

# :: 2010 Session Summary

AMERICAN SUBCONTRACTORS  
ASSOCIATION – MN CHAPTER

THE VOICE OF SUBCONTRACTORS

## 2010 Session Overview

Minnesota's 86th Legislature adjourned the 2009-2010 Regular Session on Sunday, May 16, 2010. With its business not yet done, the Governor called it back into a Special Session for Monday, May 17.

During the one-day Special Session Overtime, the Legislature addressed the state's \$3 billion budget deficit through cuts, shifts and no new taxes. The Governor signed the budget into law as Chapter 1 of the 1<sup>st</sup> Special Session. Cuts to state agencies and local governments made up \$1 billion and a shift of \$2 billion to school districts making up the remainder. Forecasts indicate that the state will be facing a \$5-8 billion deficit going into the 2011-2012 biennium.

Over the course of the last two years 3,866 bills were introduced in the House of Representatives and 3,432 bills were introduced in the Senate. Of those, 400 bills made it to the Governor's desk to become law or be vetoed. ASA-MN monitored, directly lobbied and participated in the advancement (or demise) of several bills.

Every election season brings change. At least 24 Legislators will not be returning to their current positions – some are retiring and some are running for higher office. Also, for the first time ever, the state primary will be held before Labor Day on August 10, 2010, with the focus on the competition between Democrats for the Gubernatorial ticket. The general election will be November 2, 2010. Newly elected state legislators will convene the 87<sup>th</sup> Legislature and the 2011-2012 Biennium on Tuesday, January 4, 2011.

During the interim, ASA-MN is participating in industry meetings at the Department of Labor & Industry (DOLI), meeting with elected officials, candidates and industry peers, and building its grassroots network. Come January 4, 2010, ASA-MN will be poised to advance legislation to improve the business environment in the construction industry.

### ASA-MN's 2009-2010 Legislation

ASA-MN continues to promote three policy changes to improve the business climate for subcontractors. Introduced, but not heard, were the following bills:

- **Paid-if-Paid.** Makes paid-if-paid contract clauses unenforceable (SF2163/HF 2393)
- **Loan in Default.** Requires lenders to inform prime contractors and subcontractors when the construction loan is in default (SF2163/HF2393)
- **Retainage.** Requires retainage to be placed in an interest-bearing escrow account with a third party to be released upon substantial completion of the work (SF3057)

In 2010, ASA-MN maximized its time at the Capitol to establish the association as 'the voice of subcontractors', meeting with legislators to tell them about the importance of advancing policy supporting subcontractors, attending industry rallies, and securing a place at the table for all future debates involving the construction industry.

Prepared for ASA-MN by • Remi Stone

## **New Laws of Interest**

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### **Boiler Bill**

**Chapter 287 (HF2855)**

**Effective August 1, 2010**

This new law embodies a comprehensive re-codification of Minnesota's boiler laws.

### **Bonding Bill**

**Chapter 189 (HF2700)**

**Various effective dates**

The Governor signed the \$686 million bonding bill funding a variety of construction projects across the state into law after his use of the line item veto. Tucked into this bill is a requirement that state building projects must recycle at least 50% of project waste.

### **Building Jobs Coalition Initiative - The JOBS Bill**

**Chapter 216 (HF2695)**

**Various effective dates**

This major construction jobs initiative provides, among other things, incentives for angel investment, job creation, refundable historic credits, revenue bonds for city transportation projects, development flexibility for Bloomington and the Mall of America, a modified JOBZ for the Saint Paul Ford plant, expanded TIF revenues for private development and construction projects in a handful of cities, and modifies the state's existing research and development tax credit to include partnerships and S-corps intended to benefit small and medium sized businesses.

### **Contractor Licensing & Continuing Education**

**Chapter 260 (SF2944)**

**Effective August 1, 2010**

This legislation establishes very specific and increased education requirements for those seeking to obtain and maintain a residential building contractor license.

### **Department of Labor & Industry Agency Bill**

**Chapter 280 (HF3048)**

**Various effective dates**

This law contains expanded enforcement authority for actions taken against contractors and tightens contractor-licensing requirements. The bill makes it clear that the Commissioner has full authority to take enforcement actions against any applicant or individual holding licenses, permits, certifications or registrations under Minn. Stat. 326B.082 for violation of law or rule and also for fraud, deceit, or misrepresentation.

The law includes the ability for interested persons to propose amendments to the State Building Code where alleged or established geological conditions exist within a municipality. The state must make available electronic versions of code amendments. It also provides for electronic notices for rule hearings.

"On the job training" is now call "on the job learning" under this new law. Also, it changes the definition of apprenticeship to a time based approach not less than 2,000 hours or one year of continuous employment in an approved program of on the job learning, a competency-based approach involving successful demonstration of skills and knowledge

Finally, something we've all been waiting for; state law is now clear that building certificates of occupancy validly issued before July 1, 1972 are valid after that date.

### **Elevator Bill**

#### ***Chapter 282 (SF2844)***

#### ***Effective August 1, 2010***

This new law addresses inspection requirements for elevators and revisits the issue of church and grain elevators. Specifically, all elevators are subject to periodic inspections by the department or a municipality authorized to perform periodic inspections, except that hand-powered manlifts and electric endless belt manlifts are exempt from periodic inspections. Periodic inspections by the department shall be performed at the following intervals: (1) a special purpose personnel elevator is subject to inspection not more than once every five years; (2) an elevator located within a house of worship that does not have attached school facilities is subject to inspection not more than once every three years; and (3) all other elevators are subject to inspection not more than once each year.

### **Employment and Economic Development - Omnibus Bill**

#### ***Chapter 347 (SF2510)***

#### ***Various Effective Dates***

This Omnibus Employment and Economic Development bill contains several provisions relating to the DOLI's building code responsibilities as well as other licensing and fee matters.

