



**BUILDERS
ASSOCIATION
OF THE TWIN CITIES**
PROFESSIONAL HOME BUILDERS & REMODELERS

Legislative Review 2007

*Compiled by James Vagle,
BATC Senior Public Affairs Representative*



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BATC PUBLIC POLICY DEPARTMENT

Three members of the BATC staff serve the public policy committee. The public policy staff complement includes the director of public policy, the assistant to the director of public policy, the inter-governmental relations manager, and the research and messaging specialist. All staff meets with the committee and offers and receives advice as they proceed in their function of serving the association.

Mary Schweich *651-697-7572 | mary@batc.org*

Mary Schweich is the Assistant to the Public Policy Director. She coordinates the day-to-day details that make the Public Policy Program and Developers and Builders Legal Action Fund run efficiently and smoothly. Mary has been with the Builders Association of the Twin Cities for ten years. Mary is also the staff liaison for the Women's Council and Developers Council.

Prior to joining BATC, she worked for the St. Paul Area Association of Realtors for ten years as the Membership Manager and Assistant to the Public Policy Director.

Nate Duoss *651-697-7577 | nate@batc.org*

Nate Duoss is the Public Affairs Messaging and Research Coordinator working in Public Policy at BATC. He has been with BATC for over two years. His work includes developing public policy communications and representing the industry before regulatory bodies at all levels of government. In addition, Nate tracks and distributes housing market information for BATC members.

He is a graduate of the University of Minnesota, with a B.A. in Political Science. Nate has also done communications work for several congressional campaigns, marketed professional athletes at a sports management firm, and served as a government affairs intern at the Builders Association of Minnesota.

James Vagle *651-697-7578 | james@batc.org*

James Vagle is the Senior Public Affairs Representative for the Builders Association of the Twin Cities. He represents the interests of the association and its membership before local, regional and state governments. Prior to joining BATC, James was the Government Affairs Manager at the Builders Association of Minnesota and served on Governor Jesse Ventura's policy staff.

He served four years in the United States Navy stationed aboard the U.S.S. Theodore Roosevelt, twice deploying to the Mediterranean and Middle East regions. He has studied at William Mitchell College of Law and holds a B.A. in Political Science from the University of Minnesota, where he remains an active booster of Gopher athletics.



BUILDERS ADJUST TO CHANGE IN LEGISLATIVE LANDSCAPE

The Minnesota Legislature gavelled in the 2007 session with large DFL majorities in both houses and ambitious agendas. The majorities were such that only one vote from Senate Republicans and five from House Republicans were needed to override a Governor's veto. However, leaders of the DFL caucuses embraced a new spirit of cooperation with the Republican minority and the Governor, hoping to avoid the gridlock and special sessions that became a staple of Minnesota politics over the past decade.

The session did adjourn on time, though the road traveled was not smooth and was punctuated by an acrimonious end with bitter rhetoric, vetoes, and little progress on high profile initiatives.

For builders and developers the session proved to be challenging. Proposed changes to independent contractor classification, environmental laws and general opposition to land use changes were present throughout the session. In the end, successful passage was achieved on a handful of industry priorities and agreements were reached on controversial industry issues for the most part.

BAM successfully passed the completed operations requirement for builders' commercial general liability insurance, and also passed a bill to fix the statute of repose disparity following a Minnesota Supreme Court decision.

BATC successfully passed a park dedication bill, aimed at creating a uniform standard for the basis of park fees in developing communities. Left on the table for next year were the moratoria and development contract initiatives.

THOUSANDS OF IDEAS – GOOD & BAD

BATC's 2007 law summary is a mini snapshot of all the ideas and issues dealt with by Legislators serving during the 2007 session. Below is a quick recap on the number of bills addressed.

Bills Introduced	2252 House Files Introduced 2363 Senate Files Introduced
Bills Passed	150 Bills Passed & Presented to the Governor
Bills Vetoed	12 full vetoed
Bills Becoming Law	138 Session Laws

Who Thinks Up This Stuff?

BATC members often ask "who are these people and what do they do when they're not at the Capitol?" Below are a few quick facts regarding the elected officials making decisions relating to your businesses and the business of the state.

