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ROLL NUMBER

DESCRIPTION

1105

2007 HOUSE TRANSPORTATION

HB 1105

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1105

House Transportation Committee

Check here for Conference Committee

Hearing Date: 01-11-2007

Recorder Job Number: 941

Committee Clerk Signature

Lisa M Thomas

Minutes:

Chairman Weisz opened the hearing on HB 1105. All Representatives were present. HB 1105 relates to design-build contracts for highway or bridge projects; to provide for a report to the legislative assembly; and to provide for an expiration date.

Grant Levi, ND DOT, introduced the bill.

Levi: HB 1105 was introduced at the request of the department. Before I explain the bill, I do want to take a few minutes to visit with you about the importance of it. Our budget and the challenges we face as the organization. The last year has been unprecedented for our organization. We've seen prices go up from twenty five to thirty percent in a year. We have had to delay about three million dollars worth of projects in 2006 and about one hundred million dollars worth of projects in 2007. Put that in prospective before our total city, county, state program it comes to about three hundred forty five million dollars a year. So we've moved back about a third of our program in one year. That is a real challenge. In order for us to maintain our system during that period of high construction inflation, we've had to make changes. We've made changes to our roadways and one of the most visible ones is gravel shoulders. That saved us about forty thousand dollars a mile. We are also making other changes. In addition to doing those things, we do need to look for a way to do business better,

we have to take a look and see whether or not there is a more effective contact process.

Today we are seeking your approval to allow us to see if the fuel contract and delivery process is efficient and affective process in North Dakota. Currently, we are required to use a bid bill contract. This process requires a designed project, advertised and seeks bids from contractors and then award the contractor the contract with the lowest bid, who then builds the contract. Another method is the design filled contract which is used by numerous states for highway projects. In this system, the DOT would solicit bids to design and build the contract under a single contract. It would consist of a builder and a design firm, or it could be the other way. We've seen it happen both ways. If you take a look at the bill, I will walk you through it. See attached.

Rep. Thorpe: Local contractors in my district didn't like HB 1105 but as they looked at it, they did.

Levi: I shared some of the information with Chairman Weisz about smaller projects. Thirty two or thirty four states are already doing it.

Rep. Thorpe: Would smaller contractors be able to bid?

Levi: It would depend on their ability to work with other companies.

Rep. Gruchalla: If this had been in effect for the 4 Bears Bridge, would it have been the same? Did a subcontractor cause a problem?

Levi: This is a process to see if ND can use it, is there merit to save time and money.

Rep. Gruchalla: I think I have the same concern that this may limit the amount of contracts that are bid during this period to North Dakota contractors. Have you talked to the agency about this issue?

Levi: Yes, we have had conversations with the agency and we discussed it with them. Maybe they are in better position to respond to that as to how they feel. I have indicated that I am aware of some instances where some of the firms have lost and worked out.

Rep. Price: If you are looking at a variety of projects within the five plans are you looking at having a similar project during the same time frame to match it just because of those types of things and my second question would have to do with, I would suspect we are doing more and more designed builds in our industry because that is what is coming out.

Levi: In order for it to be an appropriate evaluation it would have to existing...can't hear him at all. One of the challenges with design builds is communicating what you want. If this bill passes, we will establish that relationship with the contracting industry.

Rep. Price: In other states that have been using this, what have they seen as far as changes on the project? Is more of it going out of state?

Levi: I'm not aware of any studies that have shown that.

Rep. Schmidt: I'm having a hard time speaking to this designed build firm contractor? Is that what you are saying?

Levi: I am trying hard to distinguish between the two firms and interchange a few times. Under design builds we have a successful could be a contract which I will typically refer to as one of the major contractors in North Dakota. A design firm or it could be a design firm contractor, which is typically referred to. That's what makes it kind of confusing.

Rep. Schmidt: The way you do business now, if you have a contract submitted bid, and he's not successful, can you skip them and pay the contractor? I just don't understand this whole thing.

Levi: We do not. Under today's environment, maybe the best way to put is we operate under a local system. We put everything out for the bidding industry, to bid on a project. Then we take

the low bid. Under the design build, we take the best build that comes forward. This is not necessarily always the lowest price that is what we are supposed to do; we still need to work out the policies.

Rep. Schmidt: It looks like they are going to use technical score, more than the price.

Levi: We would discuss the draft with the partners until we find some comfort level. Technical and price are both considered.

Rep. Dosch: What you are looking at the possibility of taking the DOT out of the design aspect of a project and in essence privatize where you guys would be responsible for the design of it and someone else is designing it and so part of this is privatizing some of the stuff that the DOT has been doing in the past.

Levi: That is one way to look at it.

Rep. Dosch: On these projects, are you setting any dollar limits on these projects? Are we looking at a street project or are we looking at a fifty million dollar highway project?

Levi: No we have not. Our intent would be to sit down and contract and talk through this.

Rep. Owens: I just want to clarify the five projects are just five projects over the four years, because you've estimated about nine hundred projects over four years? Correct me if I'm wrong, but the benefit of the RFQ is that you get to evaluate and give them the general description of what you want to do. And you ask them and give them minimal requirements of experience and what they are capable of doing and then submit and bid on a project. They come back with a proposal and from that, only those that are disqualified i.e. technical to do the job based on the technical requirements are then allowed to receive the RFQ and submit a proposal and design and cost based on that. And from that you order the contract, is that correct?

Levi: That's correct.

Rep. Vigesaa: Based on what you have seen in other states, is there a bench mark percentage savings that we are looking at on these types of projects?

Levi: I'm not aware of any.

Chairman Weisz allowed for opposition on the bill to be heard.

Bonnie Staiger, Executive Vice President of AIA North Dakota spoke in opposition to the bill. See attached testimony.

Rep. Owens: I appreciate the desire of everybody working together because it's going to come out a lot better. But my question here is in four years, five projects out of nine hundred, would it not be best, rather than sit around and discuss the topic of what everybody thinks, will and won't work based on five simple projects and not worry about what's happening across the United States.

Staiger: I know that there are (cannot understand)

Rep. Ruby: There was a fair amount of time, HB 1033 dealt a lot more with having construction managers on projects and the biggest problems, kept coming back session after session and it took longer to get the results. How long did it take the industries to get together on that issue and related issues?

Staiger: This really does point to what Rep. Owens had asked. In eighteen months, we were able to resolve the language on issues.

Rep. Ruby: There are still some issues that aren't resolved that were included but the groups decided not to take up, so that still isn't a finished product there. All the other states around us pretty much having a design build, I'm sure you'll have some contractors that will bid some of those projects or pilot those projects and have some understanding of either joint ventures or being subcontractors within those types of proposals. Do you think especially if it's such a

small pilot project that it would be that onerous on the various industries to have some kind of data and information from which to work on?

