*The 2021 Legislative Session will no doubt go down in history as one of the most favorable to the construction industry. Below is a recap of key legislation of importance to the underground utility and construction industry. Most notably, NUCA of Florida’s priority legislation relating to Public Works projects was approved by the Governor last night!*

1. ***Bills of Interest That Passed & Subsequently Approved by the Governor***

* ***Public Works Project—HB 53 by Rep. DiCeglie (SB 1076 by Sen. Brodeur)***

HB 53 removes the “50 percent or more state-appropriated funds” funding threshold for public works projects on competitive solicitations for construction services, thus increasing the prohibition on local preferences to any project that is state- funded. The bill also revises the definition of “public works projects” to remove the 50 % state-appropriated funds criteria and replaces it with a cost threshold of more than $1M value paid for with any state-appropriated funds. The bill prohibits the state or any local government that contracts for a public works project from preventing a certified, licensed or registered contractor, subcontractor, or material supplier or carrier, from participating in the bidding process based on the geographic location of its headquarters, offices or residences of its employees.

HB 53 was amended to require the Office of Economic & Demographic Research (EDR) to include an analysis of the expenditures necessary to repair, replace, and expand water-related infrastructure in its annual assessment of Florida's water resources and conservation lands. By June 30, 2022, and every five years thereafter, the bill requires each county, municipality, or special district providing wastewater or stormwater services to develop a needs analysis for its jurisdiction over the subsequent 20 years. The analyses must be compiled and submitted to EDR and EDR must evaluate the compiled documents for the purpose of developing a statewide analysis for inclusion in the annual assessment due January 1, 2023.

*HB 53 passed the House 78-36 on 4/23, was amended and passed the Senate 24-16, returned to the House and finally passed 79-34 on 4/28. Approved by the Governor on June 29th.*

* ***Impact Fees—HB 337 by Rep. DiCeglie (SB 750 by Sen. Gruters)***

HB 337 makes substantive changes to Chapter 163 relating to impact fees by defining “infrastructure” and “public facilities” and expands credits against impact fees for exactions by local governments and special districts for any public facilities contributions--not just educational facilities--towards impacts on the same type of public facilities for which the contribution was made. HB 337 also allows assignability and transferability of all impact fee credits retroactively. The bill also caps impact fee increases and limits all impact fee increases to no more than once every four years. Specifically, local governments, school districts and special districts must implement increases up to 25 percent in two equal annual installments, and increases between 25 and 50 percent in four equal annual installments.

HB 337 provides a “relief valve” for local governments, school districts and specials districts that need to exceed the cap limitation. They must first show a demonstrated need pursuant to the rational nexus test, use a study completed within the previous 12 months demonstrating the extraordinary circumstances, hold at least two publicly-noticed workshops, and approve the increase by a minimum two-thirds vote. The impact fee increases apply retroactively to January 1, 2021.

Lastly, HB 337 revises the affidavit requirement for local governments, school districts and special districts to submit with their annual report or audit an attestation by the chief financial officer that all impact fees were collected and expended in compliance with the statutes.

*HB 337 passed the House 94-23 on 4/21 and passed the Senate 28-12 on 4/26. Approved by the Governor on June 4th.*

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* ***Building Code—HB 401 by Rep. Fetterhoff (SB 1146 by Sen. Brodeur)***

HB 401 is an omnibus bill that provides a process for a substantially affected party to appeal to the Florida Building Commission to review local government land development regulations or ordinances that may qualify as local technical building code amendments and issue a non-binding interpretation, thus thwarting local governments from circumventing the statutory process for adopting such code amendments. HB 401 also preempts local governments from imposing design elements on certain residential buildings (originally HB 55) and authorizes the Florida Building Commission to issue an errata to the Florida Building Code when deficiencies are identified or reference standards need to be updated. The bill authorizes the Florida Building Commission to adopt criteria by rule for approval of evaluation entities and provides for suspension and revocation of such entities.

