
- Status:** 3-31-10 S Voted do pass from Senate Transportation
- SB 818 Lembke (R/St. Louis) Modifies various provisions relating to the initiative and referendum process.
- Relates to the form and process of submitting petitions. Does not prohibit payment by signature.
- SCS/SB 818
- Status:** 4-28-10 S Set on the Senate Calendar
- SB 851 Schmitt (R/Glendale) Requires at least four days notice before voting by governing bodies of local governments on tax increases, eminent domain, and certain districts and projects.
- TAFP: See HB 1444.
- Status:** 5-25-10 Sent to the Governor

SJR 29 Purgason (R/Caulfield) Replaces all taxes on income with a sales and use tax.
"Fair Tax".
See HJR 56.
SCS/SJR 29
Status: 4-29-10 S Set on the Senate Calendar

OTHER CONSTRUCTION FUNDING

HB 1432 Flook (R/Liberty) Allows port authority boards to establish port improvement districts to fund projects with voter-approved sales taxes or property taxes.

Amends current statutes on ports and enacts the "Port Improvement District Act." Authorizes petitions to be submitted to the Circuit Court proposing authorized "projects." Port improvement projects include dredging, environmental clean-up, buildings and other "public works". After certification by the Court, port authority may by resolution propose a property tax in an amount approved by the Court which is subject to an election of registered voters and property owners by mail-in ballot. Port authority may also propose a district wide sales tax of up to 1% to be approved by registered voters and property owners by mail-in ballot.

Status: 3-30-10 H Referred to House Rules

SB 578 Shields (R/Kansas City) Allows port authority boards to establish port improvement districts to fund projects with voter-approved sales taxes or property taxes.

See HB 1432.

SS/SB 578 (Perfected)

SS/SB 578 (TAFP): Authorizes port authorities, except for the port authority in Clay County, to establish "port improvement district." Requires any expenditure by a port authority exceeding \$25,000, including professional services, to be competitively bid.

Makes additional provisions for those port authorities establishing Port Improvement Districts:

- Authorizes projects including creation of wetlands, construction or modification of any structure or facility.
- Allows levying of a sales and use tax or real property tax or both.

Effective: August 28, 2010

Status: 5-25-10 Sent to the Governor

PUBLIC CONTRACTING

HB 1290 Gatschenberger (R/Lake St. L) Increases the minimum value of county property that the auditor in a charter county must annually inventory.

SS/HB 1290: Senate “Omnibus Local Government Bill.” Includes modified HCS/SB 580 provisions regarding political subdivision construction bidding which are still problematic.

Status: 5-6-10 S Set on the Senate Calendar

HB 1543 Wallace (R/Thornfield) – See This Bill Description Under Contractor Operations (pg. 14)

HB 1960 Ruestman (R/Joplin) Exempts work done on a school in a non-charter county from Sections 290.210 to 290.340 if approved by the school board.

Authorizes “opt out” from prevailing wage.

Status: 4-7-10 H Set on the House Calendar

HB 2218 Denison (R/Springfield) Creates the “Political Subdivision Construction Bidding Standards Act”

This is the AGC of Missouri drafted “Political Subdivision Construction Bidding Standards Act.” Provisions include:

- Broad definition of “contracts for construction” to include all types of building, heavy/highway and municipal utility construction.
- Provides exceptions for:
 - Engineering and design contracts negotiated under 8.287 RSMo.
 - Construction management services awarded under 8.675 to 8.687 RSMo.
 - “Design/build” contracts to the extent that “design/build” is authorized by law for use of the specific political subdivision.
- Provides minimum bid solicitation and award standards for political subdivisions not required to bid construction contracts by state law, funding requirements or established local procurement policies.
 - For contracts exceeding \$10,000 advertising for a minimum of five days in a newspaper within the county.
 - For contracts over \$250,000 advertising at least thirty days in advance through a commercial or not-for-profit reporting service or plan room.
 - Award to the “lowest qualified responsible bidder” that is “responsive” to the contract as advertised. Provides for rejection of any or all bids with written statement of cause within five business days to the apparent low bidder.
- Establishes “bid integrity” standards applicable to all political subdivisions, including:
 - No bid may be opened in advance of the advertised deadline for bid opening.
 - All bids must be sealed and in writing and if the letting is cancelled returned to the bidders unopened.
 - Bids shall not be accepted after the advertised deadline for submission.
 - Bids must be held secure and confidential.

