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Newsletter for the Commercial Construction Industry

Registration Fee Bill Will Reduce Highway Fund Revenue

Senate Bill 78 eliminates the motor vehicle registration fee increases enacted in 2009. The passage of this bill would mean decreases in highway fund revenue, which in turn would lead to cuts for both the Department of Highway and Department of Safety. AGC of NH is concerned that the cuts will result in reduced construction projects, limiting the already scant projects available. The Association is also aware of two other bills that seek the repeal this fee, in addition to other taxes and fees.



This bill poses a serious threat to Highway Fund revenue. New Hampshire's Highway Fund has carried insufficient funds for a number of years, and the registration fee increases were a method of staving off drastic cuts. Allowing the surcharge to be repealed or sunset would equate a loss of approximately \$86 million in the next biennium. With the registration fee repealed, AGC of NH is also concerned that no additional funding mechanisms are being looked at. While registration surcharge fees are scheduled to sunset in June 2011, it was the recommendation of the Commission to Study Future Sustainable Revenue Sources For Funding Improvements to State and Municipal Highways and Bridges that registration fees be used a method of sustainable funding. As a sustainable method of funding, the registration fees would ensure that the Highway Fund would receive a certain amount of revenue each year.

The Association believes it is important to keep the registration fees at their current level, as they will continue to be a sustainable funding mechanism for the Highway Fund. AGC of NH does not believe these fees should sunset in June, or be repealed as the loss of highway funds will affect nearly all those involved in the commercial highway construction industry. In early February, the Association alerted members about these bills and encouraged them to contact their Senator and Representatives. AGC of NH provided the following points to help members in their discussions with legislators:

1. The repeal of registration fees may be made to improve the economy, but reducing highway fund revenue will hurt the economy as well. Snow plowing, state police, and state & municipal highway projects are what help the economy function in today's society. The Association concerned that a loss of highway fund revenue will mean a cut in state funded projects. This could result in layoffs, further hurting the economy.
2. AGC already had concerns that the state does not have enough revenue to adequately maintain our highway infrastructure. What method will be used to insure that the Highway Fund has sufficient revenue?
3. Reducing Highway Fund revenue will also affect the safety of the citizens. Without being able to properly maintain roads and bridges, the driving public is put at a greater risk. Additionally, as mentioned before making cuts to snow plowing, maintenance, and state police will also affect citizens' safety.

AGC of NH will keep members updated on the status of these bills as more information becomes available.

The Associated General Contractors of NH, Inc.
48 Grandview Rd
Bow, NH 03304
603-225-2701

Vol 11 No. 4
February 21, 2011

Inside

- Directory Letters Mailed**
- Flagging Class**
- Safety Edge Workshop**
- DOT Ad Schedule Compared**
- New Arrival**
- Committees Dig Into Bills**
- Simplify Permitting**
- HR Legislation**
- DOT & Admin. Services**
- Breakfast Sponsorship Form**
- Revisions to Prompt Pay**
- Wetlands Bill**
- Last Call:**
- NH Build Award Entries**



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Directory Letter Mailed Out

AGC of NH has mailed out *Directory Information* letters to members. These letters contain the information that will be printed for each member's listing in our annual Construction Industry Directory. The Directory will be printed in the spring, and is mailed to cities & towns, architects, engineers, and potential project owners.

Please double check that all your information is correct, if no corrections are made, the listing will be printed as it is written in the letter. Also, please take note of the following important guidelines regarding directory listings:

- Companies may list up to five title positions, not including the president.
- Services are limited to fifteen words.
- Companies may choose up to three categories for the classified index.
- Companies are entitled to two complimentary company addresses. Additional addresses may be listed at a rate of \$50 per address.

The chapter office is keeping track of all responses, so please fax or mail this letter back to the chapter office by March 18, 2011. AGC of NH's fax number is (603) 226-3859, and the street address is 48 Grandview Road, Bow, NH 03304. If you have any questions, please contact the chapter office at (603) 225-2701.

Join AGC of NH For Breakfast with DOT & Administrative Services

On April 21, AGC of NH will be hosting the Department of Transportation Commissioner, George Campbell, and Administrative Services Bureau of Public Works Director, Mike Connor, for a breakfast meeting. This event builds on the success of AGC of NH's Meet the Commissioners Night held in October 2010, but will allow more time for questions and answers with each of the presenters.

