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ROLL NUMBER

DESCRIPTION

2203

2007 SENATE NATURAL RESOURCES

SB 2203

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2203

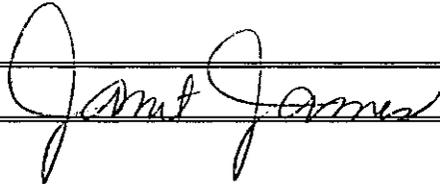
Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: February 8, 2007

Recorder Job Number: #3122

Committee Clerk Signature



Minutes:

Senator Stanley Lyson, Chairman of the Senate Natural Resources Committee brought the committee to order.

All members of the committee were present.

Senator Lyson opened the hearing on SB 2203 relating to expanding the construction contracting, bidding and project delivery system for the Red River valley water supply project.

Senator Gary Lee of District 22 cosponsor of SB 2203 introduced the bill stating the bill is about putting pieces in place to allow for the delivery of Missouri River water to the eastern parts of the state. The Red River project was established by the 2003 legislature is essential to the long term vitality of that part of the state. The bill would allow two additional project construction methods to construct the Red River valley supply project. It would be in addition to the conventional design bid build method that is required by state law. These additional options would provide additional flexibility for a project of this magnitude. The two additional options in the bill permit a process that allows pipe to be ordered before final engineering plan is complete and still provide for the establishment guaranteed maximum price. These kinds of flexibility can be essential when purchasing materials that require long lead time. He understands this raises concerns, issues and deviations from what is typically done in practice

and maybe that is a good thing to discuss here in this committee. His interest is seeing the project become complete. If there is a better way than what is allowed in statute to allow that to happen and offer some flexibility that still works with the constituents and interests of those involved in the design and construction. He hopes those better ways will be considered by the committee.

Senator Joel Heitkamp of District 26, cosponsor of SB 2203 stated the main goal even though there will be a debate about how it is done, is to get this very important project done. Water is the key to some very good things in the near future.

Dave Koland, General Manager of the Garrison Diversion Conservancy District testified in support of SB 2203 (See attachment #1). He further stated the bill only pertains to the Red River valley supply water project and proposes two methods. One is a construction manager with a guaranteed maximum price as will be explained by David Johnson. The second process is single source engineering procurement and construction open book describing the process. The third section of the bill talks about the responsibilities of the districts and is very important. It was opted to say if one of these methods is used; the district board would adopt policies that will be specifically implemented for this project. The prime consideration of the board will rightfully insist for an open and public bidding process making sure there is a quality project delivered in an efficient manner.

David Johnson, District Engineer for the Garrison Diversion Conservancy District testified in support of SB 2203 describing the two proposed methods. (See attachment #2).

Senator Joel Heitkamp stating this bill changes law to allow the processes explained and if this will follow accordance with federal law.

Dave Koland answered he was not aware of any federal laws or grants that this might be in contradiction to.

Senator Heitkamp asked again if there might be a "hook" with money the federal money allocated to this project.

Dave Koland stated he is hopeful there will be a lot of federal money and does not foresee any "hooks" as it is a very open and public process.

Tami Norgard , Council with the Vogel Law Office working with the Garrison Diversion Conservancy District testified in support of SB 2203 (See attachment # 3). She further stated there are three key components or tools for why the construction methods are appropriate to include: quality, accountability and efficiency. Also this bill will not set precedent for other projects.

Senator Lyson stated she has listed the good points so what is the down side.

Tami Norgard responded that the contractors are probably nervous that it might take away some of their turf but in reality this is a huge project with plenty of work.

Senator Constance Triplett asked if these are such useful tools why not put them in the toolbox for everybody to use on every public project.

Tami Norgard responded that might be in the works as there are seven states that still have design bid bills. All others have moved on and use better methods of designing and building projects.

Senator Lyson asked for opposing testimony.