HB 401 prohibits local governments from requiring contracts between a builder and an owner with building permit application submittals and authorizes certain local governments to utilize excess building permit fees within 4 years for construction of building that houses the local building code enforcement agency or serves as a training facility for building inspectors, building officials and plans examiners. HB 401 prohibits a municipality, county, or special district from using preliminary maps issued by the Federal Emergency Management Agency for certain purposes relating to land use changes and authorizes local governments and school districts to use a private provider for code inspection services for public works projects.

HB 401 specifies that contractors using private providers to provide building code inspections services must notify local building officials in writing and revises notice requirements. The bill authorizes virtual inspections and electronic signatures and electronic submission for private provider affidavits and inspection reports. It permits single-trade inspections, such as plumbing, mechanical, or electrical. HB 401requires building departments to reduce inspection fees when a contractor utilizes a private provider for plans review or building inspection services. The bill authorizes a private provider to perform emergency inspection services during an emergency without first notifying the local building official.

*HB 401 passed the House 118-0 on 4/22, was amended and passed the Senate 38-2 on 4/26 and was returned to the House, was amended again passing by a vote of 102-12 on 4/29 and finally passed the Senate 38-1 on 4/30. Approved by the Governor on June 29th.*

* ***Resiliency & Wastewater Grant Funding—SB 2512 by Senate Appropriations***

**SB 2512** would redistribute documentary stamp taxes to a new Resilient Florida Program, the Water Sustainability & Accountability Trust fund for wastewater grants and to the State Housing Trust Fund for affordable housing programs (Sadowski Act). Affordable housing advocates were able to secure a larger chunk for housing--$200M FY 2021-22--with $111.7M going to Resiliency and $111.7M going towards Wastewater grants.

*SB 2512 passed the Senate 25-14 on 4/7 and the House 78-38 on 4/8. Approved by the Governor on June 2nd.*

* ***Community Associations—(HB 867 by Rep. Shoaf) SB 630 by Sen. Baxley***

SB 630 is an omnibus community association package which revises Chapter 718, F.S., Chapter 720, F.S., and Chapter 719, F.S. relating to condominiums, homeowner associations and cooperatives respectively, addressing a magnitude of issues such as voting rights and procedures, board and committee member and meeting procedures, notice procedures, record-keeping, fines and fees and emergency powers.

SB 630 expressly prohibits a unit owner’s insurance policy from including rights of subrogation against the association if the association’s policy does not provide subrogation rights against the unit owner. The bill also permits unit owners to install electric-vehicle charging stations or natural gas fuel vehicle stations on a parking area exclusively designated for use by the unit owner and requires the unit owner to be responsible for all installation, maintenance and other costs related to the charging station.

The bill contains important provisions relating to reserve account funding requirements for developers to fund capital replacements of common area improvements. SB 630 essentially corrects a bad court ruling known as the Centex case by clarifying that developers may budget to fully-fund or partially-fund reserves, thus providing the flexibility necessary for each unique community development. The provisions relating to reserve account funding apply retroactively to all homeowners associations. The bill also specifies the type of expenses the developer is not obligated to pay.

Additionally, SB 630 provides that a condominium developer may expend escrow funds to satisfy actual costs of construction and development, but exclude other specified costs, such as marketing costs. Lastly, the bill provides a process to resolve homeowners association disputes by initiating pre-suit mediation as an alternative to mandatory non-binding arbitration.

*SB 630 passed the Senate unanimously on 4/7 and the House 114-0 on 4/27 and was approved by the Governor on June 16th .*

* ***Apprenticeship & Pre-Apprenticeship—SB 366 by Sen. Hutson (HB 791 by Rep. Harding)***

This bill modifies Florida’s career and technical education program to improve and expand apprenticeship and pre-apprenticeship programs, provide supports for students in work-based learning programs, modify assessment requirements for initial student eligibility in dual enrollment programs, modify funding incentives for industry certifications, and provide relevant mathematics pathways. Issues contained in the bill that the industry is most supportive of are:

* Allowing for more programs and occupations to qualify as apprenticeship program sponsors.
* Specifying that students in a pre-apprenticeship program or courses with a work-based component are deemed to be employees of the state for workers’ compensation purposes for medically-necessary care only.
* Aligns pre-apprenticeship and apprenticeship definitions for the purpose of increasing coordination across the state between secondary and postsecondary educational institutions– an alignment that will be particularly helpful to service men and women who have exceptionally high transfer rates.

