

Industry Business & Labor Committee Report – July 18, 2006

A. BACKGROUND:

As part of the study assignment from the 2005 legislative session, your committee was to study and work on several items including the following issues:

1. Public improvement contracts and issues.
2. Multiple verses single prime bids.
3. Construction management.
4. Professional liability and indemnification.
5. Design-build delivery systems.

These issues were frequently brought to the legislature as part of proposed amendments to the existing code, in particular Chapter 48 and often resulted in lively debate among members of the construction community. Hence, the direction as we understand it was to study and find the best approach to resolve these issues.

Each of these issues requires a significant amount of time by itself and the combination is indeed a daunting task. As a result of the study by your committee, the construction industry in North Dakota came together for a joint industry committee to assist in tackling this task and with the goal of development of legislation prior to the next session that will be acceptable to the major players. Organizations that have committed to and have been involved deeply in the process are:

1. AIA – Architects.
2. AGC – General Contractors.
3. NDSPE – Professional Engineers.
4. Small Contractors.
5. ACEC/ND – Engineering Businesses.
6. ND Builder's Association.

Other participants that have included in the process include:

1. OMB.
2. Attorney General's office.
3. Department of Transportation.

B. STATUS/PROGRESS TO DATE:

Beginning last fall the joint committee developed subcommittees for most of the issues. The work on each individual issue was delegated to the subcommittees and the progress was reviewed monthly with the entire committee. The process has promoted open discussion and lively debate among the participants. As part of the joint committee process, it was decided that legislation would only be brought forth when all participants supported the end draft. Also, any draft legislation adopted would be supported by all

participants during the session. Individual members of the individual organizations may oppose the adopted draft but they will do so without the support of the participating organizations. If unanimous consensus is not achieved then the joint committee will not submit legislation on that issue. Each organization will be free to support that issue separately but it will not be represented as being endorsed by this joint committee.

I am pleased to advise you that to date the committee has made significant progress on the majority of the issues and the committee is nearing completion of draft legislation that can be submitted to this committee for review and consideration. All noted organizations have been actively and diligently participating in the process and should be commended. The draft legislation developed will address the following:

1. Public improvement contracts and issues.
2. Multiple verses single prime bids.
3. Construction management.

These three issues will be addressed in a single piece of legislation. Currently the committee is on the third revision of the draft and is nearing completion. The legislation will either create a new section in the North Dakota Century Code for Public Improvement Construction or significantly revamp the existing code. The preferred approach will be reviewed with legislative counsel prior to finalizing and submitting it to the committee.

Of the other issues undertaken by the joint committee, Design/build is still being reviewed and discussed further. Currently, there isn't a consensus on this issue and as such Design/build is not being advanced in our current legislative drafts. This does not mean that we are abandoning the issue. Instead, we are discussing the issue with the hope of reaching consensus on an approach. Also, several of the participating organizations are discussing the subject with the Department of Transportation who has advanced a preliminary draft for discussion purposes.

Agreement on Professional Liability and Indemnification has not been reached in the committee and it has been determined that this issue will not be able to be addressed by the joint committee with unanimous agreement. Therefore, it will need to be addressed by others or by individual industry components.

On behalf of the joint industry committee, I thank you for allowing us to assist in this process. I believe that it has brought a new level of understanding and cooperative efforts to the industry that can be beneficial to North Dakota now and in the future.