

2015 LAW SUMMARY



**BUILDERS ASSOCIATION
OF MINNESOTA**

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2015 Law Summary

What a Way to Finish

In the depths of a dark Minnesota Capitol Building, a page waits for the green light from the Speaker of the House to run a bill over to the Senate. With time of the essence, this intrepid young staff ran across University Ave, light-rail train tracks, and through throngs of cheering lobbyists with a freshly minted bonding bill, on its way to passage. The House adjourns sine die.

Then, disaster struck. With mere minutes to go, the bill fails. With additional amendments offered by the Senate, the bonding bill is destined to fail, as the House adjourned, and were unable to receive bills. The bonding bill failed, and nothing could be done to change that.

The following days included much finger-pointing, blame, and political posturing, leaving many to ask questions such as: Will there be a special session? Will Governor Dayton sign the supplemental budget bill and the tax bill that are on his desk?

Only two of the four “big bills” were sent to the Governor’s desk. These bills, the supplemental budget bill and the tax bill, are not without controversy. Notably, the tax bill includes tax breaks for tobacco, along with tax breaks for students, farmers, veterans, etc. The supplemental budget bill includes money for broadband, workforce development, and other areas of priority for the legislature. Included in this budget bill is money BAM specifically asked for to address workforce development and workforce shortage issues in the future.

Regular session convened on January 6, 2015. Thousands of bills passed both the House and Senate during the course of the regular session’s 5-month duration. And yet, as the Legislature raced to its Constitutionally mandated adjournment date of May 18, 2015 the heavy lift of session was left undone - to pass a balanced budget for the

biennium starting on July 1, 2015. Rather, the state witnessed a budget meltdown resulting in vast segments of the state's budget to be undone or vetoed, leaving us waiting for special session to have resolution on many policy and budgetary items.

Special Session was convened on June 12, 2015 after a slew of meetings and negotiations between the Governor and House and Senate leadership. Six pieces of legislation were passed and signed by the governor completing the state's next two-year budget. Approve were three revised omnibus finance bills that the governor had vetoed at the end of the regular legislative session and the passage of the omnibus Legacy funding bill, a bonding bill, and the Revisor's bill - a technical corrections bill. The marathon special session concluded on June 13 with Governor Dayton signing all six bills into law and ending the threat of a partial state government shutdown. A review of the Special Session Bills is at the end of this summary.

Session begins March 8, 2016. It will be an unusual session because the Capitol will be shut down for renovations resulting in floor sessions being held in the new Senate Office Building.

Looking into the future, BAM expects the industry to lead on housing affordability and tort reforms, improving the code adoption process, seeking consumer protection statewide including code inspections and licensed builder enforcement, and making progress in the area of appraisals.

INDUSTRY SPECIFIC NEW LAWS

MINNESOTA SESSION LAWS 2015

6-Year Code Cycle - Chapter 54 - Sections 6 & 7 (SF1371)

Starting with the 2018 model building codes, Minnesota will officially be on a 6-year code cycle. The new law requires the cycle to conclude within 2 years of the published edition of each new code. Nothing in this new law will prevent the commissioner of labor and industry from adopting mid-cycle amendments to the code or from complying with federal code review requirements. In addition, once the rule is published, the code will become effective 270 days (currently 180) later or at a later date established by the commissioner. Finally, the new law requires the code to electronically publish the entire adopted rule chapters prior to the codes actually effective date.

DLI Provisions - Chapter 54 - Sections 6 & 7 (SF1371)

- \$125 Fee Reduction: Starting July 1, 2015, residential building contractor and remodelers license costs will drop by \$125.
- OSHA Employee Misconduct Defense: as part of the DLI agency housekeeping bill, this idea disallows job superintendents to use employee misconduct as an OSHA defense. The industry is neutral on the idea.
- Qualified Persons Sanctions: in an effort to better enforce against those flaunting the state's licensing laws, the Department of Labor and Industry is amending its compliance statutes to include qualified persons as those who can be enforced against.

Radon Licensing - Chapter 71 - Article 8, Section 24 (SF1458)

The Minnesota Radon Licensing Act gives the Minnesota Department of Health (MDH) the authority to write rules and enforce laws related to the radon industry in the State of Minnesota. On July 1, 2015, MDH will begin the rule writing process and we have 18-24 months to complete this process. Beginning October 1, 2017, the rules developed over the prior two years will go into effect.

Newly constructed homes are exempt from the Act. Specifically, "Radon systems installed in newly constructed Minnesota homes according to section 326B.106, subdivision 6, prior to the issuance of a certificate of occupancy are not required to follow the requirements of this section."

