2012 Session Overview

The 2012 legislative session began on January 24, 2012 at noon and adjourned sine die on May 10, 2012 at 2:03pm. This session was filled with heated debate, extreme positions and the occasional compromise. Discussion among legislators focused primarily on jobs, tax reform, constitutional amendments, a new sports stadium, and the elections next fall. After all is said and done, we can expect a number of constitutional amendments on the ballot in the fall, $566 million in bonding, a new stadium and every legislator will be up for election in November 2012.

The real start date of the session began well before January 2012. In December 2011 Minnesota Management and Budget announced a Surplus of 876 million dollars. This announcement was good news for everyone and set the tone for the 2012 legislative session in the sense that the common concern of a budget deficit was not the center of attention. The surplus was attributed to lower than expected costs in health and human services, deferred payments to schools and cut costs made in previous years. Despite the 2012 surplus legislators still needed to identify how to pay the state’s bills, build jobs and move forward in hard economic times.

Republicans poised themselves as redefining state government through tax cuts for businesses and reigning in state agency rule making. Democrats argued to increase the state’s revenue as well as for spending to help sustain the middle class. Neither party got exactly what they wanted but every legislator fought to make Minnesota a little better off than we were the year before, each legislator defining that a bit differently.

The session started slow and really heated up as the end came near. Only after the originally identified 2012 session deadline of April 30 came and went did things really start moving along. It was in the last few days of the legislative session that a bonding bill was passed, a stadium bill was passed and two Republican tax bills were vetoed.

ASA spent many hours trolling the halls, speaking with elected officials and maintaining relationships with other associations to ensure that Subcontractors have a place at the table when the important discussions are being had. There are a lot of interests represented at the Capitol and everyone has an opinion, but without the ever-important efforts of members, a constant presence and a unified message its difficult to rise above the background noise. Fortunately, ASA and its grassroots campaigns have been thoughtful, respectful and strategic. ASA succeeded in a Senate hearing on Unfair Risk Transfer in Construction Contracts and shed light on the inequity in the construction industry, as well as introducing legislation to address the current problems with retainage and financial accountability on construction projects. We have a lot of work ahead of us in 2012 & 2013, but ASA will take the time and put in the effort to make the construction industry a better place to do business for Subcontractors in Minnesota.

Looking forward, many of the veteran Minnesotan legislators retired in 2012 and all the others seeking another term at the Capitol are up for reelection in November. This summer will be filled with fundraisers and campaigning within newly defined legislative districts. Next year our elected officials will have their hands full as the budget deficit is expected to be in the ballpark of $1.1 billion, not including the $2.4 billion of deferred school system payments. With the specific interests of Subcontractors at the forefront ASA is already preparing for the next legislative session scheduled to begin on Tuesday, January 8, 2013 at noon.

ASA’s 2012 Initiatives:

Just as Subcontractors all over the state are committed to quality craftsmanship and equitable
construction practices, the American Subcontractors Association of Minnesota worked tirelessly to represent you at the Capitol in 2012. This year ASA fought on numerous fronts to protect the rights of Subcontractors and improve construction industry. As well as working for Subcontractors, ASA thanked our troops by donating over 1,000 Twins tickets to veterans and raising scholarships funds for youth going into construction related jobs; an effort tirelessly lead by ASA’s government affairs committee chairman, John Lloyd.

**Primary Legislative Objective: Stopping Unfair Risk Transfer in Construction Contracts**

In nearly all construction contracts signed in Minnesota the subcontract is required to insure the company employing them for that company’s sole negligence. You pay for their mistakes, or if your lucky your insurance does. This unfair risk transfer occurs because there is a problem with the way the statute is written, and until MN Statute 337 is fixed this loophole will continue to force contractors to push liability down the chain of employment, because everyone is doing it.

This year ASA introduced House File 2656 / Senate File 2229, which would end this unfair risk transfer in construction contracts. ASA got a hearing on the bill and in it ASA member John Lloyd and ASA Chapter Attorney Curt Smith spoke in the Senate Commerce and Consumer Protection Committee to stop unfair risk transfer; and despite big industry opposition ASA won the Senate vote 8-6. That said the bill did not pass this year. Accordingly, the legislative interim will be a time of continued engagement by the ASA Legislative Committee, ASA’s Lobbyist, and many other organizations working towards an equitable resolution. ASA has assembled a list of strong supporters and ASA plans to engage organizations that support fixing this problem as well as those that are fighting against a fair solution. ASA will continue to keep its members and stakeholders informed as we press forward.