- Bids must be opened in a public meeting at the date, time and place advertised or communicated to prospective bidders and the general public at least two business days in advance of bid opening.
- Provides for electronic bidding under comparable requirements.
- Grants standing to challenge bid award for violations of “bid integrity” standards. Relief sought may include:
 - Setting aside award of contract or ordering of re-bidding.
 - Award to a different bidder.
 - Monetary damages including reasonable attorneys fees.
- Authorizes action to be brought within ten days of bid award.
- Actions brought without “substantial cause” or for purposes of “harassment” or “disruption” may result in the court ordering the contractor to pay the political subdivision’s attorneys fees.
- Provides that political subdivision may not be required to accept a bid exceeding the estimate. Also provides for emergency contracts without bidding.
- Provides political subdivision established construction procurement policies remain in place or may be adopted subsequent to the effective date of the legislation, but may not conflict with state law.

Status: 3-30-10 H Public hearing completed

SB 580 Griesheimer (R/Washington) Modifies various provisions relating to political subdivisions.

SB 580 will be the Senate “Omnibus Local Government Bill.” As originally filed SB 580 includes:

- Increases county bidding threshold from \$4,500 to \$6,000.
- Authorizes a transient guest room tax to be imposed by several cities.
- Authorizes an additional city to form an “Exhibition Center and Recreational Facility District.”
- Allows city council to submit a question to an advisory referendum of voters.
- Changes regarding appeals from determination of the board of equalization.

SCS/SB 580: As passed out of Committee the Senate Committee Substitute does not include the provisions of SB 729.

SS/SCS/SB 580 (Perfected):

The Senate Substitute does include provisions of SB 729. The requirement for the Office of Administration (OA) to erect and administer a “central repository” for advertisement of local construction projects is a new provision added in SS/SB 580. OA is required to create the site at no cost to the state. Political subdivisions have the option of advertising for two days in a local newspaper in the county where the political subdivision is located or making notice to the OA central repository. However, ***political subdivisions are exempt from advertising construction projects at all until OA has the “central repository” in operation at “no cost to the state.”*** (Although there is no specific language in the bill requiring award of the “central repository” by contract to a private entity, there is discussion that organization and operation of the site would be bid to a private entity. The Missouri Municipal League which opposes the legislation has expressed interest in performing on the contract.)

HCS/SS/SCS/SB 580: Provisions of interest include:

Political Subdivision Construction Bidding:

Modified version of SS/SB 580 language which:

- Allows political subdivisions with existing or local procurement policy which were in effect on May 1, 2010 to continue to follow such policy as long as it is “equivalent or stricter” than the legislation.
- Requires political subdivisions to advertise projects of \$8,000 or more and award to the lowest and best bidder. (Language is changed to allow award in compliance with other statutes, but there is still a statutory conflict if the other statute is not “equivalent or stricter.”)
- Subdivisions requiring bonding in compliance with 107.170 RSMo and award of contracts in “substantial compliance” with state law and local policy are removed as grounds for a bidder challenging award of contract.
- Removes requirement for challenge to bid award to be filed within fifteen business days.
- Removes subsection allowing political subdivisions to set their own procurement policies in compliance with state law.

Port Improvement Districts: See HB 1432.

MSD – “Design/Build”: See HB 2031.