Staiger: There are people who can work on design build projects and do have more experience in it and we would like to include them in the study and make sure that we have their expertise.

Rep. Thorpe: How many firms do we have in North Dakota that would be able to get in on this?

Staiger: I am not sure.

There were no further questions for Bonnie Staiger.

Russ Hanson, Associated General Contractors of North Dakota spoke in opposition to the bill.

See attached testimony.

Eric Johnson, Meinecke Johnson Construction of Fargo spoke in opposition to the bill. See written testimony.

Rep. Weisz: I'll be the first to say I share some of the concerns you have outlined here. But that is one of the issues we struggle with as legislators are how do we know? If these small projects won't get design builds unless we do something because obviously we study and debate and hear the pros and cons. How do you address that?

Johnson: The way we see design builds is, it's coming and we understand that. We are taking a stance that when it comes to the state; we want to have a law that directs us of exactly what we need to do. It is mostly used on major projects; like in Colorado they did their major highway with that. What the DOT is discussing is using design builds for smaller projects. We feel it would be better put into the process which would give the less complicated jobs a better price.

Rep. Ruby: It seems to me that one of the things you are concerned about is time frame, to make sure your contractors can put together a proposal and bid and design it and have that all set up. If this bill passes, I'm sure that this year there are going to be any projects, maybe one or two by 2008. Why wouldn't they want to get the industry plenty of time to put together proposals?

Johnson: Basically, we understand, they are looking into the future. The way it sits right now, we have very few highway contractors that have the ability to do design builds. We have several very large highway contractors in the state, but they don't have design firms in their company. So it would be very difficult for them, within the next year to be able to have those capabilities. The way we look at it is if we have the interim study that would give us the time, to write with the bill that will be incorporated in chapter 48.

Rep. Owens: So are you telling me that what you are concerned about here is you don't want to go into partnerships and have a contract of subs, you don't want a partnership with design firm; you either want to do it all, or nothing?

Johnson: In the typical design build process it is all contained under one house. If you look at a building contractor that is a design build contractor, they employ the architects, the engineer, the contractor and they don't employ the mechanical electrical, so they have to sub it out to them and they do work as a joint venture in most of the parts. That is typical building version of the design build process. We would also like to see that rolled into the highway area.

Rep. Owens: My experience has been it's that way and there are a number of partnerships that have been done across the United States. Not only in design building, but in other transportation situations, where someone was brought in to work on a piece of it, like electrical and the other people come in to do the other parts, but I am familiar with the numbers in

Virginia and back east. Particularly the long term partnerships between the design team and that way they stay doing what they are used to doing.

There were no further questions for Johnson.

Greg McCormick, Northern Improvement Company, spoke in opposition to the bill.

Greg: Most of our members are against the DOT instrumentation of design build at this time. For reasons that have already been stated. Lack of specific project information. Identification for the five potential jobs and uncertainty as to whether there could be a ND project size and complexity, also, some contractors are worried about subjectivity and increase and politicizing of the award process.

Rep. Weisz: You mentioned that you thought design builds tend to politicize the process?

McCormick: Certainly with the design build, on bid day, when they are open and everybody knows who got the project, it is still judged by a panel and their opinion certainly, people tend to worry about whether they are being discriminated against or there is a vendetta or there are friends on the panel, or so on.

Rep. Ruby: I just want to make sure I get the industry's position. You mentioned you think that the benefits of design build are most predominately shown in the large projects. You don't think there's some savings in smaller market than we have included in some of this pilot program, as far as sidewalks and things like that?

McCormick: I can't speak to that. We are a heavy highway contractor.

Dwayne Wahl, representing himself, spoke in opposition.

Wahl: I have a small business in Mandan and it has nothing to do with roads or building, I sell trailers. But just from listening to this, my biggest concern is, please don't do anything to take jobs away from North Dakota people. Don't do anything to limit what the average contractor

can do in ND.

There were no questions from Mr. Wahl.

Chairman Weisz closed the hearing. No action was taken at this time.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1105

House Transportation Committee

Check here for Conference Committee

Hearing Date: 01-18-2007

Recorder Job Number: 1414

Committee Clerk Signature

Lisa M Thomas

Minutes:

Chairman Weisz allowed for committee discussion on HB 1105. All Representatives were present. HB 1105 relates to design-build contracts for highway or bridge projects.

Chairman Weisz: In reference to HB 1130. The question was raised to me and I decided it was worth bringing up, so we have asked Mr. Levi of the DOT to present himself to answer questions.

Grant Levi, Department of Transportation, spoke to the committee to clear up some questions.

Chairman Weisz: On HB 1130, the one to do with arbitration, question came up, how would the passing of HB 1130 effect under design build where you may have an engineering firm or someone else who is the lead and actually doesn't have a contract for that project? Can you address that?

Levi: HB 1130, what we asked the legislative body to do relates to the contracting issues is to place into statute a provision which would ensure that the DOT would only deal with the prime contractor to settle disputes in the contract. Right now we are forced to deal with the contractor we have a contract with which we call the prime contractor and also, anybody in the contract. If it passed, as we proposed it, and a design build situation, if it were the engineering firm that was the prime contractor that came in and was the lead and submitted the bid and subcontract

with a contractor, we would deal with the engineering firm who would be responsible for the entire contract. Who would act upon for the entire contract? I need to comment and while we brought that to the attention, the bulk of our projects worked fairly well, but we do need a process and that is why the arbitration bill was discussed to resolve this when it occurs.

Chairman Weisz: Anybody could be the lead on a design build where now obviously the lead is going be the contractor that is doing the work.

Rep. Thorpe: After our first hearing with this thing and I had some discussions with some contractors back in my district about the design build bill. When I first talked to them, they were all uncomfortable with the bill and wanted to study it. However, one large contractor, as we discussed it, we started to see some merit to the design build and it might be in a different way from what you are perceiving it here. His statement to me was that on large contracts of fifty million or more that he thinks it could possibly have the opposite effect for your department as to saving money. He said that the ability to bid on that would really limit the amount of people, so those contracts could come in at a pretty high rate. Then we talked about smaller projects like signal lights and we could start to see the merit possibly of the design build on those smaller contracts that could save the department some money.

Levi: I shared some information on design builds and traffic signal light projects in Utah and they did show a savings on those small projects. What we would intend to do with those five projects out of the nine hundred or so is we would try to take some smaller projects and we would look at and benchmark those projects against projects we are bidding with the conditional method. We do feel that it has value to study it. There are other states that are saying the same thing for smaller projects, the risks and benefits and some efficiency.

