

2011 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2156

2011 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

SB 2156
January 17, 2011
Job Number 12934

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to arbitration on construction claims.

Minutes:

3 attached testimonies

Chairman Senator Klein: Opened the hearing on Senate Bill 2156

Senator Lee: Testimony Attached (1)

Russ Hanson, Associated General Contractors of North Dakota: Testimony Attached (2). He commented that Arbitrators are generally Attorneys.

Chairman Senator Klein: Asked for Russ to explain why there is a need for arbitration.

Russ: In the bidding process for highway construction there could be a disagreement and if they can't come to an agreement they go to arbitration.

Chairman Senator Klein: If they can't come to an agreement that is when the arbitrator is brought in and the amount is being changed for that?

Russ: This bill would raise the limit to \$100,000 that would be addressed by one arbitrator. This is mutually agreed upon by both the DOT and the industry.

Grant Levi, Deputy Director of Engineering: Testimony Attached (3).

Explains what occurs if something is disagreed upon between the Department of Transportation and the contractor. First a notice of intent is given and they attempt to resolve this. Next step, they put in a claim that basically says they are going to document it in more detail. If it is not resolved at that stage then they put in an arbitration demand. The cost of arbitration is in the testimony.

Senator Larsen: This is for bided contracts and will this affect maintenance contracts?

Grant: Those are typically DOT or County or City. There are situations like landscaping that they would put in a maintenance provision. The contractor has to take care of the project and make sure the landscaping lives for a period of time.

Senator Andrist: Motioned for a do pass on Senate Bill 2156.

Senator Laffen: Seconded the motion.

Roll Call Vote Yes – 7 No – 0

Senator Andrist to carry the bill.

Date: 1/17
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2156

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Andrist Seconded By Senator Laffen

Senators	Yes	No	Senators	Yes	No
Chairman Jerry Klein			Senator Mac Schneider		
VC George L. Nodland			Senator Murphy		
Senator John Andrist					
Senator Lonnie J. Laffen					
Senator Oley Larsen					

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Andrist

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

REPORT OF STANDING COMMITTEE

SB 2156: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2156 was placed on the Eleventh order on the calendar.

2011 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2156

2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

SB 2156
March 9, 2011
15142

Conference Committee

Committee Clerk Signature

Ellen Letang

Explanation or reason for introduction of bill/resolution:

Arbitration of construction claims

Minutes:

Chairman Keiser: Opens the hearing on SB 2156.

Senator Gary Lee: Introduces the SB 2156. The bill offers a reasonable change to current law and I ask you to support the bill.

Russ Hanson~Associated General Contractors of North Dakota: (See attached testimony 1).

Chairman Keiser: Any questions? Anyone else here to testify in support of SB 2156?

Grant Levi~Deputy Director for Engineering for the North Dakota Department of Transportation-NDDOT: (See attached testimony 2).

Representative Amerman: I think \$10,000 a day for three arbitrators is low, is that the right cost? Do you pick from a pool?

Russ Hanson: Yes, that's correct. We work with the contractor who puts in the request for arbitration and together we select a group of arbitrators for the project.

Representative N Johnson: Since 2002 you have had two cases that couldn't be resolve. How many cases do you have that go to arbitration or are those the two cases that have gone to arbitration?

Grant Levi: Since 2003 we have had two cases that have gone to arbitration but we have had about 124 notices of intent where contractors have expressed concern.

Representative Kreun: Were those two cases settled in arbitration?

Grant Levi: The arbitration process set up is binding arbitration.

Chairman Keiser: Where does the problem come from, does it start from DOT saying that their review of the work product saying there is a problem with this or where does the contractor becomes upset?

Grant Levi: They typical occurrence that we have on a project is where there are concerns expresses by the contractor when they say conditions have changed in the field.

Chairman Keiser: In those conditions, do they really want more money.

Grant Levi: Yes and many times it's warranted.

Representative Clark: Who do you use for the arbitration?

Grant Levi: We work through what is called Triple A and it is an association that supplies a list of arbiters to us.

Chairman Keiser: Anyone else here to testify in support, in opposition, in the neutral position of SB 2156.

Representative Ruby: Moves a Do Pass.

Representative Vigesaa: Second.

Chairman Keiser: Further discussion?

Roll call was taken for a Do Pass on SB 2156 with 12 yeas, 0 nays, 2 absent and Representative Kreun is the carrier.