Brant Malsam representing the American Council of Engineering Companies of North Dakota testified they are not against the project but wanted to point out a few things regarding this legislation (See attachment # 4).

Senator Lyson asked if interested parties could arrive at something to make this bill work.

Brant Malsam responded it would have to happen quickly and although work has been started it would be difficult to arrive at something complete although they would be willing to work towards that end.

Senator Heitkamp asked if there is the fear this concept will move onto new projects or is the size of the project that is the concern.

Brant Malsam responded that it will go onto other projects and it will be just like Chapter 48 where design management needed to be fully defined.

Russ Hansen of the AGC of North Dakota testified in opposition to SB 2203 stating they realize the importance of the project, but their industry becomes nervous when they see single source and will they be able to compete. They know design bills will be coming and it is something they will be working on.

Senator Lyson asked if he was willing to work with a sub committee to get the bill cleaned up and workable.

Brant Malsam responded there is not a lot of time but will do the best they can.

Senator Heitkamp commented the bill reeks of sub contract work so isn't this good for those he represents.

Bill Kalanek representing the National Electrical Contractors Association and the North Dakota Association of Plumber Heating Mechanical Contractors testified in opposition to SB 2203 explaining the key leaders coalition assembled by industry people that was charged to put together a revised Chapter 48 during the previous interim. It took over 20 meeting to accomplish a rewrite of the entire chapter defining the process acceptable to all involved. He understands what is being asked but it would be very difficult to develop something this quickly. He further stated the concerns of the open and fair bidding process as the bill does not define how the process would go forward. Subcontractors have worked hard to achieve a

multiple prime bid process where the general, electrical, and mechanical contractors all have separate contracts with the governing body. That process has worked well with design big build and the concern of the contractors is that process will go away under this bill unless it is clearly defined. The bill as it is played out would give the sub-contracting authority to the general or the design profession in the involved with the process. The degree as to which that process would be open to the public is not defined and is a real concern.

Senator Lyson closed the hearing on SB 2203.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2203

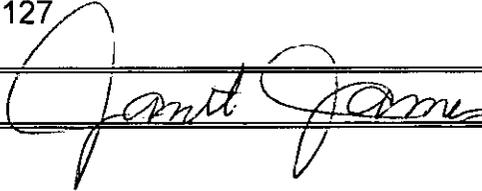
Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: February 8, 2007

Recorder Job Number: # 3127

Committee Clerk Signature



Minutes:

Senator Stanley Lyson, Chairman of the Senate Natural Resources Committee opened discussion on SB 2203.

All members of the committee were present.

Senator Lyson stated he was not sure if headway could be made or not, but would like to form a sub-committee of committee member and those groups involved in the bill to get something together to make the bill work. He included Dale Frink, Senator Constance Triplett and Senator Joel Heitkamp.

Senator Joel Heitkamp stated the senate committee needs to realize this bill contains a completely different bidding concept than has been previously used and a silver bullet will not happen.

Senator Lyson understood this but something better needs to happen.

Discussion was held as to the timing of working the bill and when all work is required to be out of committee.

Senator Heitkamp explained to the committee this bill was about a concept on a huge multi - multi million dollar project and how money can be saved within that project. To circumvent all the processes that have been used for years will concern some. This bill puts the trust into the

Garrison Conservancy District to be fair in the bidding process because this bill will take that former phase of the process out. The bill does put faith into their actions and there will be an accountability factor present.

Senator Constance Triplett commented about how Governor Schafer had waived laws and rules so that things could occur in an expedited way after the Grand Forks flood emergency. This was very helpful but this is not an emergency although it is a unique situation, so maybe something could be done to alleviate concerns that in the next legislative session the previously used bidding process will be completely eliminated from the century code. It will take an extreme amount of work to make this a general statute, but maybe some stronger language regarding some limitations might help with the concerns.

Senator Herbert Urlacher commented that perhaps the concerns are driven by the size of the project, the period of time to develop it and other issues, but still a change should not be too far removed from what has worked in the past. This will need some fine tuning.