One Call: Goes back on the agreement reached between construction industry and utility owners in 2008 (HB 1779) regarding response period of two working days”. HCS/SB 580 requires that utility owner’s response to an initial notice must be made by the same time of day on the second working day, rather than within a two working day period beginning at 12:00 am on the following day. However, also provides that if notice is given before 8:00 am on a working day the period begins at 8:00 am. If the notice is received after 5:00 pm on a working day or not on a working day the period begins at 8:00 am the next working day.

Status: 4-22-10 H Referred to House Rules

SB 716 Goodman (R/Mt. Vernon) Allows the Department of Revenue to issue special event motor vehicle licenses to applicants auctioning certain vehicles.

HCS/SB 716: House Omnibus transportation Bill. Includes Political Subdivision Bidding Standards exactly as in HCS/HB 2218.

Status: 4-29-10 H Referred to House-Rules

SB 729 McKenna (D/Crystal City) Creates the “Political Subdivision Construction Bidding Standards Act”

SB 729 is based on legislation drafted by AGC of Missouri in 2007 (SB 22). SB 22 was proposed by AGC for the purposes of requiring minimum standards for project advertisement and bid award, if a political subdivision is not otherwise subject to such requirements by state statute, state or federal funding requirements, or local ordinances or procurement policy. Minimum standards in AGC’s 2007 legislation was advertising for five days in a local paper for projects of \$10,000 or more and submission to project reporting services (“Dodge Reports”, “plan rooms”, etc.) for

projects of more than \$100,000. AGC's 2007 legislation (SB 22) required award to the "lowest responsive responsible bidder."

Differences from SB 22 in SB 729 are provisions requiring advertising for two days in local newspapers for projects over \$6,000 and a "lowest and best" bid award standard.

AGC's 2007 legislation also set the following "bid integrity" standards which apply to all political subdivisions even if the political subdivision is subject to other state statute or local procurement requirements:

- Prohibits opening any bid before bid deadline.
- Requires sealed bids and provides if letting is cancelled bids be returned unopened.
- Prohibits receiving bids after the deadline.
- Requires bids be held confidential prior to opening and requires opening in a public meeting.

SB 729 is the same as SB 22 in these "bid integrity" provisions.

However SB 729 differs from SB 22 in providing that requirements established by existing or new state statutes or local ordinances or procurement policies must be "equivalent or stricter [than] competitive bidding requirements" established by SB 729. This pre-emption would apply to both advertising and bid award standards and "integrity" standards. For example current state statutes (177.086 RSMo) require school districts to bid construction projects over \$15,000. SB 729 requires bidding projects over \$6,000. The current school statute also differs in advertising requirements and requires award to the "*lowest responsible bidder complying with the terms of the letting.*" Therefore a conflict between statutory sections is created.

SB 729's "pre-emption" provision will generate confusion and potentially disrupts the normal bidding process for cities, counties and political subdivisions for both the public owner and contractors bidding on local projects. This "pre-emption" provision should be deleted.

Status: 2-3-10 S Voted do pass as substitute from Senate Jobs, Eco. Devo.

SB 781 McKenna (D/Crystal City) Modifies various provisions relating to the regulation of motor vehicles.

Amends current law relating to motor vehicle dealers.

SCS/SB 781: This is the Senate "Omnibus Transportation Bill." Provisions are limited to motor vehicle and licensing provisions.

HCS/SB 781: House Omnibus Transportation bill. Includes Political Subdivision Construction Bidding exactly as in HCS/HB 2218

Status: 4-20-10 H Voted do pass as substitute from House Transportation

Bill also listed under Miscellaneous

HCS/SB 844: Provisions of HCS/HB 2218 added in House General Laws Committee.

HCS #2 / SB 844: Substitute #2 continued to include HCS/HB 2218 (AGC's political subdivision bidding) provisions. Numerous other provisions "relating to ethical administration of public institutions and officials" were also added to the bill. HCS #2 passed the Missouri House by a vote of (Y: 153 / N: 5). However, the political subdivision bidding provisions were removed in Conference Committee and were not in the finally passed bill.

