

AGC/C LEGISLATIVE STATUS SHEET
2009 STATE LEGISLATIVE SESSION
March 17, 2009

Contracting

SB 95 – Tapia/Riesberg – Prompt Pay

The following are the major elements of the prompt pay legislation.

Applicability of the Statute

The prompt pay law applies to private and public contracts between an owner and a general contractor in amounts \$100,000 or greater. The law does not apply to the construction of single family dwellings or multi family units with no more than two units.

Disclosure of Payment

For contracts between an owner and a general contractor in excess of \$250,000, the owner will disclose the source of funding to the general contractor. The general contractor will make this information available to the subcontractors. The general contractors and subcontractors would make their own decision whether the funding for the project is adequate for them to proceed with the work. For change orders that materially change the scope of the work, the contractors can choose whether or not to proceed.

Billing Cycle

The standard billing cycle for work is 30 days. This time frame takes into account the application for payment to the general contractor from the subcontractor through the payment to the subcontractor by the general contractor after the general contractor is paid by the owner. An alternate billing cycle of no greater than 75 days is permitted, provided that the owner notifies the general contractor and subcontractors of the use of the alternate 75 day cycle. Failure to pay a progress payment in a timely fashion subjects the party failing to make the payment to an interest rate of 12% until the amount is paid.

Change Directives

If an owner directs a contractor or a general contractor directs a subcontractor to perform additional work under a change directive without an agreement on the cost, the general contractor or subcontractor shall proceed with the work. The general contractor or subcontractor shall be compensated for the work performed under the change directive at the rate of 100% of the actual cost of the work (less retainage). If after two months there is no agreement on the cost of the work, the general contractor or subcontractor will be paid for their direct and indirect costs plus overhead at 10% and profit at 5%.

Retainage

For public and private work, retainage will be 10% until 50% of the job is complete. Early release of retention is mandatory upon satisfactory completion of the work.

Remedies/Suspension of Work

A general contractor or subcontractor can suspend performance of work for failure of the appropriate party to make timely progress payments. Suspension requires written notice.

The right of suspension of performance shall not exist in any construction agreement with a public entity where such suspension of performance would result in danger or personal injury or death as a result of such suspension. Suspension is not permitted if there is a possibility that such a provision may result in the loss or refund of federal funds.

AGC/C Position: Support

Status: Scheduled for second reading in the Senate.

Construction Defects

SB 246 – Morse/Pommer – Construction Defects

Directs that moratory interest be awarded to claimants in residential construction defect cases from the time of the creation of the construction defect through the end of the statutory notice of claim process. Sets the rate of the moratory interest, and when moratory interest shall not be awarded.

AGC/C Position: Oppose

Status: Assigned to Senate Business, Labor, & Technology Committee

Contractor Regulation

HB 1136 – Soper/Tochtrop – Regulation of Electricians

The bill will require an education requirement of 288 hours for electrical apprentices in addition to on the job training. For license renewals, the bill implements a continuing competency model where a third party entity assesses an individual's competency. If the individual is deemed competent, the application for renewal is approved. If there are areas requiring improvement, the electrician has to show evidence of successful training in those weak areas before the license is renewed. In developing the procedures for apprentice education and license renewal, the electrical board shall collaborate with established industry training programs and industry representatives. In addition, the electrical board shall work to reduce barriers for reciprocity, and, beginning on January 1, 2011, the state will no longer develop and conduct its electrical examinations.

AGC/C Position: Support

Status: Passed House, assigned to Senate Business, Labor & Technology Committee.

Construction Contracting

SB 248 – Heath/McNulty – Surety Requirements for Public Projects

Allows for a letter of credit be filed in lieu of a performance and payment bonds or other acceptable surety for public work projects in Colorado.

AGC/C Position: Position Pending

Status: Assigned to the Senate Business, Labor & Technology Committee.

HB 1208 – Soper – Prevailing Wage for State of Colorado

Any contract in excess of \$100,000 where the State of Colorado is a party shall contain a provision that workers performing work on such a project shall be paid prevailing wages and fringe benefits.

AGC/C Position: Oppose

Status: Postponed Indefinitely 2/19/09

SB 64 – King, K./Massey – School Electrical and Plumbing Inspections

Removes the requirement that state inspectors shall solely perform electrical and plumbing inspections for schools. Jurisdictions with building departments where a school is located may perform such inspections.

AGC/C Position: Monitor

Status: Hearing, 3/19/09 House State, Veterans, & Military Affairs Committee.

HB 1151 – Todd/Heath – Oversight of School Building Inspections

Replaces the Colorado Department of Labor and employment with the Colorado Department of Public Safety as the oversight agency responsible for school building inspections.

AGC/C Position: Monitor

Status: Scheduled for second reading in the Senate.

Funding for Government Contracting

HB 1272 – Massey/Tapia – Implement Amendment 50 – Gaming Initiative

Implements Amendment 50, the expanded gaming initiative the voters approved at the November 2008 General Election. New gaming revenue will be given to Colorado community colleges and gaming cities and counties.

