

A15-0116

STATE OF MINNESOTA  
IN COURT OF APPEALS

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Builders Association of the Twin Cities,  
a non-profit trade association,

*Petitioner,*

v.

Minnesota Department of Labor and Industry, a state agency,

*Respondent.*

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AMICUS BRIEF OF BUILDERS ASSOCIATION OF MINNESOTA

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## INTEREST OF AMICUS

The Builders Association of Minnesota (“BAM”) is a not-for-profit, voluntary trade association established to represent the interests of building contractors, land developers, manufacturers, suppliers and related business enterprises.<sup>1</sup> The interest of BAM is both private and public. BAM was established in 1974 and now serves over 2,800 home-building, remodeling and related professionals located throughout the State of Minnesota. BAM works to represent the interests of both its members and the public. It is dedicated to providing the public with a diverse selection of quality and affordable housing. The efforts of BAM focus on building code and other drivers of housing quality and affordability, and on the education of association members, policymakers and the public about housing affordability and best construction practices. BAM is also involved in issues related to energy efficiency, environmental programs, construction defects, moisture problems, sewer and transportation financing, and regulatory and fee setting reforms.

The issues and findings in this matter are important to the construction and development communities, as well as the general public. As an association of contractors, developers, manufacturers, suppliers and related enterprises throughout Minnesota, BAM has a keen interest in the requirements for new residential construction,

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<sup>1</sup> Counsel certifies that this brief was authored in whole by listed counsel for amicus curiae BAM. No person or entity other than the amicus curiae made any monetary contribution to the preparation or submission of this brief. This brief is filed on behalf of BAM, which was granted leave to participate as amicus by this Court’s Order dated March 12, 2015.

including the Sprinkler Rule and the Energy Code at issue in this case. BAM is concerned with these issues because the Sprinkler Rule and the new Energy Code will unnecessarily increase the cost of residential construction. If, as a result of these code provisions, potential Minnesota homeowners turn to unlicensed builders or decide to build in neighboring states, Minnesota licensed builders and other enterprises represented by BAM will be adversely affected.

### **SUMMARY OF THE ARGUMENT**

The Department of Labor and Industry (“DLI”) has adopted rules amending Minnesota’s building code (the “Code”) which mandate automatic fire sprinkler systems in all new, single-family homes of 4,500 square feet or larger (including unfinished basements) (the “Sprinkler Rule”). The Builders Association of the Twin Cities (“BATC”) has brought a declaratory judgment action under Minn. Stat. § 14.44, pursuant to which the Court “shall declare the rule invalid if it finds that it violates constitutional provisions or exceeds the statutory authority of the agency or was adopted without compliance with statutory rulemaking procedures.” Minn. Stat. § 14.45. In addition to the reasons set forth in BATC’s Brief, the Sprinkler Rule is invalid because:

- I. The Sprinkler Rule exceeds DLI’s statutory authority because it does not conform to model building codes generally accepted and in use throughout the United States;
- II. DLI failed to adequately analyze the impacts of the Sprinkler Rule, including impacts to Minnesota’s border communities and outstate Minnesota;
- III. DLI failed to allow a less costly method for achieving the purpose of the Sprinkler Rule already in the Code; and

- IV. DLI improperly delegated its rule-making authority to the International Code Council, the non-profit organization which developed the 2012 IRC.

For each of these reasons, which are discussed in more detail below, the Sprinkler Rule is invalid.