*SB 366 passed unanimously on 4/21, was amended in the House and passed 116-0, returned to the Senate and finally passed 39-0. SB 366 was approved by the Governor on June 24th****.***

* ***Construction Permits—HB 1059 by Rep. W. Robinson (SB 1788 by Sen. Boyd)***

HB 1059 requires local governments to review additional information for an application for a development permit or development order within a certain time-period—30 days for initial request of additional information submitted, 10 days for second and third request. HB 1059 requires government entities that fail to meet current established deadlines for reviewing building permit applications to reduce the fee for such permits for every business day that they miss the deadline, unless the applicant agrees to a longer period.

The bill requires local enforcement agencies to post each building permit application, including a list of any required attachments, such as drawings or plans, on their websites and allow applicants to submit completed building permit applications and plans electronically. HB 1059 also requires local governments to post the current status of every received building permit application and their procedures for reviewing, processing, and approving building permit applications on their website.

HB 1059 requires government entities that deny a building permit application for a single-family residential dwelling to allow the applicant 10 business days to correct the application. Lastly, the bill prohibits local governments from requiring a copy of a contractor’s contract with owners, subcontractors, or suppliers in order to obtain a building permit for projects on commercial property. This does not apply to projects for improvements owned or leased by a government entity.

*HB 1059 passed the House on 4/1 by a vote of 113-0 and passed the Senate 38-0 on 4/26. Approved by the Governor on June 29th.*

* ***Tolling & Extension of Permits during States of Emergency—(HB 859 by Rep. Grant) SB 912 by Sen. Albritton***

This legislation applies the six-month extension during a declared state of emergency to consumptive use of water permits, development orders and development agreements, similar to what is already in law for building permits. SB 912 applies retroactively to any declaration of a state of emergency issued by the Governor for a natural emergency since March 1, 2020. Existing permits and authorizations may receive the emergency tolling and extension for the state of emergency declared in response to the COVID-19 pandemic.

*SB 912 passed the Senate 40-0 on 4/7, passed the House 116-0 on 4/27 after being amended, returned to the Senate on 4/28, was amended and returned to the House and passed 114-0. Approved by the Governor on June 29th.*

* ***Building Inspections—HB 667 by Rep. Mooney (SB 1382 by Sen. Perry)***

HB 667 requires local enforcement agencies to allow requests for inspections to be submitted electronically. Accepted methods of electronic submission include, but are not limited to:

• E-mail;

• An electronic fill-in form available on the building department’s website or a third-party submission management software; or

• An application that can be downloaded on a mobile device.

HB 667 specifies that a local enforcement agency must refund 10 percent of the permit and inspection fees if: the inspector or building official determines the work, which requires the permit, fails an inspection; and the inspector or building official fails to provide a reason that is based on compliance with the Building Code, the Florida Fire Prevention Code, or local ordinance, indicating why the work failed the inspection within 5 business days. If any permit and inspection fees must be refunded, the surcharges for funding the Building Commission, the Florida Building Code Administrators and Inspectors Board, and the Florida Homeowners’ Recovery Fund must be recalculated based on the amount of the permit and inspection fees after the refund.

HB 667 authorizes government entities charged with enforcing the Building Code to perform virtual inspections at their discretion. However, a government entity may not perform a virtual inspection for structural inspections on threshold buildings. The bill defines “virtual inspection” as an inspection that uses visual or electronic aids to allow a building official or inspector to perform an inspection without having to be physically present at the job site during the inspection.