TAFP: The "Truly Agreed and Finally Passed" bill included the following provisions of interest to AGC:

- Requires any appointee to a board or commission requiring Senate confirmation to file a personal financial disclosure statement and a list of contributions to all candidates and committees in the preceding four years. (Provision includes Highway Commissioners.)
- Authorizes Missouri Ethics Commission to initiate an investigation without receiving a complaint, if certain requirements are met.
- Changes the term "continuing committee" to "political action committee" which are defined to be the same.
- Repeals requirement that treasurer and deputy treasurer reside in county where committee is located.
- Limits "political party committees" to a statewide committee and a Congressional District Committee for each Congressional District. (Eliminates committees by state Senatorial District, etc.)
- "Political action committees" ("PACs") are prohibited from receiving contributions from other PACs, unless it is a federal PAC. PACs may continue to receive contributions from individuals, corporations, unions, etc.
- "No person shall transfer anything of value to any committee with the intent to conceal from the ethics commission, the identity of the actual source."
 - Penalty on first violation is a warning, second violation is a Class C misdemeanor, third and subsequent violations are a Class D felony.
- Effective January 1, 2011 all campaign disclosure reports must be filed by electronic submission.
- Contributions exceeding \$500 made during the legislative session to any legislator or candidate for Senate or State Representative must be reported within forty-eight hours. Contributions exceeding \$500 made to the Governor or other statewide elected officials during the legislative session or the period the Governor's signature is pending, must be made within forty-eight hours.
- Creates the crime of "obstruction of an ethics investigation" which is punishable as a Class A misdemeanor.

Effective: August 28, 2010.

Status: 5-25-10 Sent to the Governor

SB 887 Schaefer (R/Columbia) Makes spice cannabinoids, commonly known as
"spice" or "K2", Schedule I controlled substances.

HCS/SB 887: House Omnibus Local Government Bill. Includes Political Subdivision Bidding Standards exactly as in HCS/HB 2218. There were twenty-seven amendments added in House Public Safety Committee.

Status: 4-28-10 H Referred to House-Rules

CONTRACTOR OPERATIONS

HB 1442 Jones T.(R/Eureka) Changes the laws regarding certain city sales taxes and authorizes certain cities and Montgomery County to impose, upon voter approval, transient guest taxes.

TAFP: Includes numerous local sales tax provisions.

Also enacts legislation clarifying Missouri Supreme Court's *ICC* sales tax decision. See SB 928.

Status: 5-25-10 Sent to the Governor

HB 1543 Wallace (R/Thornfield) Changes the laws regarding school employee liability, safety practices, and reporting acts of violence and establishes the Highway School Sports Brain Injury Prevention Act.

TAFP: HB 1543 is the "Omnibus Education Bill", which includes a requirement for contractors and subcontractors working on public school property to have an established drug testing program. On May 11 **Senator Schaefer (R/Columbia)** added an amendment to the bill which requires a contractor to a school district or any subcontractor to that contractor performing work on construction projects at a public or charter elementary or secondary school to have a drug testing program providing for random testing for drugs and alcohol. The Missouri Office of Administration is required to issue a rule on the requirement. The program must be administered by a laboratory certified by the U.S. Department of Health and Human Services, or a similar entity approved by the Office of Administration. The employer and employee must be notified of every positive test and the school district must be notified of "*action [presumably by the employer] to protect the safety of students as a result of such positive test.*"

Effective: August 28, 2010

Status: 5-25-10 Sent to the Governor

HB 1692 Smith, Jason (R/Salem) Changes the laws regarding courts and judges, adoptions, reports of child abuse and neglect, child support, and judicial proceedings.

TAFP: Includes "mechanics lien" legislation. See HB 2058.

