

Association of Minnesota Building Officials

Building Officials administrating the building, mechanical, plumbing & electrical codes, are committed to serving the public interest and the professionals that ensure safety in the building environment

2016 Legislative Session

End of Session Summary

Session Overview

The 2016 legislative session ended right before the constitutionally mandated deadline on midnight, May 23, 2016. While this means that legislators “finished on time,” many people still believe that they left a lot of unfinished business on the table.

Although legislators aren’t required by statute to pass certain bills, including a transportation bill, a tax bill, a bonding bill, and/or a pension bill, much of Minnesota depends on them doing so in the second year of a biennium (i.e. the even numbered year of a legislative cycle).

Why weren’t these major bills passed? Well that depends who you talk to. Democrats say that Republicans sat on their hands until the last three days of session, while Republicans argue that Democrats put forth unreasonably large spending packages. But no matter who you listen to, the fact remains—that the construction industry, the educational system, and millions of Minnesotans will pay the price for what turned into a whirlwind of political games and sour rhetoric.

Arguably, long-term transportation funding was at heart of the disagreement this session and it will likely continue to play a role in the coming November elections. Democrats may have a tough time in outstate Minnesota because of their fight for the Southwest Light Rail funding. In contrast, Republicans face an uphill battle because they weren’t able to pass a transportation or bonding bill to fund outstate road construction which was the cornerstone of their election to the House majority in 2014.

The leadership of both parties continue to meet to discuss the possibility of a special session, but no one is making any promises and therein lays the problem. The Governor will only call a special session if and when there is agreement on the major issues, but no one wants to give in first. Sadly, we may be stuck without any appropriation bill, despite the state’s budget surplus, until the legislature returns in 2017.

How is it that legislators didn’t complete all these typically achievable objectives during an election year? First, legislators know that Minnesota has a re-election rate of 90% regardless of their ability to get business done. Second, although no major legislation was passed, Minnesotans still see the government as fully functioning—road construction continues, government offices are open everyday, and schools will still start in August. What Minnesota won’t see though, is the typical infusion of a billion dollars into our economy for capital projects, the needed investment of hundreds of millions in our transportation network, and the tax relief that we as a state could afford our citizens and businesses.

But enough of the negative realities plaguing Minnesota’s political environment—AMBO had a very good year at the state capitol! We forged new partnerships and secured the passage of new laws that will make the Building Official profession a better place to work and will improve our ability to serve the people of Minnesota. Further, the politicians will surely gather next year to fight about these things again—and before then you get a chance to either vote them back in, or vote them out. Hope to see you all at the polls.

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AMBO at the Capitol in 2016

AMBO was at the Capitol everyday of session in 2016. We met with legislators, testified before committees, fought legislation that would have negatively impacted the profession, sent letters to the Governor, and helped secure the passage of several new laws.

AMBO's statewide membership can be proud of their chapter representatives who serve on the AMBO Board, as well as their legislative committee's accomplishments. In 2016, AMBO continued to expand our legislative reach and built industry relationships through a long-term proactive government relation program. We improved our position, protected the profession, and worked with our peers and our adversaries to forge new relationships in the midst of these turbulent political times.

Below are several detailed explanations of the bills and laws that AMBO actively worked on in 2016. If you have any questions, please contact Nick McNeely or your AMBO board representatives for more information.

AMBO Rewriting the Radon Mitigation Act of 2015

CHAPTER LAW 189

Article 20, Sections 12 & 14

Effective: June 2, 2016

In 2016, AMBO worked with radon mitigation contractors, home inspectors, and the Minnesota Department of Health (MDH) to re-write Minnesota's Radon Mitigation Act. The changes were legally enacted on June 2, 2016, and they exemplify another significant legislative victory for AMBO and Building Officials across the state.

History: In 2015, MDH quietly passed a law granting MDH the authority to enter into rulemaking on the licensure of radon mitigation professionals performing installation of radon systems in existing homes. The 2015 law, [MN§144.4961](#), explicitly exempted new homes and the building code, but set inordinately high license fees and required a significant amount of education to achieve licensure.

The Rulemaking: The rulemaking process for the 2015 law began last fall. AMBO was present at every meeting and monitored the process and requested a clear exemption from the law for Building Officials.

