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# The Site Report

## Construction Law Insights

**February 28, 2022**

Welcome to the second issue of 2022 of *The Site Report*.

Have you gotten a chance to take our survey? It helps us plan for the year. You can access it [here](#) or at the bottom of this e-newsletter.

As always, thank you for reading.

**[Stephanie U. Eaton](#)** - Co-Chair, [Construction Group](#); Vice Chair of Southern Offices, Litigation Department; Editor, *The Site Report*

and

**[Julian E. Neiser](#)** - Co-Chair, [Construction Group](#); Vice Chair of Northern Offices, Litigation Department

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### **[What Does Biden's Union Mandate Mean for Construction Projects?](#)**

*"President Biden signed an executive order that would require large projects funded by the infrastructure law to use project labor agreements — pre-contract commitments by employers to enter into a collective bargaining agreement with at least one union."*

**Why this is important:** On February 4, 2022, President Biden signed an executive order requiring that all projects funded by the Bipartisan Infrastructure Law to use project labor agreements. President Biden states that the executive order is going to help ensure that we build a better America, and seeks to

target the difficulties in predicting labor costs due to the fact that construction employers do not usually have a permanent workforce, and promote the efficient and timely completion of construction projects undertaken by federal contractors. The executive order directs the Department of Labor and White House Office of Management and Budget to develop a training program on the new policy for contract workers, however, many employers remain hesitant about the costs and constraints of the requirement. Specifically, the executive order may scare away contractors unfamiliar with union requirements, therefore limiting competition, which in turn cuts against the Administration's goal of reducing project costs. In addition, research has demonstrated that government-mandated project labor agreements increase construction costs. Although the Protecting the Right to Organize Act ("PRO Act") may eliminate reduction in competition by promoting unionization of companies, the Act remains pending in the Senate, and the employers' concerns remain a reality. --- [Victoria L. Creta](#)

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## **N.C. Session Law 2022-1 - Statutory Changes for NC Construction Businesses**

**Why this is important:** This new statute makes several changes to North Carolina construction law that will have impacts across the industry and will likely receive further clarification in litigation. The statute includes updates to the land surveyor licensing statute, which are fairly straightforward. Substantial clarifications to the design-build contracting process for public projects in North Carolina are also part of the new law. These design-build clarifications were inspired by a specific project on which the parties' arguments in a dispute revealed the original statute's ambiguities, and the changes are not intended to change the substance or intent of the prior version of the statutes, but to make clarifications ensuring the process works as originally intended, even in complex situations. In addition to these changes, the law is making waves with a new limitation on lien waivers and with a change to how attorneys' fees are awarded in lien and bond claim lawsuits/arbitrations. North Carolina has become only the 12th state to regulate the form and content of lien waivers, and interim/progress payment lien waivers will be limited to waiving liens/claims associated with that specific progress payment. This will cut off the broad lien waivers preferred by many upstream parties and will invalidate the lien waiver forms being used by many companies. The change goes into effect for liens that attach on or after 1 March 2022, so companies should update their lien waiver forms as soon as possible to avoid issues. The new law also changes how attorneys' fees are awarded on lien and bond claims. Among other clarifications, the changes clarify that arbitrators may award fees, update how a "prevailing party" is determined, and provide factors for the judge or arbitrator to consider when determining the amount of reasonable fees to award. The change also removes the prior "unreasonable refusal to settle" requirement for fees to be awarded. The update appears to have left up to the judge/arbitrator's discretion the threshold question of whether or not to award fees, because it maintained the prior language stating only that the judge or arbitrator "may" award fees. There is no doubt that this revised statute will be involved in litigation, and its application will receive further clarification. --- [Steven C. Hemric](#)

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## **Construction Training CEO Urges Industrywide Changes to Draw in New Talent**

*"A residential building group has released a list of ideas for combating construction's long-running labor shortage, including hiring more women, providing more education and training for minority groups and changing perceptions of careers in construction."*

**Why this is important:** In December 2021, the National Association of Home Builders ("NAHB") released information on unfilled positions in the construction industry – 410,000 as of October 2021. According to NAHB, this number of job openings amounted to a 5.4 percent hole in available construction jobs that need to be filled. To meet the growing demands in both the residential and commercial markets, construction industry employers need to expand the search for talent. The Home Builders Institute ("HBI"), a nonprofit that provides construction skills training, identified ways employers can fill jobs by including women, minority, and veteran candidates in their searches. This is important because these groups can be overlooked and/or underrepresented in the construction industry, and can become valuable members of construction companies when appropriate training is provided where needed. As demands for construction jobs are outpacing current supply, inclusion of these groups in the hiring pool will build a stronger construction industry that can meet demands for new homes, infrastructure improvements and commercial construction projects. --- [Stephanie U. \(Roberts\) Eaton](#)