This is truly an event that has something for both building and highway contractors. Topics the presentations will cover include, funding, project outlook, and new requirements or regulations. AGC of NH is excited to have these agency leaders speak to the membership about these topics, and we look forward to the questions members have for either.

The event will be held at the Derryfield in Manchester, NH. Registration information for this event is coming soon. Sponsorships for the event are available now, please turn to [page 7](#) for a flyer with more information.

AGC of NH's First Flagging Class of the Season Coming Soon!

AGC of NH will be holding its first Flagger Trainer Class of the season on Friday, April 8 at 8:30 AM. If you are in need of flagger trainers, now is the time to make sure that they are certified. The AGC of NH "Train the Trainer" Flagging Course is the best way to make sure that your employees are up-to-date on the latest flagging specification. Participants who successfully complete the course are then able to train other employees at your company to be flaggers.

In 2010, the flagger specification was updated, and now includes these important changes (AGC of NH's Flagger Class reflects these changes):

- **Flag trainers must take a training course every four years to remain in compliance**

- Upon request by the Contract Administrator, Contractors and Subcontractors shall provide verification of training within 48 hours.

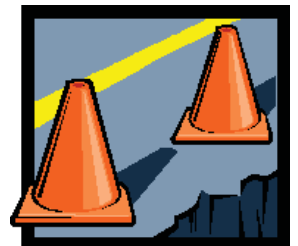
- Any flagger who is trained by a designated trainer and changes employer, must be retrained by the new employer

- Flaggers may elect to take a designated trainer course to meet the training requirements, which would not expire with a change of employers

AGC of NH members can attend the course for \$75; non members can attend for \$110. If you are interested in signing up for the course, please call the chapter office at (603) 225-2701.

Upcoming Workshops For Paving Contractors - Safety Edge

New Hampshire's Department of Transportation (DOT) recently announced a workshop for contractors concerning Safety Edge. The Safety Edge forum will take place on March 8, 2011 in Concord, NH. The intent of the forum is to address concerns expressed by contractors and DOT personnel regarding the installation and implementation of the Safety Edge to prepare them for adoption of the specification.



The forum will begin at 9:30 AM in room 114 of the Department of Transportation, 7 Hazen Drive, Concord, NH. To register for the event, go to <http://safetyedgeforum.eventbrite.com>.



