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DESCRIPTION

1102

2007 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1102

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1102

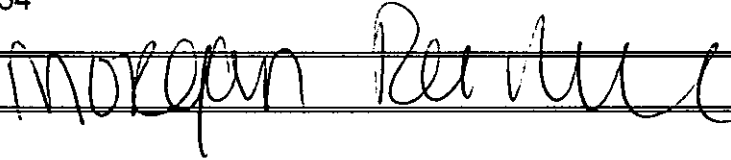
House Government and Veterans Affairs Committee

Check here for Conference Committee

Hearing Date: January 5, 2007

Recorder Job Number: 654

Committee Clerk Signature



Minutes:

Lt. Steve Tabor: *I am here testifying in support of HB 1102. Currently chapter 54 of the Century Code limits the fees that public entity agencies can pay to architect and engineering firms. There is a \$10,000 limit per contract and a \$20,000 per consecutive 12 month window that we are limited to. The intent of this language was established to insure that public agencies spread their design work around. The problem is that it was enacted in 1985 and these fee limits haven't been changed since 1985. In 1985 a principal architect or engineer charged between \$40-50 an hour. Today that same architect or engineer charges between \$90-110 an hour. Over 22 years that is quite a cost increase. In 1985 the cost of construction and inflation level at that time, the \$10,000 and \$20,000 fees worked. Today, with 22 years of inflation, the \$10,000 and \$20,000 just doesn't get you very fair dealing with the projects that you can do. It's also a burden for the architect and engineering firms. The smaller projects that this language now requires formal solicitations on. When we get beyond that \$10,000 fee. It's an awful big cost for these architect and engineering firms to occur. Put together their proposal packages, assemble their design teams, and bring them to the interviews. So they can go through the process that is required by this chapter. With my testimony there is an example in there as well that because of these solicitations and the process that is in place, driven by the*

restrictive fees, we end up often times going to Minot. What ends up happening is that we pay them \$7,900 dollars just for them to travel back and forth. I would much rather use that \$7,900 to maintain our facilities for our soldiers and make life a little better for the troops. We have to make sure that we are maintaining and keeping the air conditioning working and everything else. With this bill we are actually proposing to increase the limits to \$25,000 per contract and \$50,000 per 12 month consecutive window. This is actually proportionate to the limits that were in place in 1985. Also I would like to mention that the dollar amounts are an example to the dollar amounts that were enacted last session of the DOT. Their limits were also raised. I would like to add the two private entity organizations that this would impact, the American Institute of Architects and the American Council of Engineering Companies. Both support raising these limits. We request your favorable consideration.

Rep. Kasper: The bill says authorized by state agencies and you're here representing the Adjutant general. Does this bill encompass all state agencies or just your part of it?

Steve Tabor: It applies to all state agencies.

Rep. Kasper: Are the other members of the state agencies in support of this as well? Are they here to testify as well?

Lt. Steve Tabor: Dale Frank, from state water commission, is in favor.

Rep. Schneider: At the 25,000 mark will we still be able to properly spread out the business?

Lt. Steve Tabor: I believe we will. That much gives us flexibility and allows us to spread our dollars out.

Rep. Amerman: Along the same lines, will raising it from 25,000 to 50,000 will this have any impact on the smaller firms?

Lt. Steve Tabor: I think it will allow the small firms to compete against the larger ones. It gives me the option to hire the smaller firm just as equally as hiring the larger one. One of the things that this will allow us to do in the design projects, especially when we start doing maintenance projects. To have that original architect that we hired 20 years ago to do that project is a plus. We would be able to hire him back when it comes to repairs.

Rep. Boehning: You want to get the original team back in who designed the building 20 years ago? What will they basically do? Don't architects and engineers charge just one flat fee?

Lt. Steve Tabor: No. If it is a small, messy project we will negotiate a fee with them. If it's a cleaner project that doesn't require a lot of investigation and things, we have a fixed percentage fee scale. For a project under \$100,000 we will charge a 14% fee. 10% for the design of the project and 4% of that is for the construction.

