

BOMA 2019 LEGISLATIVE SUMMARY

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GENERAL OVERVIEW OF THE 2019 LEGISLATIVE SESSIONS

The 2019 regular legislative session commenced on January 8, with newly elected DFL Governor, Tim Walz, and the only divided legislature in the nation. The DFL also took control of the Minnesota House, picking up 15 seats in the November 2018 elections and swearing in 34 new members. The Minnesota Senate was not on the ballot in 2018, and thus remained in Republican control with a two-seat majority after a special election switched a DFL seat into Republican hands.

The constitutional obligation of the legislature was to set the state's FY 2020-21 biennial budget. In early December, Minnesota Management and Budget projected a \$1.5 billion surplus, however, much of it was one-time money. Governor Walz proposed a biennial budget of \$49.5 billion, an 8.6% increase over the previous biennium. The Governor's priorities included significant investments in transportation and transit, education, health care and moving local government aid back to the level it enjoyed in 2002. To pay for these priorities he included a number of tax increases, notably a 20 cent gas tax increase to fund roads and bridges, an 1/8th cent metro-wide sales tax for transit, continuation of the two percent provider tax, a reinstatement of the annual inflator on the statewide general levy on commercial-industrial and seasonal-recreation property, tobacco tax increases and new taxes on repatriated foreign income for corporations. The Governor also proposed a \$825 million capital investment package focused on transportation transit, housing and water infrastructure.

The House DFL majority proposed budget and policy ideas unsurprisingly were very similar to, though slightly more aggressive than, Governor Walz's priorities. In contrast, the Senate Republican majority opposed all tax increases and much of the policy proposals that the DFL sought.

The constitutionally mandated end to session was midnight May 20. By May 17 only 39 bills had been passed by the legislature and presented to the Governor for his signature, the second lowest in 30 years. The Governor and legislative leaders, Speaker Melissa Hortman (DFL-Brooklyn Park) and Republican Majority Leader Senator Paul Gazelka (R-Nisswa), spent over a week behind closed doors negotiating a global budget agreement. This agreement was announced on May 19, the day before the legislature was required to adjourn. Consequently, only one of the omnibus budget bills – the Omnibus Higher Education bill – was able to pass on time, thus necessitating a special session. The Governor called a one-day special session for Friday, May 24, and, in a marathon 24-hour session, the Legislature passed the bills required to implement the state's biennial budget.

The budget agreement spends approximately \$48.3 billion, a 6.2% increase over the previous biennium. About half of this increase goes to additional spending in E-12 education. Gas tax increases for roads and bridges did not occur and the sunset on the two percent provider tax did also not occur. In the agreed-on budget, the provider tax was reduced to 1.8% and the sunset was removed entirely. Finally, changes were made to the Minnesota tax code to simplify filing as a result of the 2018 federal tax act.

The Minnesota Legislature will convene again on Tuesday, February 11, 2020.

Statewide CI Property Tax

To pay for other priorities, Governor Walz proposed several tax increases including restoring the inflator on the statewide general levy on commercial-industrial, and cabins/seasonal recreational property.

House - The House's approach was like the Governor's, however, instead of reinstating the inflator to the proposed levy amount – a dollar figure; the House instead imposed a statewide commercial-industrial property tax rate. The dollar value that this rate would generate would go up or down depending on commercial property values. The House contended that they had “frozen” the statewide CI general levy, arguably, a misleading contention that was only true if property values did not change. The net effect was that the inflator was effectively reinstated – arguably at a more aggressive level.

Senate - The Senate proposed reducing the commercial-industrial and seasonal recreation (cabins) property tax levy amount by \$50 million per year (\$47-CI/\$3-SR) or \$100 million per biennium.

In the final budget agreement, the Senate position won out. The specific language of the 2019 Omnibus Tax bill states:

Minn. State 275.025, subd. 1 - Levy amount.

The state general levy is levied against commercial-industrial property and seasonal residential recreational property, as defined in this section. The state general levy for commercial-industrial property is ~~784,590,000~~ \$737,090,000 for taxes payable in ~~2018~~ 2020 and thereafter. The state general levy for seasonal-recreation property is ~~\$44,190,00~~ \$41,690,000 for taxes payable in ~~2018~~ 2020 and thereafter. The tax under this section is not treated as a local tax rate under section 469.177 and is not the levy of a governmental unit under chapters 276A and 473F.

2019 Minnesota Laws First Special Session – HF 5 - Article 4, Sec. 20.

This was an important victory for two reasons. First, the obvious one, taxes went down, not up. But the second is important as well. Legislation had been introduced this year to raise the dollar amount of property value that could be excluded from the statewide commercial-industrial property tax from the current amount of \$100,000 to \$150,000. This approach had won favor in 2017 in an attempt to focus relieve on rural building owners. Thus, it was important this year, that the commercial-industrial property tax relief was done in a way that was even handed across the state.

Retainage

This legislation was brought by sub-contractors who argued that owners and contractors regularly delay payment of retainage, in some cases as long as 24 months. Both Democrat and Republican legislators found their arguments persuasive. State agencies and the League of Cities were engaged on this legislation as was the Associated General Contractors.

Current law permits an owner to withhold up to five percent from any progress payment to a contractor for building improvements. This amount is “retainage.” Under current law, an owner may hold the retainage until the entire job is complete.