## ARGUMENT<sup>2</sup>

### **I. THE SPRINKLER RULE DOES NOT CONFORM TO MODEL BUILDING CODES GENERALLY ACCEPTED AND IN USE THROUGHOUT THE UNITED STATES.**

Minnesota law requires DLI to adopt a Code which “conform[s] insofar as practicable to model building codes generally accepted and in use throughout the United States.” Minn. Stat. § 326B.106, subd. 1. DLI apparently asserts that its adoption of the Sprinkler Rule was necessitated or supported by the inclusion of fire sprinklers in the International Residential Code (“IRC”), a model building code. Ex. A-5(B) at 4. DLI’s reasoning fails for multiple reasons. First, the IRC’s sprinkler provision has not been widely adopted. Indeed, 41 states have rejected it, including each one of Minnesota’s neighbors, and only two states – California and Maryland – have adopted the provision. Ex. A-5(L)(13). Second, even if the provision were widely-adopted (which it is not), DLI’s Sprinkler Rule is substantively different than the IRC’s fire sprinkler provision. Ex. A-5(L)(8). Finally, DLI is not required to adopt all of the IRC’s provisions and, in fact, it regularly declines to do so.

#### **A. The Sprinkler Rule Has Been Rejected by 41 States, Including Minnesota’s Neighbors.**

The intent of Minn. Stat. § 326B.106, subd. 1, is to keep Minnesota’s code requirements generally consistent with those of other states. Here, however, 41 states have rejected the Sprinkler Rule, including each one of Minnesota’s neighbors. Ex. A-

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<sup>2</sup> Because BAM agrees with the standard of review set forth in BATC’s Brief, it is not restated herein. *See* BATC Br., at 22-23.



5(L)(13). Only two states have adopted it, and one of those states allows local jurisdictions to freely “opt out” of the mandate by amendment. *Id.* The Sprinkler Rule is an expensive and burdensome requirement; adopting it makes Minnesota an outlier among states, including each one of its neighbors, by imposing an expensive and substantial requirement above the other codes “in use throughout the United States.” Such a result is directly contrary to the Legislature’s intent and, as discussed in more detail below, results in significant competitive disadvantages for Minnesota’s communities and businesses. § 326B.106, subd. 1 Accordingly, DLI has exceeded the scope of its statutory authority, and the Sprinkler Rule is invalid. *See, e.g., Stasny v. Minn. Dep’t of Commerce*, 474 N.W.2d 195, 198-99 (Minn. Ct. App. 1991) (holding rule invalid where it conflicted with agency’s enabling legislation).<sup>3</sup>

**B. DLI’s Sprinkler Rule is Substantively Different than the IRC’s Fire Sprinkler Provision.**

The Sprinkler Rule does not conform to codes generally accepted and in use by other states, and it does not conform to the 2012 IRC – the model code upon which it is purportedly based. Notably, the 2012 IRC requires fire sprinklers in *all* single-family homes; however, Minnesota’s Sprinkler Rule requires fire sprinklers only in single-family homes 4,500 square feet and larger. Ex. A-5(L)(11). Thus, despite DLI’s

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<sup>3</sup> Although BATC’s Brief also discussed that the vast majority of all states have rejected the Sprinkler Rule, BATC’s Brief did not argue the points in paragraphs B and C below and also did not show how the ALJ failed to consider the impact on outstate builders and border communities as discussed in Section II below.

insistence that it is relying on the 2012 IRC, the Sprinkler Rule chosen by DLI is not even supported by the 2012 IRC.

**C. DLI Regularly Declines to Adopt All of the IRC’s Provisions.**

DLI asserts that it must adopt the Sprinkler Rule to avoid the confusion that would result if the Code differed from the IRC. Ex. A-5(B) at 4. This is illogical and fails to acknowledge that DLI regularly adopts code provisions that differ from the IRC. Specifically, Minn. R. 1309.0010, subp. 1, provides that the 2012 IRC is incorporated by reference “except as qualified by the applicable provisions in Minnesota Rules, chapter 1300, and as amended in this chapter.” DLI has deleted chapters 1, 11, 12-24, 25-33, and 34-43 of the IRC and replaced them with provisions specific to Minnesota. *Id.* at subp. 3. Further, DLI has “deleted in their entirety” any IRC provisions related to flood hazard, flood-proofing, and elevator and platform lifts. *Id.* at subp. 5-6; *see also Builders Ass’n of Minn. v. City of St. Paul*, 819 N.W.2d 172, 178 n.2 (Minn. Ct. App. 2012) (noting that Minn. R. Chs. 1300 and 1309 have amended provisions of the IRC and also addressing Minnesota-specific amendment to IRC). Accordingly, DLI’s assertion that the Sprinkler Rule is necessary because declining to adopt it would result in confusion is not supported by facts or law.