Rep. Boehning: Are they being able to get paid and double dip with the fees?

Lt. Steve Tabor: The projects I'm talking about with this language are at tops of \$200,000. That is the cost of the project. The design fee is \$25,000 at my limit which I can pay them.

Rep. Boehning: So we are just looking at the real small projects?

Lt. Steve Tabor: Yes, in construction costs probably 100,000-200,000 dollar projects. That is why it has become so unproductive for these firms to put it all together because they don't make a lot of money in design fees. The first thing I look at when I'm looking at a project is how much the design fees are going to be. Then this bill kicks into place and I think about what I have to do. I'm being limited to a \$200,000 construction cost project. That is the cost. It doesn't allow us to go into the \$500,000 – \$700,000 project. The limit will prevent us from doing that.

Rep. Kasper: The bill states all state agencies securing architects, engineers, etc. Each one of those is an individual need and expertise. Some firms have multiple services like that. Does

this bill imply that you can employ one firm and pay the fees to each separate part? Does this bill mean that you can't exceed 25,000 totals, or just to one part of the firm.

Lt. Steve Tabor: You're right. We wouldn't be able to spend over 25,000 dollars.

Rep. Kasper: With this bill would you still be required to notify firms when the area whether or not you are using, is available so they can have an opportunity to talk to you. Or can you decide that you'll be under for fees and pick the company you want

Lt. Steve Tabor: The latter of those two. Currently we are not required to do that. We would have the opportunity to go directly to a firm and choose.

Rep. Kasper: How long have you been with the guards?

Lt. Steve Tabor: 1987

Rep. Kasper: In the last 10 years, how many firms have you negotiated with under this chapter?

Lt. Steve Tabor: Several different numbers. We negotiate with firms all over the state. IF I have a small electrical project I will call an engineering firm in Fargo if that is where the project is. I try to avoid the driving time.

Rep. Froseth: You said that traveling costs in the projects are quite a bit. Usually on a bidding cost are the traveling cost included in the original bid or are they charged extra.

Lt. Steve Tabor: Those are negotiated with the firms. So if I for instance have a firm on board on here, and one in Minot. We will choose the one here to avoid travel costs.

Rep. Boehning: If you know your doing a large project can you put into the project cost up and above the 10,000 fee currently?

Lt. Steve Tabor: The problem with that if I understand the question. I'm restricted to go above the 10,000 according to the Century Code.

Rep. Boehning: Can you put in a request into appropriations about the fees?

Lt. Steve Tabor: We can do that. We do have an appropriation we get out of the Nation Guard Bill. I have money available.

Rep. Weiler: If you are looking at a project that is kind of on a borderline above 200,000 or below, what process do you go through to decide who you go with

Lt. Steve Tabor: If I'm going to be close I'll go with the formal process.

Rep. Schneider: One of the things I like about this bill is it spreads out over the state. You are given a current 20,000 cap annually do you ever run into a situation where you can't find one to do a project because of the cap?

Lt. Steve Tabor: We have not. What we do is similar to federal agencies IDIQ (Indefinite delivery indefinite quantity). They go do a former solicitation for any services and advertise it, but they will advertise in such a passion that everyone who is applying for it knows that there are going to be multiple small projects. That gives everyone a chance to compete.

Rep. Haas: Is there additional testimony for HB 1102

Dale Frank: Testimony. Water Commission

I don't have written testimony, but support HB 1102. The 10,000 put into place 20 years ago is not up to inflation. Also, it is costly. From the agents we form a committee. If it's a large project it makes sense to go through the interview process. If it's a small building/project it costs money to interview also. The original bill is a good bill. It has forced people to look at what's available. It's a good concept, but when you get into the 10,000 fee, it makes sense to move it to 25,000.

Rep. Weiler: Dale, Currently on the ND law when you bid these projects out, are you forced to go with the lowest bidder or do you have an option?

