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2003 HOUSE TRANSPORTATION

HCR 3012

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10/16/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HCR 3012

House Transportation Committee

Conference Committee

Hearing Date January 24, 2004

Tape Number	Side A	Side B	Meter #
1	x		1.5 to 8.2
1		x	11.2 end at 16.1
Committee Clerk Signature <i>Lauren S. Ford</i>			

Minutes:

Rep. Weisz, Chairman opened the hearing on HCR 3012 a concurrent resolution directing the Legislative Council to study the laws of this state concerning arbitration of construction issues with the Department of Transportation

Rep. Weisz introduce the resolution by saying that he was sponsoring this at the request of the Department of Transportation . Rather than go into the rationale for this resolution and the need for the study, he deferred to the Department of Transportation personnel who were prepared to talk on all aspects of their proposed study.

Grant Levi , Deputy Director for Engineering representing the DOT spoke on behalf of the resolution. A copy of his prepared remarks are attached.

Rep. Delmore: (6.9) Would you look at administrative rules? What other ways are there?

Grant Levi: At this point in time the DOT hasn't come to a conclusion at to what would be best.

Other states use various methods other than the courts--- some use panels to review the issues, ---

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House Transportation Committee
Bill/Resolution Number HCR 3012
Hearing Date January 24, 2003

we think the better way is to bring all parties together to study and evolve how to do things better
and in the best interest of all-- including the State of North Dakota.

There being no further testimony neither for nor against, Rep. Weisz, Chairman closed the
hearing on HCR 3012. (8.2)

Tape 1 side 2 01-24-03 (11.6)

In a brief work session, Rep. Delmore moved a 'Do Pass and place on the consent calendar
motion. Rep. Thorpe seconded the motion. On a voice vote with no dissenting votes the motion
carried unanimously with 12 present and 1 absent. Rep. Hawken was designated to carry HCR
3012 on the floor. (16.1)

Date: 1/24/03
Roll Call Vote#: _____

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HCR 3012

House TRANSPORTATION Committee

Check here for Conference Committee

Legislative Council Amendment Number 38108.0100

Action Taken Do Pass - 1 placed on calendar

Motion Made By Rep. Delmore Seconded By Rep. Thayer

Representatives	Yes	No	Representatives	Yes	No
Robin Weisz - Chairman			Lois Delmore		
Kathy Hawken - Vice Chairman			Arlo E. Schmidt		
LeRoy G. Bernstein			Elwood Thorpe		
Mark A. Dosch			Steven L. Zaiser		
Pat Galvin					
Craig Headland					
Clara Sue Price					
Dan J. Ruby					
Dave Weiler					

Total Yes Unanimous Voice Vote
12 0

Absent 1

Floor Assignment Rep. Hawken

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

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Richard Costa Operator's Signature 10/16/03 Date

REPORT OF STANDING COMMITTEE (410)
January 24, 2003 12:08 p.m.

Module No: HR-14-1043
Carrier: Hawken
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HCR 3012: Transportation Committee (Rep. Welsz, Chairman) recommends **DO PASS**
and **BE PLACED ON THE CONSENT CALENDAR** (12 YEAS, 0 NAYS, 1 ABSENT
AND NOT VOTING). HCR 3012 was placed on the Tenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-14-1043

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2003 SENATE TRANSPORTATION

HCR 3012

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10/16/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HCR 3012

Senate Transportation Committee

Conference Committee

Hearing Date 3-07-03

Tape Number	Side A	Side B	Meter #
2	X		115-1110

Committee Clerk Signature *Mary K Monson*

Minutes:

Chairman Senator Thomas Trenbeath opened the hearing on HCR 3012 to study the laws of this state concerning arbitration of construction issues with the Department of Transportation.

Grant Levi (Deputy Director of Engineering, ND DOT) See attached testimony in support HCR 3012.

Senator Nething, in reference to #2 on the testimony, asked if he could give some examples of situations when notice was not required on extra work items.

Grant Levi answered that, in some instances, it is related to soils work, sub grade work, and base work. There have been situations where the contract has been completed and the contractors come back and argue that they didn't have to give notice of intent because the DOT knew the soil conditions changed.

(Meter 635) Discussion on if weather is one of the situations where notice is not required. The contract is structured around a calendar completion date or working day contract. A working

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10/16/03
Date

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Senate Transportation Committee
Bill/Resolution Number HCR 3012
Hearing Date 03-07-03

day contract is given so many working days and weather is taken into consideration. On calendar date completion contracts, it becomes the contractors risk and they need to bid accordingly.

