MEMORANDUM

TO: AGC Executive Committee
AGC Board of Directors

FROM: Randy Douglas, Legislative Committee Chair

DATE: May 8, 2017

SUBJECT: Legislative Report

The Legislature finished policy committee hearings last week on legislation that has a fiscal impact. The Legislature will finish hearing non-fiscal bills in policy committees by May 12, 2017. The next stop for these bills are the Senate and Assembly Appropriations Committees.

Below is the status of legislation that AGC is involved in.

MAJOR ISSUES

Our state highways system faces a $59 billion deferred maintenance backlog for road maintenance and repairs. The total shortfall for local streets and roads maintenance averages above $7 billion annually. It is widely estimated that the total backlog for local streets and state highways exceeds $130 billion.

In 2015, the Transportation California coalition began to formalize its strategy for a sustainable financing proposal for California’s transportation system. The coalition grew into the Fix Our Roads (FOR) coalition, which included the League of California Cities (LCC) and the California State Association of Counties (CSAC), among others. Then Assembly Speaker Atkins and Assembly Transportation Chairman Jim Beall, introduced transportation funding legislation in an attempt to remedy these funding deficiencies.

The start of the 2017-18 session brought several legislative bills and a budget proposal by the Governor that resulted in an annual funding package of $5.24 billion. Senate Bill 1 (SB 1) and Assembly Constitutional Amendment 5 (ACA 5) passed on April 6, 2017 and establishes a new transportation funding package that:

- Increases gas taxes by 12 cents per gallon, starting November 1, 2017
- Increases diesel taxes by 20 cents per gallon, starting November 1, 2017
- Increases vehicle license fees (based on car value) between $25 to $175 each year
- Starting in 2020, electric vehicles pay $100 in added vehicle license fees
- Indexes new taxes to the consumer price index (CPI)
- Repays outstanding loans of $706 million dollars over three years
- Protects new revenues from general fund appropriation (state of emergency protocol defined)
- Protects new revenues from Gann Limit computation

California's critical transportation infrastructure - highways, roads, transit systems and goods movement corridors - will enjoy an estimated $2.78 billion in 2017-18, $4.55 billion in 2018-19 and $4.88 billion in 2019-20. Once all revenue sources are fully implemented and adjusted to the CPI, revenues are expected to reach $6.5 billion by 2026-27.

Public Works Registration Trailer Bill Language - As part of the Governor's 2014-15 budget, the Department of Industrial Relations (DIR) proposed a new annual fee be charged to all contractors before they could perform work on public works in California. This fee was intended to support DIR's labor compliance and prevailing wage enforcement activities on public works projects, and replace the fee that was levied on bond funded public works projects.

While supporting the concept of the fee, AGC and other construction associations raised concerns around implementation and potential unintended consequences. The fee was ultimately approved and has been in effect since July 1, 2014. DIR is now proposing an increase to the fee and additional penalties to non-compliant contractors. DIR alleges that the Public Works Registration is not collecting enough revenues to properly sustain its compliance enforcement. Further, DIR believes that the threat of severe penalties is needed to incentivize compliance (e.g. $100 per day up to $8000 if found non-complaint).

Discussions are ongoing with DIR to review industry concerns about bid protests, subcontractor disqualification, voiding of contracts and possible debarment for failing to pay the fee. These issues must be resolved before final action is taken on the state budget in mid-June.

AB 5 (Gonzalez-Fletcher) Employers: Opportunity to Work Act - This bill would require an employer with 10 or more employees to offer additional hours of work to an existing nonexempt employee before hiring an additional employee or subcontractor. The bill would authorize an employee to file a complaint for violation of these provisions with the division or bring a civil action for remedies under the act. The bill would make a violation of these provisions punishable by a civil penalty.

AB 5 is considered a Job Killer by the Chamber and is being opposed by close to 100 associations and companies including AGC and the entire construction industry.
Although the author suggested amendments when it passed out of the Assembly Labor Committee, it didn’t change any of the opposition on the bill. The opponents of the bill are meeting with every one of the Assembly members in hopes of stopping it on the Assembly floor.