During the rulemaking process, it became apparent that MDH wanted to expand its authority by licensing not only radon contractors and testers, but also Building Officials and cities. *Even though the new radon statute did not give MDH this authority, nor was it MDH's initial intention to license Building Officials, the rulemaking arm of MDH fought to control AMBO members.*

A New Law Needed: After MDH's power grab became evident, AMBO's legislative team, alongside the radon contracting group, took action outside the rulemaking process to end this unreasonable expansion of MDH discretion.

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AMBO worked with the radon contractors, MDH, Senator Lourey, and Representative Sanders to make a significant number of changes to the state statute—effectively reeling in the MDH’s overreach.

Lisa Vieau from Maple Grove, Brian Hoffman from Saint Louis Park, and Steve Ubl and Jim Willamette from Saint Paul attended numerous meetings with legislators and testified before the legislature regarding the problems with the 2015 law.

AMBO provided practical insight into how radon inspection actually works and why the 2015 law needed to be changed.

A New Law: The law AMBO fought for was passed. This new law explicitly exempts Building Officials and their “designees” from MDH oversight and gives Minnesota cities the right to permit and inspect radon systems in existing buildings as they see fit to serve the public.

In addition to these changes, the fees for contractors and homeowners were reduced. The exact AMBO language is below:

“This section (the Radon Mitigation Act) does not apply to: (2) a person authorized as a building official under Minnesota Rules, part 1300.0070, or that person's designee;” and

“Subd. 10. **Local inspections or permits.** This section does not preclude local units of government from requiring additional permits or inspections for radon control systems, and does not supersede any local inspection or permit requirements.”

Moving Forward: Since our radon meetings began, AMBO worked not only to change the law, but also to build positive relationships with the radon contractors, legislators, and MDH. We took a bad situation and turned it into an opportunity for improving our political relationships.

Many thanks are owed to Senator Lourey, Representative Sanders, and our radon contracting allies who worked tirelessly to reign in MDH and bring reason, and industry insight, to the new radon program. We also owe thanks to the AMBO board members who invested their time to make the state’s radon inspection process more reasonable, more manageable, and safer for the people of Minnesota.

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Architectural Barriers and Affirmative Defenses

Chapter Law 159

Effective: May 23, 2016

This new law intends to give citizens reasonable access to businesses by ensuring they follow the ADA and related regulations, while striking a compromise between cost, remediation, valid lawsuits, and the recent onslaught of lawyer pushed lawsuits. AMBO was always supportive of the law's intent, but we were pulled into a debate because of a last minute amendment and a definitional concern that put Building Officials and Accessibility Specialists on the hook for obligations outside of their legal authority.

The amendment required that anytime a Building Official entered "real property" he or she would be obliged to determine whether the property met ADA requirements and/or to provide the owner with information on how to determine compliance. Fortunately, AMBO worked with the LMC and the American Institute of Architects to get the author to withdraw the amendment.

AMBO's definitional concern stemmed from use of the words "Certified Professional," which specifically included Building Officials and Accessibility Specialists. These Certified Professionals were given the responsibility of developing and preparing audit reports and remedial plans, as well as determining compliance with the federal ADA regulations and other national rules. Because Building Officials and Accessibility Specialists are authorized to enforce the state code, not federal law, this change would have conflicted with current Minnesota law, significantly expanded the Building Officials obligations, and possibly increased potential risk for cities.

AMBO used this conundrum as an opportunity to introduce the association (and the profession) to the chief authors of the bill—Representative Smith and Senator Dzedzic. After expressing our concerns, we met with the following advocates behind the scenes: the Minnesota Chamber of Commerce, Minnesota Legal Aid, and the Minnesota Disabilities Council.

Together we worked through the bill. Initially the other advocates were not happy that we had concerns. They were counting on Building Officials and Accessibility Specialists to perform this new function, despite their legal inability to do so. Things got hot for a minute, but we were able to come up with a solution.

We found, and used, a broader definition for "Certified Professional." Now the definition does not specifically name or obligate Building Officials or Accessibility Specialists in their function as city employees, nor does it explicitly exclude them. Leaving the possibility open for those certified parties to perform these services on their own time if they so choose. The definition now reads as follows: "Certified professional" means a licensed, registered, or otherwise certified professional with demonstrated knowledge of accessibility requirements under law."

This legislation exemplifies both the opportunities and the threats that come with enacting new laws. Fortunately, AMBO was able to improve relationships by providing insight and expertise in a timely and effective manner.