Dale Frank: For the engineers and architects you don't bid off it. You actually do an interview and see who is most qualified. At that point then, you get into negotiations for a contract with that person but you don't actually bid out the project.

Rep. Haas: Would you say that at the limit that we have now, the fees are going to be less than 15,000. Would you say that there might be companies that wouldn't bother to set a bid for that small amount of money?

Dale Frank: Some of the very large ones, but we haven't had problems getting people to bid.

Rep. Haas: Any questions? Is there any additional testimony in favor of HB 1102? Any opposition? If not we will close hearing on 1102. Committee members, are you prepared to take action on this bill? Is there any discussion?

Rep. Kasper: I think there are some things that we need to talk about before we take final action. I prefer to hold action.

Rep. Haas: we will not take action on HB 1102 today, but plan to do it next week Thursday.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1102

House Government and Veterans Affairs Committee

Check here for Conference Committee

Hearing Date: January 5, 2007

Recorder Job Number: 655

Committee Clerk Signature

Megan Renke

Minutes:

Rep. Haas: We will hold HB 1102 until next week.

Rep. Kasper: After the hearing on 1102, one of the gentlemen that represents engineers came to me and we had a nice discussion about the questions I had and their answers were satisfactory, so I have no objection on moving forward on this bill.

Rep. Haas: Is that a do pass motion?

Rep. Kasper: Yes.

Rep. Haas: Is there a second?

Rep. Karls: I second that.

Rep. Haas: Would you care to elaborate on the concerns you had?

Rep. Kasper: Sure. Some of you may not know but I've been involved over the sessions I've been here with the opening of the bidding process for state contracts. What we had in the past was no method of monitoring. I just saw a little bit of concern that it was increasing the limits and making it easier for bigger companies to get the bids. I talked with one of the larger engineering firms in ND and said it will actually make it harder for bigger companies because it is opening it up for smaller companies. Therefore, that was my concern.

Rep. Potter: Did they say why it made it easier for smaller companies to get the bid?

Rep. Kasper: He said because you increase the number it is jackpotting. You have a project that might have multiple pieces. Underneath those projects is smaller projects. If you open it up to the larger amount you can have individual projects bid on their own merit, or negotiate on their own merit. Now you will have an opportunity.

Rep. Potter: Why was he here testifying if that makes it harder for his companies to bid?

Rep. Kasper: He was here on behalf of the State Association. He said that it does make his company harder to get bids, but he was representing everyone.

Rep. Haas: Any further discussion?

Rep. Schneider: It seems that they aren't using all the help available. I'm sure there are lots of companies out there that would love a state contract.

Rep. Haas: This is only for professional services. Is there any other discussion? HB 1102 passes unanimously. Is there a volunteer for a carrier?

Rep. Weiler: I will carry it.

Date: 1-9-07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. "Click here to type Bill/Resolution No."

House Government and Veterans Affairs Committee

Check here for Conference Committee

Legislative Council Amendment Number HB 1102

Action Taken DO PASS

Motion Made By Rep. Kasper Seconded By Rep. Karls

| Representatives | Yes | No | Representatives | Yes | No |
|------------------------|-----|----|-----------------------|-----|----|
| Rep. C.B Haas Chairman | X | | Rep. Bill Amerman | ✓ | |
| Rep. Bette Grande V.P | X | | Rep. Louise Potter | X | |
| Rep. Randy Boehning | X | | Rep. Jasper Schneider | X | |
| Rep. Stacey Dahl | X | | Rep. Lisa Wolf | X | |
| Rep. Glen Froseth | X | | | | |
| Rep. Karen Karls | X | | | | |
| Rep. Jim Kasper | X | | | | |
| Rep. Lisa Meier | X | | | | |
| Rep. Dave Weiler | X | | | | |
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Total (Yes) 13 No 0

Absent 0

Floor Assignment Rep. Weiler

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

REPORT OF STANDING COMMITTEE (410)
January 9, 2007 1:35 p.m.

