

ASA-MN :: 2011 Session Summary

AMERICAN SUBCONTRACTORS
ASSOCIATION – MN CHAPTER

THE VOICE OF SUBCONTRACTORS

A brief note on the Government Shutdown:

Budget talks looked difficult from the start of session and sure enough they are making history. Problems were predictable in part because Governor Dayton planned on balancing the budget with a tax hike on the wealthiest Minnesotans while at the same time the GOP claimed there would be no tax increases and that the budget would be balanced by cuts alone. As it stands the uncompromising positions have taken control.

This weekend, about 22,000 state employees began the holiday knowing that there is no job for them to return to. Governor Dayton has said that negotiations will resume after the Fourth of July weekend.

Because the legislature has not determined how to fund the state, responsibility has fallen on the court system. Judge Kathleen Gearin has been given charge to define the core government services that will remain operating during the period of impasse. The prison system, the state patrol, portions of Medicare, unemployment benefits and a number of other services will continue to be funded but what about the rest, and where do you fall in this mess?

There is no clear answer to date. But what we do know is that on July 1, 2011 all state contracts are in question and many will be suspended. Many construction projects will likely be stopped or at least hampered and all levels of contractors are subject to the whims of the legislature.

The Minnesota Department of Administration Commissioner has been quoted as saying that “work activity under the contracts as of July 1, 2011 must be suspended, pending authorized appropriations, as will all payments of the state of Minnesota under those contracts.”

The following is the 2011 regular session summary. We were hoping to include a complete summary with a full budget review and related policy provisions. Unfortunately, final details are pending a special session – not yet set – to balance the state’s budget and resolve the miscellaneous outstanding policy issues.

2011 Regular Session

At midnight on May 23, 2011 Minnesota's legislative session came to a close... without a budget agreement. Indicative of the tumultuous year at the Capitol our elected officials failed to agree on the funding appropriations that sustain our state's economy, and instead the government closed its doors at five pm on Thursday June 29, 2011. The press moaned, and we might very well begin to see the affects unfold after July 4th. Secret negotiations may have taken us closer to a state budget, but close only counts for so much.

To date, Minnesota's elected officials in our 854 cities, 87 counties, 1,786 townships, and 519 school districts have come to a budget agreement, so why is this year different? Some blame the 63 newly elected faces at the Capitol, some blame the growing philosophical extremes, but all agree that the five billion dollar budget deficit has made it abnormally difficult to bridge differences.

There are many questions that can only be answered in due time, but what we do know is that there were 117 chapters of law sent to the Governor, 23 of which he vetoed - including a bill prohibiting residential sprinkler requirements, the manufactured home park water and sewer charge regulation bill, the voter ID bill and eight appropriation bills.

ASA-MN Activities

In 2011, ASA got some spectacular publicity, educated members of the legislature about our objectives, killed a few adverse bills and increased our presence at the Capitol by getting to know the new legislature while rekindling last year's relationships. ASA members worked effectively to ensure that legislators know we are keeping an eye on their activities, and that we will be at the table with officials and ideas if something important comes up.

The ASA-MN press release identified our concerns and stated our position publicly while increasing our credibility. That publicity complimented by a noteworthy grassroots campaign helped bolster 'the voice of subcontractors.' It takes time, but our message becomes more articulate and effective as we build on the requisite foundation.

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Also this year ASA-MN introduced into the House and the Senate, the Business-to-Business Accountability bill (HF 590 / SF 859) as well as the Retainage bill (HF 589/ SF 861). ASA's focused message and consistent presence at the Capitol, regular meetings with legislators and attendance at industry rallies have helped to secure a seat at the table with the construction industry.

Last, but far from least, it is important to recognize that we successfully prevented the adverse ACEC indemnification bill from becoming law and stopped the further shifting of insurance responsibilities onto subcontractors.

ASA's presence at the Capitol, continued membership engagement, grassroots campaign, and dedication to its identified objectives, causes the 2012 session to look promising for ASA-MN.

ASA-MN's 2011-2012 Legislation

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

- **Business-to-Business Accountability.** (HF 590 / SF 859). In support of ASA's on-going effort to bring transparency to the state's construction financing schemes, HF 590 / SF 859 were introduced. The bill requires evidence of construction financing as part of building & construction contracts. It allows general and sub- contractors to notify lenders in the event of non-payment. In the event of loan default it requires lenders to notify general and sub-contractors of the default and authorizes stop-work without penalty.

