

2015 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1128

2015 HOUSE STANDING COMMITTEE MINUTES

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

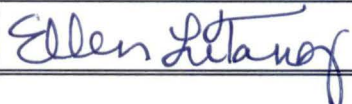
HB 1128

1/13/2015

21874

☐ Subcommittee

☐ Conference Committee



Explanation or reason for introduction of bill/resolution:

Relating to bonds for construction managers at risk.

Minutes:

Attachment 1

Vice Chairman Sukut: Opens the hearing of HB 1128.

Rick Tonder~NDSU Director of Facilities Planning: (Attachment 1).

3:00

Representative Laning: Have you had any instances where this was necessary?

Tonder: We haven't had a specific instance.

Chairman Keiser: Is there anyone else here to testify in support of HB 1128, opposition?

Mark Dougherty~Speaking for the AGC of North Dakota: One point I would like to make is the whole statues, it provides for or requires bonding. This is a double bonding and it doesn't give more coverage.

Representative Kasper: Right now, without this legislation, the construction manager buys a bond for the whole project, including the mechanical and electrical parts?

Dougherty: Yes.

Representative Kasper: This appears to be a double bonding, why wouldn't we strip out the mechanical and electrical bond that the contractors are going to buy from what the construction manager buys. Is there a problem on how insurance companies write bonds?

Dougherty: I didn't ask about the original statue to our insurance members whether they could bond to a governing body where there was no contract.

Representative Kasper: Right now, the construction manager has a bond for the entire project. Under current practices, does the mechanical and electrical contractor also have to secure a bond or does the construction cover their work?

Dougherty: The way the statute reads, the whole project is covered by the CMAR at Risk Bond.

Representative Kasper: Are there three bonds being purchased currently?

Dougherty: I can't tell you. If they are following statute, yes.

Representative Kasper: So there is nothing that changes?

Dougherty: No.

Representative Kasper: So, where is the problem?

Dougherty: The problem we saw is that it's being double covered. What should be done is strip subsection 3 out of this.

Representative Devlin: I'm trying to understand why the governing body was overstruck in the first place? Couldn't we have just put shall provide a governing body and construction manager risk with a separate bond?

Tonder: We are simply saying the government agency couldn't obtain the bonds directly from the contractor because we had no contract with them. You are correct in saying there is double bonding. In the evolution of this bill as it was passed during the last session, I think there was a desire to make sure that you were covered for the large components of the contract that might go south. Would a CMAR take a general or mechanical, regardless of what the statute should say, it's possible. I didn't want to indicate that we didn't feel that the bonding should be eliminated but instead indeed do what the legislation requested. If I could suggest that you eliminate that requirement, I would.

16:10

Representative Ruby: You are covered from the at risk manager. If something isn't done proper, you are going to go to them because they are bonded and you required to be bonded.

Tonder: Yes, we are covered. In the event that we do need to go the bonding company to get the work done or the payments made, we do that.

Representative Ruby: You don't need to be tied to the individual bonds because you are already tied to the first main one. If they so choose that something was at fault of one of the other subcontractors, they would pursue that. Either way you get paid.

Tonder: That is correct. We would get the work done regardless through the CMAR.

Representative Ruby: Why do we need this?

Tonder: We do not technically need this.

Representative Kasper: This is requiring a double bond?

Tonder: Yes, it does require a double bond as it did before.

Representative Kasper: If this language weren't here, could the construction manager require them to get a bond on their own?

Tonder: In deed he could.

Chairman Keiser: It begs the question. This legislation was introduced two years age. What was the problem?

Tonder: There was a concern at that time, the three multiple prime bids, there might have been a perception that this was similar. It didn't understand that the CMAR embraced all of the contracts. It was simply a matter of confusion of the overall process at that time.

Representative Laning: It is very common to have the CMAR carry a bond for the entire project. Subsequently that entity will require it from their subcontractors a bond.

Chairman Keiser: If you look at the financial side, as a CMAR, it's to your advantage for your bonding to get those other bonds lined up.

Representative Kasper: If we amended out section 3 entirely, that would not be a problem with you?

Tonder: Yes, that would be an excellent solution.

Bill Kalanek~Here on behalf of the subcontractors-NECA & NDAPHMC: I support the bill with the amendment.

Chairman Keiser: Is there anyone else here to testify? Closes the hearing on HB 1128. What are the wishes of the committee?

Representative Ruby: I think the real solution is to amend out subsection 3 and I make that motion.

Vice Chairman Sukut: Second.

Chairman Keiser: Amendment passes with 15 yes, 0 no, 0 absent. What are the wishes of the committee?

