ABC of Georgia Weekly Legislative Report - 1.20.20

By Rusty Paul

ABC kicked off the 2020 legislative session by cohosting a legislative reception with other construction industry groups last Wednesday. Well attended by ABC members as well as legislators, the event gave the association an opportunity to build relationships with the state’s lawmakers and chat about key legislative initiatives ABC sees as important for the 2020 session.

Among the issues discussed were:

1. **HB 715** - This bill allows permit fees to be calculated as they are currently but permits could NOT be based on the cost of the job or a business license on gross receipts.

2. **Court of Appeals Decision Regarding Lien Laws** - ALA Construction Services LLD v Controlled Access. In this case the Court of Appeals held that execution of the Georgia lien waiver not only waives a GC/subcontractor’s lien rights but also the underlying cause of action for non-payment. This is a significant change in Georgia’s lien laws. We will be working with other affected groups to enact corrective legislation.

3. **Court of Appeals Decision Regarding Contract Warranties** – Another court ruling in need of corrective legislation, is Southern States v Tampa Tank. In simple terms, the Court ruled that the construction statue of repose cuts off all contract claims to realty improvements at eight years. While not discussed in his State of the State speech, we believe the Governor’s office is aware of this and considering options because the State is one of the largest property owners – and warranty beneficiaries - in Georgia.

**Elsewhere at the Capital** - As the 2020 legislative session’s first week closed last Thursday, unsurprisingly, little of substance was accomplished. However, each of the 3 power centers – Governor, Speaker and Lt. Governor -through interviews and speeches offered a blueprint for what to expect during the remaining 36 legislative days.

The biggest obstacle for lawmakers is complying with Gov. Kemp’s call to cut state spending four percent in the current fiscal year and six percent next year. “How can Georgia be losing revenue when economic growth is at an all-time high?” they and others are asking.

One, the legislature recently cut the top state income tax rate from 6 to 5.75 percent. In addition, several popular state tax credit programs also trimmed state revenue. For instance, in 2010, the state film tax credit cost Georgia about $120 million; this year, it cost $870 million.

Considering the amount needed to close the funding gap is approximately $200-300 million, expect legislators to cast a hard eye on a range of tax credit programs, particularly after a state audit found numerous examples where film credits were improperly taken. Several key legislators have been pushing for a regular review of state tax credit programs to ensure they live up to their promises and revenue shortfalls may add impetus to that process.
The film credit has some interesting aspects. Film companies, because so little of their revenue comes from Georgia, rarely use the credits to offset their own state tax bill. Instead, they sell them to other Georgia taxpayers - usually at a discount- who need or want to offset their state tax liability. The film company pockets the additional cash and the buyer pays lower income taxes.

Revenue challenges notwithstanding, 2020 is an election year, so expect movement on legislation cutting another one-quarter percent from the top income tax rate. Legislative leaders promised a second cut and an election year seems a perfect time to deliver on that campaign commitment.

Regardless, expect a tightening in some of the state’s most popular tax credit program to ensure they are delivering their intended benefits and that the credit programs are properly audited.

**Speaking of Taxes** – While week one is largely reserved for ceremonial activities, we did see one significant bit of business. Members of both chambers came together to approve legislation left over from 2019 – the so-called market facilitators tax collection bill.

Internet retailers like Amazon carry inventory and also provide a portal for other retailers to sell their wares via the Internet in return for a slice of the revenue. As more retail activity moves to the web, collecting sales taxes becomes increasingly difficult. The state estimates several hundred million annually in owed taxes go uncollected due to Georgia revenue tracking loopholes.

The two chambers couldn’t agree on a solution last year. Yet, faced with 2020’s revenue hole, the two sides met this week, quickly agreed to a compromise that can be voted on soon and promptly moved to the Governor for a signature.

**What’s Ahead** – As noted earlier, three sets of priorities were outlined this week, while Speaker Ralston and Lt. Gov. Duncan highlighted their agendas first, the most anticipated was Gov. Kemp’s State of the State speech in which he sketched out his 2020 legislative objectives. Among them are:

- He wants an additional $2,000 annual raise for teachers stacked atop the $3,000 he achieved last session. If enacted, it would accomplish his promised $5000 annual teacher raise.
- He advocated support for his Patients First initiative, a limited Medicaid expansion that would add 408,000 uninsured Georgians to this low-income healthcare program. Republican legislators worry about the long-term cost of additional Medicaid enrollees, while Democrats say it still leaves too many uninsured individuals unprotected.
- Also regarding healthcare, he called for greater transparency in provider costs and billing to avoid what he called “surprise billings.”
- In law enforcement, he plans to crack down on violent street gangs that not only plague inner city areas, but are moving into suburban and rural areas to commit crimes.
- He also announced an initiative targeting sex trafficking. While the legislature has passed several laws focused on eliminating the human sex trade, Georgia remains a hub for this activity. He indicated he would be introducing additional measures to deal with this growing problem.
- To encourage more adoptions, he will be pushing measures to make adoptions simpler and for boosting the adoption tax credit from $2000 to $6000 per child.

Speaker Ralston met with the media at the start of the session, responding to questions about his goals for 2020. In that session, he downplayed chances for the Governor’s extra $2,000 teacher raise and held out the possibility that some form of gambling legislation may get serious consideration to bring in additional revenue.
He also suggested lawmakers would vote to lower state income tax rates to 5.5 percent, and while he opposes abolishing the film tax credit, some “tweaking” may be in order. He also cast doubt on whether – given the tight budget – Medicaid expansion will gain approval given its $100 million year one price tag.

Lt. Gov. Geoff Duncan also outlined his 2020 objectives this week. Unlike the Speaker, he doesn’t see gambling legislation getting traction this year. His Georgia Tech background shone through in his initiative to grow high-tech businesses within Georgia. He appointed a panel of high-tech and investment capital execs to advise him on ways to boost technology entrepreneurship in the state.

He also hinted at support for Gov. Kemp’s surprise billing measures and he wants to take a look at the hospital tax credit bill to ensure those funds go to Georgia’s neediest hospitals. Also, he, too, wants a tighter film tax credit program to reduce its costs to the state treasury, while ensuring proper compliance with its provisions.

Finally, he plans to boost resources for Georgia foster children, particularly assistance to those serving as foster families.