Senator Heitkamp stated so much depends on the accountability for what the end result is. This can be considered a strength because if a engineering firm and a construction company is hired and they do not do the job they were hired for, they can be held responsible. He further stated he was involved with a project where a law suit resulted with lower bidder doing a poor job. He asked the committee to keep an open mind and to understand what it takes to get this large of a project accomplished.

Discussion was held as to what it would be required for the committee to move forward on the bill and the how much time was involved.

Senator Lyson asked if there was a legal issue with the language of the bill.

Senator Triplett answered the bill was reasonably well drafted and that is was more of policy issue whether the Conservancy District will adopt the appropriate rules and maybe some lines should be added to the bill to satisfy the concerns.

Senator Layton Freborg commented that in order to be fair to all those involved to wait for this sub-committee to met and present something for tomorrow.

Senator Stanley Lyson and the committee members all agreed.

Dave Koland reported to the committee that in conversations with contractors and others involved, they will have clear language regarding the bidding process for a public and open manner for the sub-committee. He also referred to HB 1033 that has language within it that defines what a responsible bidder is and gives more latitude in accepting bids.

Senator Lyson asked if this bill will cause conflict with the sponsors of the other bill regarding this water project.

Dave Koland did not see any conflict because the governor's commitment for funding and is comfortable with the amendments being offered for SB 2345.

Senator Urlacher asked if this will take the coalition out of the process.

Dave Koland answered that is would not.

Senator Lyson closed the discussion on SB 2203.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2203

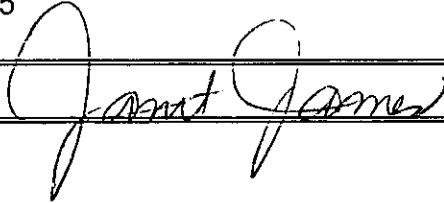
Senate Natural Resources Committee

Check here for Conference Committee

Hearing Date: February 8, 2007

Recorder Job Number: # 3215

Committee Clerk Signature



Minutes:

Senator Stanley Lyson, Chairman of the Senate Natural Resources Committee opened the discussion on SB 2203.

All member of the committee were present.

Senator Joel Heitkamp submitted an amendment # .0101 to the committee stating it does two things. First it puts in the portion concerning the bidding and that secondly it adds a sunset.

This makes it more job specific or at least that this will be in the committee again with the debate happening all over again. The compromise will alleviant the concerns of the contractors but understand the engineers will not sign off on the bill.

Senator Lyson stated he is concerned with the other bill on the Red River project and the negative response from its sponsors.

Senator Constance Triplett asked what the objection was about.

Senator Lyson stated that from conversations with the other sponsors, they are concerned with taking the project out of the district's hands.

Senator Heitkamp made a motion to adopt the amendment.

Senator Triplett second the motion.

Senator Heitkamp commented the amendment does not do it all but at this time it is as good as it is going to be.

Senator Lyson agreed the amendment takes care of some of the concerns.

A voice vote of roll call vote #1 was taken indicating 7 Yeas, 0 Nays and 0 absent or not voting.

Senator Heitkamp asked to speak as sponsor of the bill towards the engrossed bill stating he knows the sponsor of SB 2345 might not be comfortable and even oppose SB 2203, but the truth of the matter is, if this project gets built, who will build it? This is a step towards that end. There seems to be some push as how this shake out. All are working for the same thing and there is the \$12 million in the governor's budget and there is a process for that. He just does not understand what the underlying problem is.

Senator Lyson agreed.

Discussion was held as to the timing of the submission and hearing of the bill.

Senator Triplett made a motion for a Do Pass of SB 2203.

Senator Heitkamp second the motion.

Senator Triplett questioned the chairman's level of discomfort of the bill.

Senator Lyson answered he had discomfort of how things were handled and why things with the project can not proceed with the current process of bidding that is on the books.