Effective: August 28, 2010

Status: 5-25-10 Sent to the Governor

Truly Agreed and Finally Passed

Mechanics Lien

Residential Real Property

- Provisions apply to “residential real property” excluding repair, remodeling or additions.
- “Residential real property” is defined as:
 - Intended to be or is used for residential purposes including:
 - Four units or less;
 - Condominiums, townhouses or cooperatives regardless of the number of units.
 - Includes property to be occupied or sold by the current owner.
 - Excludes “mixed use” or “planned developments”:
 - “Except to the extent that any residential uses of such developments are, or will be, located on separate, identifiable parcels from the non-residential uses and then only as to those residential uses.”*
 - Includes streets, sidewalks, utility services, improved common areas or other facilities within the defined residential use structures or *“located on or within the separate identifiable parcels identified as for residential use.”*

Notice of Rights

- Claimant must record notice of rights with recorder of deeds for county where residential property is located.
- ~~Notice applies only to work or materials within the preceding sixty days of such recording.~~
- **Notice must be recorded not less than five calendar days prior to the intended “date of closing.”**
- **If the fifth calendar day falls on a Saturday, Sunday or holiday recognized by the State of Missouri, the notice must be recorded by the next day the recorder of deeds is open.**
- If an upper-tiered contractor has already accurately identified the claimant in a notice, the claimant is excused from a separate notice.
- Any claimant failing to file a notice of rights is deemed to have waived a right to assert a mechanics lien.
- Claimant is not precluded from pursuing other rights and remedies.
- **A notice of rights recorded after the owner’s conveyance to a purchaser for value is ineffective to establish a right to a lien.**
- The specific content of the notice to the county recorder is set out including:
 - Property owner by correct name;
 - Claimant by correct name.
 - Legal description of property; and
 - “Correct legal name, address and current telephone number” of “any persons or entities ~~which have or will be performing work or supplying materials on behalf of the claimant.~~ **contracting with the claimant.**
- **Persons performing work or supplying materials may be identified in the claimant’s notice but are not required to be identified. (Assume this is a distinction between a written subcontract and those performing or providing materials without a written contract.)**

- A recorded notice correctly identifies a person or entity as long as it is not *“deceptively similar”* to another person or *“so deficient in information as to make it unreasonably difficult to identify such person or entity.”*
- The notice must be filed with the recorder of deeds in the county where the property is located. The recorder must record the notice in the land records and index the notice of rights by grantor (owner) and grantee (claimant). The owner’s signature is not required for the filing.
- If the “record title holder”, or owner, has contracted with a claimant for work, labor or materials for improvement of such property *“in order to facilitate the owner’s sale of such property to a bona fide purchaser for value”* the owner shall record a notice of intended sale with the recorder of deeds for the county where the property is located:
 - The notice must be recorded not less than 45 calendar days prior to the earliest calendar date the owner intends to close on the sale.
 - The owner’s notice must state the calendar date of intended sale.
 - Only one notice of intended sale is required, even if the closing is postponed.
- The owner’s recorded notice of intended sale is *“a condition precedent to a claimant’s obligation to record a notice of rights . . . to retain a claimant’s mechanics lien rights to such property.”*
- The owner is also required to post on the property, at the entrance or at a jobsite office, a copy of the owner’s notice of intended sale.
- The owner is also required to provide a claimant with a copy of the notice of intended sale and a copy of the legal description within five calendar days of a written request by the claimant.
- The claimant is required to provide any person with which it has contracted for work, labor or materials with the notice of intended sale and other information provided by the owner within ten calendar days after receiving a written request from such person.
- If an owner fails to provide required information the claimant may recover the cost of obtaining a legal description, excluding attorney fees. However, the costs are lienable.
- The owner’s failure to post, mail or transmit the information about sale does not relieve the claimant from an obligation to record a notice to preserve lien rights.
- If a claimant relies in good faith upon the legal description provided by the owner and includes such information in its notice of rights, then the notice is deemed to comply.
- A separate notice of lien rights is required for each lot or parcel. However, one notice may be made for multiple lots in the same subdivision if common ownership exists.
 - If a claimant’s work is prior to platting or subdivision of a tract only one notice is required *“provided that the entire tract of land upon which any such lien is to be asserted is described in such notice of rights.”*
- Claimant is excused from making a notice ten days before filing a lien under 429.100 RSMo as required for other projects.
- ~~The property owner or owner’s agent:

