

2019 Minnesota Legislative Session

MSBA Construction Section, October 11, 2019



Minn. Dept. of Employment & Economic Development Data

August 2019 Minnesota		Percent Change from Previous				All Employees (AE)
Industry Title	Employment	Year	Month	Industry Employment as % of Total	Hours Worked/ Week	Earnings/ Hour
Total Nonfarm	2,992,391	0.4%	-0.2%	100.0%		
Total Private	2,591,715	0.4%	0.0%	86.6%	34.1	\$30.33
Construction	144,575	5.5%	-0.2%	4.8%	41.1	\$33.99
Construction of Buildings	29,601	1.9%	0.4%	1.0%		
Residential Building Construction	13,754	2.3%	-0.1%	0.5%		
Heavy and Civil Engineering Construction	19,724	-5.4%	1.1%	0.7%		
Specialty Trade Contractors	95,250	9.4%	-0.6%	3.2%		

2019 Session

Divided State
Government Works,
Sort of....



State Budget

After running into overtime, the Legislature and the Governor agreed on a two-year state budget (1.9% increase over current law's forecasted spending) including use of one-time \$500 million from reserves for ongoing expenditures.

Taxes

Part of the end of the session agreement, but beyond, to pass the bills.

- Largely conforms Minnesota to the 2017 Fed. Tax Law
- Reduction in state business general sales tax levy
- 0.25% cut in the 2nd individual income tax bracket
- Continuation of the medical provider tax at 90% of former tax rate.

Retainage (Chapter 7, Special Session)

- Applies to all construction projects in Minnesota - public and private.
- GCs must reduce retainage at same rate as owners.
- Retainage must be released within 60 days from substantial completion of the project. All Subcontractors that have finished their work, turned in their paperwork, and are not involved in a dispute must be paid their retainage.
- GCs must pay retainage within 10 days of receiving payment. If there is a dispute under a subcontract the GC must identify the amount and reason for withholding.
- Allows owners to withhold 250% the cost to correct or complete work known at substantial completion and up to 1% of the contract (or \$500 whichever is more) for failure to provide paperwork. Payment must be made 60 days after work is completed and documents are turned in.

Retainage

- Substantial completion definition (MN Statutes 541.051, subd 1(a)): “Date of substantial completion shall be determined by the date when construction is sufficiently completed so that the owner or the owner's representative can occupy or use the improvement for the intended purpose.” For road and bridges: “[S]ubstantial completion means the date when construction-related traffic devices and ongoing inspections are no longer required.”
- If the owner withholds, they must document why and provide documentation to a Sub that requests it.
- Withholding retainage for warranty work is prohibited.
- Covers contracts signed on or after August 1, 2019.

Bonding

Not a traditional bonding bill but authorizes the MN Housing Finance Agency to issue \$60 million in housing infrastructure bonds

Judicial Jurisdiction for Public Procurement Disputes (Chapter 21)

“(a) Original jurisdiction is granted to the district court over any action seeking legal, equitable, or declaratory relief arising under or based upon the alleged violation of any law governing public procurement requirements, public procurement procedures, or the award of any public contract.

“(b) The grant of original jurisdiction under paragraph (a) applies regardless of whether a public entity involved or implicated in the action is alleged to have acted, or may be held to have acted, in a judicial or quasi-judicial capacity.”

Effective May 10, 2019 and applies to any actions filed with the district court on or after that date.

Energy (Chapter 7, Article 11, Special Session)

This new law allows a public utility to recover costs from the rate payers for pilot projects for energy storage with a study on its “technical and economic effectiveness” administered by the Dept. of Commerce.

Transportation

- Study extending Northstar Commuter Rail to St. Cloud
- State roads/bridges \$1.8 billion/2 years
- County roads/bridges \$1.6 billion/2 years
- Municipal roads/bridges \$420 million/2 years
- Building construction related to roads/bridges \$1.1 billion/2 years
- Dump MNLARS and buy software off-the-shelf
- Established the Richard J. Ames Memorial Highway (route between Jordan and US Hwy. 61)

Wage Theft

- Makes “wage theft” a crime
- Increased enforcement
- Employers shall keep a list of personnel policies provided to employees
- More information on earning statements,
- Nine things employers must provide to employees upon start of employment
- Employers must provide notice to all employees of any wage change

Minnesota Modifies Work Zone Law (Chapter 35)

This modification allows a police officer to issue a citation to a driver if a work zone flagger reports a violation within four hours of the violation and includes:

- a description and license plate of the vehicle,
- a description of the person operating the vehicle, and
- the time of the incident.