**II. DLI FAILED TO CONSIDER THE CLASSES OF PERSONS WHO PROBABLY WILL BE AFFECTED BY THE SPRINKLER RULE.**

Minnesota law requires DLI to consider “the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.” Minn. Stat. § 14.131(1).

However, both DLI and the Administrative Law Judge (“ALJ”) largely failed to consider the impacts of the Sprinkler Rule. Exs.A-5(B) at 4-5, 27-33; A-7 at 17-19, 22-23. Rather, their analysis was narrowly focused on out-of-pocket costs, and even that analysis was unreasonably flawed. Further, because BATC is based on the Twin Cities metropolitan area, BATC’s Brief did not focus on the Sprinkler Rule’s negative impacts to Minnesota’s border communities and outstate Minnesota. Those impacts are discussed in more detail below.

**A. DLI and the ALJ Evaluated the Effects of the Sprinkler Rule Too Narrowly.**

Despite Minn. Stat. § 14.131(1)’s requirement that DLI consider the effects of the Sprinkler Rule, both DLI and the ALJ failed to do so. Rather than considering all of the potential impacts of the Sprinkler Rule, both DLI and the ALJ considered only the out-of-pocket costs associated with the Sprinkler Rule.<sup>4</sup> For instance, the ALJ concluded that small businesses would not incur expenses related to the Sprinkler Rule because “[t]he hearing record simply does not point to small businesses . . . purchasing new homes.” Ex. A-7 at 19 ¶ 77. The ALJ failed to recognize, however, that small businesses are certainly *building* new homes, and that substantially increasing the costs of such homes may negatively impact those businesses. DLI is similarly dismissive of the impacts of the Sprinkler Rule, based upon DLI’s assumption that builders will pass any additional costs along to homeowners. Ex. A-5(B) at 3. Both DLI and the ALJ, however, failed to

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<sup>4</sup> For the reasons set forth in BATC’s Brief, even the consideration of the out-of-pocket costs was inadequate and flawed.

consider the significant amount of evidence in the record showing that cities, businesses, and individuals will be harmed by the Sprinkler Rule. For instance, builders testified that some homeowners may build smaller homes to avoid the cost of the Sprinkler Rule. Ex. A-4 at 210:1-18 (Contreras). Similarly, there is evidence in the record illustrating that even seemingly minor increases in the costs of a home may price many potential homeowners out of the market. Ex. A-6 at 776 (Jan. 2, 2014 letter from Steve Orłowski and attached *Metro Area House Prices: The “Priced Out Effect”*). In addition, as discussed below, some communities will lose out on new home construction to cities just across state lines or homeowners will turn to unlicensed builders. The failure to consider these impacts is especially egregious considering that: (1) the record indicates that the 4,500 square foot threshold for installing sprinklers was proposed as a phase-in to eventually require sprinklers all new homes;<sup>5</sup> and (2) as discussed in Section III below, there is a proven, lower-cost alternative already required by the Code which DLI failed to consider as an alternative to the Sprinkler Rule.

**B. DLI Failed to Consider the Effects of the Sprinkler Rule on Minnesota’s Border Cities.**

The negative impacts of DLI’s adoption the Sprinkler Rule – which is *not* “generally accepted and in use” – may be seen most starkly in Minnesota’s border

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<sup>5</sup> The SONAR indicates that the Minnesota State Fire Chiefs Association proposed a phase-in of the Sprinkler Rule beginning at 4,000 square feet, and then Minnesota State Fire Marshals Association proposed a phase-in beginning at 5,000 square feet. Ex. A-5(B) at 31. It appears that DLI chose a number between these two. But, because these are proposals for a phase-in to eventually require sprinklers in all single-family homes, the square footage figures are not tied to any problems inherent in the size of the home.

communities, where homeowners (and builders) can avoid the increased costs of the Sprinkler Rule by simply building on the other side of the border. Notably, each one of Minnesota's neighbors has rejected the Sprinkler Rule. Ex. A-5(L)(13).