Quick Facts

Number of Legislators

201 Total: 134 Representatives – 68 R / 66 DFL & 67 Senators – 38 DFL / 29 R

House of Representatives

Speaker of the House:

Representative Margaret Anderson Kelliher, DFL-Minneapolis

House Minority Leader:

Representative Marty Siefert, R-Marshall

- 134 Representatives – 85 DFL / 49R
- 91 Men / 43 Women
- Average age – 50.2
- Legislators reported their occupations:
28 teachers, 16 attorneys, 13 business-people, 12 legislators, 10 retired and a myriad of other occupations

Senate

Senate Majority Leader:

Senator Larry Pogemiller, DFL-Minneapolis

Senate Minority Leader:

Senator David Senjem, R-Rochester

- 67 Senators – 44 DFL / 23 Republican
- 40 men / 27 women
- Average age - 52
- Legislators reported their occupations:
13 attorneys, 10 business, 6 communications and 6 retired and a myriad of others occupations.
- Senators who previously served in the House - 22

BUDGET

The focus of the 2007 legislature was the establishment of the state's biennial budget which runs from July 2007-July 2009. Unlike the previous two budget sessions which dealt with significant deficits, this budget began with a surplus. The Governor supported an increase in the state's budget by around 9% which totaled a biennial budget of around \$35 billion. The DFL-led legislature raised the Governor and proposed aggressive increases in transportation, K-12 education, health and human services and property tax relief. These priorities necessitated additional revenue, which the DFL sought in the form of a 10-cent gas tax, a half-cent metro-county sales tax for transportation, and a sales tax increase which would create a fourth-tier income tax bracket with higher rates.

Governor Pawlenty and the Republican caucuses stood closely together in opposition to the proposed revenue increases, which managed to pass the legislature but were promptly vetoed. Without the votes necessary to override, more modest proposals without new taxes were passed and sent to the Governor. When the dust settled, Pawlenty signed several spending bills but used his veto pen to line-item many specific appropriations.

Pawlenty also vetoed the tax bill, which contained no new taxes but had several policy and compliance initiatives. Most notable casualties in the tax bill veto was \$75 million in local government aid (LGA), \$33 million in property tax refund relief, provisions to allow public subsidies of the Mall of America's "Phase II" expansion, and tightened corporate tax breaks: \$125 million would have been raised in 2008-09 and \$182 million in 2010.

Another casualty in the veto was a provision to require a general contractor to withhold two percent of each payment to an independent contractor. The provision had gained momentum throughout session in spite of opposition from BAM and others in the business community. The result was positive for builders this session, though the provision is expected to reappear next session.

BUILDER SPECIFIC

Completed Operations

Completed Operations Requirement – To maintain a builder's license a builder must verify that they have commercial general liability insurance (CGL) coverage. Missing in that requirement however was a specific requirement that the insurance contain a complet-

ed operations provision. Due to increased problems for builders attempting to purchase CGL policies with completed operations coverage over the last decade, BAM forwarded a proposal that will require insurance companies to offer completed operations coverage that includes property damage. The requirement passed the legislature and goes into effect on August 1st, 2007.

✘ Chapter 9 was signed by the Governor on March 27th

WESTON Decision

Weston Decision - The MN Supreme Court decision in Weston prompted a legislative proposal by BAM to correct the court ruling that a general contractor cannot file an action for contribution and indemnity against a subcontractor after the 10-year warranty period. BAM and others felt that the statute allowing a homeowner the two-year statute of repose was also meant to cover a builder against a sub-contractor. The legislation clarified that the additional two-year repose period beyond the statutory warranty did apply to sub-contractors and clarified that a general contractor can initiate a contribution and indemnity claim during that repose period.

✘ Chapter 105 was signed by the Governor on May 21st.

Window Screen Requirement

In response to two accidents in Minneapolis last year involving children falling through screens from upper-floor apartment windows, legislation was introduced to require more durable window screens to prevent similar accidents.

The original bill would have required safety screens in new single-family residential construction. The legislation would have been enforceable in all municipalities regardless of whether or not the building code applied. The original bill defined window safety screen as "a screen and associated framing" that prevents a small child from passing through the screen when the force of 30 foot pounds or less is applied to the screen. In plain English, the screen is steel reinforced.