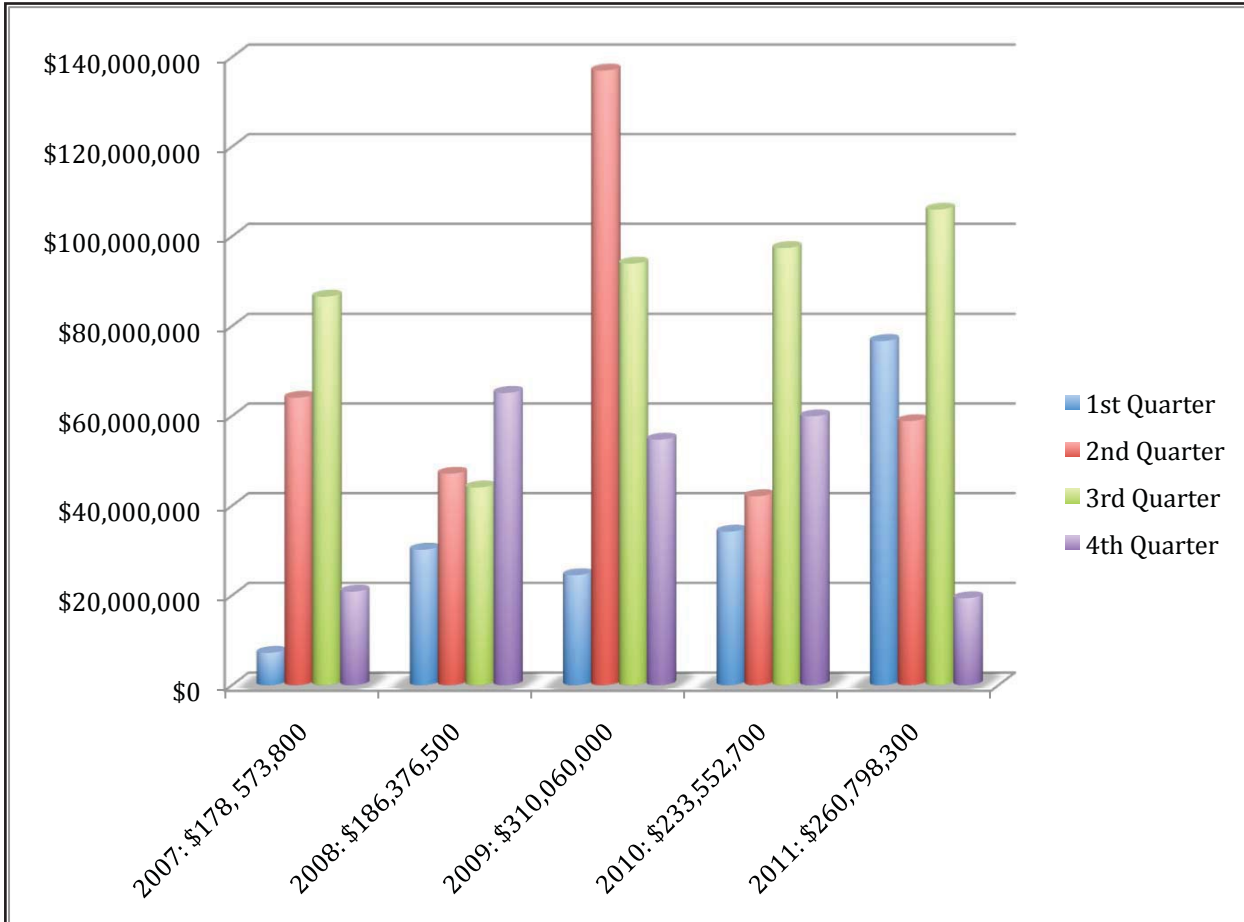
AGC Update (USPS 389-890) is published bi-weekly by the Associated General Contractors of New Hampshire Inc. 48 Grandview Road, Bow, NH 03304. Annual Subscription rate is four copies per Active membership, eight copies per Active membership paying the maximum dues amount, and two copies per Associate membership. Annual subscription rate is \$200. Members can purchase annual printed subscriptions for \$100 each. Unused subscriptions will be distributed at the discretion of the Chapter Office Executive Vice President. Periodical postage paid at Concord, NH 03301. POSTMASTER: Send address changes to the Associated General Contractors of New Hampshire, 48 Grandview Road, Bow, NH 03304 or contact us at (603) 225-2701 or fax (603) 226-3859.

NH DOT Advertising Schedule Compared

According to the New Hampshire Department of Transportation's (NH DOT) first quarter advertising schedule, the Department has estimated a 2011 Fiscal Year total of \$260,798,300. 2009 saw a jump in awarded projects, due to the American Recovery and Reinvestment Act. Comparing quarters, this quarter was the highest in the last four years. However, it contained two I-93 projects that totaled approximately \$65 million out of the \$76 million.

The chart below shows the awarded project amount comparison for the fiscal years 2007 through 2011. Please note, 2011 2nd, 3rd, and 4th quarter and fiscal year end amounts are estimates.

2007-2011 Comparison by Quarter



New Arrival!

AGC of NH would like to congratulate **Bobbie Caradonna on the birth of her new baby girl**. Nora Jean LaFlamme was born on January 31 at 2:44 AM. She weighed in at 7 lbs., 15 oz. and was 19" long.

Bobbie has been the AGC of NH Bookkeeper and Functions Coordinator for the past 6 years.

We wish Bobbie and Gary LaFlamme the best of luck with their new addition!

Committees Dig Into Legislation



Now that the 2011 Legislative Session is up and running, AGC of NH's committees have met for the first time to discuss their prospective bills. This year the committees began by reviewing all the bills that could impact the commercial construction industry either positively or negatively. Based on the bills' content, the committees made position recommendations that will be approved or changed by the Board of Directors.

The Building Committee, Environment Committee and Human Resources Committee all met prior to the first meeting of the Legislative Committee. The Legislative Committee's main task is to review all the bills and make initial recommendations and/or refer the bills to the topic specific committees. At their first meeting on January 27, the committee members reviewed the recommended positions that the Building Committee, Environment Committee, and Human Resources Committee had made, as well as reviewing new bills these committees have not

seen yet.