Senator Triplett presented the history of a project with the court house in Grand Forks and how an architect and a general contractor were hired. There was a lot of blame to go around when the project had problems and no one taking responsibility. She continued to compare how these problems can plague a much larger project. She further stated she has worked with a project with construction management also and it is a much better process although it does not respond to all the issues of minimizing legal risk.

Senator Heitkamp stated if this bill was to change our laws of how we go about procuring work, he would vote against the bill if it solely went to the design/built process. By and large the current process in North Dakota has worked although it is lengthy and tedious. Sub-contractors will have plenty of work available with this project.

Senator Lyson asked if this bill will not set precedence for the long term with other large projects.

Senator Triplett stated if this was a generic law for all construction contracts, she would vote for it because it would be a good change. If it proves well with this large project, it would be a great experiment to see if it would be a good law for all projects.

Senator Herbert Urlacher stated we always experiment as we go, but it bothers him with a project involving \$600 million. He questioned if they are going outside of the normal box where the state water commission overseeing projects and how they are developed, will the water commission still maintain control of the projects.

Dale Frink, State Engineer with the North Dakota Water Commission stated this would not be the first project constructed outside the State Water Commission. The Red River project is a huge project for the C district, but this has been done before.

Senator Urlacher asked if local, state and federal funds are all going into the project, which will have control.

Dale Frink answered the C district will have control but the water commission will have control over the money allocated to the them by the governor's budget and will provide advise on the project.

Senator Urlacher started he wants to see the project move ahead as quickly as possible but does not want to see the wheel being reinvented to the point where they cannot be back out of the wheel as it turns.

Senator Heitkamp stated there were two things that work about SB 2203. Who is going to do the project and how it will be done. There seems to be confusion as to who is going to do the project but there is a legitimate debate as to how this project will be done. Is this a new concept that should be done?

Senator Triplett assured the committee this bill is not inventing a new wheel or new concepts as many other places are using these methods although they may be new for North Dakota. Because these methods are new they may make the contractor uncomfortable.

Roll call vote #2 for a Do Pass as Amended of SB 2203 was taken indicating 3 Yeas, 4 Nays and 0 absent or not voting. The motion fails.

Senator Lyson invited Dale Frink of the State Water Commission to the podium and asked him to explain the two opposing factions and the issues involved.

Dale Frink responded that the main issue is that people are uncomfortable with the new process. There are significant obstacles with the engineers and contractors. He does feel that over time there will be support for this new concept. He continued that from his stand point, the C district does not have to design and build the project as there was that same option on Devil's Lake project although it was not used for various reasons. He would recommend the C district to necessarily use the method either because he needs to know more about it. It is a delicate relationship with all the people involved and personally is not familiar with exactly how things will work. He does have a hard time with guaranteed maximum prices because with enough changes things have to increase. He wishes there was more time for all involved to come together and become more comfortable.

The committee asked if Dale Frink understood the opposition of the sponsors of the other Red River bill.

Dale Frink stated he did not.

Senator Urlacher requested Mike Dwyer to take the podium in explanation of the dividing issues.

Mike Dwyer of the North Dakota Water Users stated he has worked on water issues for a very long time and has had excellent cooperation between Republicans and Democrats, between the east and west and has worked hard to maintain that relationship. A lot of credit goes to legislatures who are statesmen and do what is best for North Dakota. There was a tiff of which house would hear SB 2345 and was not involved in that discussion. SB 2345 is a policy issue and was assigned to the Senate Natural Resources Committee and the sponsor appeared to be upset by that. The reason for the \$12 million amendment was to get the bill back into appropriations committee and the Natural Resources Committee did not do that. He presented the history of how in 1955 the Garrison Diversion Conservancy District was developed to bring water to the eastern part of the state. Because the water is taken from a federal Corp of Engineers project, this project has to be through the Garrison Diversion Conservancy District. It is important to understand this total picture to realize how this process has to be built through the C district. The only way it could not be built by the C district is to undo a huge amount of contractual and other relationships between the Bureau of Reclamation and the Garrison Conservancy District which has been added to through out the years because that is how North Dakota legislature set it up in 1955. The legislature could do anything it wanted included dissolving the C district and place everything under the authority of the Water Commission, although it would take several bienniums to do so. There is long history of the Department Interior of Bureau of Reclamation and the Garrison Diversion Conservancy District having a master contract and sub contracts, etc. which would need to be unraveled in order for that to all happen.