**LEGISLATION**

**Transportation Issues:**

AB 287  (Holden D)  State Highway Route 710: advisory committee. Would require the Department of Transportation, in consultation with the Los Angeles County Metropolitan Transportation Authority, to establish the I-710 Gap Corridor Transit Study Zone Advisory Committee, with a specified membership, to study the alternatives considered in the State Route 710 North Draft Environmental Impact Review and other transit options to improve travel in, and environmental impacts of, the I-710 Corridor project area, along with alternatives not considered by the environmental review. (OPPOSE)

*Bill is pending hearing in Assembly Transportation Committee.*

SB 414 (Vidak R)  Transportation bonds: highway, street, and road projects. Would provide that no further bonds shall be sold for high-speed rail purposes pursuant to the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century, except as specifically provided with respect to an existing appropriation for high-speed rail purposes for early improvement projects in the Phase 1 blended system. The bill, subject to the above exception, would require redirection of the unspent proceeds from outstanding bonds issued and sold for other high-speed rail purposes prior to the effective date of these provisions, upon appropriation, for use in retiring the debt incurred from the issuance and sale of those outstanding bonds. (OPPOSE)

*Bill failed in Senate Transportation and Housing committee but granted reconsideration.*

**California Environmental Quality Act (CEQA):**

AB 278 (Steinorth R)  California Environmental Quality Act: exemption: existing transportation infrastructure. Would exempt from the provisions of CEQA a project, or the issuance of a permit for a project, that consists of the inspection, maintenance, repair, rehabilitation, replacement, or removal of, or the addition of an auxiliary lane or bikeway to, existing transportation infrastructure and that meets certain requirements. The bill would require the public agency carrying out the project to take certain actions. (SUPPORT)

*This bill failed in Assembly Natural Resources and has been granted reconsideration.*
**Water, Air & Environment:**

**SB 41 (Galgiani D) State Air Resources Board: compliance: regulations.** This bill would require the State Air Resources Board, until January 1, 2023, to deem a person, as defined, to be in compliance with the Truck and Bus Regulation and would prohibit the state board from requiring a person to expend further moneys to achieve compliance with, or from seeking to enforce against that person, if specified conditions are met. (SUPPORT)

*This measure is supported by CIAQC and other trucking interests, but is being heavily opposed by environmental groups. It hasn’t been set for hearing and is pending in the Senate Environmental Quality Committee.*

**AB 421 (Santiago D) Hazardous substances: liability: responsible parties.** Current law, the Carpenter-Presley-Tanner Hazardous Substance Account Act, imposes liability for hazardous substance removal or remedial actions. The act defines “responsible party” and “liable person” for its purposes to mean those persons described in a specified provision of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which includes persons who are, in specified ways, responsible for the disposal of hazardous substances. This bill would require that, for purposes of that definition, for a cause of action that accrued on or after January 1, 1982, “disposal,” as it is used in that federal provision, includes emissions into the air. (OPPOSE)

*The bill was double referred and initial hearing was cancelled per the author’s request.*

**SB 174 (Lara D) Diesel-fueled vehicles: registration.** This bill, effective January 1, 2020, will require the Department of Motor Vehicles to confirm, prior to the initial registration or the transfer of ownership and registration of a diesel-fueled vehicle with a gross vehicle weight rating of more than 14,000 pounds, that the vehicle is compliant with, or exempt from, applicable air pollution control technology requirements, pursuant to specified provisions.

*This bill was incorporated into SB 1 in order to gain the support of the California Truckers Association for the gas/diesel tax increase.*

**Contracting Provisions:**

**AB 92 (Bonta D) Public contracts: payment.** Current law until January 1, 2018, authorizes the retention proceeds withheld from any payment by an awarding entity, as described, from the original contractor, by the original contractor from any subcontractor, and by a subcontractor from any subcontractor to exceed 5% on specific projects where the director of the applicable department, as specified, has made, or the governing body of the public entity or designated official of the public entity has approved, a finding prior to the bid that the project is substantially complex and requires a higher retention and the department or public entity includes both this finding and the
actual retention amount in the bid documents. This bill would extend the operation of these provisions to January 1, 2023. (SUPPORT)

Bill passed out of Assembly Accountability & Administrative Review and waiting hearing in Appropriations Committee.

AB 996  (Cunningham R) Contractors Licensing Board Web site: search function for workers compensation claims. Would require the Contractors’ State License Board to adopt an enhancement to its Internet Website to permit consumers and licensees to monitor the status and progress of a licensee’s application for, or renewal of, a certificate of workers’ compensation. (SUPPORT)

This measure is sponsored by the Sacramento Regional Builders Exchange and supported by AGC. It passed the Assembly Business and Professions Committee and is on the Appropriations Committee suspense file.

