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10/3/03
Date

2003 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1387

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1387

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 1/27/03

Tape Number	Side A	Side B	Meter #
4	x		28.02-end
4		x	0.0-9.6
Committee Clerk Signature <i>Judith Hammer</i>			

Minutes: **Chairman Keiser** opened the hearing on HB 1387.

Rep. Carlson, District 41, introduced HB 1387 which relates to the use of a construction manager on public improvement projects. He is also a contractor. The Association of General Contractors requested further clarification on this proposed legislation which impacts public improvement projects such as schools, courthouses etc. It would not affect shopping malls and centers. The AIA opposed this last session. The intent of this legislation is to ensure that the entire project is covered by a single bond.

Curt Peterson, representing the Associated General Contractors of ND, testified in support of this language. He said that the changes in HB 1387 would clarify their mission. The construction manager will obtain 100% of the bonding for the project to protect public funds.

Rep. Boe: Will subcontractors also require bonds? Isn't this double bonding?

Peterson: The construction manager would request bonds from his subcontractors for their portion of the project, he would be responsible to make sure that his subs comply. The governing

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Page 2
House Industry, Business and Labor Committee
Bill/Resolution Number HB 1387
Hearing Date 1/27/03

body (a school or political subdivision) would have to make sure that all times that the project is bonded 100%.

Rep. Johnson: Who pays for the bonding? What will this cost?

Peterson: The contractor and the subcontractors pay their own bond. This increases the opportunity to the owner of the project that the project is bonded 100%.

Rep. Ekstrom: By extension, won't the cost of the bond become part of the project?

Peterson: Yes.

Chairman Kelsner: To summarize the objective, this bill would assure the political subdivision that 100% of the project is bonded. I'm referring to line 9.

Peterson: Exactly. We don't want a repeat of what happened at the Fargodome.

Rep. Klein: How is the bond handled if there isn't a construction manager?

Peterson: The same, except that the general contractor would get bonding through subcontractor bids that come to the owner. It's a little different.

Rep. Klein: So one single bond covers the whole project?

Peterson: The construction manager much like a general contractor should have the ability to bond the entire project, whatever agreement they have. Typically on a multifaceted project, the general will have their subs be able to put up the bond for their part of the project.

Rep. Klein: So a general can have his subs bond to him? But a construction manager is supposed to finance the entire project?

Peterson: Correct.

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10/3/03
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Page 3
House Industry, Business and Labor Committee
Bill/Resolution Number HB 1387
Hearing Date 1/27/03

Rep. Kasper: Can a construction manager subrogate the cost of his bond among his subcontractors and require that as part of their bid they have to buy down his bond so they wouldn't have to be paying for a double bond? Is that right?

Peterson: Correct.

Rep. Thorpe: Aren't we going to reduce the number of contractors who have ability to take on big projects?

Peterson: Small companies pay more for their bonds when they start out because they don't have a track record. Financial ability is what determines what the bond will cost.

Rep. Keiser: Will this deter small operators to move up and increase their business?

Peterson: Don't think this will deter them. Opportunity and a good track record will let them move up the ladder to larger projects.

Rep. Kasper: This bill says "if a governing body uses a construction manager". So the public body can choose a construction manager bidding out subs, the general contractor or all of the above, in getting bids from all those sources including the small ones and then they could choose the one that's best for the project? Is that correct?

Peterson: Yes, that's exactly right.

Bonnie Staiger, representing the AIA, appeared to testify in opposition to HB 1387. Originally, the AIA hasn't taken an official stance on this legislation but she spoke to clarify some points. This legislation is designed to cut off the little guy, no matter how it is worded. If this bill passes, I think that the next two years will prove whether or not it is workable. Because the point about double bonding is going to play itself out. Whether or not a bonding company will allow two bonds on the same project or the same work, whether or not a construction manager can

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Page 4
House Industry, Business and Labor Committee
Bill/Resolution Number HB 1387
Hearing Date 1/27/03

legitimately even purchase a bond if it's been bonded by someone else. I think it's a matter of giving it a shot. We'll do our best to make it work and we'll be back in two years with trial and error experience and we'll be able to say what works, what doesn't and we'll try to correct it.

