ZINZOW LAW
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NEW LAWS TO LIVE BY

FLORIDA

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I. A MESSAGE FROM OUR CEO

In his first Inaugural Address, President Thomas Jefferson said that "a wise and frugal government, which shall restrain men from injuring one another, shall leave them otherwise free to regulate their own pursuits of industry and improvement, and shall not take from the mouth of labor the bread it has earned. This is the sum of good government." If 2023's Legislative Session had a theme, perhaps this was it. Florida's representative government listened to the will of its people who sought freedom of thought, speech and religion, freedom from oppressive taxes and fees, and freedom for their commercial enterprises. No government perfectly answers the call of all its constituents, yet the calls are near perfectly answered when those elected to serve us choose these themes over all others. Having spent a month in our state capital during this year's session, as I do every year advocating for the construction industry, I observed this very sentiment at work. It was our government's dedication to this high purpose that made this session so much different than many others. I hope this legislative briefing will enlighten you as I remain humbly at your service.

Sincerely,

Justin R. Zinzow
Admitted to Practice Florida & Texas
AV Preeminent® Rated Attorney
Fla. Board Certified in Construction Law

II. 2023 LEGISLATION

Governor Ron DeSantis and our esteemed Florida Legislature continue to deliver on their promise of an America-First Agenda and continue to liberate industry, creating a strong economic climate for Florida businesses. Below is a summary of key legislation, some of which is now law or likely to become law, which affects the construction and development industry.

a. IMMIGRATION

Governor DeSantis chose to boldly lead where our Federal system is struggling, and through changes to Florida's immigration and immigrant labor rules, set a strong American-Workers First agenda. In the short-term these changes will create labor challenges, but through enforcement, contractors who substantially underbid competitors based upon cheap illegal labor will be put out of business, helping the industry on the whole. SB 1718, amending sections 322.033, 322.04, 448.09, 448.095, 454.021 does the following:

- Starting July 1, 2023, organizations that have more than 25 employees must immediately begin using E-Verify (this is in contrast to Federal law) to verify employment eligibility of new hires. Employers are not required to run existing employees through E-Verify.
    - The organization must certify compliance with this requirement annually on its first quarterly unemployment compensation return.
    - If the E-Verify system is unavailable for three business days from the date the employee begins working then the organization can be excused from this requirement if it retains documentation proving that unavailability.
    - The Organization must maintain E-Verify documentation on each employee for at least 3 years.
    - If the organization supplements its labor through an employee leasing company, the organization may be responsible for verifying eligibility of each leased employee unless that burden is placed on the leasing company in a written contract.
- All Organizations must also comply with Federal law, which requires a completed I-9, among other things.
- If an employer discovers that its employee is not authorized to work, the employer must immediately cease paying the employee.
- Construction and other licenses may be suspended or revoked for violations under certain circumstances
- Monetary penalties have been enhanced
- Florida will no longer recognize as legitimate I.D. a driver's license from another state that issues such I.D.'s to undocumented immigrants (this is in contrast to Federal law)
- To eliminate special treatment granted to lawyers which should never have been granted, unauthorized immigrants may not obtain a Florida license to practice law as of November 1, 2028.

b. CONSTRUCTION DEFECT

General liability insurance premiums have skyrocketed in recent years due to frivolous construction defect claims, including notices of construction defect under Ch. 558, Florida Statutes and litigation. Contractors have been exposed to construction defect claims for too many years following a construction project. Historically, property owners had four years (called statute of limitations) from the later of a laundry list of trigger points (such as possession, certificate of occupancy, completion, etc.) to bring a claim for construction defect if the defect was open and obvious, and up to ten years following a project if the property owner claimed the defects were

hidden or latent (called a statute of repose). Additionally, the contractor could be liable for even the most trivial violations of the Florida Building Code. SB 360, amending sections 95.11 and 553.84, Florida Statutes, delivers a big win to the construction industry and its insurers and does the following:

- The ten year statute of repose is reduced to seven years for latent defect claims, reducing contractors' potential exposure by at least three years.
- The four year period to bring a construction defect claim for open and obvious issues did not change, but the date from which the clock starts counting is now earlier. The "later of" laundry list was eliminated and replaced with the earlier of a temporary or final certificate of occupancy, or in the case of a model home, the date ownership of the model home is transferred to the buyer.
- Property owners can no longer assert building code violation claims unless the violation is material, meaning that the violation must reasonably result in physical harm to a person or significant damage to the performance of the building or building systems.

c. Local Licensing (Specialty Contractors)