The **Human Resources Committee** was the first committee to meet, with their meeting taking place on January 19. The Committee reviewed eight bills with human resources ties. The most important of these bills included clarifying the definition of gross misconduct, and prohibiting health carriers from issuing a new individual health insurance policy if the individual is eligible for certain other group health coverage. One bill the committee recommended removing was one which required a physician's office to disclose, prior to treatment, whether the patient will be assessed any fees because of the physician's relationship with a hospital. The Committee recommended instead writing a policy for the Association advocating transparency.

The **Building Committee** was the next to meet on January 25. The Committee also reviewed eight bills. A bill establishing the creation of express trusts has been introduced again. This bill was introduced in the 2009 session, but eventually tabled during the 2010 session. Also reviewed by the committee were bills attempting to create uniformity in the state building and fire codes, a bill requiring the department of transportation and the appropriate regional planning commission to submit recommendations on all school building aid projects to the state board of education, a bill that repeals the moratorium on school building aid projects, a bill that seeks to include the International Existing Building Code in the definition of the New Hampshire building code, and lastly a bill that changes the definition of "abutter" for notice of land use board hearings to include condominiums or collective unit owners rather than the association officers.

Lastly, the **Environment Committee** met on January 26. This committee reviewed eight bills as well. Three of the most important were the AGC of NH co-written bills. You can read more about Senate Bills 20 and 21 on [page 11](#) of this newsletter. Senate bill 19, prime wetlands, was written about in the last issue of the newsletter. This bill returns the definition of prime wetlands back to its original intention. Other bills reviewed by the committee include: relative to de minimis impact work to restore certain geomorphic characteristics, relative to the administrative appeals process of the department of environmental services, requiring the department of environmental services to develop criteria for classifying wetlands as contributing or noncontributing, providing extensions of permits for excavating and dredging in wetlands and activities within the protected shoreland, and lastly reducing fees for alteration of terrain permits.

Bill Introduced to Simplify Permitting Process

AGC of NH recently learned of a bill, Senate Bill 142, supported by the Department of Environmental Services (DES) that will reorganize the permitting process within the department. The proposed integrated land development permit is designed to simplify the permitting process for applicants.

This permitting process will be an alternative to the current process, and will not be mandatory. The bill states that this process provides an alternative process for application submission and review including a structured pre-application meeting with applicable program staff and a streamlined and coordinated application and review process.

While AGC of NH agrees that streamlining the permitting process will be beneficial, the Association does not think that this bill will accomplish what Senate Bill 20 will. As described on [page 11](#), Senate Bill 20 will eliminate redundancy by allowing alteration of terrain permit holders to forgo obtaining a shoreland protection permit as well. With Senate Bill 142, it is likely that applicants will still need to obtain both permits. No hearing date has been set for this bill at the time of print. AGC of NH will continue to update members on the status of this legislation.

Important Human Resources Legislation

AGC of NH has been steadily working since the beginning of the 2011 Legislative Session to file two important human resources-related bills. The Association's Human Resources Committee discussed last year that their top priorities for this legislative session included creating a medical fee schedule for workers' compensation costs and amending the withholding of wages statute to add another item to the list of exceptions covering this law.

The Association believes that creating a medical fee schedule for workers' compensation costs will be a great aid to the commercial construction industry as it will help control costs. AGC of NH worked with several other organizations on Senate Bill 71, as those organizations believe it is important to control these costs as well. While the bill has not been heard yet, the Association is already working on materials to present to the presiding committee. This includes a position paper that outlines the reasons why the Association believes the legislation to be important.

The paper highlights the fact that 43 other states, including those surrounding New Hampshire, have passed a law that creates some sort of a medical fee schedule. This overwhelming majority shows that it is an effective way to control costs, and New Hampshire should follow suit. Additionally the paper references the fact that the legislature passed a similar bill in 2004 for the prison system. Inmates were costing the

prison system too much in medical bills, so a bill was introduced that created a fee schedule to control those costs. Looking back on how that bill has helped reduce costs, New Hampshire should use this evidence and pass a bill that does the same for workers' compensation costs.



The Association also believes it is important to modify the withholding of wages statute to include the following in the following in the list of exemptions: *"For any purpose in which an employer and employee mutually agree upon, without granting financial advantage to the employer. The withholding cannot be used to offset payments intended for purchasing items required in the performance of the employee's job in the ordinary course of operation of the business."* The Human Resources Committee thought that it would be beneficial to broaden the list of allowable deductions with this language. No bill number or hearing date has been set for this bill.

