

Builders Association of Minnesota

2016 Public Policies

For Legislative and Regulatory Action

Adopted December 10, 2015



This document is available online at www.bamn.org

Local Government & The Environment

I. Street Improvements Fees

Issue: Street improvement fees are a proposed method for cities to finance street improvements, by collecting fees from properties benefitting from improvements.

BAM Position: BAM opposes the imposition of street improvement fees on new development properties, and seeks to preserve the residential construction industry carve out.

II. DNR Mississippi River Corridor Critical Area

Issue: The DNR seeks to overlay its planning and zoning requirements on local government land use standards. This affects the Mississippi River Corridor in the metropolitan area and is intended to supplant a decades old executive order.

BAM Position: BAM works to ensure that the DNR does not obtain legislative authority to burden new development and redevelopment, and does not interfere with normal local land use planning and zoning controls.

III. Park Improvement Fees

Issue: Local government expansion of the use of park fee authority.

BAM Position: Oppose the expansion of park fees, and work to narrow and refine the existing use.

IV. Wetlands

Issue: Multiple permitting authorities reduce efficient wetland permitting process for Minnesota and increases costs.

BAM Position: BAM supports the transfer of federal wetland permitting to the state, and the creation of a single permitting entity for water in Minnesota.

V. Moratoria

Issue: Cities, counties, and townships adopt land use moratoria without reasonable notice or appropriate majority.

BAM Position: BAM seeks to require local governments to publish notices prior to a moratorium. Further, BAM seeks to require a super majority vote to establish a moratorium.

Construction Codes & Licensing

I. Sprinkler Mandate Prohibition:

Issue: Fire sprinklers being required in all single-family homes a certain square footage and higher, or in all new home construction regardless of square footage or use.

BAM Position: BAM opposes any mandate requiring the installation of fire sprinklers in residential construction. BAM supports prohibiting any such mandate via legislative action. BAM believes alternatives such as interconnected battery back-up devices are significant life-safety code requirement for all residential dwellings.

II. Interconnected Smoke Alarms

Issue: Interconnected smoke alarms for all remodeling projects

BAM Position: BAM supports this proposal as a proven effective life-safety measure.

III. Statewide Code Enforcement

Issue: Inconsistent enforcement of the state building code in Minnesota is a consumer protection concern and creates an un-level playing field for legitimate, licensed contractors.

BAM Positions:

- Require statewide inspection for the safety of consumers, and for the economic health of the residential construction industry.
- Allow contractors to select private firms to conduct inspections regardless of whether a jurisdiction has code enforcement authority.
- BAM opposes legislative initiatives by local governments to opt out of the state building codes.
- All public building enforcement

IV. Code Adoption

Issue: The code adoption process is cumbersome and can result codes that are inflexible or contrary to building practices. In addition, the Code Advisory Council and Technical Advisory Groups in the rulemaking process is an attractive but treated as an inessential element of the code adoption process and lacks transparency.

BAM Positions:

- CCAC/TAG recommendations are binding in the rule promulgation process.
- CCAC/TAG are required to track and report the disposition of all recommendations made during the rule making process.

- Require code provisions to avoid putting accepted products and techniques at a competitive disadvantage (trusses, energy).

V. “The Wisconsin Solution”

Issue: Require that the Minnesota State Legislature approve all future code changes increasing the cost of by \$1000 dollars or more.

BAM Position: BAM supports the implementation of this requirement.

VI. Flippers

Issue: Clarify residential contractor licensure requirements for owners who ‘flip’ properties or hold or for rental.

BAM Position: BAM supports the requirement for homeowners who act as contractors to pull own permits, and to clarify such a requirement.

VII. Energy Code

Issue: Energy Code requirements must achieve efficiency through creative solutions.

BAM Position: The energy code must let builders use all forms of performance outcomes to meet energy efficiency ratings.

VII. Failure to Pull Permits

Issue: Failing to pull building permits harms consumers.

BAM Position: Impose violations for failure to pull local permits (currently only imposed on licensed residential building contractors), and increase the penalty for such a violation.

VIII. Residential Construction Board

Issue: Experts in residential construction are best suited to advise standards of education, licensure, and the code promulgation process.

BAM Position: BAM supports a residential construction board, similar to the electrical board or plumbing board, to oversee code development, education, and licensing criteria. (Sprinklers?)

IX. Radon

Issue: Mandatory radon testing and remediation for all real estate transactions is pending in Minnesota.

BAM Position: Require testing and remediation efforts only when necessary and warranted.

