



## ***AGC MA Bills Filed for 2017-2018 Legislative Session***

### **HB 729 – Priority of Liens on Private Construction Contracts** (Rep. Cahill)

Seeks to address those situations where a contractor or construction manager has filed a notice of contract on a project before the mortgage for the project financing has been recorded. The contractor or CM that agrees to remove their NOC in order to give preference to the mortgage will risk losing their priority position to other NOC that have been subsequently filed by other parties working on the project. This bill would enable the contractor or CM to retain their priority position if they refile their original NOC within 7 days of the dissolution at the request of the lender.

### **HB 1649 – OSHA 10 Hour Retraining** (Rep. Arciero)

Would require workers to be retrained every 5 years after being certified under the OSHA 10- hour law.

### **HB 1702 – Default Insurance for Certain Public Construction Contracts** (Rep. Rogers)

Would allow construction managers the opportunity to use a single insurance policy to protect against defaults and deficiencies by subcontractors. This proposal does not impose a prerequisite to prequalification for contractors or subcontractors when they bid on 149A project.

### **HB 3371 - Participation of MBE & WBE on Public Construction Contracts** (Rep. Holmes) &

### **SB 1710 – Participation of MBE & WBE on Public Construction Contracts** (Sen. Dorcena Forry)

Would provide the necessary changes to the current law to allow DCAMM to continue their previously implemented policy of requiring selected trade contractors to sub-contract with M/WBE contractors in an effort to facilitate the broader participation of M/WBE firms on public construction contracts.

## ***AGC MA Also Strongly Supports as Part of Industry Coalition***

### **HB 2696 – Encouraging Predictability in Utility Connections** (Rep. Golden)

Directs the Department of Public Utilities to include a utility company's record of providing new utility connections and relocations to connections as part of the service quality standards.

## ***AGC MA Also Strongly Opposes as a Part of an Industry Coalition***

**HB 1033 – Prevent Wage Theft and Promote Employer Accountability (Rep. Michlewitz) &**

**SB 999 – Prevent Wage Theft and Promote Employer Accountability (Sen. DiDomenico)**

**Note: 108 of the 200 legislators have co-sponsored HB 1033**

Seeks to make CM/GC's responsible through civil joint and several liability provisions for the violation of the wage and labor laws committed by their subcontractors. Adds the new definition of "Lead Contractor", which is described as a business which is provided labor directly from a labor contractor or indirectly from a labor subcontractor to perform labor and services that have a significant nexus with the Lead Contractor's business activities.

The president, treasurer as well as other officers and agents of the company shall be considered to be the employers of the employees under this section. Criminal penalties shall apply to employers solely with respect to the obligations to their own employees.

The Attorney General will be granted the authority to issue a stop work order against any entity that she believes has violated the state wage payment or benefit laws. The stop order may be issued only against the entity found to be in violation and only as to the specific place of the violations. The stop order will remain in effect until the AG determines that the violation has been corrected. Any employee affected by a stop work order shall be paid for the first ten days lost and any time lost pursuant to this law shall not exceeding ten days.

The stop work order shall not be in effect during the pendency of any timely filed appeal. The AG may bring a civil action for injunctive relief and to collect the claim of any employees. If successful, the employees shall be awarded treble damages and the employer ordered to pay the AG's reasonable fees.

**HB 2369 – Limiting Subcontractor Indemnity and Insurance Responsibilities (Rep. Golden)**

Amends current law, which makes contract provisions void and unenforceable if they require subcontractors to indemnify any party for injury to persons or damage to property not caused by the subcontractor or its employees, agents or subcontractors.

This bill also extends that provision to all parties to a contract and adds language that will require any indemnification or insurance provision to require coverage only to the proportional extent the negligence of the indemnitor, its agents or employees is a proximate cause of the injury or damage. This section is not to be construed to alter existing laws governing the liability of joint tortfeasors to a plaintiff.

**HB 193 – Filed Sub Bid – Sheet Metal** (Rep. Puppolo)

Adds sheet metal trades to the filed sub-bid list.

**HB 1035 – Filed Sub Bid – Structural Steel** (Rep. Nangle)

**SB 1675 – Filed Sub Bid – Structural Steel** (Sen. Boncore)

**SB 1777 – Filed Sub Bid – Structural Steel** (Sen. Tarr)

Adds the erection of structural steel framing and the associated trades to the filed sub-bid list.