Rep. Thorpe: It did mention the fact that they said they could see that and it's probably coming down the pipe.

Levi: That appears to be the trend in the industry. There are many states that are presently already doing it and working with design builds and offsets. We should take a look at it in the state of North Dakota.

Rep. Thorpe: There concern was that the smaller contractors hopefully would be able to also bid on this design-build concepts, is that right?

Levi: The way we look at the process is we wouldn't limit it to any size of contractor. It would depend on the contractor's ability to either sub-contract with an engineering firm or work with them. Many of the contractors right now, who do the traffic signal lights, had a lot of expertise.

Rep. Gruchalla: If this design build process would have been in effect when that Four Bears Bridge project, that is the one that really brought this to light, right? Wasn't there a project where the sub-contractor went after the DOT?

Levi: If we are talking about HB 1130, which is arbitration, there were some issues there that caused us to bring the bill forward. With regard to HB 1105, that for us was an issue of we need to look for more efficient, effective needs to do work and we are looking at our neighbors and they all have interest in the design build and we feel we need to move in that direction and start to look at it.

Rep. Gruchalla: So this is just a process that you feel is more efficient? What have these other entities shown when they use this process?

Levi: This is a process that we feel the state has to look at within the state to use the certain types of projects that is why we looked at it as a pilot project. We believe that there is some merit and possibilities that saving time and money for and as a result, we need to take a look at this.

Rep. Kelsch: I do believe there is merit to this. I know that it is costly for these companies to put together a bid of this sort, is the intent of the department to offer some seed money to the companies which I understand that is done in some cases?

Levi: The way the process works is the first step would be to determine whether or not the company that is qualified to go forward and give us a bid. At that point in time there would not be any seed money given to the contractors. That isn't much, but it occurs right now with the consulting and engineering firms that are looking for work from us. The second part of it is that they are asked to submit a technical price proposal. If we ask them to go through that step, we would work with the industry in a private set and appropriate reimbursement for them if they are not successful. That is part of the thing that we do need to talk to the industry about. Try to determine what those costs actually are. Other states do the same thing.

Chairman Weisz: You sent me an email and you can tell the committee what you thought.

Levi: I believe Rep. Price asked at our last meeting what type of impact design build had on in-state contractors ability to proceed with work and to do it. We are busy in doing a little research and haven't been able to see that anybody has tracked that information. So I wouldn't be able to report back any information in response to that question.

Rep. Kelsch: Does this process, are we limiting the number of in-state contractors that can bid on these projects? Would other states come in and bid these projects? It sounded to me like we only had a couple of businesses that could bid on these projects?

Levi: Obviously that would not be our intent. We would try to set the process up that would allow our consulting and engineering firms which are already doing quite a bit of work for the department of transportation, they are doing the design work which is part of the design-build package and we contract an industry which is already constructing a lot of the work in the state

to be able to get together and work as a team. Presently, under our low bid process, there are out of state contractors that get work in the state of ND, and vice versa.

Rep. Kelsch: Can you share the percentage of contracts that go to in state versus out of state?

Levi: I will do that and get it to the committee.

Rep. Price: Looking at some of the testimony and specifically from Bonnie Staiger, talking about the last interim study and what was accomplished and I had the intern get a copy of bill 1033 which she referenced and I have a great deal of new language. She indicated that the design build had to be put off because they just didn't get that far to come to an agreement. Wasn't there some progress made in this bill for the issues that came in front of you and do you feel that they could support something like this in two years if they were allowed to work on it?

Levi: The changes that came out of that study were in Chapter 48 which is a not the section of law that the DOT works through. We work through Chapter 24. We did have people who were working with them and I would say it was a productive effort for that section of statute. To say that if we put this back into committee to attempt to develop something for design build, it is our view that we would be better off having some projects to look at. I think it was mentioned the other day that the efforts get where they are today with Chapter 48 revisions. Those are our views.

Rep. Thorpe: I know there was talk about studying it again in the next interim, however, if it was passed, we almost need emergency clause in order to realize the benefit of it. Wouldn't that be right?

Levi: At one time we thought about including the emergency clause and bringing it over, but in looking at it, realistically what we felt was that all the emergency clause would do is allow us to

proceed immediately if the bill were passed and would go into effect August 1st. It would take us that period of time to sit across the table and refine our policies and procedures before we got something out the door.

Rep. Thorpe: The five projects that are identified, if it worked out as well as you are hoping it would, would you have to come back to the legislature again to open it up, is that how this is?

Levi: Section three of the bill establishes that we would have to come back to the legislative body.

Rep. Ruby: Can we ask Russ a question?

Russ Hanson, AGC of North Dakota presented himself to the committee for questions.

Rep. Ruby: In light of the discussion of bill 1130. I would like to hear the AGC's view of what this bill would have in relation to that, as far as how these bills might conflict.

Hanson: From my prospective HB 1130 and 1105 are two separate issues with two separate working groups. I took a look at it and while we usually come to a consensus, those are the two issues where we didn't so you have two separate policies in front of you.

Rep. Ruby: The reason I ask is because there are five on this committee that serve on IBL as well so we have heard both sides of that.

Hanson: We had an arbitration and AGC and DOT, while there may be some areas where they were, they were two separate discussions and now we have two separate bills as a result in our difference of opinion.

Rep. Dosch: Has Levi seen the amendment?

Levi: Yes, I've seen it.

Chairman Weisz: It's a hog house amendment to turn it into a study.

Levi: The only change I would make to the amendment is rather than saying *may study*, change to *shall study*. It is an important issue and I think it's something that needs to be

looked at, but I just have a real concern when we try to do something that affects certain industry and the industry is not on board with it, it causes problems and it might seem like we are delaying it, but I can guarantee if we pass this HB 1105 the way it is, they will be back next session again with more changes and whenever you have the industry fighting and the principle player is not on board with this legislation, it causes some issues.

Chairman Weisz: Rep. Dosch, just to be clear, you do want the language to say *shall* instead of *may*, right?

Rep. Dosch: Yes.

Chairman Weisz: The amendment that you have in front of you with a ***shall study and shall report*** is fine.

Levi: That's correct.

Rep. Dosch moved to adopt the amendment. Rep. Thorpe seconded.

Rep. Ruby: I am going to oppose the amendment. I don't know what we would study, it is all going to be speculation and it's all going to be information from other states and I don't see how this will help. When I saw that it was five projects out of nine hundred in four years, I take that as data that we are going to find useful and decide. I don't think if it's not showing that it's useful, I don't think the DOT would ever be back to ask for it to continue or for more leeway to do it again.

