

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

COMMERCE COMMITTEE

Tuesday, October 19, 2004
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative George Keiser, Chairman, called the meeting to order at 10:00 a.m.

Members present: Representatives George Keiser, Donald L. Clark, Mark A. Dosch, Mary Ekstrom, Pat Galvin, Eliot Glassheim, Kim Koppelman, Mary K. Nester, Dan J. Ruby; Senators Dick Dever, April Fairfield, Tim Flakoll, Karen K. Krebsbach

Members absent: Representatives Ron Iverson, Jo Ann Rodenbiker, Arlo E. Schmidt

Others present: David Straley, Greater North Dakota Chamber of Commerce, Bismarck

Doreen Riedman, North Dakota Association of Builders, Bismarck

Sandy Blunt, Workforce Safety and Insurance, Bismarck

Parrell Grossman, Attorney General's office, Bismarck

Alvin A. Jaeger, Mary Feist; Secretary of State's office, Bismarck

Ray Holmberg, State Senator, Grand Forks

It was moved by Senator Flakoll, seconded by Senator Dever, and carried on a voice vote that the minutes of the June 23, 2004, meeting be approved as distributed.

CONTRACTOR STUDY

At the request of Chairman Keiser, Mr. Parrell Grossman, Attorney General's office, reviewed a bill draft [50190.0100] relating to the regulation and licensing of contractors. Mr. Grossman said the concept for the bill draft was developed by the Secretary of State and representatives of the Attorney General's office. He said the bill draft provides the Secretary of State the authority to seek criminal history record information for applicants for a contractor's license and for applicants for renewal of a contractor's license. He said the bill draft also authorizes the Secretary of State to refuse to grant a license if an application contains false, misleading, or incomplete information; if the applicant fails or refuses to authorize or pay for criminal history information; or for other reasons provided under law. He said the bill draft provides for similar provisions for refusal to renew a license. He said an applicant aggrieved by a decision to not grant or renew a license may appeal the decision to the district court.

Mr. Grossman said the bill draft provides that there is a rebuttable presumption of abandonment of a contract if a contractor fails to substantially commence work agreed upon within 60 days of the starting date agreed upon in writing or within 90 days of the contract date if no starting date is agreed upon in writing. In addition, he said, a presumption of abandonment may arise if a contractor fails to complete any work agreed upon within 180 days of the contract date if no completion date is agreed upon in writing. He said the bill draft authorizes the Attorney General to bring an action under consumer fraud laws if a contractor violates any of the laws regulating contractors.

In response to a question from Representative Koppelman, Mr. Grossman said the Secretary of State would not likely routinely request criminal history information from applicants. However, he said, if something included in the application suggests that further investigation may be necessary, the bill draft would provide the Secretary of State the authority to seek criminal history information at the cost of the applicant.

Representative Keiser said because seeking criminal history information may be the only method to determine the fitness of a contractor, the Secretary of State would likely need to seek that information on a regular basis.

Mr. Grossman said the Secretary of State can also determine the fitness of an applicant by reviewing information included in the application and checking to see whether the applicant has had previous complaints filed against the applicant with the Secretary of State or the Attorney General.

Senator Krebsbach said North Dakota Century Code Section 43-07-04 provides the Secretary of State the authority to seek any other information required to assist in determining an applicant's fitness to act as a contractor. Thus, she said, it appears the Secretary of State has the authority to seek criminal history information. However, she said, the proposed change in the bill draft would authorize the Secretary of State to charge the applicant for the cost of seeking criminal history information.

In response to a question from Senator Dever, Mr. Grossman said the Bureau of Criminal Investigation has access to criminal history information from

other states. Therefore, he said, criminal history information could be searched for out-of-state applicants.

In response to a question from Representative Koppelman, Mr. Grossman said the Secretary of State and the Attorney General's office always look for the least restrictive measures when regulating contractors. He said seeking criminal history information only after a complaint is filed would not be as valuable as getting the information before a license is issued.

In response to a question from Senator Dever, Mr. Grossman said the application forms for licensure and renewal include questions designed to obtain relevant information from the applicants, including information regarding prior criminal activity.

In response to a question from Senator Flakoll, Mr. Alvin A. Jaeger, Secretary of State, said the application also includes questions regarding whether an applicant has had a contractor's license revoked in another state.

In response to a question from Representative Ruby, Mr. Grossman said the term "substantially," when used with respect to commencement of a project, is not readily definable. However, he said, the determination of whether a project has been substantially commenced is a question of fact to be determined by the Secretary of State, Attorney General, and a court, if necessary.