*HB 667 passed the House on 4/21 by a vote of 118-0 and passed the Senate 39-0 on 4/26. Approved by the Governor on June 29th.*

* ***Toll Roads/M-Cores Project—SB 100 by Sen. Harrell***

SB 100 repeals the Multi-use Corridors of Regional Economic Significance (M-CORES) Program and related provisions, but retains the associated funding within the State Transportation Trust Fund (STTF). The bill draws on the recommendations of the M-CORES task forces and prioritizes strategic improvements to existing highway facilities. More specifically, the bill:

* Authorizes the Florida Department of Transportation (FDOT) to upgrade existing arterial roadways with targeted improvements, such as adding new tolled or non-tolled limited access alignments to manage congestion points and retrofitting roadways with tolled or non-tolled grade separations that provide alternatives to a signalized intersection for through traffic.
* Prohibits reduction of any non-tolled general use lanes of an existing facility, requires maintenance of existing access points, and limits the location of any tolling points such that a non-tolled alternative exists for local traffic.
* Provides that all existing applicable requirements relating to FDOT or turnpike projects apply to any projects undertaken and must take into consideration the guidance and recommendations of any previous studies or reports relevant to the projects.
* Directs the FDOT to develop by December 31, 2035, and include in the work program, construction of controlled access facilities to achieve free flow of traffic on U.S. 19 and requires the facility to be developed using existing or portions of existing roadway by specified improvements.
* Directs the FDOT to identify and include in the work program projects to widen certain two lane arterial rural roads serving high volumes of truck traffic to four lanes.
* Directs the FDOT to begin the project development and environmental phase for a project to extend the Florida Turnpike from its current terminus in Wildwood to a terminus as determined by the FDOT, and to submit a summary report by December 31, 2022.

The revenue redirected to the State Transportation Trust Fund (STTF) as a result of the 2019 M-CORES legislation is retained in the STTF and is dedicated for purposes of funding the authorized controlled access facility projects and widening projects on arterial rural highways. Beginning July 1, 2023, the distribution of $35 million to the Florida Turnpike Enterprise for feeder roads and related projects is discontinued; such funds will remain in the STTF.

*SB 100 was amended and passed the full Senate 39-1on 3/25, passed the full House on 4/27 115-0, and was approved by the Governor on June 24th.*

* ***Payment for Construction Services—SB 378 by Sen. Bradley (HB 585 by Rep. DiCeglie)***

SB 378 enhances the statutory interest rate for public and private parties that fail to make required payments for certain construction labor, services, and materials. For public sector construction projects, the bill increases the interest rate from one percent to two percent per month. Public entities that wrongfully withhold payment to contractors and, likewise, contractors who wrongfully withhold payment to subcontractors and sub-subcontractors on public projects will be liable for interest at a rate of two percent per month on the unpaid amounts. For private sector construction projects, current law specifies that late payments bear interest at the rate specified in s. 55.03, F.S., which provides the general rate of interest on judgments. The bill increases the late payment interest for the private sector to the rate specified in s. 55.03, F.S., plus twelve percent per annum.

*SB 378 passed the Senate 40-0 on 4/1 and the full House 114-0 on 4/26. Approved by the Governor on June 21st.*

* ***Redaction—HB 781 by Rep. W. Robinson (SB 844 by Sen. Hooper)***

This legislation is intended to correct a glitch with a 2019 law relating to redaction of public records that changed the definition of “home address” such that it is virtually impossible to clear title on real property or file a proper notice of commencement. HB 781 specifies that redacted information, including home addresses, may be disclosed to the following persons upon presentation of photo identification and affirmation by sworn affidavit to the county recorder, for the purpose of conducting a title search of the Official Records:

* An authorized title insurer and its affiliates.
* A title insurance agent or title insurance agency.
* An attorney duly admitted to practice law in this state and in good standing with The Florida Bar.

For each document requested within the sworn affidavit, HB 781 requires identification of the Official Records book and page number, instrument number, or the clerk’s file number, and a description of the lawful purpose along with the individual or property that is the subject of the search within the sworn affidavit.

For written requests received on or before July 1, 2021, a county property appraiser or county tax collector must comply with the request by October 1, 2021. However, a county property appraiser or county tax collector may not remove the street address, legal description, or other information identifying real property within the agency’s records if the name or personal information otherwise exempt from inspection and copying is not associated with the property or otherwise displayed in the public records of the agency. Any information restricted from public display, inspection, or copying pursuant to a written request must be provided to the individual whose information was removed.