 - Shall provide any claimant with a copy of the deed including the “legal description” or the survey, within five calendar days of a request from a subcontractor or supplier. (HA1 adopted April 21.)~~
- ~~If the owner fails to comply with these requirements, the lien claimant may recover from the owner, attorneys fees necessary to obtain a legal description. (HA 1 adopted April 21.)~~

- ~~If the legal description provided by the owner is in error claimant is not relieved of duty to provide accurate notice. Lien rights are extinguished. (HA 1 adopted April 21.)~~
- ~~Claimants notice is good for one year and lien rights are extinguished unless renewed.~~
- ~~Claimant must make notice for each lot of residential property and renewal notices must include lots for which claimant has been paid.~~
 - ~~If work precedes platting by lots, only one notice must be made.~~

Just and True Account

- Specifies content required to make a lien claim, including:
 - Copies of file-stamped notice of rights;
 - Name and address of person claimant contracted with.
 - ~~Name and address of subcontractors and suppliers;~~
 - Copies of contracts, purchase orders, ~~invoices, etc., including amounts. or proposals, called "agreements".~~
 - **In the absence of written agreements, a general description of the scope of work and basis of payment.**
 - Last date claimant performed on project.
 - **All invoices submitted by claimant and an accurate statement of account showing payments or credits.**

Lien Claims

- A file stamped copy of claimants notice of rights must be attached to any lien filed.
- If there is an error in the claimant's notice of rights the mechanic's lien *"shall be forfeited to the extent of the prejudice caused by such error."*

Alternative Security / Surety Bond Provisions

- Provides owner may provide alternative security against liens filed which may be:
 - Cash or certified check;
 - Irrevocable letter of credit; or
 - A surety bond.
- Such alternatives release mechanic's liens.
- Surety company shall be made a party to any mechanics lien enforcement action.
- Claimant's rights are transferred from the real property to the substitute collateral.
- **Substitute collateral does not modify priority of claimant's interest.**
- **Substitute collateral does not relieve claimant from liability for "slander of title."**

Lien Waivers

- Any claimant executing an "Unconditional Waiver" is barred from asserting a lien to the extent claimant has not been paid.
- If claimant filing a notice of rights has been paid in full, the claimant may not ~~unreasonably~~ withhold a lien waiver **and may be presumed liable for slander of title if waiver not provided.**

Effective Date

- The legislation becomes effective August 28, 2010.
- Provisions would ~~not~~ apply to residential ~~structures substantially completed prior to September 1, 2010.~~ **property closing on or after November 1, 2010.**

Status: 5-25-10 Sent to the Governor

SB 795 Mayer (R/Dexter) Exempts certain individuals who use explosive materials for unclogging agricultural irrigation wells from having to obtain a blaster's license.

Amends the licensing section of the State Blasting Safety Act to add persons using explosives for purposes of cleaning screening devices on agricultural irrigation wells to the exemptions from licensing.

Perfected: Provisions are limited to irrigation well screen cleaning as in the original bill.

HCS/SB 795: Has become the House "Omnibus Ag Bill." Title is "relating to animals and agriculture."

TAFP: "Omnibus Ag Bill". No change in original blasting provisions regarding exemption of irrigation well screen cleaning.

Effective: August 28, 2010.

Status: 5-25-10 Sent to the Governor

SB 867 Mayer (R/Dexter) Modifies various provisions relating to real estate liens.