Module No: HR-05-0375
Carrier: Weller
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1102: Government and Veterans Affairs Committee (Rep. Haas, Chairman)
recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
HB 1102 was placed on the Eleventh order on the calendar.

2007 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1102

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1102**

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **February 28, 2007**

Recorder Job Number: **4084**

Committee Clerk Signature



Fees for state agencies, architect, land survey:

St. Colonel Steven Tabor, ND National Guard - In Favor

TESTIMONY # 1 *Went over testimony*

Fee limitations on services of architect, land survey and energy.

S Andrist: Do you seek a bidder for projects or is this for projects that are so small that engineers or architects wouldn't be interested in bidding?

Steven T: Oftentimes, they aren't. When we do a solicitation, there are certain requirements in the Century code that they have to comply with. We ask them for that information, which requires them to have to assemble all that information. On the smaller projects, you can tie people up for some time for some proposal package together. It becomes cost prohibitive for them to do it for the smaller projects.

S Klein: Simple bill, raising 2 of the \$ figures.

S? O? CLOSE

Motion for DO PASS by S Heitkamp

Second by S Behm

Vote for DO PASS HB 1102 – 6-0-1 Passed

Carrier: S Heitkamp

REPORT OF STANDING COMMITTEE

HB 1102: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1102 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

HB 1102

TESTIMONY OF
LIEUTENANT COLONEL STEVEN TABOR
NORTH DAKOTA NATIONAL GUARD
BEFORE THE
SENATE INDUSTRY, BUSINESS AND LABOR COMMITTEE
FEBRUARY 28, 2007
HOUSE BILL 1102

Mr. Chairman, Members of the Committee,

North Dakota Century Code Chapter 54-44.7 "Architect, Engineer, and Land Surveying Services" establishes procurement procedures for the selection of professional design and construction management procedures for state agencies.

Currently NDCC 54-44.7-04 (paras. 1 and 2) mandates that Architect and Engineer (A&E) fees cannot exceed \$10,000.00 per contract and that A&E fees cannot exceed \$ 20,000.00 within a consecutive 12 month window. The intent of this language is to insure that all professional service providers are able to compete fairly for public agency projects above the specified dollar limits. These fee limits were set in 1985 when this chapter of century code was established and have not been raised since. In 1985 the hourly fees charged by principal architects and engineers was between forty and fifty dollars. Today those hourly fees range from ninety to one hundred and ten dollars an hour.

The original intent of the language is being negated by its own limits. The fee limits are so restrictive, based on today's constructions costs and twenty-two years of inflation, that state agencies are not able to call and negotiate with local architectural firms for small projects but must now formally solicit for professional services for these small projects. These formal solicitations often result in the professional service provider being located hours from the actual project site.

The cost incurred by professional service providers to assemble and submit proposals and attend formal interviews is extremely expensive and often times cost prohibitive for smaller scale projects. Additional Agency funds are required to compensate A&E for traveling to project locations for design and inspection services when local firms could be utilized to perform these services were it not for the restrictive dollar limits.

Example:

For a 2 month construction window on a project in Minot when the indefinite service provider and consultants are in Bismarck, approximately \$ 7,900.00 would be expended in additional fees for travel time from Bismarck to Minot. These additional fees could be better utilized on additional maintenance and repair projects.

With this bill, we propose to increase the fee limits to \$ 25,000.00 per contract and \$ 50,000.00 in a twelve-month window which equals the percentage increase in hourly fees since 1985. These proposed dollar amounts are identical to those approved last session in section 24-02-07.3 for the Department of Transportation. The American Institute of Architects and the American Council of Engineering Companies are the two professional organizations affected by this proposed change. Both of these organizations support this increase in fee limits. In conclusion, the Office of the Adjutant General's Office strongly supports this bill and we request your favorable consideration.

Thank you Mr. Chairman. I would be pleased to respond to any questions.