The bill redefines licensees in Minn. Stat. 326B and reconfigures the state's licensing fee structures. All industry licenses now fall into four categories - entry level, journeyman, mater, and business. It adds a new plumber contractor business license and water conditioning contractor business license. In addition, the bill directs a wholesale restructuring of all of DOLI's fees.

Several changes are made to plumbing licensing, insurance and bonding requirements. It exempts well contractors from plumbing licensure, insurance or bonding when they are engaged in installing 1) water service pipe from wells to pressure tanks or frost-free water hydrant with an antisiphon device located entirely outside of a structure requiring potable water, or 2) temporary shut-off valves on well water service pipes.

The bill requires statewide enforcement of the State Building Code's requirements for persons with disabilities. Municipalities not adopting the State Building Code must enforce these provisions through an agreement with another municipality, contracting with an individual appropriately certified, or hire and train their own staff.

Local authorities must report to the Commissioner of DOLI violations by master and journeyman water conditioning licensees. The bill requires licensed professionals to install and service water-conditioning systems except in cities and towns of a population under 5,000. Licensed professionals are not required for exchanges of portable water conditioning equipment or by homeowners doing their own work, provided the work is compliant with the Plumbing Board's minimum standards.

State law now allows manufactured homes to be reinstalled without frost footings if the home is more than 24 months old and the purchaser and seller sign a consent form. The law prohibits the manufacture or sale of a new

manufactured home unless it complies with the Manufactured Home Building Code and bears labels required by HUD.

One of the most heart wrenching consumer protection items discussed this session was incorporated into this bill. Several examples of personal injury caused by the poor operation and maintenance of inflatable amusement equipment resulted in legislation regulating this type of business.

### **Home Warranty Bill / Notice & Opportunity to Repair**

#### ***Chapter 343 (HF3386)***

***Effective dates - sec.1-12, January 1,2011; sec.13, August 1, 2010***

This bill addresses many of the home warranty issues triggered by the rash of construction defects over the past decade. The bill contains a requirement that homebuilders provide a written contract that includes "performance guidelines" for specific construction details, although the bill does not define performance guidelines. Also, as part of the notice and opportunity to repair process, parties will have an "ENE" - early neutral evaluation option - to address claims in a non-binding forum before pursuing litigation.

### **Housing Maintenance Codes - Morris v Sax**

#### ***Chapter 308 (SF2759)***

***Effective August 1, 2010***

This legislation was introduced in response a court case invalidating portions the City of Morris' rental maintenance code. The new law is intended to make clear that municipalities have the ability to enforce property maintenance and rental codes provided they do not impose more restrictive requirements than was required by the building code at the time of construction, reconstruction or alteration, or the component or system was installed, unless specific retroactive provisions for existing buildings have been adopted as part of the State Building Code.

### **Lead Remediation - EPA Program Compliance and Contractor Responsibilities**

#### ***Chapter 321 (SF3128)***

***Effective February 1, 2011***

The final version of this law requires that contractors performing renovation on pre-1978 residential and child-occupied facilities to be certified in accordance with the federal lead remediation law.

Contractors requiring certification are residential building contractors, residential remodelers, manufactured home installers, and residential roofers.

The law requires municipal building officials to verify a contractor's lead remediation certification before issuing a permit. Accompanying this requirement is the authority for municipalities to charge a small surcharge of up to \$5.00 to verify lead certification qualifications (similar to contractor license verification fee).

### **Plumbing Licensing & Education; Exterior Permits; Water Conditioning; False Advertising**

#### ***Chapter 183 (HF927)***

***Effective August 1, 2010***

This bill deals primarily with the Plumbing Board's responsibilities and licensure requirements for plumbers. The bill prohibits false advertising by those carrying construction licenses required under Minn. Stat. 326B.

It specifically gives municipalities the authority to adopt an ordinance that requires exterior work authorized by a building permit to be completed within a fixed number of days, but not less than 180 days.

It amends the water conditioning requirements directing the Plumbing Board to set standards and preserves municipal authority to have local regulations relating to water conditioning.

**Supplemental Budget – Economic Development Finance Omnibus Bill**  
**Chapter 215 (HF1671)**  
***Various effective dates***

This supplemental budget bill was one of the first steps taken in this year's multi-step budget balancing activities. Major shifts in funding and the reallocation of fees to general fund purposes is one of the hallmarks of the state's current budget.

A provision in the law increases the surcharge that is imposed on all permits issued by municipalities in connection with the construction of or addition or alteration to buildings and equipment or appurtenances. The new language establishes the permit surcharge to be the greater of one-half mill (.0005) of the fee or \$5. The origin of this fee increase stems from the state's ongoing transfer of fees from the special revenue fund to the state's general fund (what seems to have become an annual budget & supplemental budget event).

Also part of the supplemental budget is the transfer of \$14 million from the worker's compensation assigned risk plan to the general fund. This plan provides worker's compensation insurance to employers who are rejected by the private sector insurance market.

It removes a provision allowing licensed individuals from seeking continuing education credit for courses not previously approved by the Department of Commerce.

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### **Thanks!**

Thank you, ASA-MN, for the opportunity to represent your interests. It is a delight to work on issues important to the construction industry.

Also, special thanks to ASA-MN's Government Affairs Committee and Board of Directors for their insights, direction, and most importantly, spending a lot of time at the Capitol with elected officials this year. I look forward to 2011 and another successful year for ASA-MN!

To obtain copies of these or other pieces of legislation, please contact me at 612.419.0525 or [remistone@comcast.net](mailto:remistone@comcast.net).

Sincerely, Remi