Representative Ekstrom said the term is commonly understood within the construction industry.

In response to a question from Representative Ekstrom, Mr. Grossman said most construction contracts contain provisions relating to the commencement or completion of a project and delays related to weather conditions.

In response to a question from Representative Keiser, Mr. Grossman said 180 days from the contract date appears to be a reasonable time under which a contract could be completed before a presumption of abandonment would arise if no completion date is agreed upon in writing.

In response to a question from Representative Koppelman, Mr. Grossman said a consumer fraud action is generally initiated after receipt of a complaint and an investigation by investigators from the Attorney General's office. He said many complaints can be resolved through settlement actions rather than through an administrative or criminal proceeding.

Mr. Jaeger said the bill draft enhances the authority of the Attorney General and the Secretary of State to address licensing issues and complaints. He said the major proposals in the bill draft have been reviewed by representatives of the Home Builders Association and Associated General Contractors. He said representatives of those organizations appeared to be comfortable with the initial draft.

Mr. Jaeger said although the Secretary of State has the authority to seek any necessary information from an applicant for a license, the bill draft clarifies

that the authority extends to seeking criminal history information. He said the bill draft also closes some loopholes that exist in law and specifically grants to the Attorney General the authority to deal with complaints regarding contractors under the consumer protection laws.

In response to a question from Representative Koppelman, Mr. Jaeger said because it is often cheaper to resolve problems through settlement agreements, complaints are frequently resolved without the necessity of an administrative hearing. If an individual is acting as a contractor without a license, he said, the issue may be referred to a state's attorney for prosecution. However, he said, some state's attorneys are not likely to pursue those types of complaints. He said he will attempt to get an unlicensed contractor licensed and impose a penalty fee with the license fee if the individual is qualified to act as a contractor.

Ms. Doreen Riedman, North Dakota Association of Builders, said the membership of her organization generally supported the provisions in the initial draft of the bill. However, she said, she will review the bill draft further because some changes were made during the drafting process.

In response to a question from Representative Keiser, committee counsel said the provision relating to abandonment of a project if work is not completed within 180 days provides only that a rebuttable presumption may arise if the work is not complete. He said if a consumer does not file a complaint regarding the completion of the project, the 180-day deadline is not an issue.

It was moved by Representative Koppelman, seconded by Representative Glassheim, and carried that the Legislative Council staff be requested to amend the bill draft to eliminate redundant language on page 5 and correct a typographical error on page 6.

It was moved by Representative Dosch, seconded by Senator Dever, and carried on a roll call vote that the bill draft, as amended, relating to the regulation of contractors, be approved and recommended to the Legislative Council. Representatives Keiser, Clark, Dosch, Ekstrom, Galvin, Glassheim, Koppelman, Nester, and Ruby and Senators Dever, Fairfield, Flakoll, and Krebsbach voted "aye." No negative votes were cast.

WORKFORCE SAFETY AND INSURANCE SAFETY AUDIT

Chairman Keiser called on Mr. Sandy Blunt, Workforce Safety and Insurance, for presentation of the modified workers' compensation coverage program performance audit and Roughrider Industries safety audit. Copies of the audits are on file in the Legislative Council office. Mr. Blunt said the modified workers' compensation coverage program was established to provide coverage for inmates incarcerated at

the State Penitentiary who are working in a prison industry program. He said the coverage program was established to allow Roughrider Industries to continue receiving federal funding through the prison industry enhancement certification program. He said the safety audit indicated Roughrider Industries was found to be in compliance with all components of the Workforce Safety and Insurance risk management program. He said the September 2004 audit of the modified workers' compensation coverage program concluded that the desired results and effectiveness of the program are being achieved.

In response to a question from Representative Keiser, Mr. Blunt said two minor medical claims have been submitted by inmates under the Roughrider Industries program. He said he is not sure if the premium charged is adequate to cover administrative costs. He said the Workforce Safety and Insurance Board of Directors will be presenting a proposal to allow the board to set an adequate rate.

MISCELLANEOUS ADMINISTRATIVE MATTERS

Chairman Keiser thanked the members of the committee for their work. He said the committee addressed many difficult issues and members of the committee did an admirable job in addressing the complex unemployment compensation studies.

It was moved by Senator Flakoll, seconded by Representative Clark, and carried that the chairman and the staff of the Legislative Council be requested to prepare a report and the bill drafts recommended by the committee and to present the report and recommended bill drafts to the Legislative Council.

It was moved by Senator Flakoll, seconded by Representative Glassheim, and carried that the meeting be adjourned sine die.

John Bjornson
Committee Counsel