AGC of NH will keep members updated on the status of this legislation.

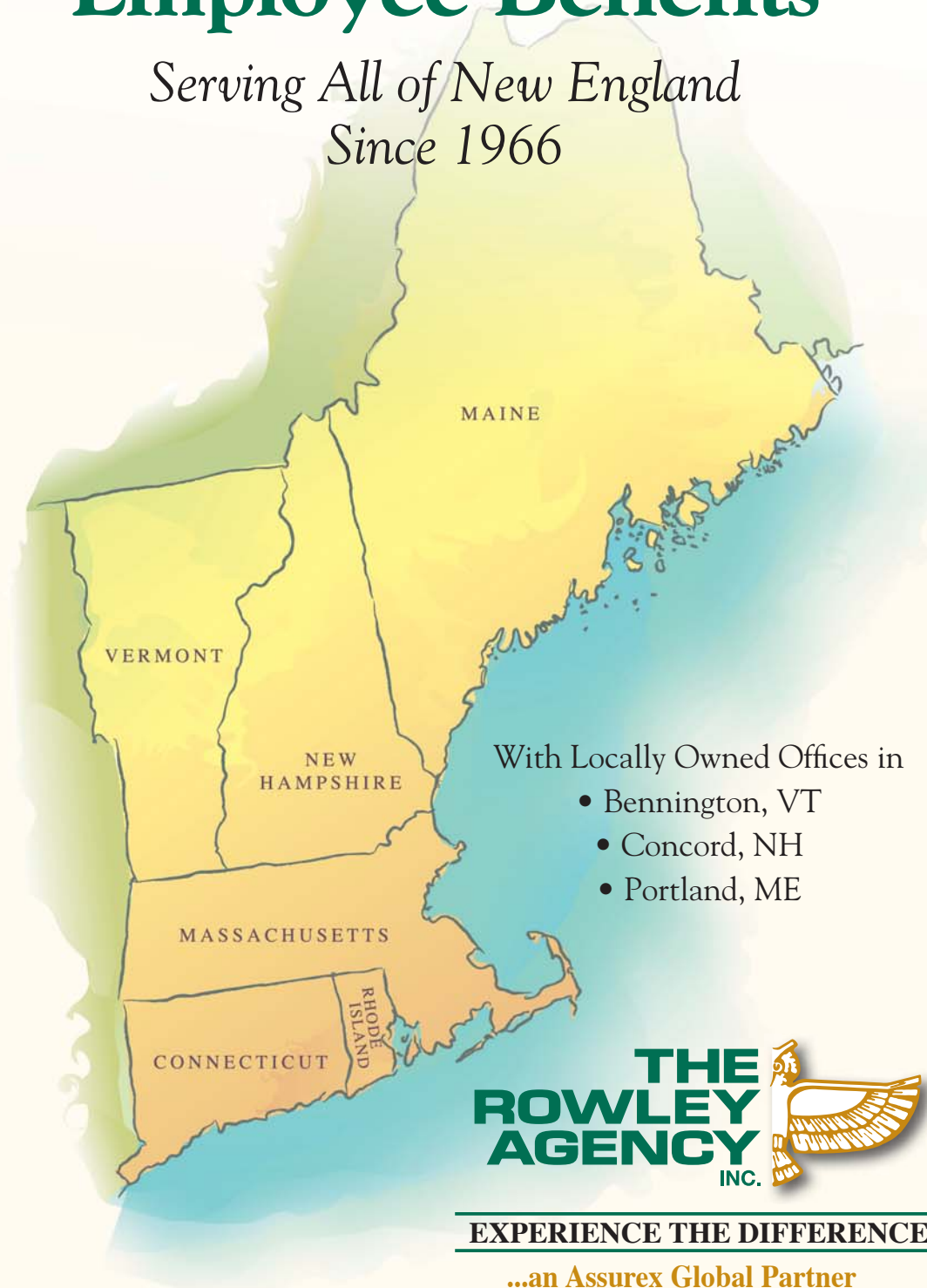
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Presentations to follow



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Department of Transportation



Michael Connor
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**Any questions regarding sponsorship, please contact Bobbie at
(603) 225-2701 or email her at bcaradonna@agcnh.org.**

Restrictions:

**** Restrictions apply on banner size. We must receive your banner at least one day before the event. Once logos are submitted by email to aweaver@agcnh.org for the Gold sponsors, they will then be listed on the Event Flyer. The sooner your logo is supplied, the more times your logo will be advertised. Please call Andrea at (603) 225-2701 for details.**

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Revisions to Prompt Pay Specification

During the AGC of NH Highway Specification Committee meeting on February 4, the Department of Transportation introduced revisions to the prompt pay specification. The Committee will be discussing this in depth at their next meeting on March 2. The Association believes that these revisions will affect our members, and we encourage you to read through the changes (shown below) and forward any comments you have to AGC of NH (agcnh@agcnh.com). Please send comments by February 25th.

Removing (Current Specification):

Section 109.09 - Payments to Subcontractors.

109.09 Payments to Subcontractors. Within 21 days of the issuance of progress payments, the Contractor shall pay, in full, all Subcontractors and suppliers for the value of satisfactorily completed work and materials placed under the Contract and for materials in accordance with 109.07 or 109.08 paid for in the progress payments. If the Contractor withholds any portion of payment from a Subcontractor, the Contractor shall, within the same timeframe, demonstrate to and obtain acknowledgement from the NH DOT Compliance Review Officer that the Contractor has reasonable cause that the Subcontractor failed to complete work satisfactorily, or portions thereof; or that the supplier failed to provide materials as specified above. When the Contractor is found in noncompliance with this specification, sanctions will be imposed as determined by the Department.

For purposes of this Section, satisfactorily completed means: The Subcontractor has fulfilled the Contract requirements of the Prime Contractor including the submission of all documentation required by the Contract and the subcontract.

Adding:

109.09 Prompt Payment to Subcontractors. The Prime Contractor shall pay all Subcontractors for the work performed no later than 21 calendar days from the date the Prime Contractor received payment from the Department for said work, including materials in accordance with 109.07 and/or 109.08 paid for in the progress payments. This requirement is also applicable to all lower-tier Subcontractors and suppliers, and shall be made part of all Subcontracts and agreements.

If the Prime Contractor believes that any portion of the payment should be withheld from the Subcontractor, the Prime Contractor shall notify the NHDOT Contract Administrator, or Resident Engineer, in writing, prior to the estimate being processed. The NHDOT Office of Federal Compliance shall be courtesy copied in this notification. The NHDOT may withhold payment for the portion of work in dispute pending resolution.

This prompt payment provision is a requirement of 49 CFR 26.29 and does not confer third-party beneficiary right or other direct rights to a Subcontractor against the Department. This provision applies to both DBE and non-DBE Subcontractors.

A. Satisfactory Completion. Progress and Partial payments for contract work are made based on this assessment; and satisfactory completion is defined for purposes of this prompt payment provision as:

1. Upon review, the Engineer finds the work completed in accordance with the contract, plans and specifications, and;
2. Required paperwork, for Progress and Partial payments, including material certifications, payrolls, etc., have been received and deemed complete.

The determination of whether work meets the standards of satisfactory completion is the responsibility of the Engineer. If the Subcontractor becomes insolvent after satisfactory completion of its obligations but before payment is due, the obligation to pay is not extinguished.

The Prime Contractor must include in all Subcontract agreements notices to Subcontractors of their right to prompt payment, and of the Department's prohibiting Prime Contractors from holding retainage from Subcontractors under 49 CFR 26.29.

Failure of a Contractor to comply with these prompt payment provisions may result in sanctions. Sanctions may include, but not limited to, withholding of estimates on projects where prompt payment violations are confirmed, changes in pre-qualification status, and or/withdrawal of bidding privileges.

B. Non-Payment Claims. All notifications of failure to meet prompt payment provisions shall be referred by Subcontractors to the Prime Contractor. Notifications must be made in writing with a copy to the respective NHDOT Federal Compliance Officer and Contract Administrator/Resident Engineer. The Prime Contractor must respond, in writing, to the Subcontractor with a copy sent to the respective NHDOT Federal Compliance Officer and Contract Administrator/Resident Engineer, within 7 calendar days of receipt of the notification of failure to meet prompt payment provisions. Failure of the Prime Contractor to respond may result in sanctions. The Subcontractor is responsible for notifying the NHDOT Federal Compliance Officer, in writing, anytime a Prime Contractor has not complied with these provisions.

