MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M

ROLL NUMBER

DESCRIPTION

2375

2001 SENATE POLITICAL SUBDIVISIONS

SB 2375

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2375

Senate Political Subdivisions Committee

☐ Conference Committee

Hearing Date February 8,2001

Tape Number	Side A	Side B	Meter #
1		x	5.8-22.2

Committee Clerk Signature Mary Jo Wocken

Minutes:

The hearing was opened on SB2375; relating to limitations on governing bodies requiring directed suretyship bonds.

SENATOR ESPEGARD: Sponsor of SB2375 also introduced this bill. This bill has nothing to do with the requirements. It has nothing to do with the suretyship bonds that get the job right. You go to the bank to get the loan. The change on the bill is on Line 9, amend this bill to include insurance producer, "specified". I recommend a Do Pass from the committee. See written testimony. REPRESENTATIVE MARAGOS : Cosponsor of this bill, asked the committee for support of the this bill . He urges a unanimous Do pass. WAYNE LAUWERS: Spoke in favor of SB2375. See attached testimony. SENATOR COOK: Is this practice in North Dakota isolated? WAYNE LAUWERS: Not here. SENATOR LYSON: We have bonding people who bond people to get out of jail, where a judge only accepts bond. Is this the same kind of case? WAYNE LAUWERS: Only on public programs. SENATOR POLOVITZ: Is it the responsibility

of the contractor to make sure he has bonds with a suretyship company? What happens is he is not reputable? WAYNE LAUWERS: Yes, that is possible, but not probable. SENATOR LEE: If public entities are legislative suretyship bonds, are there any kind of standards to allow to go on as it has? Does the public entity has certain standards? WAYNE LAUWERS: Surety companies have a certain rate. Suretyship companies that are not reputable, they are eliminated. They must be regulated through the State of North Dakota. SENATOR LEE: So it would be common, but not all the time is a bid proposal? SENATOR MATHERN: I can't imagine a contractor company not reputable, we all want assurance when we build. JERRY HJELMSTED: North Dakota League of Cities spoke in neutral of this bill. We are just monitoring government body to rely on, for security purposes. The penalty reference for government bodies, though not specific penalties of government board. Remove the specific penalty section of the code also. SENATOR ESPEGARD: There are two issues here. One talks at specifying certain insurance: contracts reputable company insurance rate and bill only specifies you have in that insurance and has nothing to do with the quality of the bond. Second, the penalty of the governing body insists you buy from a certain area. SENATOR LEE: Looking at government agent as a elected official, an office type thing. SENATOR ESPEGARD: The engineering departments ready the bids to be bid on and the suretyship bonds relate to those specs of the engineering departments for the projects.

Hearing Closed on SB2375.

Committee discussion followed.

Senator Polovitz moved a Do Pass as written

Senator Lee 2nd, although she shares concerns with Line 10, as inappropriate, however, she would support bill if amended.

Senator Lyson motion to make a amendment, otherwise he would vote against this bill.

Senator Polovitz withdrew his motion

Senator Lee moved to amend, delete Line 10, change agent/broker to insurance producer

Senator Lyson 2nd

Senator Flakoll added that agent broker was a grammatical error and needed correcting

Add "or"

Senator Watne added that " penalty" should remain, covered elsewhere under the duties of the Legislative Council, they would've kept it.

Senator Lee moved Do Pass as amended

Senator Polovitz 2nd

Roll Call Vote: 8 yeas, 0 no 0 abs.

Carrier: Senator Mathern

(These minutes are from the minutes of the committee clerk. The tape from February 8,2001, tape 1, Side B, Meter # 5.8-22.2 did not record the minutes of the hearing.)

Date: February 8, 2001
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2375

Senate Political Subdivisions Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Moved to Amend SB. 2375

Motion Made By Sen. Lee Seconded By Sen. Lyson

Senators	Yes	No	Senators	Yes	No
Senator Cook	✓		Senator Christenson	✓	
Senator Lyson	✓		Senator Mathern		✓
Senator Flakoll	✓		Senator Polovitz	✓	
Senator Lee	✓				
Senator Watne		✓			

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

Date: February 8, 2001
Roll Call Vote #: 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

Senate Political Subdivisions Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Sen. Lee Seconded By Senator Polovitz

Senators	Yes	No	Senators	Yes	No
Senator Cook	✓		Senator Christenson	✓	
Senator Lyson	✓		Senator Mathern	✓	
Senator Flakoll	✓		Senator Polovitz	✓	
Senator Lee	✓				
Senator Watne	✓				

Total (Yes) 8 No 0

Absent 0

Floor Assignment Sen. Mathern

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

REPORT OF STANDING COMMITTEE

SB 2375: Political Subdivisions Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (8 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2375 was placed on the Sixth order on the calendar.

Page 1, line 2, replace "; and to" with a period

Page 1, remove line 3

Page 1, line 7, remove "**- Penalty**"

Page 1, line 9, remove ", agent," and replace "broker" with "insurance producer"

Page 1, remove line 10

Renumber accordingly

2001 HOUSE POLITICAL SUBDIVISIONS

SB 2375

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2375

House Political Subdivisions Committee

☐ Conference Committee

Hearing Date 3-16-01

Tape Number	Side A	Side B	Meter #
1	xx		100--800
2	xx		1300--1600

Committee Clerk Signature

Minutes: Chair Froseth opened the hearing on SB2375 relating to limitations on governing bodies requiring directed suretyship bonds.