SB 486  (Monning D) Contractors’ State License Law: letter of admonishment. If, upon investigation, the registrar has probable cause to believe that a licensee, registrant, or applicant has committed acts or omissions that are grounds for denial, suspension, or revocation of a license or registration, this bill would authorize the registrar to issue a written and detailed letter of admonishment to an applicant, licensee, or registrant instead of issuing a citation. (SUPPORT)

This bill is sponsored by the CSLB and supported by AGC. It passed the Senate Business and Professions Committee and is pending before the Senate Appropriations Committee.

AB 1628  (Grayson D) Public works: independent contractors. Would declare the intent of the Legislature to enact legislation that would prohibit the use of independent contractors on public works projects. (WATCH)

This bill is a spot bill and continues to be monitored.

Tax Issues:

AB 652  (Flora R) Property taxation: base year value: new construction. Would prohibit new construction that is in progress from acquiring a new base year value until the date of completion, thereby requiring that new construction be reappraised only upon completion instead of each lien date. (SUPPORT)

This bill passed the Assembly Revenue and Taxation Committee and is pending in Assembly Appropriations Committee.

SB 640  (Hertzberg D) Taxation. Would make legislative findings regarding responding to pending proposals for federal tax reform and California’s tax climate and would state that the intent of the bill is to make 3 changes to taxation within the state,
including broadening the tax base by imposing a modest sales tax on services. (OPPOSE)

*This bill is still pending in the Senate Governance and Finance Committee with no hearing date.*

**Legal/Liability Issues:**

**AB 281 (Salas) Labor Code Private Attorneys General Act of 2004: penalties.**
Currently, the Labor Code Private Attorneys General Act (PAGA) authorizes an aggrieved employee to bring a civil action to recover specified civil penalties, filing fees, reasonable attorney’s fees and costs for labor code violations. This bill seeks to reform PAGA and will provide an employer with a 65 day period in which to cure any alleged violation of the Labor Code and to specify that an employee can only collect penalties for violations the employee has actually suffered. (SUPPORT)

*The AGC has joined the Chamber’s coalition along with many other associations who are supporting this bill. It’s currently pending before the Assembly Labor Committee.*

**SB 524 (Vidak R) Employment: violations: good faith defense.** This bill would permit a person to raise as an affirmative defense that, at the time of an alleged violation of statute or regulation in a judicial or administrative proceeding, the person was acting in good faith, had sought, relied upon, and conformed with a published opinion letter or enforcement policy of the Division of Labor Standards Employment. (SUPPORT)

*The Chamber has labeled this bill a job creator and is leading a large support coalition which includes the AGC. This bill is pending in the Senate Labor Committee.*

**AB 534 (Gallagher R) Common interest developments: mechanics liens.** Would prohibit, in a common interest development, a mechanics lien from being filed against another owner in the common interest development unless that consent was provided or that request was made, except in the case of emergency repairs. (WATCH)

*This bill was amended and is no longer opposed by AGC.*

**AB 1701 (Thurmond) Labor-related liabilities: original contractor.** Would require the general contractor to assume, and be liable for, specified debt owed to a wage claimant that is incurred by a subcontractor, at any tier, for performance of labor which includes wages, fringe or other benefit payment or contributions. (OPPOSE)

*This measure is sponsored by the Carpenters Union – the AGC and other construction associations are actively working against it. It is pending before the Assembly Labor Committee.*
SB 423 (Cannella R) **Indemnity.** Would establish that design professionals would only have a duty to defend themselves, thus prohibiting contract requirements under an indemnity agreement with a duty to defend the general contractor and owner for alleged negligence, recklessness, or willful misconduct. (OPPOSE)

*This bill was amended into AB 496 as part of an overall consideration for the passage of SB 1. AGC was successful in working with the author to allow for first dollar defense costs based on a proportionate percentage of fault.*

**Labor/Prevailing Wage:**

AB 199 (Chu D) **Public works: private residential projects.** Would require private residential projects built on private property that are built pursuant to an agreement with the state or a political subdivision to meet the requirements for projects that are defined as “public works,” thus expanding the types of projects that must meet these requirements. By expanding the definition of a crime, this bill would impose a state-mandated local program. This bill contains other related provisions and other existing laws. (WATCH)

*Recent amendments have limited the application of prevailing wage to successor agencies of redevelopment agencies. Most opponents of this measure are now neutral.*

**Employer/Employee Workplace Issues:**

AB 1053 (Calderon D) **Professions and vocations: career technical education: licensee information.** Current law requires the Department of Consumer Affairs to furnish, upon request by the Office of the Chancellor of the California Community Colleges, specified information with respect to every licensee for the sole purpose of enabling the office of the chancellor to measure employment outcomes of students who participate in career technical education programs. (SUPPORT)