Many of Minnesota's border cities are opposed to the Sprinkler Rule because, as explained above, Minnesota's neighboring states have all rejected the Sprinkler Rule. *Id.* The city councils of Moorhead, Dilworth, East Grand Forks, Breckenridge, Perham, Detroit Lakes, and Ortonville each passed resolutions expressing their opposition to the Sprinkler Rule. *E.g.*, Exs. A-5(X); A-5(Y); A-6 at 86; A-5 at 145. DLI dismissed this concern without any analysis or consideration. *See generally* Ex. A-6 at 91, 797. While DLI may not regulate Minnesota's border states, Minnesota law does require DLI to consider the costs and consequences of adopting the proposed rules. Minn. Stat. § 14.131. As stated in the numerous submissions from many of Minnesota's border cities, the Sprinkler Rule will have a negative impact on them. Exs. A-5(X); A-5(Y); A-6 at 86; A-5 at 145. For example, the City of Moorhead competes for new home construction with Fargo, North Dakota. Ex. A-4 at 173:25 – 175:6 (Dietrich). Currently, Moorhead and Fargo have similar residential building requirements and, thus, the cost to build in either city is roughly equal. *Id.* However, like every other state that borders Minnesota, North Dakota has rejected the Sprinkler Rule. *Id.* If Minnesota enacts the Sprinkler Rule, the cost to build in Moorhead will be noticeably higher than the cost to build in Fargo. *Id.* As a result, the record suggests that it is likely that many homeowners will choose to build in Fargo instead of Moorhead.

The ALJ ignored empirical evidence to support the effect of increased costs on border cities and builders. Moorhead experienced a reduction in new home construction in 2005-2006 after Minnesota enacted the energy code. *Id.* The requirements of that code increased the costs of construction by only a couple thousand dollars; however, builders noticed that most homeowners were resistant to incurring the additional cost just so that they could build in Minnesota, choosing, instead, to build in North Dakota. *Id.* Given that homeowners chose to move across the border instead of incurring an additional \$2,000 to comply with Minnesota's energy code, it is likely that an additional construction cost of \$9,000 for a sprinkler system (and more, with the requirements of the new Energy Code<sup>6</sup>) will result in Minnesota's border cities, builders, and Minnesotan homebuyers suffering an economic disadvantage.

Minn. Stat. § 14.131(1) requires that DLI consider the effects of the Sprinkler Rule. The ALJ's failure to consider the effect of the Sprinkler Rule on Minnesota's border cities and builders is arbitrary and capricious.

**C. DLI Failed to Consider the Effects of the Sprinkler Rule on Outstate Minnesota.**

1. The Expensive Sprinkler Rule will Encourage Homebuilders to Use Unlicensed Builders, Resulting in More Unsafe Minnesota Homes.

The record also establishes that licensed builders will be put at a disadvantage as a result of the Sprinkler Rule because homeowners trying to avoid the significant cost of fire sprinklers will choose an unlicensed builder and build in a non-code-enforced area.

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<sup>6</sup> BAM supports BATC's arguments regarding the Energy Code and does not repeat them here.