Rep. Owens: I would like to provide you all with a little information. This is a study done in 2006 by the federal highway administration over the past sixteen years of designing builds. Now it looks like, in relationship to design build and it looks at it in relationship to design bid and build. While they looked at a number of comparable design builds versus design bid projects, primarily from Arizona DOT and every case the time was shorter in design build and that was even for the design bid bill omitting the time it took to create the specifications, it was

shorter. Impacts on project timeliness, the benefit to a contracting agency of using design build instead of bids is to reduce the overall duration. It talks about Rep. Kelsch's question. Impacts on small businesses, specifically stipends their payments to unsuccessful propose of design build projects are frequently used to increase the number of capable proposals and thereby enhance competition of these types. Half of the project surveyed offer stipends averaging fifty thousand dollars. The one surveyed numbered a little over three hundred projects because this has been going on. It goes on to talk about other considerations for medium to large projects that are more complex in nature can benefit from the application of innovative concepts, new widening rehabilitation construction bridges. Projects with a high sense of urgency. How many people had to drive on I-29 when they were working on it in Fargo? That was a seven year project and I wanted it to be six months. It has the potential to as a process that contractually insulate the project participants. This hints (*referring to the book he is reading from*) toward the fact that the larger projects demonstrated much more than the smaller projects. Since that was done in the study, I didn't want to hide that from you. I don't mind a study if we can reach some accommodation on the study including some practical experience here in North Dakota and allowing the DOT to do some of the five projects so that then with the study we can have our own local information. Require one of them to be a small urban or small some time of contract or better yet, small, medium, and large.

Chairman Weisz: In all of your data there, did it say anything comparing cost of design builds versus design bid builds?

Rep. Owens: Yes, that first one, just in Arizona alone in every case it was lower. In every case there appeared to be no difference in quality between the two methods. The disadvantages included reduced competition which is what the industry has said that they are afraid of. It

favors large national engineering construction firms in competing for large design build contracts that are too big for small, local or regional firms to pursue.

Rep. Ruby: I think there are plenty of studies and this is the information we would be hashing out in them anyways. The pilot project itself is the study. How could you put a pilot project in with the direction and study for the next two years when they can't even really get any projects going? There would be no data to look at. The Minot area with Government projects they do some design builds and requirements and there are some joint ventures that take place with smaller contractors that can get together and do joint ventures or partnerships. I think this study is really going to delay it and not give us the information that we want. If DOT had come to us, we wanted to have the ability to possibly bid every project we do is design bid we could tell them to do a pilot project of five projects in the next four years.

Rep. Delmore: I think it still addresses the fact that that is going to be used in this study and if we don't have our people in North Dakota on board for this, we are still not sure it is the right thing to lend out five projects, small, medium, large, in between. I think if we could have the two groups get together and accomplish that in the next interim. North Dakota is different because we meet every other year and there are a lot of differences between what can be saved in a state like Arizona where they can do construction practically all year long and what we have here. I think until we get people on board, sometimes it's just as well that we move slower and do it the right way.

Rep. Schmidt: I feel a lot like Rep. Delmore. If we get our contractors up to speed. I would hate to do this if our contractors of North Dakota are not eligible to bid on it. And this could happen because maybe Minnesota is ahead of us and I think we should give the contractors two more years as well. Where was the study done last time?

Rep. Ruby: That was the interim IBL committee.

Rep. Schmidt: Why wasn't it in transportation?

Rep. Ruby: It had to do with prime bidders and builders; it was much broader than that.

Rep. Gruchalla: I think the best way to find out if this is a good process is to; again it's only five out of nine hundred projects. It's a small amount of the projects and if they find out it doesn't work, well then they don't have to do it next time. I really think this is a better way to study it than to make it a study.

Rep. Dosch: The bottom line is that we don't know the impact on North Dakota contractors. They have all testified against it. Now whether it be good, bad, I can't say at this point either, but the fact is, we have not identified any of these projects that they want to do, I would hate to sit here and approve this and have two or three of our state's largest contracts go out of state because some out of state bidders, we did not set up proper guidelines and we did not prepare our industry in North Dakota and they got two or three of them out of state. I don't want to answer to that. We need to listen to our industry people. If we don't listen to the industry in our own state, then watch out for the consequences.

Rep. Owens: I don't want everyone to think that all of these states that have been doing design builds now are in love with it and running to it. New Jersey, after doing their priority projects are now backing off but you said something about Arizona because there was a large portion, I understand your comment.

Rep. Delmore: I didn't mean to apply that at all. You were more than fair.

Rep. Owens: It's just that after what you said, I wanted to make sure that this was clear. It's also Pennsylvania and New York.

Chairman Weisz called for the question on the amendment.

Roll Call Vote: 6 yes. 7 no. 0 absent. Amendment fails.

Rep. Ruby moved a DO PASS. Rep. Gruchalla seconded.

Roll Call Vote: 6 yes. 7 no. 0 absent.

Rep. Price moved a DO NOT PASS. Rep. Kelsch seconded.

Roll Call Vote: 7 yes. 6 no. 0 absent.

Carrier: Rep. Dosch

FISCAL NOTE
 Requested by Legislative Council
 12/28/2006

Bill/Resolution No.: HB 1105

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill provides for a pilot program using design-build as a tool for project delivery. The intent of the pilot program is to determine potential benefits and impacts of the procedures. At this time we have no way to determine fiscal impact. The pilot program will be used to assess fiscal impact.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

At this time we have no way to determine the fiscal impact. The pilot program will be used to assess the fiscal impact.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Mark Gaydos	Agency:	NDDOT
Phone Number:	328-4417	Date Prepared:	01/03/2007

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DO SCIT

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1105

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a study."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA

SECTION 1. During the 2007-08 interim, the legislative council ^{*SHAC*} ~~may~~ study the design-build method of project delivery for highway or bridge projects. The legislative council may report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty first legislative assembly.

Date: 1-18-07
Roll Call Vote #: HB 1105

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. _____

House Transportation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do pass on amendment

Motion Made By Rep Dosch Seconded By Rep Thorpe

Representatives	Yes	No	Representatives	Yes	No
Chairman Weisz		✓	Rep. Delmore	✓	
Vice Chairman Ruby		✓	Rep. Gruchalla		✓
Rep. Dosch	✓		Rep. Myxter	✓	
Rep. Kelsch	✓		Rep. Schmidt	✓	
Rep. Owens		✓	Rep. Thorpe		✓
Rep. Price	✓				
Rep. Sukut		✓			
Rep. Vigesaa		✓			

Total Yes 6 No 7

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:
The intent of the amendment was to turn the bill into a study.