Where a state construction license is not required to perform a particular scope of work, the state has allowed municipalities to require local construction licenses. These specialty contractor licenses become a tangled web of hundreds of conflicting and overlapping licenses and regulations that even differed county by county, requiring contractors to procure multiple different license types in each municipality. Last year the Governor signed a bill to restrain local government's power to regulate in this fashion, reserving licensing power to the state, and specifying that local licenses would expire July 1, 2023. In response, local government, disinclined to acquiesce, began requiring state licenses (like general contractor, building contractor, etc.) for activities previously reserved for specialty contractors. Tile layers, painters, stucco contractors, and much more would now be forced by municipalities to obtain state licenses they did not need, which would have brought construction to a halt. HB 1383, amending sections 163.21, 489.113, and 489.117, Florida Statutes, will resolve this problem if the Governor signs the bill, which seems probable:

- Local government may no longer require a state license if the contractor's job scope is not regulated at the state level
- Local government may no longer require a local license or a permit unless the contractor's job covers the following:
    - Structural aluminum or screen enclosures
    - Marine seawall, bulkhead, pile driving, or dock work
    - Structural masonry
    - Structural prestressed, precast concrete work
    - Rooftop solar heating installation
    - Structural steel
    - Window, door, and garage door installation, as well as hurricane and windstorm protection
    - Plaster and lath

    - Structural carpentry
- Local government may no longer require local licensing as a bid requirement unless the license is otherwise required by law.

d. Natural Emergencies & Permit Duration

The limited power given to government by We the People is often abused, and sadly, in the most extreme circumstances, such as during a national emergency. In the wake of Florida hurricanes our citizenry and businesses have been prevented by local government from protecting themselves and each other, and from rebuilding in an effective manner. SB 250, creating or amending sections 125.023, 166.0335, 252.35, 252.363, and 252.40, Florida Statutes, will resolve many of these problems if the Governor signs the bill. It does the following after a state declaration of natural emergency:

- Allows the placement or construction of temporary shelters on a project site (for 36 months) that do not meet code while a permanent structure is being repaired or built.
- Contractors engaged in debris removal activities for local government may be asked to sign model contracts posted by local government on their websites.
- Extends rights under a development order, DEP permits, and building permits, among other permit types, from what used to be six months, to now twenty four months, or up to forty eight months in the event of multiple natural emergencies.
- Local government must have special processing procedures to expedite permits where technical review is not required, such as roofing, electrical repairs, service changes, and replacement of a single window or single door. Local government may also waive application and inspection fees for these expedited permits.
- Empowers local government to create inspection teams to expedite permits for other construction, such as temporary housing solutions, repairs, and renovations, and to work with other jurisdictions to procure additional expedited inspection services as needed.
- Specialty contractors who are licensed only at the local level may engage in contracting, within the scope of work of their license, in natural disaster impacted areas of the state even if they are not locally licensed in those geographical areas. This automatic emergency authorization terminates twenty four months after expiration of the state of emergency.
- Prohibits local government from raising building inspection fees in areas affected by Hurricanes Ian or Nicole before October 1, 2024.
- Prohibits any local government located within one hundred miles of either Hurricane Ian or Nicole from adopting any construction or development moratorium and from imposing more restrictions in comprehensive plans.

e. Land Sales to Foreign Interests

Recent headlines have shocked the country; much of our land is being sold to foreign interests who are trying to destroy or capitalize on the American way. These lands are or were primarily agricultural in nature, and are often close to military or other sensitive installations, such as power plants. Security concerns aside, these foreign interests are taking away Florida based development

opportunities. No longer. Governor DeSantis and our Legislature have created a brand-new law to stop these activities. Among other things, it does the following:

- Prohibits the purchase of agricultural land by foreign principals, directly and indirectly, unless that interest is de minimus.
- Purchasers of agricultural land must sign an affidavit, under penalty of criminal perjury, that they are not a foreign principal.
- All foreign principals that directly or indirectly acquire a de minimus interest must register certain information with the state or be subject to fines and a lien on the property which the state may foreclose. Land acquired in violation of this law can also be forfeited to the state as an illegal acquisition.
- A foreign principal may not acquire any type of land, except a de minimus indirect interest, within ten miles of any military installation or critical infrastructure facility.