Ex. A-4 at 176:6-22 (Dietrich), 185:4-16 (Neisen), 189:12 – 190:19 (Ranweiler); *see also* Ex. A-5(L)(59), (60) (illustrating code enforcement in Minnesota).<sup>7</sup> DLI dismissed this concern as “without merit,” summarily stating that all builders are required to build to code. Ex. A-6 at 91. Although technically correct in an intellectual vacuum, it ignores the practical reality presented at the rule-making hearing from both outstate builders and code officials: non-licensed builders who build in non-code enforced areas often do not build to code. *See, e.g.*, Ex. A-4 at 176:6-22 (Dietrich), 185:4-16 (Neisen), 189:12 – 190:19 (Ranweiler); A-6 at 72. Unlicensed builders often ignore code requirements, including important fire protections in the existing code. Ex. A-4 at 176:6-22 (Dietrich), 185:4-16 (Neisen), 189:12 – 190:19 (Ranweiler). This is an issue with every Code requirement, but the expensive Sprinkler Rule and Energy Code will only exacerbate the problem, especially given that more than 88% of outstate respondents in the Minnesota Survey stated that fire sprinklers should remain a homeowner choice. Ex. A-5(L)(61). This negatively impacts both licensed builders, who will lose business, and Minnesota as a whole, because more homes will be built by unlicensed builders who have no incentive to build to code.

Once again, DLI’s decision to put Minnesota’s licensed builders at a competitive disadvantage as a result of a Sprinkler Rule with little documented benefit and immense cost is arbitrary and capricious.

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<sup>7</sup> In addition to the cost of fire sprinklers, the record indicates that Minnesota residents overwhelmingly believe that whether to install fire sprinklers should be a matter of choice and not mandate. *See* Minnesota Poll Ex. A-5(L)(61).

2. Installing Fire Sprinklers in Homes Using Wells is Even More Expensive.

A significant portion (26%) of Minnesotans receive their water from a private well.<sup>8</sup> Installing fire sprinklers on a private well system can add, on average, \$4,000 to the already high cost of a sprinkler system. Ex. A-5(L)(45). For example, BAM obtained a bid for the installation of fire sprinklers in a 4,635 square foot home on a private well. The bid was \$2.83 per square foot, plus an additional \$4,000 for a well system upgrade. Thus, the total cost to install fire sprinklers was \$13,100.00. Exs. A-5(L)(46),(47). Regardless of the total cost of a home, this is a significant expense. Ex. A-4 at 209:6 – 210:18 (Contreras). Although the SONAR notes that BAM raised this issue, it does not appear that DLI ever considered this additional cost.

**III. DLI FAILED TO RECOGNIZE THAT THERE IS A LESS COSTLY METHOD FOR ACHIEVING THE PURPOSE OF THE SPRINKLER RULE: UNDERFLOOR PROTECTION.**

Minnesota law requires DLI to conduct “a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.” Minn. Stat. § 14.131(3). In addition, DLI must consider “alternative methods for achieving the purpose of the proposed rule.” *Id.* at (4). However, despite admitting that underfloor protection may be equivalent to fire sprinklers, at a fraction of the cost, DLI considered *zero* alternatives to the Sprinkler Rule.

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<sup>8</sup> U.S. Census Bureau, Historical Census of Housing Table: Water Source, at <http://www.census.gov/hhes/www/housing/census/historic/water.html>



**A. DLI Failed to Consider Any Alternatives to the Sprinkler Rule.**

DLI admits that it failed to consider any alternatives to the Sprinkler Rule, apparently on the basis that there is only one IRC:

Because the IRC serves as the base document for the Minnesota Residential Code and it is currently the only model residential building code that is generally accepted and in use in the United States, no alternative model code was considered.

Ex. A-5(B) at 4. The ALJ seemingly accepted this analysis, stating:

The Department did not spend much time or resources on developing alternatives for “achieving the purpose of the proposed rule” because, in this instance, the regulatory purpose was to revise the existing code.

Ex. A-7 at 17 ¶ 66. This interpretation of Minn. Stat. § 14.131(3-4) would give DLI carte blanche to adopt whatever substantive requirements it wanted in the Code, without considering alternatives of and impacts to the individual rules, as long as DLI stated that its purpose was broadly to “revise the existing code.” This cannot be what the law requires or allows. Rather than summarily stating that its only choice was to revise the Code as a whole, DLI should have analyzed alternatives to the Sprinkler Rule (and the other individual rules adopted). Had it done so, DLI would have realized that the Sprinkler Rule is neither needed nor reasonable in light of other safe and cost-effective fire protections.