For all other structures, the commissioner of health will adopt rules for licensure and enforcement of applicable laws and rules relating to indoor radon in dwellings and other buildings. The new law's purpose is to coordinate, oversee, and implement all state functions in matters concerning the presence, effects, measurement, and mitigation of risks of radon in dwellings and other buildings.

Under the new law, two relevant terms are defined. "Mitigation" means the act of repairing or altering a building or building design for the purpose in whole or in part of reducing the concentration of radon in the indoor atmosphere. "Radon" means both the radioactive, gaseous element produced by the disintegration of radium, and the short-lived radionuclides that are decay products of radon.

In addition, the new law requires an annual license for "every person, firm, or corporation that sells a device or performs a service for compensation to detect the presence of radon in the indoor atmosphere, performs laboratory analysis, or performs a service to mitigate radon in the indoor atmosphere." Retail stores that only sell or distribute radon sampling but are not engaged in the manufacture of radon sampling devices are exempt from this requirement.

The radon license fees will be as follows:

- Measurement professional license, \$300 per year.

"Measurement professional" means any person who performs a test to determine the presence and concentration of radon in a building they do not own or lease; provides professional or expert advice on radon testing, radon exposure, or health risks related to radon exposure; or makes representations of doing any of these activities.

- Mitigation professional license, \$500 per year.

"Mitigation professional" means an individual who performs radon mitigation in a building they do not own or lease; provides professional or expert advice on radon mitigation or radon entry routes; or provides on-site supervision of radon mitigation and mitigation technicians; or makes representations of doing any of these activities. This license also permits the licensee to perform the activities of a measurement professional.

- Mitigation company license, \$500 per year.

"Mitigation company" means any business or government entity that performs or authorizes employees to perform radon mitigation. This fee is waived if the company is a sole proprietorship.

- Radon analysis laboratory license, \$500 per year.

"Radon analysis laboratory" means a business entity or government entity that analyzes passive radon detection devices to determine the presence and concentration of radon in the devices. This fee is waived if the laboratory is a government entity and is only distributing test kits for the general public to use in Minnesota.

- Finally, the law requires radon mitigation system tags for installed systems (newly constructed homes exempt). There is a \$75 fee per tag.

Responsible Contractors - Chapter 64 (HF1257)

Significant changes were made to the Responsible Contractor Law, a law that applies to publicly owned or financed projects if the estimated cost exceeds \$50,000 and is awarded pursuant to a lowest responsible bidder selection method or best value selection method.

The law requires prime contractors to certify under oath that they meet certain minimum criteria in order to be awarded a project including compliance with workers' compensation and unemployment insurance requirements, have a valid federal tax

identification number or a valid Social Security number if an individual, has filed a certificate of authority to transact business in Minnesota with the Secretary of State if a foreign corporation or cooperative and is in compliance with and, during the three-year period before submitting the verification, has not violated certain labor and wage laws or laws related to construction contractors, construction codes, and licensing.

The amended law applies to all construction contracts entering on or after July 1, 2015. Changes improve the verification of subcontractor requirements by allowing the successful prime to provide verification under oath confirming that all subcontractors and motor carriers meet the minimum criteria. If the low-bidder fails to provide the required supplemental verification, it could forfeit its bid bond.

The new law also requires each contractor or subcontractor to obtain from all subcontractors they will have a direct contractual relationship a signed statement under oath verifying that they meet the responsible contractor requirements prior to execution of a construction contract with each subcontractor.

Material suppliers are now defined as “a business or natural person that supplies materials, equipment, or supplies to a subcontractor or contractor on a project, including performing delivery or unloading services in connection with the supply of materials, equipment, or supplies.” A material supplier does not include “a natural person or business that delivers mineral aggregate such as sand, gravel, or stone that is incorporated into the work under the contract by depositing the material substantially in place, directly or through spreaders, from the transporting vehicle.” All other requirements that a material supplier must meet under the law remain unchanged.

A *design professional* is defined as a business or natural person retained to perform services on the project for which licensure is required by Minnesota Statutes, section 326.02. This includes architects, professional engineers, and surveyors. The Responsible Contract Law does not apply to design professionals.

In addition, the law allows for the electronic verification of compliance when submitting bids electronically and that verification does not need to be notarized to meet the standards of the law.

MINNESOTA SESSION LAWS 2015, SPECIAL SESSION

Wetlands & More: The Omnibus Environment Bill - Special Session Chapter 4 (SF5)

Governor's 50' Buffer Initiative: Governor Dayton's interest in buffers along waterways resulted in new law in the Omnibus Environment Bill that requires perennial vegetation strips of at least 30 feet in width and averaging 50 feet along public waters, and a minimum of 16.5 feet or alternative practices on public drainage systems. Soil and Water Conservation Districts are charged with local implementation and assistance. The law also provides local and state authority for \$500 Administrative Penalty Orders for compliance with the requirements as well as modifies the state Soil Erosion statutes for statewide applicability. The provision does not include residential construction.