Date: 1-18-07
Roll Call Vote #: HB 1105

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. _____

House Transportation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS

Motion Made By Rep. Ruby Seconded By Rep Gruchalla

Representatives	Yes	No	Representatives	Yes	No
Chairman Weisz	✓		Rep. Delmore		✓
Vice Chairman Ruby	✓		Rep. Gruchalla	✓	
Rep. Dosch		✓	Rep. Myxter		✓
Rep. Kelsch		✓	Rep. Schmidt		✓
Rep. Owens	✓		Rep. Thorpe	✓	
Rep. Price		✓			
Rep. Sukut	✓				
Rep. Vigasaa		✓			

Total Yes 6 No 7

Absent _____

Floor Assignment _____

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

Date: 1-18-07
Roll Call Vote #: HB 1105

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. _____

House Transportation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DO NOT PASS

Motion Made By Rep. Price Seconded By Rep. Kelsch

Representatives	Yes	No	Representatives	Yes	No
Chairman Weisz		✓	Rep. Delmore	✓	
Vice Chairman Ruby		✓	Rep. Gruchalla		✓
Rep. Dosch	✓		Rep. Myxter	✓	
Rep. Kelsch	✓		Rep. Schmidt	✓	
Rep. Owens		✓	Rep. Thorpe		✓
Rep. Price	✓				
Rep. Sukut		✓			
Rep. Vigesaa	✓				

Total Yes 7 No 6

Absent 0

Floor Assignment Rep. Dosch

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

REPORT OF STANDING COMMITTEE

HB 1105: Transportation Committee (Rep. Welsz, Chairman) recommends DO NOT PASS
(7 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). HB 1105 was placed on the
Eleventh order on the calendar.

2007 TESTIMONY

HB 1105

HOUSE TRANSPORTATION COMMITTEE
January 11, 2007

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

HB 1105

Good morning, Mr. Chairman and members of the committee. I'm Grant Levi, Deputy Director for Engineering for the North Dakota Department of Transportation. Thank you for giving me the opportunity to present information to you today. I'm here to testify in support of HB 1105, which was introduced at the request of the department.

325 M per year
The cost for us to construct and maintain our transportation system has increased substantially in the past two years. We have seen construction prices increase as much as 25 to 30 percent in the last year. As a result, we have been forced to delay approximately \$30 million of projects in 2006 and will be delaying almost \$100 million of projects in 2007. To maintain our system in this period of high construction inflation, we have had to change our roadway designs (i.e., gravel shoulders) and we are moving to more preventative maintenance projects (asphalt thin lift overlays). We also need to look for ways to continually improve our contract delivery process. Today, I'm seeking your approval to allow NDDOT the ability to determine if a design-build contract delivery process is an efficient and effective process for certain projects in the state of North Dakota.

Currently, we are required to use the design-bid-build contract delivery system for all highway projects as required by North Dakota Century Code, Chapter 24. This process requires us to design the project, advertise and receive bids from contractors, and then award the contract to the contractor with the lowest bid who then builds the project. In this system, the project is completely designed before it is put out for bids and before any building can take place.

Another contract delivery method is the design-build contract delivery system, which has been used by numerous states for highway projects. In this system, NDDOT would solicit bids from firms to design and build the project under a single contract. The design-build firm could consist of a builder as the prime with the design firm as the subcontractor, or the design firm could be the prime with the builder as the subcontractor.

Section 1 of the bill gives the NDDOT Director authority to use the design-build method of contract delivery by combining the design and construction elements of a project into a single contract. This section limits the number of projects to no more than five projects in the next four years. During the four-year evaluation period, we would be bidding approximately 900 projects. So the request is to allow us to do 5 of those 900 projects using the design-build process. This section also provides for the NDDOT Director, in conjunction with the appropriate and affected professionals and contractors, to develop and adopt policies for procuring projects using the design-build project delivery. The proposed policy is attached as Exhibit I for your information. The attached proposed policy is a draft and does need additional discussion.

Section 2 of the bill requires the Director to work with appropriate and affected professionals and contractors to evaluate the design-build project delivery system and report to the sixty-second legislative assembly (four years) with recommendations.

Section 3 of the bill establishes that it will be in effect through December 31, 2011.

As we developed the HB 1105 and the draft policy, we established a committee comprised of members of the Associated General Contractors (AGC), the American Consulting Engineers Council (ACEC), and the NDDOT. This committee reviewed the drafts. As a result, suggested changes were made to the bill and draft policy. We appreciated the opportunity to work with members from each organization.

While they worked with us, and after much discussion, the AGC and ACEC have indicated to us they do not support the bill we submitted. I'm sure today they will share with you the reasons why they do not support the bill and may even suggest that the legislative body complete an interim study. While we respect their views, we do not agree with them for the following reasons:

- Passage of this legislation will allow us as a state to evaluate whether the design-build project delivery method is a cost-effective and efficient tool for the state to use. The design-build contract delivery process is not new. The Federal Highway Administration reports in a "Design-Build Effectiveness Study" dated January 2006, that between 1990 and 2002, approximately 300 projects representing \$14 billion were proposed for design-build contracting by transportation agencies in 32 states, the District of Columbia, and the Virgin Islands. Our neighbors in Minnesota and South Dakota are among these states. In addition to those states, Montana has also completed projects using the design-build process.
- As a pilot project with the enabling legislation being rather simple, we will have the ability, working with the AGC and ACEC, to modify the policies to establish the best policy we can, based upon our experiences from the projects. Attempting to put all of the detail we have outlined in our proposed policy into state statute, we believe, would be a mistake at this time. At the end of the evaluation period, the sixty-second legislative body will receive a report from us on the results of our pilot program. Using the information from the pilot program, the legislative body can then decide if additional study is needed (interim study) or if the process works for North Dakota and the final language could be placed into the state statute for design-build.
- Finally, we as an agency are responsible to look for new ways of doing business to continue to make our organization as efficient and effective as possible. Many states have examples of how the design-build delivery process has saved them time and money. For example, the state of Utah shared at a conference that they have used the design-build process to shorten the amount of time it takes to install signal lights at intersections to three months, instead of nine to twelve months. It should be noted Utah has the materials on hand.

It is important to continue to improve the quality of our transportation system for the citizens of North Dakota. HB 1105 will allow NDDOT to be able to determine if a design-build contract delivery process is feasible for certain projects within North Dakota.

Mr. Chairman, I would be happy to answer any questions at this time. Thank you.

NORTH DAKOTA DEPARTMENT OF TRANSPORTATION POLICIES FOR DESIGN-BUILD PROCUREMENT OF HIGHWAY CONSTRUCTION PROJECTS

PURPOSE

To establish the department's policies for procuring the design, construction, and construction engineering and inspection services within one contract.

AUTHORITY

North Dakota Century Code Section 24-02-17.1; Design-Build statute.