Rep. Klein: What's the approximate cost on a \$5 million dollar project?

Stalger: I don't have the information.

Tom Tupa, representing the National Electrical Contractor's Association, Dakotas Chapter, appeared in opposition to HB 1387. Prior to the session, we worked out some compromise language relative to this whole issue. The final product isn't quite what we thought we'd agreed to it. I have to stand in opposition. The very last line that talks about "contract the project in bid packages acceptable to the governing body" we're not sure if that means a single bid or if we're talking about multiple kinds bids that allows for a more competitive spirit. We'd like to suggest that at a minimum that this committee consider deleting the language in lines 11-14. That would be more acceptable to us.

Gerhard Bockness, appeared in opposition to HB 1387. He's a previous resident hoping to establish a small construction business and remain in his home state. He elaborated how this bill will make it impossible for him to establish a viable business here. He referenced statute 48-01.105 pertaining to Contracts for Advertising.

Rep. Keiser: You'll be building a business that will grow over time and establish a history that the bonding companies will support.

Bockness: I am required to provide a certificate of insurance to the Secretary of State. That ought to cover that portion for the awarding body. The contracts, no matter what the amount, should total up to the total project value.

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10/3/03
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Page 5

House Industry, Business and Labor Committee

Bill/Resolution Number HB 1387

Hearing Date 1/27/03

Rep. Kasper: On line 9, if we added "or multiple bonds from subcontractors equal to 100% of the value of the construction project", would that work for you?

Bockness: There would be none because then the primary contractors would be directly bonded directly to the agency and the cost of that would be covered in the total cost of the project. Your construction management firm would not have to provide total project bond. There shouldn't be a gap.

Chairman Keiser: If you were a sub, and there was a construction manager, and they bonded 100% of the project, how would your relationship to that CM or General change?

Bockness: I'd want to perform so that my bonding company would not be notified.

Tom Wolfe, Skeel's Electric, appeared in opposition to HB 1387. We have more control of our contract when working for the general contractor.

Rep. Klein: What percentage of projects you bid do you provide your own bonding for?

Tom Wolfe: Private negotiated work you don't need bonding, the general does. But for work through architects and engineers, 100%.

As no one else was present to testify in opposition to HB 1387, the hearing was closed.

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1387

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 1/29/03

Tape Number	Side A	Side B	Meter #
3	X		27.4-36.4
Committee Clerk Signature <i>Judith Hammer</i>			

Minutes: **Chairman Keiser** called for committee work on HB 1387.

Rep. Froseth moved a Do Pass. **Rep. Kasper** seconded the motion.

Rep. Klein: I can't support the bill as it is. I think we'd be loading costs on the public with the double bonding. It doesn't reduce costs.

Rep. Ruby: I agree with Rep. Klein. If we removed lines 11-14, I'd be able to support it.

Rep. Nottestad: I cannot support this. The current method of bonding works well for school construction in Grand Forks.

Rep. Kasper: I think this came up because of the fiasco at the Fargo Dome. The whole project plus construction manager fees have to be bonded.

Chairman Keiser: Be careful and read the struck language in these bills. The existing law required complete bondage. Fargo's problem is Fargo's fault. Double bonding is expensive and it's not free.

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Page 2
House Industry, Business and Labor Committee
Bill/Resolution Number HB 1387
Hearing Date 1/29/03

Rep. Ruby: If we make this change and require double bonding and nobody checks it, we still have the same problem.

Rep. Froseth: It's the responsibility of the construction manager.

Rep. Klein: The construction manager can't get bonding on a multi-million dollar project. It's not possible. A major contractor can, he has the resources. This is stifling new enterprise.

Rep. Froseth I withdraw my motion for a Do Pass.

Rep. Kasper: I withdraw my seconding of that motion.

Rep. Klein: I move a Do Pass.

Rep. Ekstrom: I second.

The results of the roll call vote were: 12-1-1.

Rep. Severson will carry this bill on the floor.

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