Vice Chairman Sukut: Motions a Do Pass as Amended.

Representative Kasper: Second.

House Industry, Business & Labor Committee

HB 1128

January 13, 2015

Page 4

Voting roll call was taken for a Do Pass as Amended on HB 1128 with 15 yes, 0 no, 0 absent and Representative Devlin is the carrier.

January 13, 2015

SB-13-15

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1128

Page 2, overstrike lines 1 and 2

Page 2, line 3, overstrike "shall provide the governing body"

Page 2, line 3, remove "construction manager at-risk"

Page 2, line 3, overstrike "with a separate bond for"

Page 2, overstrike line 4 overstrike "the contractor's portion of the public improvement"

Page 2, line 4, remove ", with the governing body included"

Page 2, line 5, remove "as a co-obligee"

Page 2, line 5, overstrike the period

Renumber accordingly

Date: Jan 13, 2015Roll Call Vote: 1

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1128**

House Industry, Business & Labor Committee
☐ Subcommittee

 ☐ Conference Committee

Amendment LC# or Description: _____

 Recommendation: ☒ Adopt Amendment

 ☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation

 ☐ As Amended ☐ Rerefer to Appropriations

 Other Actions: ☐ Reconsider ☐ _____

 Motion Made By Rep Ruby Seconded By Rep Sukut

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	x		Representative Lefor	x	
Vice Chairman Sukut	x		Representative Louser	x	
Representative Beadle	x		Representative Ruby	x	
Representative Becker	x		Representative Amerman	x	
Representative Devlin	x		Representative Boschee	x	
Representative Frantsvog	x		Representative Hanson	x	
Representative Kasper	x		Representative M Nelson	x	
Representative Laning	x				

Total (Yes) 15 No 0Absent 0

Floor Assignment _____

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

Remove line 1-5 on pg 2

Date: Jan 13, 2015Roll Call Vote: 0

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1128**

House Industry, Business & Labor Committee
☐ Subcommittee

 ☐ Conference Committee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
 ☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
 ☒ As Amended ☐ Rerefer to Appropriations
 Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep Sukut Seconded By Rep Kasper

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	x		Representative Lefor	x	
Vice Chairman Sukut	x		Representative Louser	x	
Representative Beadle	x		Representative Ruby	x	
Representative Becker	x		Representative Amerman	x	
Representative Devlin	x		Representative Boschee	x	
Representative Frantsovog	x		Representative Hanson	x	
Representative Kasper	x		Representative M Nelson	x	
Representative Laning	x				

Total (Yes) 15 No 0Absent 0Floor Assignment Rep Devlin

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

REPORT OF STANDING COMMITTEE

HB 1128: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1128 was placed
on the Sixth order on the calendar.

Page 2, overstrike lines 1 and 2

Page 2, line 3, overstrike "shall provide the governing body"

Page 2, line 3, remove "construction manager at-risk"

Page 2, line 3, overstrike "with a separate bond for"

Page 2, overstrike line 4 overstrike "the contractor's portion of the public improvement"

Page 2, line 4, remove ", with the governing body included"

Page 2, line 5, remove "as a co-obligee"

Page 2, line 5, overstrike the period

Renumber accordingly

2015 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1128

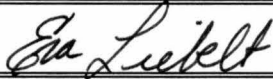
2015 SENATE STANDING COMMITTEE MINUTES

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

HB 1128 Engrossed
3/10/2015
Job Number 24559

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to bonds for construction managers at risk

Minutes:

Attachment

Chairman Klein: Called the hearing to order.

Russ Hanson Associated Contractors of North Dakota: In support of the bill. He said he wasn't sure of the geniuses of how the bill was introduced but in the discussions in the House and the amendment that they made to clarify that the CM at risk before starting any construction has to bond for the guaranteed maximum price to insure that it is bonded and the amendment will somewhat eliminate the confusion of a double bonding on page two. It cleans up the statute and makes it clear that the CM at risk is responsible for bonding the guaranteed maximum price.

Chairman Klein: All we are doing is deleting the language on page two.

Senator Campbell: They didn't need to be bonded before?

Russ Hanson: It was a little bit confusing because the statute and being part of the coalition that wrote this bit of the code and as it was implemented in 2007 session, it might have been a bit of an oversight with that portion on page two. It was a bit confusing because it appeared to require double bonding. The CM at risk had to bond the guaranteed maximum price and then on the second page it appeared to make the mechanical and electrical contractors bond on their portion too and it didn't seem to make sense to us.

Chairman Klein: What we are seeing on the first page on line 12 would suggest that they bonded.