***Bills Impacting CM/GC's or the Construction Industry: AGC MA to Monitor***

**Building Code**

**HB 1275 – Fire Protection Systems and Enforcement** (Rep. Kafka)

Transfers the authority for developing and enforcing the state fire code from the Board of Building Regulations and Standards to the Board of Fire Prevention Regulations

**HB 1317 – Building Code Coordinating Council** (Rep. Walsh)

Establishes a Building Code Coordinating Council within the Department of Public Safety. The BCCC shall have the authority to review, compare and coordinate all existing and proposed construction codes in order to eliminate redundancy, minimize inconsistencies and conflicts and maximize the efficiency of the code promulgation process. The BCCC shall review all proposed regulations made by adopting agencies to adopt, modify or repeal a construction code, as a precursor to submission to the Secretary of State.

**HB 1721 & 1722 - Relative to Stretch Building Codes** (Rep. Vieira)

Prevents the BBRS from adopting any amendment to the state building code that permits a city or town to adopt additional local option amendments to the building code.

**HB 3255 – Carbon Monoxide Alarms for All Buildings** (Rep. Brodeur)

Requires all buildings to be fitted with carbon monoxide alarms. The current law only requires buildings used in part or whole for residential purposes to be outfitted with the alarm systems. One reading of the bill would seem to require all existing buildings to be retrofitted with the carbon monoxide alarms.

**HB 3390 – Promoting Solar Ready Construction** (Rep. Connolly)

Requires all new construction for commercial and residential buildings to be built to accommodate the installation of a solar energy system and solar hot water heater systems in accordance with regulations adopted by the BBRS.

**Labor & Wages**

**HB 1005 – Reporting Employee Benefits** (Rep. Dykema)

**SB 1019 – Reporting Employee Benefits** (Sen. Keenan)

Requires the developer and other vendors on a development with a value of more than \$250,000 to provide the Office of Labor and Workforce Development with a true attested copy of all payments to the unemployment and worker compensation programs for all employees on the job site.

**HB 1350 – Expenses for Unfair Labor Practices Litigation** (Rep. Chan)

Allows a labor union that has successfully challenged an unfair labor practice to be reimbursed for the reasonable amount of attorney's fees.

**HB 2367 – Regulation of Apprenticeship Programs** (Rep. Ferrante)

Requires that the 150 hours of required class instruction to be monitored by a proctor certified through the Division of Apprentice Training. Entities bidding on public projects will be required to commit to having apprentices on jobsites by 90 calendar days after the start of the contract.

**HB 2377 – Public Labor Contracts for Local Residents** (Rep. Speliotis)

Requires contractors and subcontractors who bid on projects estimated to cost more than \$5 million to commit to making a good faith effort to allocate 15% of the workers and services to those who live or have places of businesses within a twenty mile radius of the locations of the project.

**HB 3136 – Required OSHA Training** (Rep. Chan)

Requires any employer in the construction industry, whose business is subject to oversight by OSHA, to require their employees to receive no less than 10 hours of OSHA training relative to the work that the employee is required to complete. Employers that contract with independent contractors shall require the independent contractor to provide evidence of completing at least 15 hours of OSHA training that is relevant to the work the independent contractor is expected to perform.

**HB 3137 – Commission on Contractor Accountability** (Rep. Cusack)

Establishes a special commission to address concerns about the lack of accountability in contracting and subcontracting of labor and services in Massachusetts. The commission shall investigate how entities

that use contractors and subcontractors shall be held liable for violations of workplace laws. There shall be 12 members of the commission. The bill specifically provides for 4 appointments for unions and community based organizations that represent workers. The identity of the remaining 8 members is not specified.

**SB 997 – Civil Injunctive Relief for Wage Violations** (Sen. DiDomenico)

Provides the Attorney General with the authority to file a civil action for injunctive relief for the violation of wage violations as an alternative to initiating criminal proceedings. The relief may be sought on behalf of an employee or multiple, similarly situated employees. The employees will be awarded treble damages and liquidated damage if the Attorney General is prevails. Cost of the litigation and reasonable attorney’s fees shall also be assessed.

**SB 1751 – Violation of Federal Immigration Laws** (Sen. Pacheco)

Requires the debarment of any contractor that is found to be in violation of the federal immigration laws.