The new law makes the following changes:

1. If the owner reduces the amount of retainage, the contractor must reduce retainage for any subcontractors at the same rate.
2. The owner, or owner’s agent, must release all remaining retainage no later than 60 days after substantial completion – the definition of “substantial completion” is unchanged and is found at Minn. Stat. 541.051, subd. 1(a).
3. A contractor must pay out any remaining retainage to its subcontractors no later than ten days after receiving retainage from the owner, unless there is a dispute about the subcontracted work. If there is a dispute, the contractor must pay out retainage to a subcontractor not involved in the dispute and must provide a written statement about the reason for the withholding to the affected subcontractor.
4. After substantial completion, an owner, or owner’s agent may withhold no more than:
 - (1) 250 percent of the cost to correct or complete work known at the time of substantial completion, and (2) the greater of \$500 or one percent of the value of the contract, pending submission of all final paperwork by a contractor.

“Final Paperwork” means document required to fulfill contractual obligations, including, but not limited, to, operation manuals, payroll documents for projects subject to prevailing wage requirements, and the required withholding exemption certificate.

If the owner, or owner’s agent, withholds payment, the owner, or owners’ agent must provide written notification of any basis for withholding to the contractor and any requesting subcontractor. Requires any amounts withheld for incomplete or defective to be paid within 60 days after the completion of the work.

5. Retainage may not be withheld for warranty work.

6. An owner is not required to pay for a portion of a contract that is not complete or for which an invoice has not been submitted.

The new changes to law are effective to agreements entered on or after August 1, 2019.

2019 Minnesota Laws Frist Special Session Chapter 7 – HF 2 (Mahoney) - Art. 9, Sec. 13.

Clean Indoor Air Act – Electronic Cigarettes

In 2018, anti-tobacco advocates, and other allies, including BOMA Minneapolis, sought to ban the use of electronic cigarettes within buildings open to the public by including electronic cigarettes within the Minnesota Clean Indoor Air Act. The 2018 effort was unsuccessful, and thus, in 2019, this legislative effort was renewed. This year, the provision passed the House 100-25 and was put into the House Omnibus Health and Human Services Bill. In the Senate, the legislation passed out of committee to the Senate floor. It was not taken up on the Senate floor.

The final 2019 Omnibus Health and Human Service bill that Governor Walz signed included electronic cigarettes within the Minnesota Clean Indoor Air Act. The relevant language states:

Minn. Stat. 144.413, subd. 4 – Smoking Definition

“Smoking” means inhaling or, exhaling smoke from, burning, or carrying any lighted or heated cigar, cigarette, pipe, or any other lighted tobacco or plant or heated product containing, made, or derived from nicotine, tobacco, marijuana, or other plant, whether natural or synthetic, that is intended for inhalation. Smoking also includes carrying a lighted cigar, cigarette, pip, or any other lighted tobacco or plant product intended for inhalation carrying or using an activated electronic delivery device, as defined in section 609.685.

Minn. Stat. 144.416 – Responsibilities of Proprietors

(a) The proprietor or other person, firm, limited liability company, corporation, or other entity that owns, leases, manages, operates, or otherwise controls the use of a public place, public transportation, place of employment, or public meeting shall make reasonable efforts to prevent smoking in the public place, public transportation, place of employment, or public meeting by:

- (1) posting appropriate signs or by any other means which may be appropriate; and
- (2) asking any person who smokes in an area where smoking is prohibited to

refrain from smoking and, if the person does not refrain from smoking after being asked to do so, asking the person to leave. If the person refuses to leave, the proprietor, person, or entity in charge shall handle the situation consistent with lawful methods for handling other persons acting in a disorderly manner or as a trespasser.

(b) The proprietor or other person or entity in charge of a public place, public meeting, public transportation, or place of employment must not provide smoking equipment, including ashtrays or matches, in areas where smoking is prohibited. Nothing in this section prohibits the proprietor or other person or entity in charge from taking more stringent measures than those under sections 144.414 to 144.417 to protect individuals from secondhand smoke or from involuntary exposure to aerosol or vapor from electronic delivery devices. The proprietor or other person or entity in charge of a restaurant or bar may not serve an individual who is in violation of sections 144.411 to 144.417.

2019 Minnesota Laws First Special Session Chapter 9 – SF 12, Article 11, section 23

Stretch Codes – SF 2637 (Senjem) / HF 2396 (Long)

In 2008, legislation was passed that appropriated \$500,000 to the Center for Sustainable Building Research at the University of Minnesota to develop a Sustainable Building 2030 implementation plan. The bill introduced in 2019 stated:

The Construction Codes Advisory Council shall establish a voluntary code of standards for the construction, reconstruction, and alteration of public and private commercial and multifamily residential buildings, as an appendix of the State Building Code. This voluntary code of standards must conform to Sustainable Building 2030 standards, as defined in section 216B.241, subdivision 9. The code sections contained in this appendix may be adopted by a local jurisdiction at its election and become an official addendum to the baseline energy code in the jurisdictions adopting them. In adopting the code sections contained in this appendix, the local jurisdiction may not amend them, but may specify a minimum size for the buildings this stretch code will apply to. This minimum size must be no less than 10,000 square feet.

This bill was opposed by the Association of General Contractors, Minnesota Multi-Family Association, and others.

It received a hearing in the House Energy and Climate Committee, but was not voted on. It did not receive a hearing in the Senate.

Street Maintenance Fee Bill

In 2019, two bills were introduced that, if enacted, would have allowed cities to impose a street improvement fees for improvements and maintenance in addition to other existing municipal authority. Neither of these bills had a hearing in either body.

SF 1271 (Senjem) / HF 1095 (Elkins) – Establishing procedure for creating municipal street improvement districts.

HF 2296 (Tabke) / SF 2442 (Pratt) – Authorizing municipalities to charge a street impact fee.