HB 781 provides that upon the death of a protected party any party can request the county recorder to release a protected decedent's removed information unless there is a related request on file with the county recorder for continued removal of the decedent's information or unless such removal is otherwise prohibited by statute or by court order.

*HB 781 passed the House 118-0 on 4/21 and was approved unanimously by the Senate on 4/22. Approved by the Governor on June 29th.*

* ***COVID-19 Liability Protections—SB 72 by Sen. Brandes (HB 7 by Rep. McClure)***

SB 72 is intended to protect employers from employee lawsuits related to COVID-19 as long as the employer follows the CDC and state health guidelines.

*SB 72 passed the Senate 24-15 on 3/18 and the full House 83-31 on 3/26. The Governor signed the bill into law on March 29th.*

* ***State Budget***

Governor DeSantis signed the state budget June 2, a record $100 billion budget and he used his veto pen to slash $1.5 billion worth of requests by state lawmakers, totaling 150 line items out of the 700 submitted. He also vetoed $1 billion in federal funding that would have come from the American Rescue Plan Act and was slated to provide for a new emergency preparedness and response fund in the Governor's office, however, the Governor was concerned federal guidelines prevented the funds from being set aside to address future needs. Highlights of the budget include:

* $1000 bonuses for first responders & teachers and pay raise to $13 minimum for state workers
* $9.44B Transportation Work Plan
* $75M Visit Florida tourism promotion
* $74M Job Growth Grant Fund
* $22.8B Public Schools
* $102M for Florida Forever Land Conservation
* $100M Beach Restoration
* $300M Wildlife Corridor Protection
* $415M Everglades Protection
* $50M for State Parks
* $500M Sea Level Rise
* $500M Wastewater Grants
* $100M Clean-up Manatee County Phosphate Plant
* $169M Sales Tax Holidays--Disaster Preparedness, Back-to-School & Freedom Week
* $734M Water Restoration Assistance Programs, including:

> $135M Drinking Water Facility Construction

> $211.2M Wastewater Treatment & Stormwater Management Revolving Loan

> $10M Septic Upgrade Incentive Program

> $11M Small County Wastewater Treatment Water Projects

1. ***Bills of Interest that Did Not Pass***

* ***PACE Funding for Septic-to-Sewer Conversions***

**HB 387 by Rep. Fine** and **SB 1208 by Sen. A. Rodriguez** would have added consumer protections to PACE loans, a financing vehicle that helps property owners pay for home upgrades, such as hurricane and storm resiliency, installing solar panels, or more efficient insulation. The bills would have allowed consumers to pay for septic-to-sewer conversions with PACE financing.

* ***Lien Law***

**HB 473 by Rep. Toledo** and **SB 622 by Sen. Perry** included some good provisions such as allowing remote online notarization and “stop and start” provisions, but after weeks of negotiations, we could not reach agreement on the problematic lien waiver section of the legislation to protect suppliers, subs and contractors. A version that would have removed the ability of two parties to freely contract passed the full Senate, however, the House did not take up the problematic bill in the closing days of Session.

* ***Construction Defects***

**HB 21 by Rep. Andrade and SB 270 by Sen. Perry** tweak the Chapter 558, F.S., Notice & Right to Repair law by defining a construction defect as a “material violation;” requiring the property owner to exhaust all warranties prior to filing a Chapter 558, F.S., claim; requiring more specificity and visible proof that a defect exists; mandating personal attestation by the claimant; and requiring a notice to the lender that a construction defect case was filed, how it was settled and if the repair was made. Unfortunately, although the bill passed two House Committees and Senate Judiciary, the measure was stalled in Senate Community Affairs where it failed to get a hearing.

* **Sanitary Sewer Lateral Inspection Programs**

**HB 773 by Rep. McClure and SB 1058 by Sen. Burgess** would have authorized local governments to access sanitary sewer laterals within their jurisdiction and required notification to property owners within a specified timeframe if the county or city intended to access the owner’s sanitary sewer lateral. Local governments would be financially responsible for all work done.