**Public Construction**

**HB 3372 – Equity in Public Contracting** (Rep. Holmes)

**HB 3383 – Equity in Public Contracting** (Rep. Tyler)

**SB 1684 – Equity in Public Contracting** (Sen. Chang-Diaz)

Establishes a goal for the state to achieve MBE and WBE contracting goal and workforce participation goals on the totality of state-funded design and construction contracts that are reflective of the diverse racial, ethnic, and gender make-up of the Commonwealth’s population. The hiring of the workforce on state-funded construction contracts shall be targeted to members of the community in which the project is physically located and that the workforce hired for the project reflect the demographic diversity of the host community when construction projects are located in low income communities. For the purposes of this bill, a low income community is one in which the medium household income is 65 percent or less than the statewide household median income. In a community with 50,000 residents or more, a low income community shall mean a geographically contiguous, historically recognized neighborhood of 10,000 to 50,000 residents. All appropriate awarding authorities shall give strong consideration to the bidder’s ability to advance the state’s contracting and workforce inclusion goals. They shall also consider a bidder’s failure to comply with commitments made in their bidding or contract documents regarding the employment of minority and women enterprises. The selected bidders will be required to provide the awarding authority with a breakdown of the hiring of women and minority enterprises and workers with each request for a progress payment.

**HB 1002– Definition of Construction for Prevailing Wages** (Rep. Chan)

Classifies any offsite fabrication work that will be used on a qualified project as “construction”. In those cases the prevailing wage shall be paid for such work.

**HB 1656 – Guarantee Fund for Public Construction Defaults** (Rep. Cariddi)

Requires any entity issuing a bond pursuant to Chapter 149A to register with the Division of Insurance and pay a fee for such registration in an amount not to exceed \$10,000 annually. It also establishes the Public Construction Surety State Bond Guarantee Fund to receive the registration fees and to make payments to qualifying purchasers of surety bonds from defaulting issuers; defines defaulting issuer, issuer, person and purchaser.

**HB 1662 – Project Labor Agreements** (Rep. Decker)

Authorizes public agencies to require the use of Project Labor Agreements if the agency determines such agreements would be in the public’s best interest. Bidders that cannot comply with the terms of the PLA would be deemed to be unresponsive and ineligible bidders for the project.

**HB 1664 – Timely Payment for Public Construction Projects** (Rep. Galvin)

Requires awarding authorities to pay for all work performed pursuant to a signed Time and Materials itemized invoice, Extra Work Orders and Notice to Proceed on a time and material basis and must be paid within 65 days.

**HB 1670 – Oversight of Public Construction Projects** (Rep. Honan)

**SB 1743 – Oversight of Public Construction Projects** (Sen. Moore)

Requires DCAMM to control and supervise all building construction projects undertaken by a state agency or building authority when the estimated cost of the project exceeds \$1 million and involved structural and mechanical work. A state agency or building authority shall control and supervise its own building projects when the estimated cost of the projects is less than \$1 million or the project does not involve structural or mechanical work.

**HB 1688 - Relative to Honesty in Bidding for Public Works** (Rep. McMurtry)

Adds the following paragraph to Subsection (b) of Clause (1) of Section 44D of Chapter 149 of the General Laws: - The applicant shall provide, under the penalties of perjury, truthful and complete information in all bids or offers. Whoever violates any provision of this paragraph shall be punished by imprisonment for not more than 6 months or by a fine of not more than \$50,000 or by such fine and imprisonment.

**HB 2373 - Relative to Prevailing Wages** (Rep. Naughton)

Seeks to include payments made by employers to bona fide apprenticeship programs in calculation of wages for the purpose of calculating the minimum prevailing wage rate.

**HB 2664 – Definition of Fraud in Public Contracts** (Rep. Ferrante)

**SB 1744 - Definition of Fraud in Public Construction Bid Laws** (Sen. Moore)

Adds a definition of fraud to Chapters 30, 149 and 149A. The definition is as follows: “a statement, act or omission relating to a material fact that (i) has the natural tendency to be relied upon by or to influence the average person, (ii) is knowingly false or misleading or is in reckless disregard of its truth or falsity and (iii) is intended to mislead, regardless of whether the statement, act or omission is actually relied upon.”