State Assumption of Federal Wetland Permitting Authority: Found in the Omnibus Environment Bill is a study to determine how best to transfer federal wetland permitting to the state (wetlands & section 404 permitting). While BAM was originally named as a participant on the study group, the group is now recast in a format similar to the EQB.

Wetlands Conservation Act Amendments: This initiative includes statute, rule and administrative changes to improve public value benefits from wetland mitigation required by WCA. The changes stem from the state's no-net-loss wetland policy and an interagency report that addressed mitigation for wetlands impacts occurring in Northeast Minnesota. The initiative's most significant elements include:

- Authority to create a mechanism for the industry to pay a fee in lieu of land dedication for wetland replacement. The "In-lieu fee program" means a program in which wetland replacement requirements of section 103G.222 are satisfied through payment of money to the board or a board-approved sponsor to develop replacement credits
- Promotion of watershed-based wetland mitigation;
- Improved targeting of wetland mitigation; and
- Diversification and enhancement of mitigation mechanisms.

Workforce Housing - Special Session Chapter 1, Article 2, Section 2 (HF3)

Contained in the Omnibus Jobs & Energy Bill is a \$2 million appropriation in each year of the biennium for a newly created Workforce Housing Development Grant Program. The grant program is designed to help communities in Greater Minnesota develop market-rate, workforce housing in support of job growth. The Department of Employment and Economic Development (DEED) will administer the program.

The program is targeted to cities located outside of the seven-county metropolitan area with a population greater than 500 or communities that have a combined population greater than 1,500 located within 15 miles of a city outside of the seven-county metropolitan area or an area served by a joint county-city development authority, created by special law (read an authority between Grand Marais and Cook County).

Eligible recipients must meet the following criteria:

- The average vacancy rate for rental housing located in the eligible project area, and in any other city located within 15 miles or less of the boundaries of the area has been 5 percent or less for at least the prior two-year period;
- One or more businesses located in the area, or within 25 miles of the area, that employ a minimum of 20 full-time equivalent employees in aggregate have provided a written statement indicating that the lack of available rental housing has impeded their ability to recruit and hire employees; and
- The eligible recipient certifies that the grant will be used for qualified expenditures for the development of rental housing to serve employees of businesses located in the eligible project area or surrounding area.

A grant may not exceed 25 percent of the project development cost, and every \$2 of state money must be matched with \$1 of non-state funds. The grants can only be used to fund market-rate rental housing, which excludes projects that use financial assistance requiring the property to be occupied by residents that meet income limits under federal or state law of initial occupancy.

SAVE FOR A LATER DAY LEGISLATION

Attorney's Fees Awarded to Homeowners - Dead

The bill was heard very early this session and was vehemently opposed by the industry. The bill proposed attorneys fees be awarded to homeowners prevailing in litigation, but would deny the same right to builders prevailing in litigation. This is a perennial issue and will come back to life in the months and years to come.

Border Cities & Mille Lacs County Codes

Both of these bills seek to change the nature of code enforcement in local jurisdictions. The border city bill proposed to relieve 5 cities along the Red River to from Minnesota's statewide building code in favor of North Dakota's building code. The Mille Lacs bill allows the county to stop its inspection services. Both bill cause policy concerns for the industry - from licensing and liability problems with the border city idea to the shift away from code enforcement statewide.

Common Interest Communities / Notice and Opportunity to Repair / Breach of Contract or Negligence Claims

This idea is on hold until at least 2016. The City of Minneapolis is experiencing the consequences of CIC liability as fewer contractors are interested in building owner occupied properties, opting to build rental properties. This is due to the increasingly aggressive litigation "cottage industry" that is suing the construction industry. Minneapolis is exploring ways to limit liability exposures and the idea may it may include a solution for residential contractors who are experiencing lawsuits where builders are sue under breach of contract or negligence to avoid the state mandated "notice an opportunity to repair" process (a process designed to allow repairs to be made before litigation ensues).

Duty to Defend / Indemnification

The issue of duty to defend and indemnification clauses reared its head again this year only to stall in committee. We expect it to be back in future years. The industry is concerned with this bill because it alters the insurance relationship between parties and creates general liability insurance uncertainty.

Fire Marshal Plan Review & Inspections

Plan review, inspections, and code rulemaking for fire safety would have been shifted from local building departments and the Department of Labor and Industry to the State Fire Marshall under this bill. For many reasons, the industry is very uncomfortable with this idea. The bill did not get a hearing this year.