Absent national standards and after several conversations with bill authors and stakeholders, compromise legislation was crafted. The new language addresses several areas of concern including moving the requirement to the Commissioner of the Department of Labor and Industry, who is required to adopt rules for window fall prevention devices as part of the state Building Code. The rules require compliance with standards developed by ASTM International, contained in the International Building Code. These rules will be effective on July 1, 2009.

✘ Chapter 147 was signed on May 25, 2007.

Department of Labor and Industry Reorganization Bill

This bill completed the reorganization of construction codes and related activities in the Department of Labor and Industry (DOLI) nearly two years after Governor Pawlenty signed an executive order to consolidate code administration, education and enforcement. The lengthy bill provides several organizational changes to the codes, licensure, education and enforcement elements of residential construction.

- Responsibility for the administration of the state building code is transferred to the commissioner of DOLI. A construction code fund is created in the state treasury to be funded by surplus funds from fees to the various boards and units administered at DOLI related to the administration of the construction code.
- The bill modifies portions in the building code to ensure compliance with the International Residential Code. The state building code will now be adopted by the DOLI Commissioner in consultation with each industry board and the Construction Codes Advisory Council.
- Interpretive authority rests with the commissioner for all state building code matters except for the Plumbing Code and the Electrical Code. The Board of Electricity, Plumbing Board, and Board for High Pressure Piping Systems will have final interpretive authority for each industries respective code.

- The Construction Codes Advisory Council has been re-established and will be comprised of 19 members of various industries and related state agencies.
- Detailed requirements relating to continuing education, course approval, course coordinators and instructors are established in statute and are the responsibility of the Commissioner of DOLI.
- Written contracts are required in statute for all agreements including proposals, estimates, bids, quotations, contracts, purchase orders, and change orders between a licensee and customer. They must contain detailed summary of work to be performed; specific materials to be used; total contract price or description of basis on which price will be calculated; requirement for signatures by both parties; and a requirement that the licensee provide the customer a signed and dated document at the time of signature. That requirement includes agreements and mechanic's lien waivers.
- Contractor Recovery Fund is also moved to DOLI and will serve the purpose of compensating owners or lessees of residential real estate, reimbursement to government for legal and administrative expenses, education research projects and services to the public.

✘ Chapter 140 was signed by the Governor on May 25.



Questions regarding Builder Specific legislation can be directed to Lisa Frenette, Director of Government Affairs at the Builders Association of Minnesota at lisaf@bamn.org or 651.646.7959.

HOUSING

Finance

When the dust settled on the budget, the MHFA appropriation was nearly identical to the Governor's original budget requests from last January and represents a significant increase in projected spending on housing. Programs receiving increases are the Housing Trust Fund, Rental Assistance for the Mentally Ill, Family Homeless Prevention, Affordable Rental Investment Fund, Housing Rehabilitation Loan Program, Urban Indian Housing, Homeownership Education Counseling and Training, and Non-Profit Capacity Building Grants.

The Legislature and governor were able to come together and provide a significant increase to the overall housing budget for the state. The result was an increase to affordable housing appropriations by over \$44 million in the Minnesota Housing Finance Agency (MHFA). Of the additional \$44 million \$15 million went to the Housing Challenge Program, which is Minnesota's vehicle for creating new affordable housing. As with many appropriations this session, most of the increase is one-time money and not MHFA's base budget for the next biennium.

Several housing advocacy groups proposed an increase in the deed tax, an initiative dubbed the Housing Solutions Act. The Housing Solutions Act failed to gain traction this session amidst several barriers. Opposition by the Governor, chairs of both Senate and House Tax Committees and a well-organized lobbying effort by the Minnesota Association of Realtors in opposition to the tax increase kept the increase to the deed tax from becoming law.

Mortgage Originator and Servicer Licensing Act Changes

A variety of legislative changes, including significant changes to Chapter 58, the Minnesota Mortgage Originator and Servicer Licensing Act were made in the 2007 legislative session.