This bill is the American Subcontractors Association version of 2010 mechanic's lien legislation. Provisions include:

- Prohibits oral or written lien waivers which release lien rights, except to the extent payment has been received by the claimant in exchange for release of lien rights.
- Changes the scope of design professional's lien rights from one to three acres.
- Repeals current law requiring a person filing a lien to provide a "just and true account." The lien must only state the dollar amount and a brief general description of the type of labor, materials or services such as "carpentry", etc. Specifically provides: *It shall not be necessary to include in the lien statement an itemization of the labor, materials, equipment and other costs.*
- Summons is to be issued to property owner, but if property owner is unknown, notice shall be given by publication in a local newspaper once each week for three consecutive weeks prior to a hearing on the petition.
- Interest, costs and reasonable attorneys fees may be assessed against the property.
 - If the owner has failed to pay the original contractor, reasonable attorneys fees shall be awarded to the claimant.
 - If the court finds the lien has been brought "*without just cause or right*" the court shall award attorney's fees to the owner.
- Upon filing of a lien the court must appoint a disinterested party as referee.
 - Process is set out for submission of documents and consideration of the lien by the "referee".
 - If the court confirms the report of the referee judgment is rendered by the court with the same effect as a verdict by the court.
 - If the court issues exceptions to the report, the claim may be returned to the referee with special instructions.
- Attorney's fees may be awarded to the claimant by the court for the period after the referee's report has been filed.

Status: 2-23-10 S Hearing conducted

SB 928 Lager (R/Savannah) Modifies provisions of law regarding the sales tax treatment of sales for resale.

See HB 1442 "ICC Legislative Fix" provisions.

Status: 5-12-10 G Signed by the Governor

SB 934 Griesheimer (R/Washington) Modifies the law relating to mechanics' lien rights.

See HB 2058.

Status: 2-23-10 S Hearing conducted

SB 935 Giresheimer (R/Washington) Modifies the law relating to priority in mechanics' lien rights.

Changes the priority of mechanics liens over mortgages and other equity interests. Repeals 429.060 RSMo to that effect.

SB 935 provides mechanics liens are preferred over other liens or encumbrances only if the other lien or encumbrance was created after the furnishing of labor or material constituting the basis for the mechanic's lien.

Status: 2-23-10 S Hearing conducted

ENVIRONMENTAL REGULATIONS

HB 2109 Ruzicka (R/Mt. Vernon) Modifies provisions relating to the Missouri Clean Water Law.

Extends water permit fees at their current rate from August 28, 2010 to August 28, 2012.

SCS/HB 2109: Adds specific fees for CAFOs.

Without passage, water permit fees expire December 31, 2010. Fees provide \$4 million of \$15 million for DNR clean water enforcement. Possible a special session will be called.

Status: 4-22-10 S Set on the Senate Calendar

EMPLOYMENT

HB 1544 Fisher, Barney Extends the state's eligibility to receive federal extended unemployment benefit money to provide unemployed individuals compensation beyond the current unemployment benefit period.

Removes December 5, 2009 eligibility date for receiving federally funded extended benefits under the American Recovery and Reinvestment Act of 2009. Change is necessary to cover an additional period of benefits passed by Congress.

There is some controversy as to whether a specific date upon which authority expires should be stated in the legislation.

HCS/HB 1544 (Perfected): Perfected with a "soft trigger" making extended benefits available as long as 100% funded by federal government, rather than a specific expiration date.

SCS/HCS/HB 1544: Makes two changes regarding unemployment compensation:

- Sets the expiration of federally funded extended unemployment benefits in Missouri as four weeks prior to the last week of unemployment which is 100% federally funded or March 3, 2011 whichever occurs first.
- Changes the period over which "shared work benefits" may be paid from twenty-six to fifty-two weeks.

Status: 3-4-10 G Signed by the Governor

HB 2059 Fisher (R/Richards) Changes the laws regarding workers' compensation and the Second Injury Fund.