This bill received a lot of publicity in 2011. Not only were our story and our rationale for the bill plastered on the front page of Finance and Commerce but we raised awareness for ASA as a whole. It is important to be seen and this bill has received a lot of positive exposure.

- **Retainage.** (HF 589/SF 861). The bill requires retainage to be held in an interest-bearing third party escrow account and released within 30 days of substantial completion as defined by Minnesota Statutes, section 514.051.

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This bill was well received in office conversations with senators and representatives, probably because it's objectives seem like common sense. But as you know common sense in the legislature is... well only part of the equation. We have worked hard and will continue to try and bring people together over this issue, especially those who are adverse to more "paperwork," for example - owners, general contractors, and banks.

As a footnote, the Residential Subcontractors Association (RSA), our subcontractor and supplier peer group, continues to be present at the Capitol. This year their interests included extending the permissible period for liens and mandating written contracts between subcontractors and general contractors. ASA-MN worked with RSA to ensure our interests were aligned.

New Laws of Interest in 2011: Few and Far Between this Year

Lead Training – EPA remediation program

Chapter 2 (SF 139)

Effective date August 1, 2011

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).

The law was passed last session but due to concerns regarding proper steps for certification the effective date has been suspended by six months, from the original effective date of February 1, 2011 to August 1, 2011.

City, county, and town zoning controls – variance ordinances

Chapter 19 (HF 52)

Effective Date May 6, 2011

This legislation follows a recent Minnesota Supreme Court decision articulating the requirements for granting municipal land use variances. The new law changes the previous requirement for a variance from “undue hardship” to “practical difficulties.”

The new language presumably grants municipalities a broader degree of discretion as to when to grant a variance, including slightly more discretion with regard to economic considerations in the determination of practical difficulties.

The three-factor test of 1) reasonableness, 2) uniqueness, and 3) essential character, remain as the necessary elements for a variance, but new language more clearly identifies that “variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance and when the terms of the variance are consistent with the comprehensive plan.”

Agricultural building roof panels load bearing capacity

Chapter 20 (HF 529)

Effective date May 14, 2011

The law adds language to Minn. Stat. § 326B.106 and § 326.121, subdivision 1. Section 1. Mandating that the state building code “must require translucent panels or skylights without raised curbs to be supported with equivalent load-bearing capacity as the surrounding roof.”

The Section 3 addition modifies the application of the state building code as the statewide standard for agricultural buildings with respect to translucent panels or skylights as provided in Section 1.

Well contractor licensing requirements modified

Chapter 21 (HF 569)

Effective date August 1, 2011

This law modifies the licensing and bonding requirements for well contractors by amending terminology used in Minn. Stat. § 326B.46, subdivision 6. The modification makes a limited expansion to the exemption for certain installations.

Residential remodeling workers compensation

Chapter 89 (SF 1159)

Effective date May 28, 2011

This law contains a number of recommendations made by the Workers' Compensation Advisory Council (WCAC). WCAC is an organization comprised of 12 members, six from organized labor and six from Minnesota businesses.

The new language modifies a number of sections of Minnesota Statute 176. The most dramatic changes are affect the process by which administrative hearings take place and dollar amount that is to be allocated for residential remodeling for an employee who is permanently injured on the job.

In accordance with WCAC recommendations the amount that can be allocated for residential remodeling after a permanent on the job injury has been increased from 60,000 to 75,000. The increase is designed to adequately cover the costs of obtaining proper architectural certification and meeting supervision requirements.

For projects not requiring architectural approval the new provisions requires approval by the Council on Disability. The work is to be performed by a licensed residential building contractor or residential remodeler and approved by a carried building official or certified accessibility specialist.

Vetoed Legislation

State Fire Code – residential fire sprinkler systems

Chapter 47 (HF 460)

VETOED

This bill was vocally opposed by Firefighters, Building officials, as well as by the Department of Labor and Industry because it would have permanently and unnecessarily prohibited the State Building Code, Fire Code, and or local governments from requiring the installation of sprinklers in new or existing single-family homes.

This bill would have in effect bypassed the mandated rule-making process by direct enactment through the legislature.

Air admittance valves

HF 837 / SF 579 (Incorporated in HF 562, Sec. 10)

VETOED by way of HF 562

Designed to remove a state provision prohibiting the plumbing code for allowing air admittance valves.