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Temporary Family Healthcare Dwellings

Chapter Law 111

Effective: August 1, 2016

AMBO appreciated the idea of this legislation, but opposed it because of the unintended consequences it would create for local units of government. We worked with the LMC, the City of Saint Paul, DLI, and several others to voice many concerns. Steve Ubl and Jim Willamette from Saint Paul worked hard to educate legislators, but the fears of finding temporary living quarters for members of the “Silver Tsunami” seemed to wash reason from the minds of many legislators.

Fortunately, before it became a law, most of the foreseeable problems were ameliorated. However, concerns still remain.

Highlights of the changes made to the bill prior to it becoming law:

- Originally, this bill mandated that these temporary dwellings be permitted by every city in Minnesota; now, a city or county can opt-out by ordinance or resolution.
- Previously, these temporary dwellings were allowed to remain indefinitely; now, they are allowed to remain for six months with one six-month extension.
- Previously, cities could not change the state mandated fee structure; now, cities can change the fee by ordinance.
- Previously, the dwellings had to follow very few, if any, city regulations; now, they must meet existing storm water, shore land, setback, and easement requirements.
- Previously, there were few provisions dealing with the basic elements of any living quarters; now, the dwelling plans must incorporate backflow valves, verify septic service contracts, include site maps showing where the unit will be placed, complete adjacent neighbor notification prior to application, and specify the individual authorized to live in the unit.

Significant reforms were made prior to the bill’s passage, but AMBO still has safety concerns about the water, electricity, and anchoring of these dwellings, as well as concerns about how to best protect the wellbeing of the inhabitants and neighbors. Cities will have to work out many of the remaining details unless changes are made in the 2017 legislative session.

Craig Johnson at the LMC took the lead on this issue and invested an immense amount of time sticking up for local units of government. He was able to get many of these reforms into the statute. We at AMBO owe him a big thank you.

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New Trade-relevant Laws from 2016:

Chapter law 86 - Dual training competency grants. This law streamlines the grant process used by employers to train the targeted individuals in trades licensed by DLI. **AMBO monitored the legislation to determine if a similar program could be developed to bring more people into the building official profession.*

Chapter law 87 - Cities permitted to donate unused equipment. This new law exempts cities from liability for donations made to non-profits. The law is intended to allow cities to donate equipment that they are no longer able to use for a charitable purpose.

Chapter law 128 - MN OSHA AWAIR list updated every five years. Trade related injuries are documented and the businesses within an identified trade that incur a heightened number of injuries are put on the AWAIR list and must have a written safety plan. This law alters the frequency of updating the listed trades from every two years, to every five years so the average number does not force a trade on and off the list unnecessarily.

Chapter law 133 - Retainage Reform. Retainage, which is money withheld from progress payments made to lower tier parties on a construction project, will now be limited to 5%.

Chapter law 189, Article 7, Section 38 – High Pressure Boiler Attendance Requirements, Sunset Exemptions Extended. This law, authored by Senate Majority Leader Bakk, extends the expiration of the current boiler attendance exemption from August 1, 2016 until August 1, 2018 or until rulemaking is complete, whichever is sooner. **AMBO monitored this legislation.*

Preparing for the 2017-18 Legislative Session:

The below topics were discussed in some capacity, albeit without formal legislation, throughout the 2016 legislative session. AMBO and its membership should consider developing policy positions for the topics listed below:

- Some trades would like Building Officials who inspect plumbing to be licensed plumbers;
- Some legislators have discussed the possibility of making Building Officials personally liable for any inaccurate advice provided to contractors or home owners;
- Some legislators have suggested that Building Officials should be responsible for the determination of ADA compliance in commercial buildings;
- Mechanical Contractors would like their own Authoritative Board;
- Builders would like to hire private companies to perform building inspections in cities that currently have enforced building codes; and
- The Enterprise zones (a select group of five cities bordering other states) will likely be doing something to exempt themselves from the building codes.

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Bills that did not pass in 2015-16:

The bills listed below were introduced in 2015 or 2016. They are part of the 7,000 bills introduced that did not become law because they did not pass one of the following: the requisite committees, the House Floor, the Senate Floor, or were not signed by the Governor. Although the bills below didn't become law in 2016, we will likely see them again in 2017-18.