SCOPE

These policies affect all North Dakota Department of Transportation (NDDOT) offices associated with the design and construction of transportation projects using the design-build process.

Background

Design-build (D-B) combines into a single contract the design, construction, construction engineering, inspection requirements, and testing requirements for a project, all in accordance with standard NDDOT design criteria, construction specifications, and contract administration practices. These projects allow the contractor to participate in the design in an effort to reduce costs and expedite construction.

The Sixtieth Legislative Assembly in 2007 authorized the NDDOT to use the design-build process on up to five projects. This authorization will expire on December 31, 2011.

The NDDOT director is to work with the appropriate professionals and contractors to evaluate the design-build process and report to the Sixty-second Legislative Assembly in 2011 with recommendations whether or not to continue the design-build project delivery system.

Definitions

Bid Proposal, hereinafter referred to as "Proposal", means a technical proposal and a separately sealed price proposal submitted by each design-build firm.

Design-Build Firm, means any individual, partnership, corporation, association, joint venture, or other legal entity permitted by North Dakota law to practice engineering and construction contracting as appropriate. The entity may include a construction contractor with the design professional as subcontractor or a design professional with the construction

contractor as the subcontractor. The contractor or design professional cannot team with other partners to submit more than one bid per project. The design-build team cannot change, after award, without the written approval of the department.

Design-Build Package, is the document published by the Department that contains the Public Advertisement (Notice to Bidders), the Request for Qualifications, the Request for Proposals, General Requirements, Design Scope of Work, Technical Specifications, Price Proposal Documents including the Bid Schedule, and any forms, drawings and other supporting documents necessary to guide the proposers in preparation and submittal of a proposal for a design-build project.

Price Proposal, contains the Proposer's price for performing the work contained in the Technical Proposal and specified in the Design-Build Package. The Price Proposal is sealed and completed only on forms included in the Design-Build Package.

Project, the project to be designed and constructed as described in the public announcement.

Bid Proposer, a design-build firm or joint venture submitting a statement of qualifications or a technical proposal for a design-build project.

Request for Qualifications, A part of the D-B Package that contains the desired minimum qualifications of the Design-Builder, a scope of work statement, the project requirements, and the selection criteria (understanding and approach, team members, firms capabilities, and quality and safety programs) for compiling a short list including the number of firms to be short listed.

Request for Proposals, A part of the D-B Package that contains a detailed scope of work including design concepts, technical requirements, and specifications; criteria package the time allowed for design and construction; the Department's estimated cost of the project; the deadline for submitting the proposal; the required format for the proposal; the selection criteria; and a copy of the contract the Design-Builder is expected to sign.

Statement of Qualifications, the Design-Builder's response to the Request for Qualifications. It contains information about the Design-Builder capabilities, team members, previous experience, and understanding and approach to the project.

Technical Proposal, the Design-Builder's response to the Request for Proposals. This document contains detailed descriptions and exposé of the Design-Builder's approach to designing, constructing, and managing the project in accordance with the Design-Build Package. The Design-Builder's conceptual design is included as well as a proposed construction sequence and schedule. Technical Proposals contain tables, charts, drawings, plots, and sketches of the project.

Public Announcement Policy

Except in emergency situations, the Department shall publish an announcement in accordance with 24-02-19 NDCC. The announcement shall set forth a general description of the project requiring design-build services and defining time frame and procedures for interested qualified firms to apply for consideration. The public announcement shall further state whether design-builders will be pre-qualified for the project.

Technical Review Committee

There shall be a Technical Review Committee (Committee) comprised of the following:

1. The NDDOT Director, or designee from within the department;
2. The Director of the Office of Operations, or designee, and up to one additional member from this office appointed by its Director from within the department;
3. The Director of the Office of Project Development, or designee, and up to three additional members, to be appointed by its Director, from the areas of Materials and Research, Bridge Design, and Roadway Design from within the department; and
4. A licensed contractor (highway or bridge, whichever is applicable) who is not involved in the project. The AGC will submit names to the NDDOT Director;
5. A representative from the American Council of Engineering Companies.

The Committee shall have responsibility for determining the most qualified bid proposers as provided in "Qualification of Design-Builders" and rating and scoring Technical Proposals as provided in "Competitive Selection of Design-Build Services".

Criteria Package and Request for Proposals

(1.) The Department shall prepare a criteria package. The criteria developer may be either a private practitioner (selected in accordance with normal procedures for selecting design firms) or on the staff of the Department. The criteria developer is prohibited from being part of the bidding entity. The criteria package may include the following:

- a. Scope of work;
- b. Site survey
- c. Material quality standards;
- d. Conceptual design criteria;
- e. Design and construction schedules;
- f. Site development requirements;
- g. Stipulation of responsibilities for permits and utility, storm-water, and road connections;
- h. Stipulation of responsibility for meeting environmental regulations;
- i. Soil borings and geo-technical information;
- j. Traffic control stipulations
- k. Performance specifications;

- l. Statement of required compliance with codes and general technical specifications;
and
- m. Stipulation of the responsibility for acquisition of right-of-way.
- n. Stipulation of the responsibility for coordinating utility relocation.

(2.) The purpose of the criteria package is to furnish sufficient information for firms to prepare qualitative proposals and price proposals. The firm submitting the successful proposal shall develop a detailed project design based on the criteria in the criteria package. Moreover, the firm shall construct the facility in accordance with the criteria package.

(3.) The Request for Proposals ("RFP") will consist of the items listed in the definition on page 2.

Qualification of Design-Builders

(1.) The Department will pre-qualify design-builders on a project by project basis.

(2.) The Department will advertise in accordance with 24-02-19 NDCC for a Request for Qualifications ("RFQ"). The RFQ shall contain the following:

- a. a general scope of work statement and schedule;
- b. the minimum qualifications of the design-builder;
- c. the basis upon which the most qualified bid proposers will be determined;
- d. the selection criteria for compiling a short list and the number of Design-Build Firms to be included on the short list.
- e. The maximum time allowable for design and construction.
- f. any other requirements the Department deems necessary.

Design-Build Firms desiring to submit bid proposals on the design-build project shall submit a statement of qualifications setting forth the qualifications of the entities involved in the firm and providing any other information required by the RFQ.

(3.) The Committee shall determine the relative ability of each Design-Build Firm to perform the services required for each project. The Committee shall base its determination upon the following:

- a. Experience with comparable projects;
- b. Financial and bonding capacity;
- c. Managerial resources;
- d. The abilities of the professional personnel;
- e. Past performance;
- f. Capacity to meet time and budget requirements;
- g. Knowledge of local or regional conditions
- h. Recent and current project workload; and

- i. The ability of the design – build firm to complete the work in a timely and satisfactory manner.
- j. Submitted Pre-qualification form for design-build firm.