X. Advertising Requirements

Issue: Advertising Requirements are often disregarded by those engaged in residential construction.

BAM Position: Clarify advertising requirements of licensed and unlicensed contractors and increase DLI’s enforcement authority.

Legal, Contracts, & Business Transactions

I. Attorney's Fees

Issue: Some interests seek attorney's fees to be awarded to homeowners prevailing in new home warranty and home improvement litigation, but would deny the same right to builders.

BAM Position: BAM strongly opposes legislation to award attorney's fees to any prevailing party in warranty litigation.

II. Appraisals

Issue: Inaccurate or flawed appraisals hinder the housing industry. Appraisals do not reflect energy efficiency, different materials, longevity of products, etc.

BAM Position: Inaccurate appraisals hurt the industry as a whole, and BAM will work with industry partners to create a real-estate appraisal system that yield accurate appraisals and reflect modern building practices.

III. Warranties

Issue: Fewer contractors are interested in building owner-occupied properties, due to the consequences of CIC liability, in part due to a cottage industry in the legal profession that drives construction defect litigation over repairs and solutions.

BAM Position: BAM seeks to amend the NOR law to require the NOR process to

be exhausted before breach of contract and negligence claims can be brought; and to amend CIC and warranty laws to reign in HOA driven litigation.

IV. Retainage

Issue: Some interests seek to codify retainage limits and set specific contract terms in state statute.

BAM Position: Ensure that any changes to the state's retainage laws do not undermine residential construction contracts that allow for withholding on final payment for outstanding items, including punch list fulfillment.

V. Responsible Contractor Law

Issue: The State's Responsible Contractor Law requires businesses to prove absolute compliance with what is often artificial market, wage, and other standards.

BAM Position: Amend the law to allow companies to attain compliance in light of labor-force, training, and marketplace realities.

VI. Building Permit Fee Appeals

Issue: The ability to dispute building permit fees is vague and puts fee payers at the mercy of local governments who may or may not be willing to allow builders to fairly dispute building permit fees.

BAM Position: Clarify escrow of disputed fees, set valuation on actual market costs, and appeal directly to District Court.

VI. Insurance Reforms

Issue: There continues to be debate at the Capitol regarding the insurance coverage for residential construction repairs, driven mainly by concerns related to “storm chasers”. Many of the reforms extend into accepted business practices of members, such as the use of price agreeable contracts and contractor communication with adjusters

BAM Position: Work to ensure any reforms maintain the ability for members to use price agreeable contracts and have reasonable communication with adjusters.

VIII. Indemnification/Duty to Defend

Issue: Some parties seek to limit the ability to direct how insured and indemnified relationships between parties – owners, general contractors, and subcontractor – are managed via contract.

BAM Position: Work to make sure there is no further erosion of the statutory indemnification provisions, and that all parties have parity in the level of indemnification coverage.

Ensure residential licensing requirements and statutory warranty obligations are not negatively impacted by any changes to the contracting and insurance indemnification law.

Miscellaneous Policies

I. Workforce Development

Issue: A shortage of workers – especially young workers—coming into the construction field negatively impacts the industry.

BAM Position: The building industry needs workers. BAM supports initiatives to eliminate barriers to bringing young people into the construction industry, and supporting programs to encourage vocational training for high-school aged students.

Marketing plan, public/private

II. Patent Trolling

Issue: Small business owners in home building and scores of other industries across the nation are increasingly being attacked by patent trolls who are indiscriminately issuing threatening letters to companies alleging patent infringement.

BAM Position: BAM will work with industry partners at the state and national level to increase penalties for frivolous patent infringement claims, establish a more effective vetting process to eliminate weak claims, and implement measures to discourage lawsuits and provide alternatives to litigation.

III. Fire Protection Awareness Act

Issue: Legislation was introduced requiring builders to show a video to prospective homebuyers about the merits of sprinklers, and disclose that new homes built in Minnesota do not comply with the ICC model residential code.

BAM Position: BAM opposes this piece of legislation.

IV. Point of Sale Contamination Awareness Act

Issue: Legislation was introduced requiring real-estate sellers to disclose whether there is, or has ever been, soil or water contamination on the property.

BAM Position: BAM has joined with industry partners to monitor this bill, as it may yield unintended consequences in the future.

V. Fire Marshall Plan Review & Inspections

Issue: Shifting fire safety plan review, inspections, and code rulemaking for from local building departments and DLI, to the State Fire Marshall.

BAM Position: BAM opposes this legislative initiative, and will keep close watch on any iteration of this idea.