Senator Urlacher stated this brings a better understanding of things and then made a motion to reconsider action of the previous motion for a Do Pass as Amended of SB 2203.

Senator Triplett second the motion.

Senator Jim Pomeroy stated it was curial for the committee to have a united vote of SB 2203 before the floor of the Senate.

Roll call vote # 3 to reconsider action of the committee of SB 2203 was taken by a voice vote indicating 7 Yeas, 0 Nays and 0 absent or not voting.

Senator Urlacher made a motion for a Do Pass as Amended of SB 2203.

Senator Triplett second the motion.

Senator Tollefson requested the vote be delayed for one more day for further discussion of those involved with the issues.

Discussion was held to that regard and it was decided to make the call.

Roll call vote # 4 was taken for a Do Pass as Amended indicating 5 Yeas, 2 Nays or 0 absent or not voting.

Senator Heitkamp will carry SB 2203.

The committee concluded that they were put in the middle of an issue they are unclear about.

JS
2-9-7

PROPOSED AMENDMENTS TO SENATE BILL NO. 2203

Page 1, line 3, after "project" insert "; and to provide an expiration date"

Page 2, line 31, after the underscored period insert "The district shall follow the procedures contained in chapter 48-01.2 to the extent those procedures are not inconsistent with this Act."

Page 3, after line 5, insert:

"SECTION 2. EXPIRATION DATE. This Act is effective through July 31, 2015,
and after that date is ineffective."

Renumber accordingly

Date: 2-8-07

Roll Call Vote #: 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2203

Senate Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number - 0101

Action Taken adjuv amendment

Motion Made By Heitkamp Seconded By Triplett

Senators	Yes	No	Senators	Yes	No
Sen. Stanley Lyson, Chairman			Sen. Joel Heitkamp		
Sen. Ben Tollefson, ViceChairman			Sen. Jim Pomeroy		
Sen. Layton Freborg			Sen. Constance Triplett		
Sen. Herbert Urlacher					

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2-8-07

Roll Call Vote #: 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2203

Senate Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Triplett Seconded By Heitkamp

Senators	Yes	No	Senators	Yes	No
Sen. Stanley Lyson, Chairman		✓	Sen. Joel Heitkamp	✓	
Sen. Ben Tollefson, ViceChairman		✓	Sen. Jim Pomeroy	✓	
Sen. Layton Freborg		✓	Sen. Constance Triplett	✓	
Sen. Herbert Urlacher		✓			

Total (Yes) 13 No 4

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2-8-07

Roll Call Vote #: 4

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2203

Senate Natural Resources Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken

Do Pass as Amended

Motion Made By

Urlacher

Seconded By

Triplett

Senators	Yes	No	Senators	Yes	No
Sen. Stanley Lyson, Chairman	✓		Sen. Joel Heitkamp	✓	
Sen. Ben Tollefson, ViceChairman		✓	Sen. Jim Pomeroy	✓	
Sen. Layton Freborg		✓	Sen. Constance Triplett	✓	
Sen. Herbert Urlacher	✓				

Total (Yes) 5 No 2

Absent 0

Floor Assignment Heitkamp.

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2203: Natural Resources Committee (Sen. Lyson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2203 was placed on the Sixth order on the calendar.