(4.) The Committee shall select at least two and no more than four firms deemed to be most highly qualified to perform the required services, after considering the factors in (3) above. The Committee will report its selection of most highly qualified design-build firm to the Director.

(5.) The Director will issue RFP's to the most highly qualified firms selected by the Committee.

Competitive Selection of Design-Build Services

1. Each Design-Build Firm submitting a proposal shall submit a Technical Proposal and a Price Proposal. Only firms receiving an RFP may submit proposals. Proposals shall be segmented into two packages;
 - a. Technical Proposal. A Technical proposal shall include preliminary design drawings, outline specifications, technical reports, calculations, permit requirements, management plan, schedule, and other data requested in response to the RFP. Technical proposals shall be submitted in a sealed package, which identifies the project and the design-builder on the outside of the package. Each firm shall place the words "**TECHNICAL PROPOSAL**" on the outside of the package. Nothing contained in the technical package, except the project management plan set forth below shall identify the design-builder. The project management plan shall be submitted in a separate envelope within the technical proposal package.
 - b. Price Proposal. Price proposals shall include one lump sum cost for all design, construction, construction engineering, and inspection and testing for the proposed project. Each firm shall submit its price proposal in a separate sealed package. Each firm shall place the words "**PRICE PROPOSAL**" on the outside of the package. Each firm shall also place its name, the project description, and any other information required by the RFP on the outside of the package. The Department shall secure price proposals until the time provided in "Selection and Award", paragraph (1).
2. Each technical proposal shall be assigned a number by the Construction Engineer's designee. The technical proposal, less the project management plan, shall be submitted to each member of the Committee with only the assigned number to identify the design-builder (it is intended that the Committee members not know the identity of the design-builder during the review and scoring of the technical and schedule aspects of the packages). The project management plan shall be submitted to the Committee members for review and scoring only after they have turned in their scores for the other portions of the technical proposal. The Committee members shall review the design concepts, preliminary designs and technical data

submitted by each firm. Prior to issuing their ratings, the Committee members may consult with each other and with any Consultant hired by the Department to assist with the design-build procurement process. The Committee members shall then independently rate each firm's proposal based upon criteria established by the Committee for the project. The criteria may include the following format example, but shall be adjusted for the particular characteristics of the project prior to the advertisement of RFP:

- 1. Technical Proposal Maximum Score:??
- 2. Project-specific Management Plan Maximum Score:??

- A. Management Plan and Organization
- B. Resumes of Key Professional and Managerial Personnel
- C. Quality Assurance Plan
- D. Safety Plan
- E. Minority and Disadvantaged Business Participation Plan

- 3. Project Schedule Maximum Score:??

- A. Construction Schedule and Ability to Meet Schedule
- B. Engineering Design Schedule and Ability to Meet Schedule
- C. Length of Construction and Design Schedule

Total Maximum Score, Technical Proposal : 100

- 3. The Committee will adjust and refine all of the above criteria and the points assigned to each based on the project type and Department experience. The Committee may reduce the weight of management criteria or omit it entirely if it is sufficiently determinative in selection of the most qualified offerors under "Qualification of Design-Builders". The Committee may omit schedule as criteria when it is a fixed requirement in the RFP.
- 4. The Committee members shall, without conferring with one another, submit their criteria scores for each design-builder to the Director. The Director, or designee, will average the scores of the Committee members for each design-builder to arrive at a single score for each design-builder.

Selection and Award for Design-Build Services

- 1. The Director, or designee, shall set a date for publicly opening the price proposals, and shall notify all firms submitting price proposals at least seven calendar days prior to the opening date. The notification shall include the date, time, and place of the opening of price proposals and date for award of the project.
- 2. The Director, or designee, shall publicly open the sealed price proposals and divide each firm's proposed price by the technical score given by the Committee to obtain an

"adjusted price". The firm selected will be that firm whose adjusted price is lowest. An example of the selection formula follows:

Firm	Technical Score	Proposed Price	Adjusted Price
A	90	\$5.1 million	\$5.67 million
B	79	\$4.8 million	\$6.08 million
C	84	\$6.2 million	\$7.38 million

3. (Award to Firm A at \$5.1 million)

4. Instead of requiring Technical Proposals and Price Proposals, the Department may establish a fixed dollar budget for the design-build project in the RFP. With a fixed price established for all bid proposers, each firm would submit only Technical Proposals. The Department would award the project to the firm receiving the highest Technical score.
5. The Department reserves the right to reject all proposals. The director shall either reject all proposals or approve an award to the firm with the lowest adjusted price. The Director will notify all bid proposers in writing of the Department's intent to enter into a contract with the firm with the lowest adjusted price or highest technical score when a fixed price is established.
6. The Department shall enter into a contract with the firm selected as provided above. At the time of the award, the Department may negotiate minor changes for the purpose of clarifying the design criteria and work to be done, provided that the negotiated changes do not affect the ranking of the proposals based on their adjusted score.

Stipends for unsuccessful firms that submitted an RFP

Design-build firms that were selected to submit a Technical Proposal but, were unsuccessful in obtaining the bid, shall receive compensation for their efforts in preparing the proposal if the proposal is determined to be responsive by the Technical Review Committee. The intent to compensate and the amount of the compensation will be noted in the RFP. A stipend is

not intended to compensate the firms for the total cost of preparing the bid proposal. Compensation will be commensurate with the level of effort required to develop a bid proposal. In return, the department reserves the right to use any of the concepts or ideas within the technical proposals, as the department deems appropriate.

The unsuccessful bidders will be eligible for the stipend following the selection and award for Design-Build services.

Upon request, a Design-Build firm may elect not to receive a stipend. In this case the department is prevented from using any of the information contained in the technical proposal.

Errors and Omissions Insurance for design services is required on all Design-Build projects.

**House Transportation Committee
Testimony in Opposition
To HB 1105**

**Provided by Bonnie Staiger
AIA North Dakota &
Chair, Industry Key Leaders Coalition**

Chairman Weisz and members of the Committee

My name is Bonnie Staiger, Executive Vice President of AIA North Dakota (the American Institute of Architects). Today I appear in opposition to HB 1105 both representing the AIA but also in my role as Chair of the Industry Key Leaders Coalition. My testimony represents the opposition of each coalition partner.

The coalition is comprised of the following design and construction industry organizations:

- AIA North Dakota
- ACEC/ND (American Council of Engineering Companies)
- Associated General Contractors of ND
- National Electrical Contractors Association
- ND Builders Association
- ND Plumbing, Heating, and Mechanical Contractors Association
- ND Society of Professional Engineers

This group formed at the end of last legislative session with the passage of an interim study (sponsored by Rep. Dosch) to look at procurement and delivery options. That study encompassed such delivery methods as design/bid/build, construction management, and design build. And all of the organizations listed here (and are represented here today) agreed to discuss these issues which have plagued the industry and professions for a decade.