C. Prompt Payment Verifications. The NHDOT Office of Federal Compliance may, at their discretion, perform prompt payment verifications to ensure compliance with this section.

D. Monthly Payment Certifications. When a Contractor is found to be in violation of this special provision and evidence suggests a pattern of violations, NHDOT Office of Federal Compliance shall, at their discretion, require the Submission of monthly payment certifications. These steps are outlined in the Department's written Prompt Payment Enforcement Process.

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Wetlands Bill Removes Need For Permit For Maintaining Man-Made Wetlands

Following the Senate Energy and Natural Resources Committee passage of AGC of NH's requested prime wetlands bill (SB 19), a second AGC of NH supported wetlands bill has passed the committee. On February 3, the Senate Energy and Natural Resources Committee voted 4-0 ought to pass with amendment.

Senate Bill 21 was heard for the first time on January 13, and involves allowing maintenance and corrective actions to man-made wetlands without the need for obtaining a wetlands permit. Initially, the bill, sponsored by Senator Bob Odell, was written into the definition of wetlands. However, the Department of Environmental Services (DES) were opposed to the placement of the language as it would interfere with the Department's General Permit.

Following the objections of DES, AGC of NH's Gary Abbott worked with member Jim Gove of Gove Environmental Services and other interested organizations to amend the bill. The amendment does the following in RSA 482-A:3 IV:

- Adds to existing subsection b: *"Maintenance of, existing"*
- Creates a new subsection c which says, *"Modifications to man-made roadside and railroad ditches, gullies, farm ponds, fire ponds, detention basins, wetlands made specifically for stormwater treatment or control, aggregate wash ponds, and sluice ways shall be exempt from a permit under RSA 482-A. The modification cannot be extended into any area of wetlands jurisdiction of the department of environmental services, and wetlands or surface waters outside of the limits of the constructed drainage facility, roadside or railroad ditches, gullies, farm ponds, fire ponds, or man-made water conveyance system."*

Senate Bill 21 will now move to the Senate floor, and if voted to pass there it will move onto the House. Following the passage of Senate Bills 19 and 21, AGC of NH is now hoping for its third environment bill to meet the same results. Senate Bill 20, will eliminate the need for holders of an alteration of terrain permit to also have a shoreline protection permit. AGC of NH believes that the current alteration of terrain rules are very comprehensive, and require both stormwater quality and stormwater quantity to be addressed. The alteration of terrain rules ensure that businesses discharge clean water, thus negating the need for a shoreland protection permit as well.

This bill was scheduled to heard on January 13, but was rescheduled for a later date. DES thought that the bill should be heard in conjunction with their bill regarding the innovative permitting process. A new hearing date has not been scheduled at the time of print. AGC of NH will continue to keep members updated on the status of these bills.

Last Call: Submit Your Build NH Award Entries

The deadline to submit Build NH Award entries, March 1, is fast approaching. Build NH Awards a great way to show your industry peers and AGC of NH members what you have accomplished in the past two years. Winning a Build NH Award is recognition of your company's dedication and skill. Recipients of these prestigious awards have been innovators, employing new technologies and meeting challenges that result in an impactful outcome.

Entries into the Build Awards must be for projects undertaken from 2009-2010. The best entries include many pictures of projects in all stages of completion. Builders have the choice of two categories- Best Building Project and Best Environmental Building Project. Highway contractors also have a choice of two categories- Best Highway Project and Best Environmental Highway Project.

Each category gives members the chance to showcase their accomplishments.



The best Build NH Awards entries contain a detailed description of the project, as well as photos showing various stages of completion. You may download the entry form at www.agcnh.org, and click on "AGC Resources" and then on "AGC Events." Companies may submit entries in more than one category, but please fill out a separate entry form for each entry.

2009 Build NH Award winners include Harvey Construction Corporation for Best Building Project with the renovation of the Currier Museum of Art, Gilbane Building Company for Best Environmental Building Project with the additions of the East and North Wings to the Concord Hospital, and Redimix Companies for Best Environmental Highway or Bridge Project with the new pervious pavement parking lot for White's Park.

The winners will be recognized during the Association's annual Awards Banquet. This year's Awards Banquet is being held in June, and will also showcase the recipients of the National AGC Safety Awards. More information on the Awards Banquet will be available in a future newsletter.

Please call the chapter office at (603) 225-2701 with any questions.



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