Beginning August 1, 2007, an applicant for a residential mortgage originator license must be a corporation or other business entity and must have one of the following: (1) approval as a mortgagee by either Housing Urban Development or Federal National Mortgage Association; (2) tangible net worth of \$250,000; or (3) a \$50,000 surety bond or letter of credit, and meet other require-

2008-9 MHFA Housing and Homelessness Budget

Challenge	\$34.2 million
Urban and Tribal Indian Program	\$3.4 million
Preservation Loans and Grants	\$20.5 million
Housing Trust Fund	\$22.1 million
Family Homelessness Protection	\$14.9 million
Rehab Loans	\$9.8 million
Bridges rent assistance	\$5.2 million
Housing Counseling	\$1.7 million
Nonprofit Capacity Building	\$680,000
Homeownership Assistance Fund	\$1.7 million

ments in order to obtain a license. After July 31, 2007, the Department of Commerce (DOC) will no longer license natural persons as residential mortgage originators. Likewise, exemption from licensure for certain real estate agents and insurance agents will not be available after July 31, 2007. The DOC will be consulting with surety bond providers concerning a bond form that will meet the requirements.

The fee for an initial mortgage originator license has been increased from \$850 to \$2,125 and the renewal fee has been increased from \$450 to \$1,125, effective August 1, 2007.

The July 31, 2007 renewal date for mortgage originators who are already licensed has been pushed back to October 30 to enable licensees to meet the new licensing requirements. There is no grandfathering of existing licensees.

The bill also provides for 15 hours of educational training covering state and federal laws for all individuals engaged in residential mortgage origination which must be completed by March 1, 2008. Provided that the training meets the statutory requirements, the DOC will give credit for training completed within 24 months prior to the August 1, 2007 effective date of the statute. Likewise, courses approved by other states may qualify for satisfying at least part of the educational requirement.

Natural persons, including independent contractors, who are employed as mortgage originators by licensees and exempt entities, are not required to be licensed; however, the entity employing them must maintain a perpetual list of these individuals, perform background checks on these individuals, assure compliance with the prohibition contained in Section 58.125 and assure that the individuals have completed the education requirement.

May 8, 2007, the omnibus bill Senate File No. 2096 was signed into law by Governor Pawlenty. The bill's effective date is August 1, 2007, but several of the provisions have a later effective date.

Predatory Lending

In response to increases in predatory and unethical lending in Minnesota, a bill to prohibit predatory lending practices made its way to the Governor this session. The bill was highlighted by additions to the prohibited practices spelled out in statute for a residential mortgage originator or servicer. These additional changes prohibit an individual or company from the following:

- Make, provide, or arrange for a residential mortgage loan without verifying the borrower's reasonable ability to pay the scheduled payments of the following, as applicable: principal, interest, real estate taxes, homeowner's insurance, assessments, and mortgage insurance premiums.
- For all residential mortgage loans, the borrower's income and financial resources must be verified by tax returns, payroll receipts, bank records, or other similarly reliable documents.
- Engage in "churning." "Churning" means knowingly or intentionally making, providing, or arranging for a residential mortgage loan when the new residential mortgage loan does not provide a reasonable, tangible net benefit to the borrower considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan, and the borrower's circumstances.
- Make, provide, or arrange for a residential mortgage loan, other than a reverse mortgage pursuant to United States Code, title 15, chapter 41, if the borrower's compliance with any repayment option offered pursuant to the terms of the loan will result in negative amortization during any six-month period.
- These provisions do not apply to a state or federally chartered bank, savings bank, or credit union, or to a person making, providing, or arranging a residential mortgage loan originated or purchased by a state agency or a tribal or local unit of government.

✘ Chapter 18 was signed by the Governor on April 17, 2007

ENVIRONMENT

Wetlands Conservation Act – After a year-long stakeholder input process, the Board of Water and Soil Resources sought legislative changes to the Wetlands Conservation Act (WCA). The environment omnibus bill was the vehicle for changes to the WCA. The early versions of the bill contained several provisions spearheaded by the Minnesota Center for Environmental Advocacy, most of which were opposed by BATC/BAM. The three biggest issues of opposition in the initiative were: a third-party citizen cause of action which would have given parties without an interest in a development activity standing to bring a cause of action or level a complaint; changes to the 60-day rule that would exempt wetland delineation and related wetland activity from the 60-day time limits; and finally, a provision that would eliminate partial wetland credit for stormwater replacement ponds.

The third-party citizen cause of action was removed from the bill and the other priority opposition issues were negotiated and improved.

After significant negotiations the wetland delineation provision was amended to allow for applications to proceed in accordance with the 60-day rule with conditions to be satisfied prior to final approval, such as delineation review, etc. This mirrors industry practice by allowing the rest of the application to proceed in accordance with the 60-day rule timeline and was agreeable to stakeholders.