Fire Protection Awareness Act

Under this proposal, residential builders would have been required to show a video to prospective homebuyers about the merits of sprinklers and disclose new homes built in Minnesota do not comply with the ICC model residential code. The industry opposes this bill and it did not get a hearing prior to deadline.

Point of Sale Contamination Awareness Act

This bill would have required real estate sellers to disclose whether there is or ever has been soil or water contamination on the property. The industry has joined with our realtor friends to monitor this bill as it may have unintended negative consequences.

Retainage

A bill to require interest and segregating retainage in identifiable accounts was introduced but failed to get a hearing. BAM monitors on an annual basis as it may have unintended consequences for punch list items and final payment clauses in residential construction contracts.

Single Family Home Buyers Public Safety Protection Act

A similar proposal to the "Fire Protection Awareness Act", this bill did not get a hearing. It would have required potential homebuyers to watch a video about sprinkler systems and sign a disclosure prior to closing.

Sprinkler Mandate Prohibition

Despite amazing Senate (45 yeas & 17 nays) and House (85 yeas & 43 nays) floor votes supporting the industry position to prohibit the mandate and give consumers the choice to install these systems, the issue proved again to be a poison bill as the Governor repeatedly makes it clear that any bill containing the mandate prohibition language would be vetoed.

Street Utility Fees

A street utilities bill would have given municipalities the authority to create street utility zones to collect revenue for street repairs and maintenance. While the bill died, it died containing an industry-negotiated provision that carves out new development.

2015 SPECIAL SESSION LAWS

CHAPTER 1: Jobs and Economic Development Omnibus

Governor Dayton originally vetoed this legislation (HF 1437) by citing concerns with inadequate investments for broadband development, funding for Minnesotans with disabilities, and Department of Commerce program appropriations. The final bill passed during the Special Session includes funds for a workforce housing grant program, rural career counseling services, the Minnesota Youth Program, and unemployment benefits for poultry workers affected by the avian influenza outbreak. A provision was added to the bill clarifying the eligible uses of sales tax raised by the City of Rochester with regard to the Destination Medical Center project. The change was needed to prevent future spikes in local property taxes for the area.

CHAPTER 2: Legacy Fund Appropriation Omnibus

A hold over from regular session, the Legacy bill - an appropriation bill that spends dedicated constitutional funds for clean water, outdoor access and habitat, parks and trails, and cultural heritage - was completed without fanfare. The water portion includes \$9.25 million per year in grants for new water infrastructure environmental requirements, as well as funding for state agency programs needed to avoid federal water discharge permit issuance problems for Minnesota cities and businesses. It also funds soil and water conservation districts to do the work on the Governor's buffer initiative.

CHAPTER 3: E-12 Education Finance Omnibus

The final education bill did not contain the Governor's much desire early childhood program. The Special Session bill increased per pupil funding and early learning scholarship funds.

CHAPTER 4: Agriculture, Environment and Natural Resources Omnibus

This bill contains the Wetlands Conservation Act and Governor's 50' Buffer provisions discussed above under "Wetlands & More". A notorious provision in the bill is the extremely controversial move to eliminate the Minnesota Pollution Control Agency's Citizens' Board.

CHAPTER 5: Bonding / Capital Investment

Of the \$370 million+ authorized in the Omnibus Bonding Bill is \$180 million in General Obligation bonds as well as \$193 million in Trunk Highway bonds and General Fund dollars. Major projects include:

- \$33 million to complete the ongoing state Capitol restoration project
- \$5 million for highway-rail grade separation projects
- \$32.8 million to the Department of Transportation for local road and bridge projects
- \$31.9 million to Minnesota State Colleges and Universities system for facility improvements
- \$23.6 million to the Department of Natural Resources for flood hazard mitigation projects
- \$21 million for disaster relief for flood damages related to major storms in 2014
- \$8.5 million for the University of Minnesota's Willmar-based poultry testing lab
- \$1.2 million for replacement of the food processing facility at the Northeast Regional Corrections Center in Saginaw.

CHAPTER 6: Revisor's Correction Bill

The Revisor's bill passed at the end of each session makes technical corrections to other bills already passed into law that year by the Legislature.

BAM GRATITUDE

Many thanks to BAM's government relations committee (see list below) for all its advice and direction; we know volunteering on this committee is time consuming, but your input is priceless.

BAM Government Relations Committee Members

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Welker Construction Services

BAM Lobbying Team

Thank you to Jane DeAustin (CMBA), James Vagle (BATC), the “retired” Matt Limoges (RAB) for the work you’ve done to make our industry have a unified and statewide voice.

Accolades to the industry's stellar contract lobbyists Brian Halloran, Larry Redmond, Andrea Perzichilli, Forrest Cyr, and Pete Coyle.

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BUILDERS ASSOCIATION OF MINNESOTA

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