Page 1, line 3, after "project" insert "; and to provide an expiration date"

Page 2, line 31, after the underscored period insert "The district shall follow the procedures contained in chapter 48-01.2 to the extent those procedures are not inconsistent with this Act."

Page 3, after line 5, insert:

"SECTION 2. EXPIRATION DATE. This Act is effective through July 31, 2015, and after that date is ineffective."

Renumber accordingly

2007 TESTIMONY

SB 2203

**Testimony by Dave Koland, General Manager
Garrison Diversion Conservancy District**

to the

**Senate Natural Resources Committee
SB 2203 Hearing**

**Bismarck, North Dakota
February 8, 2007**

Chairman Lyson, members of the committee, thank you for the opportunity to testify on Senate Bill 2203 being considered by your committee. My name is Dave Koland, and I am the general manager of the Garrison Diversion Conservancy District (Garrison Diversion). The Red River Valley Water Supply Project is a major water infrastructure project that is vital to the State of North Dakota.

The current contracting laws have served North Dakota well for many years and will continue to do so. However, the two proposed methods in this bill will provide the flexibility to manage this project to control costs, reduce warrantee risks, and maintain quality. Given this flexibility, we can lock in prices earlier to reduce costs; reduce the warrantee risks by selecting a contractor early in the process; and deliver a high quality project by maintaining control of material selection.

The two project delivery methods proposed will maintain the key values that exist in current law. These values are selecting an engineer based on

qualifications, and transparency in the bidding process through open competitive bidding to establish a fair price for services provided.

This project calls for 80,000 tons of steel; a massive amount of material that will need to be purchased. Flexibility in the timing of this purchase is expected to save money, but comes with warrantee risks to Garrison Diversion. The two project delivery methods in SB 2203 enable Garrison Diversion to select a process that allows pipe or raw steel to be purchased early and facilitate shifting the warrantee risk to the contractor. This flexibility is essential in purchasing materials that require a long lead time and in shifting the warrantee risk to the contractor until the materials and equipment can be installed and tested. Without these options, Garrison Diversion will have to assume the warrantee risk.

The traditional design-bid-build method does not maintain owner control during the construction process or in the selection of materials. These two methods maintain this control. Garrison Diversion will retain the ability to designate materials to be used much later into the construction phase, such as which brand of valves will be used. In the traditional method the contractor would choose the valve, often based solely on cost.

These two methods maintain a transparent and open competitive bidding process. In addition, they allow the flexibility to select a contractor based on qualifications as well as price. One more benefit is the opportunity to bring the contractor on board early in the process, adding the contractor's expertise and experience in the design of the project.

In conclusion, providing these additional project delivery methods to Garrison Diversion will provide the tools necessary to 1) control costs, 2) reduce warrantee risks, and 3) further enhance the quality control of the Red River Valley Water Supply Project. Thank you for the opportunity to testify this morning.

**Testimony by David L. Johnson, District Engineer
Garrison Diversion Conservancy District**

to the

**Senate Natural Resources Committee
SB 2203 Hearing**

**Bismarck, North Dakota
February 8, 2007**

Chairman Lyson, members of the committee, thank you for the opportunity to testify on Senate Bill 2203 being considered by your committee. My name is David Johnson, and I am the district engineer for Garrison Diversion. SB 2203 offers Garrison Diversion two additional project delivery methods to construct the Red River Valley Water Supply Project. In my testimony, I will explain these two methods in more detail.

First, let me review the current contracting law and how it applies to the Red River Valley Water Supply Project. The first step is for Garrison Diversion to select a design engineer based on qualifications. The engineer would design the project in its entirety and put it out to bids. A contractor then takes subcontract bids and internally puts a price on the project and submits a bid.

The pipeline for the Red River Valley Water Supply Project is going to be approximately 66 inches in diameter. Pipe this size is designed by the manufacturer one piece at a time and delivered to the job site in order of installation, along with pipe lay instructions. Therefore, it takes time for the suppliers to provide shop drawings and get them approved to start