Flaggers are required to complete training on flagging operations, observation techniques, and traffic laws.

Effective August 1, 2019 and applies to violation on or after that date

Hands-Free Driving Law (Chapter 11)

Drivers are required to use hands-free technology with making calls, sending texts, or accessing content behind the wheel.

According to the Minnesota House of Representatives public information office:

“[t]he law specifies that a communications device does not include a device or feature that is physically integrated into the vehicle, a GPS or navigation system that is only capable of being used for navigation purposes, or a two-way radio, CB radio, or amateur radio equipment used in accordance with Federal Communications Commission rules. Calls and messages made or composed using a hands-free device are exempt from the prohibition, as are messages or calls placed to obtain emergency assistance. So, too, is the use of a navigation system on a device that does not require the driver to type while the vehicle is in motion or a part of traffic, provided the driver does not hold the device with one or both hands. Also exempt is the use of a device to listen to audio-based content in a manner that doesn't require the driver to scroll or type while the vehicle is in motion.”
Effective August 1, 2019.

Minnesota's Expanded 'Move Over' Law (Chapter 18)

Minnesota's 'move over' law has been expanded to include: construction vehicles, road maintenance vehicles, utility vehicles, tow trucks, and solid waste/recycling vehicles, in addition to "authorized emergency vehicles" (police, fire, and ambulance).

When approaching these types of vehicles who are using emergency, flashing or warning lights and are stopped on or next to the street or highway, traffic must either slow down or move over.

Effective May 4, 2019.

Other New Laws

- **PACE.** Expands Property Assisted Clean Energy projects to include new construction.
- **Work Compensation.** Allocates money to build a system for managing files electronically.
- **Unemployment Comp.** Small technical bill from last year due to a 2018 gubernatorial veto.
- **Legislative Comm. of Housing Affordability.** Eight legislators to study housing affordability.



What Did Not Pass?

- **Indemnification**
- **Preempt Cities** Bill on Uniform Labor Standards
- **Residential Construction Rulemaking**
Legislative Notice and Review
- Allowing **minors** to work on **construction sites**
- Statutory process for **Public-Private Partnership**
financing/procurement
- **Bonding**

Rule Making: State Building Code Adoption

The Department of Labor and Industry has finished its first round of public input on revising the various Construction Codes (Building, Elevator, Residential, Existing Building, Commercial Energy, Mechanical, Accessibility, Fire, and Administration) that are part of the Minnesota State Building Code.

The Department is in the middle of proposing draft code language & a statement of need and reasonableness for the second round of public input in the rulemaking process.

Look for adoptions in 2020, followed by the six-month waiting/education period.

2020 Session

2020 Minnesota Legislative session opens at noon on Tuesday, February 11, 2019.

- ▶ End of February, State Budget Forecast
- ▶ May 18, 2020 Session Ends

2020 issues:

- ▶ Any modifications in the Two-Year State Budget
- ▶ Bonding Bill
- ▶ Energy
- ▶ Marijuana Legalization
- ▶ Election in Nov. 2020

Bonding Amounts by Year

Year	Amount of Bonding and Cash for Construction
1996 Session	\$652 Million
1997 Session	\$111 Million
1998 Session	\$999 Million
1999 Session	\$154 Million
2000 Session	\$610 Million
2001 Session	\$118 Million
2002 Session	\$673 Million
2003 Session	\$231 Million
2004 Session	\$0 (no bonding bill)
2005 Session	\$944 Million
2006 Session	\$990 Million
2007 Session	\$0 (no bonding bill)
2008 Session	\$849 Million (2 bills)
2009 Session	\$276 Million
2010 Session	\$686 Million
2011 Session	\$531 Million
2012 Session	\$567 Million
2013 Session	\$150 Million
2014 Session	\$1.125 Billion
2015 Session	\$180 Million
2016 Session	\$0 (no bonding bill)
2017 Session	\$987,939 Million
2018 Session	\$913 Million
2019 Session	\$0 (no bonding bill)

Questions?



- Gary Thaden, gthaden@gmail.com, 651/646-2121