Date: March 9, 2011

Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2156

House House Industry, Business and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment

Motion Made By Rep Ruby Seconded By Rep Vigesaa

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Amerman	✓	
Vice Chairman Kasper	Ab		Representative Boe	Ab	
Representative Clark	✓		Representative Gruchalla	✓	
Representative Frantsvog	✓		Representative M Nelson	✓	
Representative N Johnson	✓				
Representative Kreun	✓				
Representative Nathe	✓				
Representative Ruby	✓				
Representative Sukut	✓				
Representative Vigesaa	✓				

Total Yes 12 No 0

Absent 2

Floor Assignment Rep Kreun

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

REPORT OF STANDING COMMITTEE

SB 2156: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING).
SB 2156 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

SB 2156

SB 2156
#1

SB 2156 – Relating To Arbitration On Construction Claims.

IBL – Roosevelt Park, 10:15 AM 1/17/2011

Good Morning Chairman Klein & Members of the IBL Committee. I am Senator Gary A. Lee from District 22.

SB 2156, as part of the title indicates, relates to arbitration on highway construction or repair claims. The Bill simply increases the claim limit from \$50,000 to \$100,000.

By increasing the claim limit, it also increases the threshold where 3 arbitrators would be required. Fewer Arbitrators should lower the cost of the proceedings for the claimant & the Department of Transportation.

The claim increase amount can be justified, simply by construction cost inflation. Today's \$100 bill seems to be the new \$10. Since 1995, when the current claim limits were put in place, highway construction inflation is probably well beyond that ratio.

So, Mr. Chairman & Committee members, the bill offers a reasonable change to current law. I ask you to support the bill.

Currently: 1 – Arbitrator for claims <\$50,000

3 – Arbitrators for claims >\$50,000

Testimony SB 2156
Senate Industry, Business, and Labor Committee
January 17, 2011

Mr. Chairman, members of the Senate Industry, Business, and Labor committee, my name is Russ Hanson of the Associated General Contractors of North Dakota and I appear today in support of SB 2156. The AGC of ND is a trade association of approximately 400 businesses of general contractors, specialty contractors, subcontractors, and material/equipment suppliers involved in all aspects of commercial construction.

The AGC of ND and the North Dakota Department of Transportation work in partnership on most issues affecting each entity. The arbitration process was one issue which we had a number of meetings with the DOT during the past interim.

We mutually concur with the DOT and submit the proposal included in SB 2156 to request the Legislature amend the allowable amount one (1) arbitrator is allowed to handle an arbitration case. Since 1995, the North Dakota statutes policy was one arbitrator is allowed to handle cases of up to \$50,000. After this amount, three (3) arbitrators are designated.

SB 2156 requests the amount for one arbitrator to handle cases be increased to \$100,000. The reason for such a request is two-fold. One, construction inflation has increased dramatically since 1995. For example, construction inflation has risen 88% since 2001 alone. Two, the costs associated with the contracting of arbitrators is becoming increasingly expensive. I believe the DOT could detail the exact costs associated with the arbitration process.

Thank you for the opportunity to testify today. On behalf of the AGC of ND, we request your favorable consideration of SB 2156 and I would be happy to attempt to address any questions.

SENATE INDUSTRY, BUSINESS & LABOR COMMITTEE
January 17, 2011

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

SB 2156

Mr. Chairman and members of the committee, my name is Grant Levi. I am the Deputy Director for Engineering for the North Dakota Department of Transportation (NDDOT.) I'm here today to testify in support of SB 2156.

Since 1953, the State of North Dakota has had in state statute some form of arbitration procedure for resolving construction contract issues that cannot be resolved by the owner and the contractor. We are comfortable with the use of the arbitration process as a means to resolve contract issues after all negotiation efforts have been exhausted. We continually attempt to resolve all issues through collaboration and negotiation with the prime contractor, but we also recognize that we need a process to resolve issues when those efforts fail.

While we are comfortable with the arbitration process, working with the contracting industry we believe the modifications as outlined in SB 2156 are necessary.

SB 2156 modifies current state statute by increasing the threshold that allows the use of one arbitrator for any claim from less than \$50,000 to less than \$100,000. For a claim of \$100,000 or more, three arbitrators are required. The increase is appropriate for the following reasons:

- The \$50,000 limit is outdated because of construction inflation. For example, since 2001, construction inflation has increased 88 percent. What cost \$50,000 in 2001, cost \$94,000 in 2009.
- The cost of arbitration has also increased. The cost for three arbitrators can be as high as \$10,000 per day.

We believe changing the limit to \$100,000 best serves the contracting industry and the State of North Dakota.

Mr. Chairman, this concludes my testimony and I would be happy to answer any questions the committee may have.

Testimony 1

*Testimony SB 2156
House Industry, Business, and Labor Committee
March 9, 2011*

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HOUSE INDUSTRY, BUSINESS & LABOR COMMITTEE
March 9, 2011

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