Sen. Duain Espegard, Dist 43, Grand Forks : testified in support of SB2375. A governing body may not require any person that has to provide a surety bond under this title to furnish financial data or obtain a surety bond from a specified insurance company or surety company. This law would stop any practice that would require a contractor doing business with a governing body to purchase a surety bond from a party that the governing body directs. If the city says you have buy your bond from a certain agent. This takes away the possible conflict of interest that may arise from this practice. Simple bill of fairness.

Rep. Ekstrom :(280) Have there been incidents of this being done?This is why we have SB2375?

Sen. Espegard : This has happened in other parts of the county and seems to be a trend. Has not happened in ND yet. Proactive bill.

Wayne Lanwers, Fargo : testified in support of bill. **(SEE ATTACHED)**

Rep. Ekstrom : (610) Do you own a construction company?

Wayne : No.

Rep. Niemeier : (690) You say that the project owner has the right to have bonds from a reputable and financially sound company. Does this mean that the project owner has approval rights?

Wayne : No.

Chair Froseth :Can they use this as a method of rejecting a bid?

Wayne : As long as the bonding company involved is licensed within the state of ND and meets the requirements of the insurance commissioners office, I don't believe the owner has the right to say no or yes.

Chair Froseth : Any further testimony for or against? Hearing none, the hearing is closed.

Tape 2, side A (1300--1600) Chair Froseth : What does committee wish?

Rep. Ekstrom : **I move a DO PASS.**

Vice-Chair Severson : **I second.**

VOTE: 13 YES and 0 NO with 2 absent. PASSED. Rep. Maragos will carry the bill.

Date: 3/6/01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2375

House POLITICAL SUBDIVISIONS Committee

☐ Subcommittee on _____

or

☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep Ekstrom Seconded By Rep Disrud

Representatives	Yes	No	Representatives	Yes	No
Chairman Glen Froseth	✓		Rep. Wayne W. Tieman	✓	
Vice-Chair Dale C. Severson	✓				
Rep. Lois Delmore	✓				
Rep. Rachael Disrud	AB				
Rep. Bruce Eckre	✓				
Rep. Mary Ekstrom	✓				
Rep. April Fairfield	AB				
Rep. Michael Grosz	✓				
Rep. Jane Gunter	✓				
Rep. Gil Herbel	✓				
Rep. Nancy Johnson	✓				
Rep. William E. Kretschmar	✓				
Rep. Carol A.Niemeier	✓				
Rep. Andrew G. Maragos	✓				

Total (Yes) 13 No 0

Absent 2

Floor Assignment Rep. Maragos

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

REPORT OF STANDING COMMITTEE (410)
March 16, 2001 12:23 p.m.

Module No: HR-46-5825
Carrier: Maragos
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2375, as engrossed: Political Subdivisions Committee (Rep. Froseth, Chairman) recommends **DO PASS** (13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2375 was placed on the Fourteenth order on the calendar.

2001 TESTIMONY

SB 2375

Wayne L. Lauwers
[illegible] North
Fargo, North
[illegible]

Mr. Chairman and members of the committee. My name is Wayne Lauwers. I live in Fargo.

I am in favor of Senate Bill No. ?375 that would prohibit directed suretyship on public projects.

Under directed suretyship (or an owner-controlled bond program) the required surety bonds must be executed by a surety company designated by the public owner through an insurance or bonding agency also designated by the owner. Limiting a contractor's ability to use its regular surety producer and surety company interferes with competitive bidding and runs contrary to the existence of a free and open marketplace.

With suretyship a surety stands behind its contractor, acting as a silent partner, representing to an owner that the contractor is qualified to do the work and has the expertise, organization, and financial resources to complete the project according to the specifications and within the timeframe and price bid.

This qualification process requires a relationship between the contractor, surety agent, and surety company. This relationship is built over time and has as its foundation, trust and confidentiality. In this relationship a contractor provides the surety with confidential information regarding the financial and operational condition of the firm. This may include personal financial information as well. This relationship is based on mutual confidence and respect and is vitally important to the contractor's growth and success. It is comparable to the contractor's relationship with their bankers or attorneys.

Requiring contractors to obtain bonds from a particular agent and surety presents an untenable situation for contractors. It is unfair to ask contractors to provide this kind of detailed information to a surety agent or company other than the contractor's own. Contractors are concerned that a surety selected by and working for the public owner would not be able to handle disputes in a fair and unbiased manner.

Directed surety can also have the effect of limiting competition. Experience shows that many contractors refuse to bid projects that involve directed surety. This reduces the number of bidders and possibly eliminates the contractor who may have been the lowest or most qualified bidder.

I recognize the project owner's right to require that only bonds issued by reputable and financially sound surety companies be provided on its projects. Beyond that, the public owners should allow the contractors to choose an agent and surety company with whom the contractor maintains an established relationship.

TESTIMONY ON
SENATE BILL NO. 2375
DUAINE ESPEGARD, SENATOR DISTRICT 43

Good morning Senator Cook and members of the Political Subs Committee.

I come today to Sponsor SB 2375.

Senate Bill 2375 is a bill relating to limitations on governing bodies requiring directed suretyship bonds: and to provide a penalty.

The bill simply says that a governing body may not require any person that has to provide a surety bond under this title to furnish financial data or obtain a surety bond from a specified insurance company or surety company, agent, or broker, and states that anyone the violates this section is guilty of a class B misdemeanor.

It's a simple bill and seems as if it one of fairness and as the sponsor of the bill I ask for a "Do Pass"

Mr. Chairmen there are others who would like to speak in favor of this bill and I would yield to them at this time.

Thank you