**HB 2667 – Neutrality for Project Labor Agreements** (Rep. Jones)

Prevents a public awarding authority from requiring bidders to enter into Project Labor Agreements or to discriminate against contractors and subcontractors who refuse to be signatories to agreements with one or more labor unions for public construction projects.

**HB 2669 – Relative to Force Accounts** (Rep. Kocot)

Requires awarding authorities to provide truthful and complete information on all bid solicitations. It creates fines and penalties for any person who circumvents bids and offers and the related procurement laws by performing public construction, of a dollar value subject to public bid, through the use of a force account practice or any other similar practice that does not follow the bid procurement laws. These provisions shall not apply for emergency construction and repairs under \$100,000 in cost.

**HB 3076 – Debarment in Public Contracts** (Rep. Keefe)

**SB 1696 – Debarment in Public Contracts** (Sen. Donnelly)

Chapter 29, Section 29F details the violations committed by contractors which the Commissioner “may” issue the penalty of debarment. This legislation would make the debarment mandatory for the listed offenses.

**HB 3358 – Public Record of Prequalification Applications** (Rep. Cabral)

Requires all applications for prequalification to be a public record with an exception for the financial information contained in the application.

### **H 3378 – Payment of Subcontractors** (Rep. Moran)

Requires that whenever a general contractor receives payment from a public entity for labor, services, or materials furnished by a subcontractor, the general contractor must remit payment within 7 days of receipt. All payments due to a subcontractor and not made within 7 days will bear interest at the prime rate plus 3 percentage points compounded daily on the outstanding non-paid balance. In addition, the bill requires the state purchasing agent to oversee the payment of subcontractors by general contractors.

### **SB 296 – Insurance for Designers of School Building Projects** (Sen. McGee)

Prohibits an applicant for a school building project from entering into a contract for design services unless the designer has obtained professional liability insurance covering negligent errors, omissions and acts of the designer or of any person or business entity for whose performance the designer is legally liable arising out of the performance of the contract. The total amount of the insurance shall at a minimum equal fifty percent of the project's estimated cost of construction, or such larger amounts as the board may require.

### **SB 1697 – Definition of Fraud in Public Contracts** (Sen. Donoghue)

Adds a definition of fraud to Chapters 30: *“a statement, act or omission relating to a material fact of significant importance to the construction project at issue that (i) has been relied upon by to the detriment of an awarding authority or its representatives, (ii) is knowingly false or misleading or is in reckless disregard of its truth or falsity and (iii) is intended to mislead, and has been shown by clear and convincing evidence to have done so.*

### **SB 1708 – Timely Decisions by Awarding Authorities** (Sen. Flannagan)

Seeks to amend the current law which requires the awarding authorities to respond to requests for clarification of work within 30 days of the request. This bill would reduce to 15 days the time for a response to the request or notification that a response cannot be made within the required 15 days. The awarding authorities would also be required to make semi-annual reports on the applications and agency responses as required under MGL, C. 30, S. 39P.

### **SB 1731 – Prequalification Records as Public Records** (Sen. McGee)

Requires all prequalification documents to be public records with the exception of the financial information contained in the application.

### **SB 1753 – Life Cycle Costs for Public Construction** (Sen. Pacheco)

The awarding authorities for public construction projects shall consider the life cycle estimates for the cost of energy and the cost of operation of the facility into the determination for the selection of the lowest responsible and eligible bidder.



## **Miscellaneous**

### **SB 858 – Penalties for Corporate Manslaughter** (Sen. Flanagan)

Imposes a fine of not less than \$250,000 on any corporation that is found guilty of committing manslaughter. The appropriate commissioner or secretary may also debar the corporation under Chapter 29, Section 29F for a period not to exceed 10 years.

### **SB 909 – Relative to Corporate Criminal Conduct** (Sen. Montigny)

Provides that any corporation or business entity that wantonly or recklessly engages in conduct that creates a substantial risk of serious bodily injury or death or wantonly or recklessly fails to take reasonable steps to alleviate such risk shall be punished by a fine of not less than \$1 million or more than \$10 million if serious bodily injury results and by imprisonment for not more than 2 ½ years, or by a fine of not less than \$10 million nor more than \$50 million if death results and by imprisonment in the state prison for not less than 10 years nor more than 25 years.

### **SB 1950 – Relative to Vehicle Idling** (Sen. McGee)

Reduces the time allowed for letting a motor vehicle idle from 5 to 3 minutes.