Senator Sinner: What was the amendment the House put on?

Russ Hanson: The amendment of the Engrossed bill is on page two lines 1-4 which deletes those lines of the code. What we believe is that it was a little bit confusing in that on lines 12-14 it says the construction manager at risk is responsible for guaranteeing the

entire maximum price and then on page two there seem to be a double bonding for the subcontractors.

Senator Sinner: The whole bill is new law and then the amendment was?

Russ Hanson: No on the engrossed bill lines 1-4 were current statute and the amendment was to eliminate those lines and eliminate any confusion of double bonding.

Chairman Klein: What did the House do different because it is engrossed?

Russ Hanson: The original bill propose to amend subsection three and add language that it should provide the construction manager at risk with a separate bond for the contractor portion of the public improvement with the governing body included as a co-oblige and I didn't what that did and why it was necessary.

Chairman Klein: They just eliminated it.

Rick Tonder, NDUS Director of Facilities Planning: Written Testimony Attached (1). (5:27-6:57)

Senator Murphy: Said basically the sponsors of this bill attempted to clear something up but it got to confusing and someone realized that we could just eliminate section three altogether and we would be fine, correct?

Rick Tonder: You are correct.

Chairman Klein: Closed the hearing.

Senator Miller: Moved a do pass.

Senator Burckhard: Seconded the motion.

Roll Call Vote: Yes-7 No-0 Absent-0

Senator Miller will carry the bill.

**2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
HB 1128 Engrossed**

Senate Industry, Business and Labor Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Senator Miller Seconded By Senator Burckhard

Senators	Yes	No	Senators	Yes	No
Chairman Klein	x		Senator Murphy	x	
Vice Chairman Campbell	x		Senator Sinner	x	
Senator Burckhard	x				
Senator Miller	x				
Senator Poolman	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Miller

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

REPORT OF STANDING COMMITTEE

HB 1128, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1128 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

HB 1128

HB1128

House IBL, 1/13/15

Rick Tonder, NDUS Director of Facilities Planning

Chair and Members of the Committee:

I am Rick Tonder, NDUS Director of Facilities Planning and appear today in support of HB1128 at the request of the State Board of Higher Education. This bill is intended to correct a discrepancy in managing performance and payment bond requirements for construction services when using Construction Manager at Risk (CMaR) delivery methods.

For the purpose of explanation, performance and payment bonds are “insurance policies” provided by a builder which provide financial assurances to the owner that the project will be completed as designed (performance) and that costs for material and services provided to the builder for the project will be paid (payment). The scope of coverage for a performance and payment bond is defined by the construction contract documents, which in essence are assumed by the surety should the builder fail to perform or make payments.

As currently written, NDCC section 48-01.2 specifies that the CMaR provide the owner with a performance and payment bond for the value of the entire project. In addition, 48-01.2-23 specifies that the mechanical and electrical contractors provide the owner with a separate performance and payment bond for the value of their work. Because performance and payment bonds are provided only to contracted parties, and as no separate contract exists between the mechanical and electrical contractors and the owner when using CMaR delivery methods, it is not possible for the owner to secure the bonds directly.

The requested change in the language of 48-01.2 closes this gap by requiring the CMaR to obtain a payment and performance bond from mechanical and electrical contractors while indicating the owner is a co-obligee. This change provides the performance and payment protections for the owner that the statute intends, but changes the parties to the bond to make it contractually possible.

We ask a favorable do pass on the bill. I would be happy to answer any questions.

pg 1

HB1128

Senate IBL, 3/10/15

Rick Tonder, NDUS Director of Facilities Planning

Chair and Members of the Committee:

I am Rick Tonder, NDUS Director of Facilities Planning and appear today in support of HB1128 at the request of the State Board of Higher Education. This bill was originally intended to correct a discrepancy in managing performance and payment bond requirements for construction services when using Construction Manager at Risk (CMaR) delivery methods.

As originally proposed for amendment by the SBHE, the bill would have modified the language of 48-01.2-23.3 to remove the requirement for bonds between the Owner and mechanical/electrical contractors when using a CMaR. Instead, the amendment would require the bonds to be placed between the mechanical/electrical contractors and the CMaR in accord with the contractual relationships.

During HB1128 hearings with the House IBL, it became apparent that the section, regardless of changes, would enable "double bonding" as the CMaR currently provides a bond to the Owner for the entire cost of the project. Subsequently, the House IBL voted to redact the section in its entirety, removing the need for the correction as proposed by the SBHE. The net effect of the change is an improvement for both project management and cost efficiency of the project.

We ask a favorable do pass on the bill. I would be happy to answer any questions.