*This bill was introduced in order to address concerns from last year’s enactment of SB 66 which required all contractors’ license information to be disclosed to the Chancellor’s office upon request to follow up on CTE students. AGC opposed SB 66 and was supporting AB 1053. With the assistance of Assemblymember Calderon, a compromised was reached with the Chancellor’s office to allow the student’s information to be shared with the Department of Consumer Affairs and then matched with licensing records. This is a satisfactory result and AB 1053 is now a two year bill.*

AB 450 (Chiu) **Employment Regulation: immigration worksite enforcement actions.** This bill would place various requirements on public and private employers with regard to federal immigration agency immigration worksite enforcement actions. It would prohibit an employer from providing a federal immigration enforcement agent access to a place of labor without a properly executed warrant. This bill also has other employer obligations. (OPPOSE)
The AGC has joined with the Chamber and a number of other associations to oppose this measure which passed the Assembly Judiciary Committee. The amendments taken in committee do not change any of the onerous provisions. It will be heard next in the Assembly Appropriations Committee.

AB 1008 (McCarty D) Employment discrimination: prior criminal history. Would provide it is an unlawful employment practice for an employer to include on any application for employment any question that seeks the disclosure of an applicant’s criminal history, to inquire into or consider the conviction history of an applicant until that applicant has received a conditional offer. (OPPOSE)

This measure may create more of a problem for contractors working on school projects since they are required to fingerprint their workers. AGC will be working to resolve this issue. It is currently pending before the Assembly Labor Committee.

SB 62 (Jackson D) Unlawful employment: family care and medical leave. Would make various changes to the definitions of the Moore-Brown-Roberti Family Rights Act as specified, thereby expanding the persons and purposes for which family leave is required to be provided under the act.

The author amended this bill to deal with totally unrelated subject matter and is no longer a concern for this year.

SB 63 (Jackson D) Unlawful employment practice: parental leave. Would prohibit an employer, as defined, from refusing to allow an employee with more than 12 months of service with the employer, and who has at least 1,250 hours of service with the employer during the previous 12-month period, to take up to 12 weeks of parental leave to bond with a new child within one year of the child's birth, adoption, or foster care placement. (OPPOSE)

This bill is a reintroduction of an identical measure which was vetoed by the Governor last year. The Chamber has again labeled this bill a Job Killer and is leading the coalition to oppose it – AGC is a part of the coalition.

Injury Prevention/Safety:

AB 978 (Limón D) Employment safety: injury and illness prevention program. Would require an employer who receives a written request for a paper or electronic copy of the written injury prevention program from a current employee, or his or her authorized representative, to comply with the request as soon as practicable, but no later than 5 business days from the date the employer receives the request. The bill would require the employer to provide the copy of the written injury prevention program free of charge. (OPPOSE)

The AGC is part of the Chamber's coalition opposing this measure which passed the Assembly Labor Committee and is pending in the Assembly Appropriations Committee.
Apprenticeship Requirements:

AB 581 (McCarty) Apprenticeships on public works projects. Would require an apprenticeship program, to be eligible to receive grant funds from the council, to agree to keep adequate records that document the expenditure of those grant funds and make all records available to the department so that the department is able to verify that grant funds were used solely for training apprentices. (WATCH)

This measure is sponsored by the Electrical Workers and implements recommendations from the State Auditor that the State needs to better oversee apprenticeship programs. Although AGC does not oppose audits, AGC will be suggesting amendments to ensure that these audits are conducted fairly.

Project Procurement:

AB 851 (Caballero D) Local agency design-build projects. Current law authorizes a city or county or a special district that falls within the definition of a local agency to use the design-build procurement process for specified types of public works projects. Current law requires specified information submitted by a design-build entity, as defined, in the design-build procurement process to be certified under penalty of perjury. This bill would modify the definition of “local agency” for those purposes to include special districts that provide specified types of services, or that operate specified types of facilities. (SUPPORT)

Bill passed out of Assembly Local Government Committee and is pending hearing in Assembly Appropriations Committee.

AB 618 (Low D) Local Agency Public Construction Act: job order contracting: community college districts. The Local Agency Public Construction Act authorizes job order contracting for school districts until January 1, 2022. The act restricts job order contracting to school districts that have entered into a project labor agreement or agreements, as defined, that will apply to all public works in excess of $25,000 undertaken by the school district. The act requires job order contractors to submit a questionnaire to the school district containing specified information verified under oath. This bill would authorize job order contracting in a similar manner for community college districts until January 1, 2022. (OPPOSE)

Referred to Assembly Higher Education Committee.