Senator Espegard asked for more elaboration on if ground conditions change, not because of weather but if they run into rocks or something.

Grant Levi (Meter 700) If conditions change on a project and the Department is aware that the contractor feels those conditions have changed, they will work with them on the contract to see if the original contract documents covered it. A notice of intent is supposed to be given if there is a concern in the contract.

Curt Peterson (Association of General Contractors) Testified in support of HCR 3012. Feels that arbitration almost always works. There are a lot of intricacies in any kind of construction work. They are not opposed to the resolution and feel it probably is an area that should be looked at.

The hearing on HCR 3012 was closed.

Senator Espegard moved a **Do Pass**. Seconded by **Senator Nething**. Roll call vote 5-0-1.

Passed. Floor carrier is **Senator Espegard**.

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10/16/03
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REPORT OF STANDING COMMITTEE (410)
March 7, 2003 2:33 p.m.

Module No: SR-41-4278
Carrier: Espegard
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HCR 3012: Transportation Committee (Sen. Trenbeath, Chairman) recommends DO
PASS (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HCR 3012 was placed on
the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-41-4278

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Colista Rickford
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10/6/03
Date

IP

2003 TESTIMONY

HCR 3012

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10/16/03
Date

HOUSE TRANSPORTATION COMMITTEE
January 24, 2003

North Dakota Department of Transportation
Grant Levi, Deputy Director for Engineering

HCR 3012

Good morning Mr. Chairman and members of the committee. I'm Grant Levi, Deputy Director for Engineering for the North Dakota Department of Transportation.

The department supports HCR 3012. We believe the laws concerning arbitration of contractor claims should be studied.

Currently, we issue contracts for more than \$225 million worth of highway improvements each year. We administer construction contracts with the intent of treating the contractors fairly and doing what is in the best interest of the state of North Dakota. We attempt to settle all disputes in a fair and equitable manner. On occasion, however, contract disputes arise and the contractor files a claim requesting additional compensation. Some of the claims run into millions of dollars. For example, in 2002 we were involved in two claims valued at about \$1.5 million each. In 1999, we were involved in an arbitration where the contractor claimed he was due an additional \$6 million.

When a claim is not resolved through negotiations, the only option under state law is binding arbitration. Both the state and the contracting industry have had many years of experience in dealing with binding arbitration. Over the years, issues have surfaced that we believe need to be examined to ensure the process meets legislative intent and is the most effective, efficient, and just way to resolve arbitration issues. There also are portions of existing law that appear unclear and sometimes result in considerable expenditure of time and effort to resolve the legal intent. A study could provide an opportunity for all interested parties to thoroughly examine and comment on issues they may have.

Some examples of issues we believe should be studied:

1. Is binding arbitration the most efficient and effective method to use in trying to resolve large contract disputes?
2. The current law requires contractors to provide a Notice of Intent to file a claim when they encounter what they consider additional work on a project and intend to request additional compensation. Some contractors have argued that they are not required to give notice on some types of extra work items. This issue should be reviewed to determine if further clarification in the law is needed.
3. Some contractors have presented a claim more than a year after completion of the highway construction project. What are the requirements for timely filing, and are there any exceptions?

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contract
sent to
Glen*

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4. Contractors have submitted certified claims requesting a specific dollar amount and have later increased the same claim – sometimes as late as during arbitration. Should a contractor be allowed to change a certified claim at any time?
 5. Can subcontractors file a claim directly against the department when they do not have a contract with the department? In one case, we paid a prime contractor for work completed by a subcontractor, but the prime contractor did not transfer the funds to the subcontractor. The subcontractor then filed a total cost claim directly against us rather than the prime contractor.
 6. The last two arbitrations in which the department was involved were conducted using the American Arbitration Association Construction Industry rules. These rules generally allow the arbiters to decide which details to present when giving an arbitration decision. In some cases, neither we nor the contractor have received much information about why the arbiters made a certain decision. A detailed, well-reasoned decision would better inform the public about the use of its money.

The department believes that a study addressing these and other issues pertaining to the arbitration of construction claims would help the state and the contractors. Such a study could determine whether current laws are adequate or need revision.

Mr. Chairman, this concludes my testimony on HCR 3012. I would be happy to answer any questions the committee might have.

Richard Costa
Operator's Signature

10/16/03
Date