**B. Underfloor Protection is Part of the IRC, Has Been Adopted by DLI, and Offers More Reliable Protection than Fire Sprinklers.**

Underfloor protection involves the installation of gypsum wallboard (more commonly referred to as the trademarked “Sheetrock™”) to unfinished ceilings –

typically, in unfinished basements. *E.g.*, Ex. A-4 at 118:16-25. Although BATC's Brief discussed underfloor protection as a lower-cost alternative to fire sprinklers, it is important for the Court to understand that underfloor protection *is part of the 2012 IRC and that it has been adopted by DLI in the Code*. See Ex. A-5(L)(11) (R501.3, requiring floor assemblies to be protected with 1/2-inch gypsum wallboard). The underfloor protection provision of the IRC was the result of a joint proposal between the National Association of Homebuilders (the parent organization of BAM) and the United States Fire Marshals to address concerns related to the performance of lightweight construction during fires. Ex. A-4 at 51:15-22 (Orlowski). Evidence shows that underfloor protection, such as 1/2-inch gypsum wallboard, results in lightweight construction performing as well, or better, than legacy construction during fires. See Ex. A-5(B.2), Underwriters Laboratories, *Report on Structural Stability of Engineered Lumber in Fire Conditions* (Sept. 2008), at 4-5; see also Ex. A-5(L)(14), Effect of Underfloor Protection on Collapse Time Table. In addition, underfloor protection guards against fires that fire sprinklers would not, such as within a home's walls, closets, attics, and small bathrooms. Ex. A-5(L)(18). Further, unlike fire sprinklers, underfloor protection is a passive system that is relatively tamper-proof, cannot be turned off by homeowners, and requires no maintenance. Ex. A-4 at 168:14-25 (Dietrich). By contrast, a homeowner is free to turn off fire sprinklers and/or not maintain them. *Id.*

Significantly, unlike fire sprinklers, underfloor protection is affordable. On average, it costs between \$0.27 and \$0.30 per square foot to add underfloor protection. Ex. A-5(B) at 4-5. Underfloor protection only needs to be added where the ceiling is

unfinished, typically in the basement. Ex. A-4 at 119:8-20. Thus, for a 4,500 square foot home with an unfinished basement, the cost to add underfloor protection would be \$450 (\$0.30 per square foot multiplied by 1500 square foot basement). *Id.* at 119:8-20. By contrast, according to bids obtained by BAM, adding fire sprinklers to a 4,500 square foot home would cost over \$9,000 and \$4000 more if the home is serviced by well water. Ex. A-5(L)(46).

**C. DLI Apparently Acknowledges That Underfloor Protection and Fire Sprinklers are Trade-Offs.**

Despite its determination to shoe-horn fire sprinklers into the Code, even DLI acknowledges that underfloor protection and fire sprinklers are “trade-offs.” Specifically, *the Code does not require homes equipped with fire sprinklers to have underfloor protection.* See Ex. A-5(B) at 4-5. However, notwithstanding its recognition that underfloor protection and fire sprinklers may offer equivalent protections, DLI failed to acknowledge that the difference in cost between underfloor protection and fire sprinklers is staggering. As discussed above, it would cost approximately \$450 to add underfloor protection to a 4,500 square foot home; fire sprinklers for the same home would likely cost approximately \$9,000. See Ex. A-5(L)(46). Even DLI acknowledged the significant price differences between fire sprinklers and underfloor protection:

Q (Springer): So what this is saying is even using the numbers in the SONAR, if you spend \$7,245 for sprinklers, using our example of 4,500 square foot, you’re saving \$450 in additional fire protection?

A (McLellan): Right.

Ex. A-4 at 123:3-8.

