

2015 SENATE POLITICAL SUBDIVISIONS

SB 2140

2015 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Red River Room, State Capitol

SB 2140
January 15, 2015
Job Number 22007

Explanation or reason for introduction of bill/resolution:

Relating to the removal of architects from the required composition of selection committees formed for construction management at-risk planning and design phase services of proposed public improvements.

Minutes:


Written attachment #1

Vice- Chairman Howard Anderson opened the hearing on SB 2140. All senators were present.

Chairman Burckhard presented the testimony from the main sponsor Senator Lonnie Laffen was ill today and not able to present his testimony. Written testimony #1 (1:11-4:28).

Senator Judy Lee asked Senator Burckhard if he wants to shoot his own dog? **Chairman Burckhard** replied that is exactly right.

Senator Howard Anderson has an issue of relative to architecture engineers that was brought to him by a small engineering firm in his district. That is we have requirements and we always bid out the contract. But, we never bid out the architecture, or the engineering. So, sometimes, those get in there at much higher fees, because we select somebody who is bigger or usually does these kinds of jobs and yet there is no, bidding control on those issues. So he thought as a smaller engineering firm he didn't get a lot of jobs that he might of if he had the opportunity to bid. Obviously, it was a small firm so his costs are less. So we could hog house this bill and change that around.

Bonnie Staiger, Executive Vice President and Lobbyist for the American Institute of Architects in North Dakota chapter for which Senator Laffen is a former President. We stand in opposition to this bill, for all of the reasons that the good senator has pointed out especially and even Senator Anderson talking about the importance of everybody having a fair shot at those projects. We have worked for years to make sure that statute got into place. At any rate, when Senator Laffen, came to me and told me about the bill, I said you realize that your professional society is going have to oppose your bill. He said that he got that, and then several days later, he said that I maybe need to withdraw the bill. **Ms. Staiger** replied that I don't think procedurally you're going to be able to do that because it has been introduced. You could follow the good Senator Judy Lee who often says, "I have been known to shoot my own dog" and so he said I am probably will have to do that. So at any rate, we are here to oppose the bill as an organization. (6:00- 7:31)

Russ Hanson Associated General Contractors in North Dakota.(7:47-9:42)I wanted to take 90 seconds to give a little bit of background of how this delivery system came into play. I

joined the AGC in mid-July 2005 and the first interim committee I went to, was chaired by Senator Krebsbach the interim IBL committee there was a mandated study resolution that was passed in 2005 (HB1260) which mandated a study for all of the delivery systems, design build which is still isn't in statute, construction management at risk. What occurred at that meeting were an agreement and a collaborative effort between contractor groups, design professional groups, subcontractor groups, and we just took on this whole chapter. We did a complete rewrite. We went through Chapter 48, and amended the design bid bill, statute, and implemented the refine construction management at-risk of which this delivery system and the selection committee was a creation of our deliberations. The committee that worked on that really discussed at length the interest in having those four entities on that selection committee with their various levels of expertise. As a result, HB 1033 was introduced in the 2007 session and went through the House and the Senate without enabled in either chamber. The statute by in large with the exception of a few tweaks has pretty much been the same since, and we think it's working pretty well. We stand in opposition to the bill too.

Senator Bekkedahl asked Russ you just opened the door for another question. When you mentioned design build in the statute is it my understanding that the Association of General Contractors typically are in opposition to design bill though, even, though you looked at it? **Russ Hanson** replied that would be correct. There was a design bid bill that was introduced last session that we actively opposed. I should have clarified in my comments, we examined all of the various delivery systems and amongst the committee that was meeting of the groups we had an agreement that everybody in the group had to have a thumbs up before we would move forward with anything and we came to an agreement with design bid build, an agreement with construction management at risk, we left the design bill out of it because we just couldn't come to an agreement on that.

Vice Chairman Anderson closed the hearing on SB 2140.

Senator Bekkedahl moved that the committee pass a Do Not Pass recommendation to the chamber on SB 2140.

Senator Grabinger- 2nd the motion.

Roll call vote: 6 Yea, 0 No, 0 Absent

Carrier: Senator Bekkedahl

REPORT OF STANDING COMMITTEE

SB 2140: Political Subdivisions Committee (Sen. Burckhard, Chairman) recommends DO NOT PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2140 was placed on the Eleventh order on the calendar.

2015 TESTIMONY

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TESTIMONY TO THE SENATE POLITICAL SUBDIVISIONS COMMITTEE

JANUARY 15, 2015

LONNIE J. LAFFEN, SENATOR, DISTRICT 43

I am here to introduce SB2140. In what is probably a first for you Mr. Chairman, I am here as the bill sponsor to introduce the bill, explain the bill and then ask that you kill the bill.

Construction Management at Risk (CMAR) is a method allowable by NDCC to construct buildings. It works well for large projects and is being used more and more. The normal process for selecting a contractor is through a public bid process whereby contractors submit bids at the end of the design process, on a specific bid day, and the contractor earns the project by being the lowest bidder.

Under the Construction Management at Risk process the contractor is selected through qualifications, works with the design team during construction, takes bids directly to themselves during the process and then eventually becomes the general contractor at the end. Everything is still bid but this process allows you to select a very qualified firm to run the job - and you have one single source of responsibility.

This bill deals with how you select the CMAR.

Current state law requires the CMAR selection committee consist of:

1. An administrative individual from the governing body
2. A registered architect
3. A registered engineer
4. A contractor

The purpose of this bill was to simply remove the architect from this process.

The reason I felt this was a worthy change is that there is a potential ethical conflict, as architects are sometimes also employed by these same CMAR's. It has happened several times where I have been asked to serve on the

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selection committee only to find firms submit for the work that I have worked for in the past and will likely work for again in the future. Eventually it will happen that I will be asked to judge a CMAR proposer that I am currently working for. I didn't want that conflict of interest and sought to remove the architect from the process.

What I have learned since submitting the bill is:

1. The public agencies very much like having an architect on the selection committee. We understand construction and ask the tough questions.
2. The contractors submitting their proposals also like to have an architect on the selection process for the same reason.
3. The architects in the state like to have some say in who they will be working with as constructing buildings is truly a team effort between client, architect and contractor (or CMAR).
4. The potential conflict of interest seems to be an issue unique to my firm. I didn't realize this until the bill was submitted. We are the largest firm in ND and as such may be the only firm which is also works occasionally as a sub-consultant to the larger CMARs on private projects.

The current law is good public policy. It asks that an architect, who is well versed in construction, be a part of the CMAR selection process. Potential conflicts of interest are something that my firm just needs to manage on our own.

I ask that you vote no on SB2140.