HF44 / SF67: **This bill would exempt Mille Lacs County from the State Building Code** and by ordinance, would rescind its adoption of the State Building Code. The county may, by ordinance, adopt a municipal building code to be enforced in and administered by the county. **AMBO met with the Chief Authors to express concern with the legislation and sent a formal letter identifying the rationale of our opposition. AMBO worked with the LMC, BAM, Saint Paul, and others to fight an amendment that was identical to this bill and was almost added to the DLI Housekeeping bill.*

HF2995 / SF3147: **DLI Housekeeping Bill.** The bill made a number of changes, but most pertinent to the Building Official profession, was a change to the method of measurement used to account for building official education. If this bill would have passed, the education requirements for building officials would have changed from "16 units" to "38 hours." There was no substantive change in the amount of education needed; the change only simplified the way credits were reported & recorded. The bill was not passed because Senator Senjem, added an amendment prohibiting sprinklers in any residential building. **AMBO's legislative committee met with DLI to discuss the Housekeeping Bill prior to the legislative session. And prior to the addition of the amendment, AMBO lobbied for the passage of this bill in an effort to help DLI.*

HF898 / SF1267: **Authorized border city enterprise zones to adopt different building code** provisions for one and two family dwellings. This is not the first time we have seen a bill like this - there were 3 others like it in 2015, and we will likely see the debate reemerge in 2017. **AMBO actively opposed all three bills on the grounds that code uniformity, code interdependence, safety, and current statutory requirements for licensure of Building Officials and licensed builders were not considered by the legislation. AMBO submitted formal letters of opposition, met with the chief authors, and lobbied legislators to vote against each of these bills.*

HF3467: **Land Use Moratorium.** BAM/BATC and MN Realtors worked on this bill to make it more difficult for a city or political subdivision to enact a land use moratorium. This bill did not pass off the Senate Floor and thus died for the year. **AMBO actively followed this bill.*

HF2839: **Construction Codes and Licensing to Public Safety.** This bill will move all construction code development and licensing from the Department of Labor and Industry to the Department of Public Safety. **AMBO discussed this bill with the author and DLI to understand the intent and the current level of involvement by the stakeholders. The bill is still in a preliminary phase and AMBO actively monitored it.*

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HF3296: Mandating a gross misdemeanor for the assault of a “code enforcement official”.

This bill defined “code enforcement official” broadly and included the assault of a building official. **AMBO supported this, but didn’t actively advocate passage as it didn’t make deadlines.*

HF2608: Providing a civil remedy for misconduct of public official or employee. The civil remedy provided for in this bill would be in addition to any current criminal charges available under law. **AMBO expressed concern about the potential implications with the authors.*

HF2021 / SF909: HVC contractor licenses, the regulation of heating, venting, and cooling. This legislation set the requisite educational requirements and titles in an attempt to ensure competence through formal DLI standardization of the HVC trade. **AMBO actively monitored this legislation.*

HF276/SF723: Providing the authority for the Fire Marshals to promulgate a State Fire Code and make amendments in accordance with the Administrative Procedure Act in chapter 14. **AMBO met with the Chief Author to express curiosity and concern about the legislation. We expect that another, more tailored bill will be introduced in 2017-18 to accomplish a similar objective.*

HF242 / SF1163: Counties and cities are required to have written procedures available to the public for any regulation, including those requiring a fee. Regarding fees, “the city must include any required forms and all other payment information, including any information or instructions required to complete the form, the due dates of payments, any other requirements, and the consequences of late payment.” **AMBO met with the Chief Author to express sincere concern.*

HF418: Contract upon request - A municipal contract must require the contractor, upon request of the municipality, to submit to the municipality a copy of any subcontracts entered into. **AMBO met with the chief author and actively followed this bill.*

HF1261 / SF1329: Regulated state agency rulemaking by statutorily defining substantial economic impact; required rulemaking docket submission to the legislative coordinating commission (LCC) for review; required agencies to request that the legislative auditor convene a peer review advisory panel to conduct an economic impact analysis of proposed rules with substantial economic impact; and granted the legislature rule veto authority. **AMBO sent a formal letter identifying the rationale for our opposition.*

HF1977: Flexibility in meeting energy code requirements. The Commissioner of DLI would be required to allow builders flexibility in methods used to achieve energy reduction goals. This would also have given a private company energy-related inspection authority. **AMBO met with the Chief Author, the proponents, and the opponents to express our concerns.*

SF1027: Requiring insurance policies to disclose that the policy may not cover all costs related in accordance with building code requirements due to policy limits. **AMBO monitored this bill.*