Provisions include:

- Eliminates "permanent partial disability" from Second Injury Fund coverage.
- Limits compromise settlement for "permanent total disability" to \$40,000.
- Provides exceptions for "permanent partial disability" from active military duty.
- Second Injury Fund recipients may be required to submit to vocational assessment and/or independent medical examination.
- For employees of employers failing to insure, Second Injury Fund will continue to pay medical expenses.
- Eliminates claims where claimant has filed for workers compensation in other states.
- Employer's premium surcharge remains at a maximum of 3%.
- Creates an eleven member "Missouri State Workers Compensation Council" with four members appointed by the Speaker and four members appointed by the President Pro Tem of the Senate and three members appointed by the Governor. Requires an annual report to the Governor and General Assembly by January 15 each year with recommendations for changes in workers' compensation. Council may contract for outside studies of the system.

HCS/HB 2059: Changes include:

- Specifies that permanent partial benefits will not be paid from the Second Injury Fund, but also specifically states such claims may be paid under employers' insurance.

- Limits compromise settlements to \$60,000.

Status: 4-20-10 H Returned to House Rules – without amendment

HB 2272 Fisher (R/Richards) Changes the law regarding workers' compensation and the Second Injury Fund.

Provides that no more than one-third of the 3% premium surcharge on employers may be advanced from the Workers' Compensation Fund to the Second Injury Fund on an annual basis.

Status: 4-19-10 H Third read and defeated (Vote: N: 77 / Y: 77)

SB 1026 Rupp (R/Wentzville) Denies unemployment benefits for those with outstanding overpayment penalties.

Status: 4-29-10 (S) Third read and passed (Vote Y: 33 / N: 0)

MISCELLANEOUS

SB 844 Shields (R/St. Joseph)

Allows statewide officials to request the office of administration to determine the lowest and best bidders for their purchasing, printing, and service contracts.

Bill also listed under Public Contracting

HCS/SB 844: Provisions of HCS/HB 2218 added in House General Laws Committee.

HCS #2 / SB 844: Substitute #2 continued to include HCS/HB 2218 (AGC's political subdivision bidding) provisions. Numerous other provisions "relating to ethical administration of public institutions and officials" were also added to the bill. HCS #2 passed the Missouri House by a vote of (Y: 153 / N: 5). However, the political subdivision bidding provisions were removed in Conference Committee and were not in the finally passed bill.

TAFP: The "Truly Agreed and Finally Passed" bill included the following provisions of interest to AGC:

- Requires any appointee to a board or commission requiring Senate confirmation to file a personal financial disclosure statement and a list of contributions to all candidates and committees in the preceding four years. (Provision includes Highway Commissioners.)
- Authorizes Missouri Ethics Commission to initiate an investigation without receiving a complaint, if certain requirements are met.
- Changes the term "continuing committee" to "political action committee" which are defined to be the same.
- Repeals requirement that treasurer and deputy treasurer reside in county where committee is located.
- Limits "political party committees" to a statewide committee and a Congressional District Committee for each Congressional District. (Eliminates committees by state Senatorial District, etc.)
- "Political action committees" ("PACs") are prohibited from receiving contributions from other PACs, unless it is a federal PAC. PACs may continue to receive contributions from individuals, corporations, unions, etc.
- "No person shall transfer anything of value to any committee with the intent to conceal from the ethics commission, the identity of the actual source."
 - Penalty on first violation is a warning, second violation is a Class C misdemeanor, third and subsequent violations are a Class D felony.
- Effective January 1, 2011 all campaign disclosure reports must be filed by electronic submission.
- Contributions exceeding \$500 made during the legislative session to any legislator or candidate for Senate or State Representative must be reported within forty-eight hours. Contributions exceeding \$500 made to the Governor or other statewide elected officials during the legislative session or the period the Governor's signature is pending, must be made within forty-eight hours.
- Creates the crime of "obstruction of an ethics investigation" which is punishable as a Class A misdemeanor.

Effective: August 28, 2010.

Status: 5-25-10 Sent to the Governor