For stormwater pond credit, the language was amended to allow for partial credit assessment if the pond design includes pre-treatment of runoff and the pond is functioning as a wetland. Technical review at the local level will be used to make the functional assessment.

✘ Chapter 57 was signed by the governor on May 4th. The changes to the WCA will be implemented into rule by the Board of Water and Soil Resources this summer in an expedited rulemaking process and will be permanently placed in rule by 2009.

Other Environmental Appropriations

With continued emphasis on clean water at all levels of government, the legislature appropriated funds for regulatory programs aimed at clean water.

- In the Environment and Natural Resources bill, the Pollution Control Agency will receive \$31 million in one-time money for impaired water assessments and TMDLs under the Clean Water Legacy Act. This appropriate will be spent for analytical work and it is expected that the PCA will be completing this work over a 10 year period. It is also the Legislature's expectation that the PCA will complete 10% of this work every year.
- The Department of Natural Resources (DNR) received \$2.25 million in their Water Resources Management section to assess water within their jurisdiction for impairments and create TMDLs under the Clean Water Legacy Act. The DNR received an additional \$2.25 million in their Ecological Services section for impaired water assessment and TMDL development.
- The Board of Water and Soil Resources (BWSR) received over \$14 million under the Clean Water Legacy Act for a variety of clean water activities that serve primarily rural areas, but will also assist part of the Metro Area's development fringe. Included in the BWSR section that is applicable to the Metro Area is an analysis of wetland mitigation opportunities and evaluating applied soil and water conservation practices.

LAND USE

-Park Fees, Fair Market Value - Prior to 2007, the basis for a park fee (in lieu of a land dedication) was the fair market value of the land at any point prior to the final approval of a project. That created disparities and confusion among developing municipalities resulting in varied park fees throughout the region. Working with the League of Minnesota Cities and Association of MN Counties, a bill was passed that clarified that fair market value shall be established based upon the average fair market value of

undeveloped land that is, or under the city's adopted comprehensive plan, may be served by municipal sanitary sewer and water service or community septic and private well as authorized by state law. For purposes of redevelopment on developed land, the municipality may choose to accept a cash fee based on fair market value of the land no later than the time of final approval.

✘ Chapter 131 was signed by the Governor on May 23rd

Met Council

The 2007 Minnesota Legislature approved funding for regional transit and park operations, as well as passing several of the Metropolitan Council's policy initiatives.

- ***Regional parks operation and maintenance.*** The Legislature appropriated \$17 million to help fund the operation and maintenance of regional parks and trails in the coming two years. This represents a \$1.5 million increase from the current biennium. It also allocated \$2.5 million from the Environmental Trust Fund for regional parks capital improvements, on condition that these funds are matched at the 40 percent level with regional bonding money.
- ***Nonprofit parks foundation.*** The Legislature approved a Council initiative authorizing the creation of a Regional Parks Foundation. The foundation will seek to raise funds from the private and nonprofit sectors to supplement the public dollars provided for park land acquisition, accelerating the purchase of lands while they are still available and affordable.
- ***Local planning grants.*** The Council was given authority for a one-time transfer of up to \$1 million from the Council's Livable Communities program to provide planning grants to local units of government. The funds will be targeted at smaller, lower property value cities on the metro fringe that are projected to start growing rapidly within the next 10 years. The Council will use this authority to provide grants to three counties and some 47 communities to assist with the cost of developing or updating their local comprehensive plans, which are due at the end of 2008.
- ***The Land Planning Act housekeeping bill*** - While most of the bill was intended to remove obsolete references and redundant language, it also contained a provision that to allow the Met Council to waive the review and comment process for minor Comprehensive Plan amendments that were not on municipal boundaries. The provision did not define "minor" amendment, in an effort to allow flexibility for minor amendment criteria work with the Council. The provision will streamline the Comprehensive Plan amendment process and will eliminate some of the unnecessary tasks required by the current process.

✘ Chapter 113 was signed by the Governor on May 21st, 2007.

Annexation

Townships and cities perennially argue annexation issues at the Capitol seeking changes to the annexation law (MN §414). The residential construction industry relies on annexation processes to provide homes on more affordable, higher density lots with adequate and less expensive infrastructure.