In the effort to make the construction industry more equitable in Minnesota ASA also filed an Amicus Brief to the Minnesota Supreme Court in support of L.H. Bolduc. In this case L.H. Bolduc was a Subcontractor found 0% negligent by a jury, but is being held financially liable for 100% of someone else’s negligence. This is happening because of the unfair risk transfer provisions that are included in nearly every construction contract Subcontractors sign.

On May 7th, 2012 oral arguments were heard before the Minnesota Supreme Court on the L.H. Bolduc case. The oral arguments made on behalf of L.H. Bolduc illustrate the unfair practices and realities in the construction industry, the argument can be viewed at Minnesota Supreme Court webpage or on this link: [http://www.tpt.org/courts/MNJudicialBranchvideo.NEW.php?number=A110159](http://www.tpt.org/courts/MNJudicialBranchvideo.NEW.php?number=A110159)

**Other Important ASA Legislative Priorities**

**Retainage** – House File 589 / Senate File 861

Introduced in 2011 by ASA, it requires retained funds to be held in escrow with interest accruing to the benefit of the party to whom funds are owed. The retainage system has become increasingly inequitable and counterproductive. ASA supports the elimination of unnecessary retainage on all construction projects. In addition, ASA supports legislation to prohibit a prime contractor from retaining a higher percentage from its subcontractors than the owner is retaining from it.

**Business-to-Business Accountability** House File 590 / Senate File 859

Introduced in 2011 by ASA the bill facilitates honest communication between business partners so
that each can assess risk. It would inform parties to the contract regarding financing and identify who is working on the project and disclosure if there is a material change in financing. It would require lenders to notify subs if an owner defaults on the construction loan.

**Government Relations**

Like any place the Capitol has its own culture and processes for accomplishing objectives. Part of ASA’s goal is to build relationships and develop rapport with legislators, like-minded organizations and organizations on the other side of the wall. Without laying this foundation there is little success in building a sound structure, so it is with passing bills. ASA will continue over the interim to create sustaining relationships so next January we are ready to move ahead alongside all those facing similar problems. A special thanks to all the Subcontractors and ASA board members that made it up to the Capitol this year to let our representatives know how important the legislature is in creating fairness in the construction industry.

**Newly Enacted Laws Relevant to Subcontractors**

The legislative process is designed to ensure only bills that are well supported make it into law in Minnesota. As such it is much more difficult to pass a law than it is to kill a bill and this is intentionally designed into our democratic process. Some years legislators compromise and other years compromise seems impossible, this year leaned more towards the later. There were over 3,000 proposed bills since 2011 but fewer than several hundred passed into law. Some of the bills ASA followed that did pass into law are listed below.

**House File 1992 / Senate File 1687** – Prohibition of Indemnification in Trucking Industry

*Chapter 165*

*Effective Date – 4/06/2012*

**Summary:** This new law statutorily prohibits the common practice, in the trucking industry, of requiring truckers to indemnify another party for the other party’s sole negligence. Currently suppliers require trucking companies to insure and indemnify the supplier for the supplier’s sole negligence. This is a positive step in the right direction and this is very similar to what happens in the construction industry.

**HF 2093 / SF 1653** – Independent Contractor versus Employee Distinction Clarified

*Chapter 295*

*Effective Date - Varies*

**Summary:** Independent Contractor or Employee clarified – Identifies metrics and methods by which an individual is classified as either an independent contractor or an employee. This bill was designed to eliminate the practice of requiring subcontractors to incorporate as an LLC in order to avoid providing employees with required benefits.

**HF 2553 / SF 2137** – Insurance Claims Practices Regulated

*Chapter 248*

*Effective Date – 8/01/2012*

**Summary:** Expands the prohibition against a contractor promising to pay the deductible in connection with work paid for through insurance proceeds and includes home repair or
improvement services.