AGC/C Position: Support

Status: Passed House and Senate

**SB 232 – Schwartz/McFadyen – State Financial Assistance to Local Government
Capital construction Projects**

Creates the local government capital construction assistance fund to allow the state to assist local governments in completing needed capital construction projects more quickly. Monies can be placed in the assistance from the Local Government Permanent Fund, net proceeds from the sale of certificates of participation, and matching funds paid by applicants. The program is administered through the Department of Local Affairs.

AGC/C Position: Position Pending

Status: Assigned to Senate Local Government and Energy Committee.

SB 108 – Gibbs/Rice – Additional Sources of Transportation Funding

Provides additional sources of transportation funding through the increase of vehicle registration fees.

AGC/C Position: Support

Status: Signed into law 3/2/09

SB 228 – Morse/Marostica – Eliminates the Limit on the Growth of the Total General Fund Appropriations

The bill repeals the 6 percent limit on general fund appropriations. Transfers and diversions from the general fund to transportation and capital construction may be altered by the bill. In addition, the bill may alter transfers from the Limited Gaming Fund to several other funds.

AGC/C Position: Oppose

Status: Passed the Senate.

Workers Compensation

SB 37 – Kopp/McNulty – Subsequent Injury and Major Medical Insurance Funds

The bill provides that the tax paid by Colorado businesses to fund benefits for injured workers in the Subsequent Injury Fund and the Major Medical Fund will continue until such time as there are no further injured workers receiving benefits from the fund, but the tax would only provide only so much revenue as to pay benefits for the next fiscal year.

AGC/C Position: Support

Status: Hearing, 3/20/09 in Senate Appropriations Committee.

SB 70 – Foster/Acree – Procedural Changes Workers' Compensation

Makes several technical changes to the workers' compensation statutes.

AGC/C Position: Monitor

Status: Passed the House and the Senate.

SB 168 – Tochtrop/Soper – Procedural Changes Workers' Compensation

Makes several procedural changes to the workers' compensation statutes.

AGC/C Position: Monitor

Status: Hearing, 3/17/09 House Business Affairs and Labor Committee.

SB 243 – Boyd – Payments for Workers' Compensation Benefits

Among several provisions, the bill contains a substantive change to the workers' compensation system. The bill would allow an injured worker to combine any emotional/mental impairment rating that is obtained with their physical impairment rating in order to receive a higher overall impairment rating. An impairment rating of 25 percent or higher means benefits are capped at \$150,000 instead of \$75,000.

AGC/C Position: Position Pending

Status: Referred from the Senate Business, Labor & Technology Committee to Senate Appropriations Committee.

Unemployment Insurance

HB 1170 - Casso/Tochtrop – Unemployment Insurance – Locked Out Employees

The bill would allow an employee to receive unemployment insurance benefits while the employee is defensively locked out in response to a union initiated labor dispute. The dispute relates to multi employer bargaining units.

AGC/C Position: Oppose

Status: Referred from the House Business Affairs and Labor Committee to the full for second reading.

HB 1310 – Levy/Heath – Misclassification of Employees as Independent Contractors

Creates the Office of Employee Misclassification in the Division of Employment and Training in the State Department of Labor and Employment for the purpose of investigating complaints of employers misclassifying employees as independent contractors and avoiding the payment of employment taxes for such employees. Requires a study be conducted to determine the scope of the problem, is the problem more prevalent in certain industries, and is there revenue loss due to misclassifications.

AGC/C Position: Position Pending

Status: Assigned to the Senate Business Affairs and Labor Committee.

SB 247 – Tochtrop/Pace – Expands Benefits for Unemployed Workers in Colorado

Expands the availability of unemployment benefits to certain unemployed individuals to include: creation of an alternative base period; separation from a job due to domestic violence; relocation to a new residence because of a spousal change of a job; quitting a job to care for an ill family member; and participating in approved training programs leading to job enhancement.

AGC/C Position: Position Pending

Status: Assigned to Senate Business, Labor & Technology Committee

HB 1076 – Pace/Tochtrop – Calculation of Unemployment Insurance Benefits

Treats all remuneration paid to a person due to separation from employment the same for the purpose of calculating the postponement of unemployment insurance benefits. Deletes the allowance of severance pay as a means of reducing the overall unemployment benefit. Eliminates the requirement to reduce benefit payments when social security benefits are received.

AGC/C Position: Oppose

Status: Hearing, 3/20/09 Senate Appropriations Committee.

SB 76 – Heath/Court – Employment and Training Technology Fund

The bill creates the Employment and Training Technology Fund for automation initiatives at the Department of Labor and Employment. It diverts 20 percent of employer surcharges to the Technology Fund which reduces to 30 percent the amount of taxes deposited into the Unemployment Compensation Insurance Fund.

AGC/C Position: Monitor

Status: Referred from House Business Affairs and Labor Committee to House Finance Committee.