Lost revenue, amortization, revenue sharing and other policy issues have led to impasses in the legislative process over the past several years as various annexation reform initiatives were advanced. In an attempt to better understand the issues regarding municipal boundary adjustments, an advisory task force was extended again this session.

The task force is required to report back their findings and recommendations to the legislature by January 2008. Specifically, the task force must develop recommendations regarding best practices annexation training for city and township officials, as well as any changes that should be made to the law governing municipal boundary adjustments. The task force is comprised of legislators, township officials, and city officials.

✘ Chapter 90 was signed by the Governor on May 21, 2007.

TRANSPORTATION

Many thought that this session would be one where significant increases to the transportation budget occurred. Ambitious proposals were passed out of both bodies to increase the gas tax, county-imposed wheelage tax, metro-area sales tax, tab fees and leased vehicle transfer tax. Early versions of the House Bill contained express authority for local governments to impose transportation impact fees on each building permit it issues. That provision was removed in committee amidst opposition from the building and business community.

The governor vetoed the omnibus bill that included a gas tax and a last ditch attempt to override the veto failed in the House. The governor did, however, sign a bare-bones highway and transit funding bill that keeps the Department of Transportation functioning day-to-day.

The lights on bill, HF562 contains no increase in the gas tax, no increase in license tab fees, no dedication of sales tax revenue on leased vehicles, no expansion of authority to levy a wheelage tax and no authorization for counties to impose an increase in the local sales tax for transportation purposes. The Motor Vehicle Sales Tax split on Roads and Transit is 60/40 and the transit split is 36/4, 36 for the Metro and 4% for Greater Minnesota. The bill includes the payback of \$12 million to the State Airports Fund. In 2003, \$15 million had been taken from the State Airports Fund to help balance the general fund budget. The State Patrol received less funding than recommended by the Governor. The appropriations are slightly higher than the previous biennium due to the increased motor vehicles sales tax revenue approved by voters in November.

Transit

Advocates of the Central Corridor LRT project were unsuccessful in securing state bonding dollars that would go toward the state's share of the \$930-million project. A \$334-million bonding bill that included \$40 million for the Central Corridor LRT project was vetoed by the governor, who objected to the total size of the package.

The "lights-on" transportation finance bill passed on the final day of the session provides \$98.8 million for transit in fiscal year 2008 and \$78.8 million for fiscal year 2009, about \$7.7 million less than needed in the second year of the biennium. Overall, the bill leaves Metropolitan Transit with a cut of around 1% and Greater Minnesota Transit with a cut of 1.4%

A separate bill that included language clarifying the Met Council's authority to build LRT lines failed to win final legislative approval. The Council will continue leading the project in concert with the Minnesota Department of Transportation, which has such statutory authority.

Miscellaneous but Interesting

Smoking Ban - A national trend hit home in Minnesota, sparking a flurry of heated committee hearings and floor debates. One of the most significant changes in law is the statewide smoking ban, effective October 1, for virtually all indoor places in the state.

Ticket Scalping Ban Repeal - The secondary market for ticket sales has been opened up in Minnesota. As of August 1, peddling a ticket for a price higher than face value is no longer a crime in Minnesota.

Gift Card Value - Rising in popularity as a gift, the value of gift cards is protected and will not expire or dwindle from fees if the recipient happens to not use the cards for months after receiving it.



NEW CODE INSTRUCTION FOR TOWNHOME CONSTRUCTION

On July 10, a new building code will be enforced requiring sprinklers in all multi-family buildings over 9,250 sq. ft. in size (including garages and basements). Several more code changes are also fast approaching. BAM has hired expert consultants to help you learn the new IBC, IRC and Accessibility rules specifically for townhomes.

COURSE INCLUDES

- Townhome fire sprinkler requirements
- IBC and IRC Code Changes to Building Multi-Family
- 2006 Accessibility Code: Overview by Construction Type
- Townhome Accessibility Guidebook
- Townhome Roadmap to the IRC & IBC
- Lunch!

COURSE DATES

June 21st in Maple Grove or
 June 27th in Apple Valley
 9:00 am – 3:45 pm
(Continuing education credits cannot be offered for this course.)

COST

Members - \$150
 Non-Members - \$200
 \$50 discount for additional attendees from the same company



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