HF 2173 / SF 2067 – Home solicitation sale
Chapter 234
Effective Date – 8/01/2012
Summary: This bill adds sales of improvements to real property, made at the consumer’s home, to the definition of home solicitation sales covered by consumer protections. This definitional change brings these services into the three-day buyer’s right to cancel, return of payments or goods, penalties for violations, and damages.

HF 1752 / SF 1463 – Omnibus Bonding Bill
Chapter 293
Effective Date - Varies
Summary: This $566 million dollar bonding bill is to be used for capital improvements in the state of Minnesota. Appropriations of bond proceeds must be spent as authorized by the Minnesota Constitution, article XI, section 5, paragraph (a), to acquire and better public land and buildings and other public improvements of a capital nature or as authorized by the Minnesota Constitution, article XI, section 5, paragraphs (b) to (j), or article XIV. Unless otherwise specified, the appropriations in this act are available until the project is completed or abandoned subject to Minnesota Statutes, section 16A.642.

HF 2378 / SF 2131 - Design Build Contracting Program
Chapter 176
Effective Date – 8/01/2012
Summary: This bill amends a 2009 law that established a pilot program for selecting and undertaking local transportation projects on the municipal and county state-aid systems using the design-build method of contracting. The bill (1) removes an October 1, 2012, expiration date for the program; (2) eliminates a council established to select projects for the program; transferring those duties to the Minnesota Department of Transportation (MnDOT); (3) expands MnDOT’s oversight of the solicitation process; (4) removes limits on the distribution of projects between the county versus municipal state-aid systems; (5) eliminates an annual legislative report on the program; and (6) changes program terminology. Under the revisions, the program expires upon completion of nine design-build projects.

HF 2685 / SF 2321 - Transportation Omnibus Bill
Chapter 287
Effective Date - Varies
Summary: Sections 1, 3, 7, 8, 9 - Establish the process and requirements governing evaluation and selection of the construction manager or general contractor under temporary MnDOT program. Provides for solicitation, RFP’s, committee evaluations and cancelations of contracts. Amends bridge inspection provisions and codifies some aspects of MnDOT administrative rules on bridge inspection and posting.

HF 2354 / SF 1993 – Sump Pumps and Drain Tiles
Chapter 159
Effective Date: 8/01/12
Summary: This bill was originally introduced by a waterproofing contractor who sought clarity as to
his rights to install single-family residential sump pumps. The original bill language was broad and put
installation and or alteration of any type of sump pump into the building code and barred sump pump
regulation under the plumbing code. In a senate hearing on March 15, 2012 there was an
amendment that tightly tailored the bill to address the waterproofing contractor’s ability to work on
sump pumps and drain tiles. The law allows waterproofing contractors to install sump pumps and
drain tiles inside existing single-family dwellings in accordance with the plumbing code.

HF 2263 / SF 1964 – Window Cleaning Safety Measure added to Building Code
Chapter 182
Effective Date: 4/19/12
Summary: Requiring the state building code to mandate window cleaning safety measures
for multiple level buildings and authorizing the commissioner of labor and industry to
waive requirements under certain circumstances.

HF 2732 / SF 2324 – Satellite System Installer Regulation
Chapter 262
Effective Date: 10/01/12
Summary: This law prohibits an individual from installing satellite broadcast systems unless the
person is an employee of a licensed contractor or the individual provides specified certification
and passes an examination. Certified individuals are prohibited from performing other functions
under a limited power technician license. Fees and continuing education are also provided for in the
bill.

HF 2958 / SF 2469 – Vikings Stadium
Chapter 299
Effective Date – Varies
Summary: Well if you have not heard, there will be a new Vikings stadium. Included in the bill a
Minnesota Sports Facilities Authority was established; the Metropolitan Sports Facilities Commission
was abolished; local tax revenue was provided for through electronic pull-tab games and electronic
linked bingo games that will help fund the stadium; conditional imposition of taxes and collection of
other revenues was provided for; tax rates on lawful gambling were modified; bonds were issued;
and a good deal of money was appropriated.

Bills Affecting Subcontractors That Did Not Become Law in 2012

The 2012 legislative session was filled with bills proposing regulations designed to limit agency
regulation and free Minnesota businesses from the “unnecessary” burdens. This desire was evident in
everything from the environment to the building codes. But because of strong opinions legislators
had a difficult time working out the details and few bills made it into law. Below are a number of bills
that were proposed but never made it through their respective committees or were vetoed by the
Governor.