f. Building Construction Inspection-Forcing Post Permit Changes

Contractors have suffered for years under the heavy hand of building inspectors and fire marshals who permit plans, and then long after construction is underway, force a later change or addition. Adding insult to injury, local government often cannot, or plainly refuses to identify a particular code section which requires the changes. These actions are not only frustrating, they cost both time and money. HB 89, which modifies sections 553.79 and 633.208, Florida Statutes, will resolve this problem if the Governor signs the bill, which seems probable. The bill does the following:

- After local government issues a permit, it may not make or require any substantive changes to the plans or specifications unless the change is expressly required by the Florida Building Code, Fire Prevention Code, or Life Safety Code.
- If changes are required, local government must identify the specific plan features that do not comply and cite specific code sections to support that finding. This information must be provided to the permitholder in writing.
- A plans examiner, inspector, or building code administrator who fails to comply with these requirements is subject to license discipline, which can include license revocation.
- These same requirements and discipline penalties are also applicable to local fire officials.

g. Energy Code Delay

Florida's building code was last updated in 2020 and changes every three years. It is anticipated that energy code compliance software may not be ready in time for the new energy code provisions. HB 869, which modifies section 553.73, Florida Statutes, will insulate contractors from this problem if the Governor signs the bill. It provides that if the software is not available at least three months before the new requirements are to take effect, the building commission may delay the effective date of the new energy code provisions for up to three months.

h. Lien & Bond Law

Each year changes are made to Florida's lien and bond laws. Many of these changes are wordsmithing for wordsmithing's sake, and have no meaningful impact. Others actually affect collection on construction projects. These laws are strictly enforced, so a detailed understanding of each nuance is critical. HB 331 modifies sections 255.05, 337.18, 713.01, 713.011, 713.10, 13.13, 713.132, 713.135, 713.18, 713.21-713.25, and 713.29, Florida Statutes, if the Governor signs the bill, as Governors typically have when presented with a bill of this nature from both chambers. The bill does the following:

- Liens
    - Creates lien rights for construction management and program management services.
    - Clarifies that any finance charges included in a lien must be specified in the contract.
    - Changes the process and timeline for terminating a Notice of Commencement.
    - Extends recording deadlines when the Clerk of Court is closed due to an emergency.
    - Prohibits local government from requiring a certified copy of a Notice of Commencement or a notarized statement of filing provided it receives a recorded Notice of Commencement in the form required by the statute.
    - Notices of Commencement are no longer required for projects of $5,000 or under, but contractors should continue to use them for lien priority purposes if collection is a concern.
    - Notices of Commencement are no longer required for direct contracts with a property owner to repair or replace an HVAC system if the contract price is less than $15,000; however, contractors should continue to use them for lien priority purposes if collection is a concern.
    - Full or partial recorded satisfactions of lien must be notarized and indicate the Official Records reference number of the lien that is being satisfied.
    - Changes the calculation for lien transfer bonds from principal plus three years interest, plus $1,000 or 25% of the lien, whichever is greater, to principal, interest, plus $5,000 or 25%, whichever is greater.
- Bonds
    - Where the payment bond was not recorded, it allow service of a Notice to Contractor within forty five days of receiving a copy of the bond, thus preserving the right to look to the bond.
    - Modifies the notary form on a Notice of Non-Payment
    - Expands the list of security a contractor can provide (instead of a bond) to include domestic corporate bonds, notes, and debentures, but eliminates irrevocable letters of credit, and gives local government the right to determine the required value of the alternative security.

- See also (j), Negligence and Tort Reform regarding recovering attorney's fees against sureties.

i. Public Construction Prompt Payment

Infrastructure projects like schools, water treatment plans, and roads are the lifeblood to all forms of construction and development. These projects also provide a strong source of revenue for contractors, but local and state government can be slow to pay. SB 346, which amends sections 218.735, 218.76, 255.073, 255.077, and 255.078, Florida Statutes will speed up payment and dispute resolution if the Governor signs the bill, which seems probable. The bill does the following:

- As it concerns local government withholding payment for allegedly incomplete or non-conforming items, construction contracts with local government must now include custom language describing a process for the creation of a single list of incomplete or nonconforming items and describing how to estimate the cost to complete each item.
  - Local government must timely develop the list, and for projects having an estimated cost of $10 million or more, the deadline to perform this activity is shortened by up to 15 days.
  - Within 20 business days after the list is created, local government must pay the contractor the remaining contract balance, including retainage previously held, less an amount equal to 150% of the estimated cost to complete the items on the list.
  - If local government fails to timely and properly develop the list then the contractor is entitled to payment of the entire remaining balance, including retainage.
- If local government disputes an invoice it must commence internal dispute resolution proceedings (non-binding) within thirty days to resolve the dispute and conclude those proceedings within 45 days of the date the invoice or payment application was received.
- If state or local government disputes only a portion of a payment application, the undisputed portion must be paid by the contractual deadline, or within 20 business days of receipt of the request, whichever is earlier.