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## [Construction Mentor Program Head: 'We Need to do a Better Job Recruiting Minorities and Women'](#)

*"ACE Mentor Program of America President Diana Eidenshink said 70% of the students it reaches identify as minorities."*

**Why this is important:** The Architecture Construction Engineering ("ACE") Mentor Program of America is a program that is meant to increase the number of students that enter into the construction field, particularly minority and women students. This is important because many publicly funded projects require a percentage of minority- or women-owned businesses on the project as contractors. If the construction industry does not increase the number of women and minorities that enter into the field then the talent pool gets smaller and the industry suffers as a whole. Not to mention that bidding on projects will become more difficult when trying to fulfill the MBE/DBE requirements. The lawyers at Spilman Thomas & Battle have extensive experience advising and representing minorities and women in the construction industry. If you would like more information or need legal advice/representation, Spilman has you covered! --- [Matthew W. Georgitis](#)

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## [Why Private Construction Jobs are Requiring Surety Bonds, Too](#)

*"Bonding is no longer just a requirement for public works projects."*

**Why this is important:** One of the collateral consequences of the numerous uncertainties caused by the pandemic is the increased desire for companies to pay a premium up front to achieve certainty on the back end. In the construction industry, this trend is developing in the areas of surety bonds. Once used primarily on public projects, a growing number of private projects are seeing the use of performance bonds — guaranteeing project completion — and payment bonds — guaranteeing subcontractor/vendor/supplier payment — becoming required as a matter of course. Although these bonds increase the price of a project, current reporting indicates that contractors and owners are viewing the certainty provided by the bonds as being worth the premium. --- [James E. Simon](#)

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## [3D Printing Builds Reputation in Construction Thanks to Speed and Efficiency](#)

*"Now additive manufacturing is beginning to gain popularity with architects and construction firms."*

**Why this is important:** 45 hours is all the time it took to construct a 1,346 square foot office building in Austria — the first of its kind in that country. This beautiful, modern space was the result of a collaboration of a German construction manager and an Austrian contractor using a 3D printer. While concrete 3D printers for this sort of construction are expensive at this time, costing between \$180,000 to \$1,000,000, as technology improves and the use of these machines becomes more mainstream, this manner of construction can revolutionize the industry. I say revolutionary because not only is concrete a naturally sustainable and inexpensive building material, but also these 3D printers generate little waste. Moreover, 3D printed construction greatly reduces the time it takes to construct a building compared to manual construction, reduces labor required to construct buildings, minimizes supply chain disruptions using alternative building materials, and allows contractors to build even complex structures that are aesthetically pleasing and resilient. 3D concrete printed buildings can have a positive impact on the environment, supply affordable housing where it is most needed, and allow construction companies to continue business despite labor and/or supply shortages. --- [Stephanie U. \(Roberts\) Eaton](#)

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## **Featured Attorney Profile**

**[Stephanie U. Eaton](#)**

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Stephanie Eaton is a Member in our Winston-Salem office. In addition to serving as Vice Chair of Southern Offices for the Litigation Department, she is Co-Chair of the Construction Practice Group. Stephanie's construction experience includes evaluating and negotiating commercial construction contracts for owners, contractors and subcontractors, including WBE/MBE's, tank fabricators and erectors, grading and hauling contractors, and specialty subcontractors, in a variety of public and private building and highway construction. Stephanie uses alternative dispute resolution to

resolve litigation disputes as early as practicable, files and/or defends lien claims, and handles construction litigation in court or arbitration to achieve optimal results for clients. She advises clients on commercial projects with construction management and best practices before, during and following construction.

Stephanie is a Fellow with the Construction Law Society of America and former Chair of the NC Bar Association Construction Law Section. She was nominated by her peers for inclusion in The Best Lawyers in America for Litigation – Construction. Stephanie is an active member and frequent speaker and author for the Defense Research Institute's Construction Law Committee. She is AV® Preeminent™ Peer-Review Rated by Martindale-Hubbell and is a member of the Federation of Defense and Corporate Counsel.

Stephanie received her B.A. from Emory University and her J.D. from the University of Florida School of Law. She has a multi-state practice and is admitted to all state and federal courts in North Carolina, Florida and South Carolina, the United States Court of Appeals for the Fourth and Eleventh Circuits, and the United States Court of Federal Claims.

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