Omnibus state government finance

Chapter 40 (SF 1047)

VETOED

This was the omnibus state government finance bill. The bill contained budgets for the Legislature, the constitutional offices, the Departments of Management and Budget, Revenue, Administration, Military and Veterans Affairs, as well as the operations of the Minnesota State Retirement System (MSRS).

Manufactured home parks water and sewer charges regulated

Chapter 73 (HF 562)

VETOED

This bill would have granted owners of manufactured home parks the right to install wells and septic systems within the park. And it would have given the cities, in which the parks are located, the authority to regulate rates as well as adopt ordinances to govern the installation process.

Construction codes 180-day effective date

HF 1076 / SF 634 (Incorporated in SF 887, Art. 3, Sec. 1-2, 7, 49-50)

VETOED by way of SF 887

This bill would have provided a six-month window after the publication of new construction codes in the State Register before the new codes become effective.

Omnibus state government finance bill & backflow valves

***HF 1265 / SF 899 (Incorporated into SF 887, Art. 1; Art. 2, Sec. 2, 10-11; Art. 3)
VETOED via SF 887***

Attempted to make appropriations to the various agencies that regulate the construction industry as well as provides enhanced continuing education standards for licensed construction professionals. It provided regulation for the appropriate installation of backflow valves.

Legislation Carried Over to 2012

Building and construction contracts indemnification agreements (ACEC)

HF 390 / SF 387

In Committee

Design Professionals Seek Exception to Additional Insured Coverage
The American Council of Engineering Companies of Minnesota (ACEC) was and presumably will continue to pursue legislation that would alter the definition of construction contract and allow those providing professional services such as engineering and architectural design to be able to avoid additional insured contract responsibilities.

Maintenance plumbers licensed

HF 632 / SF 411

In Committee

Would have allowed for the transfer of restricted master plumber and journeyman plumber licenses in certain circumstances.

Construction contractor registration

HF 1170 / SF 852

In Committee

This bill would have established a detailed definition of construction contractors and construction services. It required those providing construction services on or after January 1, 2012 to register with the Department of Labor and Industry.

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Thanks!

Thank you, ASA-MN, for the opportunity to represent your interests, as well as for your individual time and commitment to the process. Laying the foundation for the long-term success of Subcontractors across Minnesota requires a constant effort and a consistent plan, and we are well on the way.

Also, special thanks to ASA-MN's Government Affairs Committee and Board of Directors for their insights, direction, and most importantly, their presence and support at the Capitol. We look forward to 2012 and another constructive year for ASA-MN!

Respectfully submitted by:

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With substantial experience throughout the Midwest and now the Northeast representing private and public clients before 23 state legislatures and regulators and in Washington, DC, Remi Stone works with Legislatures, state agencies, cities, townships, counties, watershed districts and the Twin-Cities' Metropolitan Council to protect and advance clients interests.

At Crocus Hill, her practice focuses on commerce, consumer protection, appropriations, capital investments, taxes & fees, financial services, construction, building codes, licensing, agency rulemaking, land use, environment regulations, contracts, insurance, indemnification, civil law and payment matters.

Clients – past & present – include the Mall of America, T-Mobile, American Subcontractors Association, Association of Minnesota Building Officials, Builders Association of the Twin Cities, League of Minnesota Cities, Flint Hills Resources, and Advance America / National Cash Advance.

A graduate of Hamline University - School of Law, she enjoys a part-time gig at her alma mater as an adjunct professor of law, teaching statutory interpretation, legislation and lobbying since 1999.

Committed to her local communities, she serves on the City of St. Paul's Truth in the Sale of Housing Committee. She sat as Chair of the Roseville, MN Planning Commission Variance Committee and Chair of the St. Paul, MN Capital Improvement Maintenance Budget Committee. She is very proud to have served four years in the Minnesota Air National Guard.

Nick McNeely

Nick McNeely, a Saint Paul native, earned a bachelors degree in Business Administration from the University of St. Thomas and a Juris Doctorate from Hamline University School of Law. Nick is a qualified neutral working on small claims matters and began lobbying with Crocus Hill Consulting in 2010.

Rooted in the community he serves as an advisor and board member to a number of Twin cities institutions including the Family Business Center at the University of St. Thomas, the McNeely Foundation, and the Neighborhood House food shelf. Nick brings to his advocacy a sense business acumen and sincere concern for community stakeholders.