These issues have pitted many in this room against one another--not unlike the Hatfields and McCoys. Unfortunately, most of you have witnessed prior skirmishes.

When this past interim IBL committee received the study, we came to them and told them that we would be a resource, partner with them, and maybe if we were really successful, help them craft a bill draft that collectively our member organizations could support.

That interim committee, chaired by Sen. Karen Krebsbach, was most relieved and as it turns out we did come up with a bill-- with the help of

John Bjornson from Legislative Council who staffed the interim committee. This was no small feat because first we had to learn how to be in the same room together, then to work together, compromise, and turn out a work product that we could all live with. We are proud of what is now HB 1033 and it will have its first hearing in a couple weeks.

Our charter has been to

- Bring together diverse membership and opinions
- Find common ground and
- Create a culture of collaboration and trust

Since last legislative session, we have met at least monthly and we have had 3 subcommittees at work. Many other groups such as the Association of Counties, Board of Higher Ed, League of Cities, Fargo Public Schools, and Department of Transportation have been invited to participate and collaborate.

Through that process, we realized that we simply could not take on design build. For a variety of reasons including time constraints and the fact that it is the least known delivery method, we agreed that we would continue our pattern of success and take up design build in the next interim. And we reported that commitment to the interim IBL committee.

Several key staff from DOT have attended our meetings and are aware that we want to wait and "do it right." Further they were in the room when every member organization voted not to support their bill.

Mr. Chairman and members of the committee, if this bill passes, we will be right where we were before with legislation that does not have industry support and will lead to a series of cobbled up amendments over time—adjudicated by you and ultimately a re-write to fix it all in a few years.

Design build is a delivery method that has mixed reviews across the country and we would like to do it right. Give all parties the chance to work out language in healthy debate, that will keep us doing what we do best, and to bring a bill in 2009 that is the product of effective collaboration. To my testimony, I've attached our position paper to that effect.

We urge a do not pass on HB 1105 or that it be amended to a mandatory interim study. I will be happy to answer questions from the committee but I may refer those of a more technical nature to a coalition partner with us today.

Testimony – HB 1105
House Transportation Committee
January 11, 2007

Mr. Chairman and members of the House Transportation Committee, my name is Eric Johnson and I am a fourth generation contractor from Meinecke Johnson Construction in Fargo, ND. I am the immediate past president of the AGC of ND and I was one of the industry representatives who served on the key leaders group which drafted the changes to the public improvement statute – Chapter 48 of the ND Century Code. This working group was assembled and met every month during the 2005-2007 interim.

I would request you follow the suggested path to implement Design Build as outlined in the Industry Key Leaders Position paper presented previously, ~~by the Industry Key Leaders~~. The industry coalition plan for further Chapter 48 revisions includes addressing Design Build and we are confident we can provide a similar effort with affected industry interacting with the DOT during the 2007-09 interim.

As a contractor, the discussion of Design Build Delivery system causes fear to most of our highway contractors – particularly our smaller contractors. Candidly, they believe they will not be able to compete and may lose business to out of state contractors. Currently, there are very few North Dakota contractors with expertise to utilize Design Build.

Another concern with the need of HB 1105 time revolves around the DOT's inability to clearly define the scope of potential projects which would be constructed if HB 1105 is enacted. The interim study would provide the time necessary to clearly define those projects to ease some of the concerns of contractors. When the scope of possible projects is clearly defined, contractors would then know what adjustments they'd need to make to be competitive on Design Build projects.

The main opposition to HB 1105 is two-fold philosophically.

One - Projects of extremely large scope, complexity or possessing a need to be completed rapidly due to extreme congestion or safety concerns are typical of those selected to be completed using the Design Build project delivery method. To date, we have not been presented with these types of projects in North Dakota which affirms the position that HB 1105 is unnecessary.

Second - we do not believe it is to the benefit of the North Dakota taxpayers to utilize Design Build for minimally priced projects. For those, the typical Design Bid Build Delivery System remains the best avenue in the industry's opinion as those projects are awarded to the lowest responsible bidder who meets the bidding requirements.

For those reasons we oppose HB 1105 and would respectfully request a Do Not Pass recommendation to HB 1105.

Mr. Chairman and committee members, thank you for the opportunity to address the committee. I would be happy to address any questions.

56:46
Job 941

Industry Key Leaders Coalition:

Russ
Hanson

The Associated General Contractors of ND

AIA North Dakota

American Council of Engineering Companies - ND

ND Association of Builders

Dakotas Chapter, National Electrical Contractors Ass'n

ND Plumbing, Heating, & Mechanical Contractors Ass'n

Background: HB 1260 from the 59th Legislative Assembly was a mandatory study resolution for the 2005-07 interim. It required a study of Design Bid Build, Construction Management, and Design Build Delivery Systems for NDCC Chapter 48. The affected industries listed above agreed to work collectively to address each delivery system.

We were informed the ND DOT was interested in Design Build for NDCC Chapter 24. The industry coalition invited the DOT to participate with the industry coalition to discuss Design Build for NDCC Chapter 24.

Key Leaders Position - the Design/Build issue for both NDDOT and the Chapter 48 implications are:

1. This is an important future component of potential delivery systems in ND and as such needs careful attention to the language involved in development of the legislation.
2. The legislative intent is best developed by the industry including all participants (architects, engineers, contractors, and owners).
3. Development of this legislation will require education, discussion, and consensus building to address the issues of all parties in the best interest of North Dakota.
4. Currently a coalition of the industry leaders exists that would actively assist in the development process. That group has demonstrated they can successfully complete such a task, provided there is sufficient time allowed. This is demonstrated by their work on Chapter 48 concerning Design/Bid/Build and Construction Management.
5. Rapidly developed language or piecemeal legislation has caused many issues in the past as evidenced by the amount of controversy and subsequent efforts that surrounded Chapter 48 over the past several sessions. This was mainly a result of poorly constructed and improperly

defined language on Construction Management. We do not want to see a repeat of this on Design/Build.

6. Proper legislation needs to clearly define the process and contain sufficient detail in the legislation. An outline format with outside interpretation is not acceptable in our opinion.

Our recommendation: Amend the development of Design/Build legislation (HB 1105) to a mandatory study assignment as the legislature did with Chapter 48 and Construction Management. As in the previous biennium, accept the help of the existing Industry Key Leaders Coalition in development of the proposed legislation so that concerns of the industry and the public are properly represented. The development of the legislation should be targeted for the 2009 session.