To the extent that DLI may assert that fire sprinklers provide more protection than underfloor protection, such an assertion has no support in the record. First, DLI never attempted to make this argument. Second, as described in Section III(B) above, the evidence shows that underfloor protection actually offers more comprehensive and reliable protection than fire sprinklers. *See, e.g.,* Ex. A-4 at 116 (McLellan); Ex. A-5(L)(14). Further, the record does not support the assertion that fire sprinklers are generally reliable. For instance, even a study using cherry-picked data concluded that fire sprinklers operated and were effective only 39% of the time in one- or two-family dwellings. Ex. A-6 at 783 p. 10 (discussing Ex. A-5(L)(66), John R. Hall, Jr., *U.S. Experience with Sprinklers and Other Automatic Fire Extinguishing Equipment*, National Fire Protection Association (Jan. 2009)).

While the scientific evidence indicates that passive underfloor fire protection provides as much or better fire protection than fire sprinklers, DLI itself recognizes that fire sprinklers and underfloor protection are tradeoffs—if a homeowner installs a fire sprinkler, the homeowner does not need to install underfloor protection. Requiring homeowners to spend \$9,000 to install fire sprinklers, rather than \$450 to install underfloor protection, with *zero* evidence that fire sprinklers are superior, violates DLI's duties to both consider alternatives and not unduly increase construction costs. *See* Minn. Stat. §§ 14.131(3-4), 326B.101. Accordingly, the Sprinkler Rule is invalid.

#### **IV. DLI HAS IMPROPERLY DELEGATED ITS RULEMAKING AUTHORITY TO THE IRC.**

DLI relies upon the 2012 IRC to justify its adoption of the Sprinkler Rule. Ex. A-5(B) at 4-5. However, the Legislature has delegated rule-making authority to DLI, not to the International Code Council (“ICC”), the third-party organization which developed the 2012 IRC. *See* Minn. Stat. §§ 326B.02, subd. 5, 326B.101, and 326B.106, subd. 1. Further, the Legislature has enacted specific constraints on DLI’s rule-making authority. Minn. Stat. §§ 326B.101, 326B.106, subd. 1. The ICC, however, is not constrained by Minnesota law. Rather, the ICC is a non-profit membership association based out of Washington, D.C., governed by an independent board of directors. It is not part of Minnesota’s government. As such, the IRC may include provisions which are inconsistent with the authority granted to DLI by the Minnesota Legislature, and DLI and the ALJ cannot simply point to the IRC as the deciding factor in their rule-making. It is especially inappropriate for DLI and the ALJ to defer to the ICC given the evidence in the record that the sprinkler requirement was included in the IRC as a result of extensive and expensive lobbying efforts by fire sprinkler manufacturers. Here, however, in its zeal to mandate fire sprinklers for Minnesota homeowners, that is exactly what the ALJ has allowed DLI to do. Accordingly, the Sprinkler Rule constitutes an improper delegation of rule-making and should be invalidated.

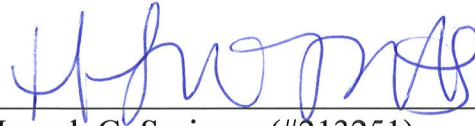
#### **CONCLUSION**

BAM supports safe and affordable homes. The Sprinkler Rule requires Minnesotans to spend millions of dollars on fire sprinklers when a lower cost, but at least

as effective alternative exists. However, in its narrowly-focused effort to mandate sprinklers for Minnesota homeowners, DLI failed to comply with its statutory duty to consider the impacts of and alternatives to the Sprinkler Rule. Accordingly, on behalf of its approximately 2,800 members, BAM respectfully requests that the Court invalidate the Sprinkler Rule.

Dated: March 30, 2015

Respectfully Submitted,



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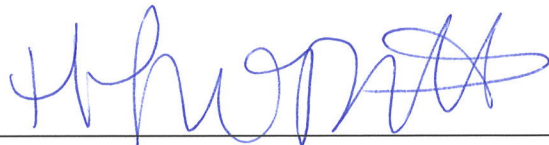
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**CERTIFICATE OF COMPLIANCE**

This brief complies with the word limitations of Minn. R. Civ. App. P. 132.01, subd. 3(c). This brief was prepared using Microsoft Word Version 12.0 in 13-pt. font, which reports that the brief contains 4,334 words.

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