j. Negligence & Tort Reform

Contractors and the associated insurance industry have suffered considerably at the hands of frivolous and other extensive litigation. Construction and design-build defect claims often include claims of negligence. Project adjacent building owners claiming damage through vibration or other activities often use negligence or another tort theory, like nuisance or trespass. Vehicle and equipment accidents with third parties give rise to negligence claims. Insurance exposure has risen sharply, and therefore premiums with it. Coverage has also narrowed (for example, it can be challenging to procure sufficient coverage if you work in tract home developments). Lastly, disputes between insured and insurer have driven up insurance costs. HB 837, amending sections 57.104, 86.121, 95.11, 624.155, 627.428, 768.0427, 768.0701, 768.0706, and 768.81, Florida

Statutes, aims to change this. While it will not fix everything overnight, it attacks some of the key items which incentivize litigation:

- Creates a rebuttable presumption that law firms should not receive bonus fees from the losing contractor; they should receive only a reasonable fee based upon reasonable hours expended times reasonable hourly rates for work actually performed.
- Insurance carriers or their insureds (contractors, developers, etc.) can now seek an early and expedited determination that coverage does or does not exist, and the prevailing party on that issue is entitled to recover attorney's fees from the other party.
- Negligence claims (other than for construction defect) must now be brought promptly within two years instead of four years.
- Both insured and insurer now have tools to resolve their dispute over coverage. An insured can demand that that the insurer pay either the full amount of the third party's claim up to policy limits, and if the carrier fails to do so within 90 days of receiving evidence to support the claim, the carrier can be exposed to a claim of bad faith. Reciprocally, by making the demanded payment, the carrier can avoid a bad faith claim.
- An insurer can no longer be liable in bad faith if it merely acted negligently in reaching a coverage decision.
- In certain vehicle and other injury lawsuits, the damages recoverable by the plaintiff are now limited to certain types of expenses.
- A developer, owner, or contractor managing or operating property are now not solely liable for injuries sustained by an individual who was harmed on the property by a third party criminal. The criminal may be found solely responsible, thereby eliminating all liability of the developer, owner, or contractor managing or operating property.
- The developer of a multifamily property which (a) implements certain security, lighting, and design features, (b) completes a crime prevention assessment, and (c) trains its employees on proper crime deterrence and safety, is presumed not liable for injuries and other damages arising from criminal acts that occur on the property.
- A party who is greater than 50% at fault for his or her own harm may no longer recover any damages.
- The prevailing party in an action against a payment or performance bond surety is entitled to an award of attorney's fees.

III. About Us

WHY WE DO IT

Each member of Team Z believes in liberty and in building the American Dream. We honor Her traditions, uphold her foundations, and protect Her People. It is this higher purpose that drives everything we do. We are patriots through and through, and can think of no more important calling than serving those who build America.

WHAT WE DO

Zinzow Law is a full-service Construction, Real Estate, and Business Law Firm. Our holistic approach to representation means that we cover every conceivable business and legal need you may experience to ensure your experience is seamless. We take pride and joy in representing business owners and helping them grow and foster their American Dream.

HOW WE DO IT

Why Partner with the Team at Zinzow Law? With an overabundance of Law Firms out there, why should you choose the team at Zinzow Law? Every law firm will tell you how hard they will work for you and how much expertise they have in a given field. We can tell you the same things, and we mean it. But our unique approach to solution delivery coupled with our unwavering values set us apart from other law firms and lawyers.

You will not find any pretentious attitudes when you meet our team or team members. Unless we are going to court, you will not find us in suits and ties; you will not be told the law says: X, Y, and Z, so you have to do it this way. Instead, you will find us to be salt of the earth people who understand your struggles in the Construction, Real Estate, or Business world. We will advise you and recommend solutions, always with a keen eye on your business objectives.

OUR AFFILIATES

Team Z enjoys giving back. Over a decade ago we founded Zinarro Notice to Owner, a cost effective option for construction companies to procure Notice to Owner, Notice to Contractor, Claim of Lien, and Notice of Non-Payment services. And we would not have the freedom to serve the construction industry if not for our armed forces and their families who have and continue to make great sacrifices to preserve our way of life; we are honored to support them through our all-volunteer 501(c)(3) charity, the Zinzow Law Foundation.

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