HF 2087 / SF 1717 – Updates Building Code and Fee Changes & Sprinkler Prohibition
Governor Veto
Summary: Originally this was just a DLI “house-keeping bill” to update and clarify license-fees to
conform to the fee structure enacted in 2010 and 2011. But an amendment was added that would
statutorily prohibit fire sprinklers in single-family dwellings from ever being a part of the building
code. The bill was vetoed because of the fire sprinkler prohibition provision.

**HF 1974 / SF 2087 – Collective Bargaining Contract Extinguished if Terms Altered**

**Governor Veto**

**Summary:** Under current law, after a public sector collective bargaining contract expires, the terms of the contract remain in effect until the right to strike matures, and for additional time if the parties agree. This section provided that a contract term does not continue in effect after the expiration date stated in the contract, and the parties may not agree to extend or honor a contract term beyond that date, if the contract term would: (1) provide a wage or salary increase; or (2) provide an increase in the dollar amount of the employer contribution for insurance.

**HF 1981 / SF 1673 – Bond Threshold Decreased**

**Summary:** Changed the threshold at which the sections relating to contractors’ bonds for public work applies. The sections on contractors’ bonds for public work did not apply to contracts for snow removal, ice removal, grading, or other similar road maintenance on town roads. The amount is linked to the threshold in the competitive bidding law, which is currently $100,000, had this bill passed the new threshold would have been $75,000.

**HF 2857 / SF 1700 – Advisory Plumbing Board**

**Summary:** This bill would change the plumbing board from an authoritative board to an advisory board. The bill did not meet the first committee deadline on Friday 16, 2012 or the second committee deadline on February 23, 2012.

**HF 2211 / SF 1631 – Moratorium on Rule Making**

**Summary:** There were a number of bills designed to limit state agency rulemaking or put agency ruling making under greater legislative supervision. This bill would have prohibited the adoption of a new building code until 2014.

**HF 2458 / SF 2478 - Advisory Inspections**

**Summary:** Provided that upon request for an advisory inspection for the purpose of complying with state law, a state agency must conduct an advisory inspection. This would have required a agency conducting an advisory inspection to notify a person potentially subject to fine or penalty as a result of the inspection 10 days before. It provided that if within 60 days of receiving notice, the person corrected the situation (and the agency determines the situation is corrected), the agency may not impose a fine or penalty as a result of the advisory inspection.

**HF 2610 / SF 2578 – Rental Inspection, Time to Repair, and Fees Associated Modified**

**Summary:** This bill would have allowed any party to request an inspection of a rental property. If there were no code violations then the landlord would not need not to be notified of the inspection. If there was a code violation that did not impact health and safety the landlord would have 120-360 days, depending, to complete the repairs before a fee could be imposed. If there is a reinspection to determine if the violation has been fixed the reinspection fee is limited to $100.

**HF 2548 / SF 1551 - Electrical Inspections in Case of Government Shutdown & Fees Directed**

**Summary:** Directed all fees collected in conjunction with electrical occupations and operations, be
deposited in a special account and appropriated for the purposes of electrical inspections; and
allowed electrical inspections to continue if no budget is passed.

HF 1787 / SF 1524 – Licensing and Fee Modification
Summary: Architecture, engineering, land surveying, landscape architecture, geosciences, and
interior design professional licensing provisions and fee modifications. This bill would have changed
the education and ethics requirements for engineers, added fees for review of engineering
applications to other states and contained new fees for services that were previously free.

Thank You ASA!
Thank you, ASA, for your dedication and hard work, as well as the opportunity to represent your
interests at the Capitol. It is a delight to continuing working with you on such important
Subcontractor issues. Thank you to all the members who contacted other associations, spoke with
legislators and who donated to ASA as well as to ASA initiatives like helping our veterans. A special
thanks to our ASA board members, our legislative committee and to Tony Grazzini our outgoing
President. We look forward to the leadership of Jeff Meek, ASA’s new President, as well as Mike
Schmaltz our Executive Director. Crocus Hill Consulting looks forward to 2013 and another
successful year for ASA!

Please feel free to contact Nick McNeely at anytime with information, questions or feedback. Thank
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