

MINUTES OF THE MEETING
BUSINESS & INDUSTRY COMMITTEE
MONTANA STATE SENATE

January 22, 1985

The seventh meeting of the Business & Industry Committee was called to order at 10:10 a.m. by Chairman Mike Halligan in Room 410 of the Capitol Building.

ROLL CALL: All members were present except for Senator Gage.

CONSIDERATION OF SENATE BILL 120: Senator Paul Boylan, Senate District 39, is the sponsor of this bill. He explained that since last session there was a committee appointed comprised of legislators, architects, contractors and engineers which met to study the problems of the construction industry and they comprised several bills to be introduced this session which will help tie up the loose ends which are now apparent. This particular bill will remove the restriction on submitting bids by public contractors when working beyond contract time, amend two sections and repeal section 18-2-311.

PROPOSERS: Mr. Denzel Davis of Helena, spoke in support of SB 120. He stated he felt it would eliminate some of the potential pre-bid problems that now exist for the contractor and the owners. The key words that would be eliminated are contract time and project completion. In most cases contractors will have more than one project going on at a given time and will most likely have disputes over contract completion dates on one job or another. Section 37-71-203, as written before the proposed amendments, leaves the contractor and the owner of a new project going out for bid in a precarious position. The law as written precipitates a potential of litigations causing delays and big dollar damages. He feels the amendments would still allow protection for the State of Montana and would not weaken any present laws. (See EXHIBIT 1) Mr. Bill Olson, Secretary-Manager of the Montana Contractors Association, urged a do pass on this bill. Mr. Wayne Edsell, Edsell Construction of Bozeman and a member of the interim committee, stated that this bill does not just consider political contracts, that it covers all subdivisions contracts. The state contracts are most generally let as multi-let contracts which leaves the question of just who causes the delay when there is a dispute over contract completion. The general contractor usually ends up by being penalized the most, first with a fine per day overdue and then by not being able to bid on new work. He feels the law now is almost impossible to enforce and should be repealed. (See EXHIBIT 2) Mr. Phil Lannon, on the Board of Regents for the university system and also a member of the interim study committee, commented that in interviews with state and other governmental bodies they indicated that repealing this law would help reduce paperwork, eliminate litigation

costs and they urged the committee's consideration.

OPPONENTS: There were no opponents to Senate Bill 120.

Questions from the committee were then called for. Senator Williams wanted to know how long this had been in law and was told it was 1967. The purpose was basically to prevent stockpiling of jobs as had been done in the past where a contractor would not move off a job, take the penalty and take the next job coming up. Senator Christiaens then asked if a contractor could bid on a job if they had a certificate of substantial completion and was told they could but it was questionable and had been in the courts. Senator Halligan asked Phil Hauck, Administrator of the Architecture & Engineering Division for the State, about how they could issue a certificate of substantial completion if the job was not 100% complete. He asked if there should be some form of protection from a deliberate delay by a contractor and was told they do have liquidated damages which can be assessed against the contractor. Mr. Hauck feels that this bill should be passed because it is impossible to enforce without going through the courts now. Senator Christiaens asked Mr. Hauck just who was being penalized in a general contract and was told it was the prime contractor. Senator Goodover wanted to know if all contractors were members of the contractors association and was told they are not. Senator Boylan explained that the highway department handles their own bids now and this bill just deal with building and buildings construction and is not just for state work. He stated in closing that he felt the committee should study the interim report and talk with members of that group. He felt some good decisions were made that would help to save the state some money.

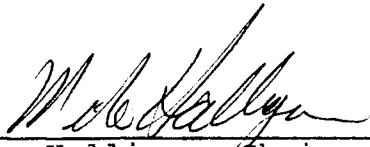
The hearing was closed on Senate Bill 120.

DISPOSITION OF SENATE BILL 103: Senator Goodover wondered what other bills might pertain to this in this session. After discussion, it was felt there was none that might deal with this particular case. Senator Christiaens then moved that Senate Bill 103 DO PASS. There was some concern over whether or not it would raise insurance rates. Judy Carlson was asked about this and she referred the committee to the information distributed on January 18 and stated she felt it would not. The motion carried.

CONSIDERATION OF SENATE BILL 120: Senator Halligan is concerned that there be some sort of protection for the state if there were to be some negligence on the part of a contractor. Senator Neuman wondered what the leverage would be to complete a job if this bill were to pass. Senator Williams felt the committee should keep in mind that this affects all governmental parties in the state not just state work. Senator Thayer wondered why the state bids multi-let contracts and

private construction usually only hires one prime contractor. Senator Kolstad felt it was hard to collect on bonds from prime contractors and felt that liquidated damages were sometimes hard to collect. Chairman Halligan felt the committee needed more input before a final decision was made. Senator Boylan again urged the committee to refer to the interim study report.

The meeting was adjourned at 11 a.m.


Mike Halligan, Chairman

cd

ROLL CALL

BUSINESS & INDUSTRY

COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 1/22/85

STATE
SEAT
#

NAME	PRESENT	ABSENT	EXCUSED
CHAIRMAN MIKE HALLIGAN	X		
V-CHRM. B. F. CHRISTIAENS	X		
SENATOR PAUL BOYLAN	\		
SENATOR DAVID FULLER	X		
SENATOR DELWYN GAGE		X	
SENATOR PAT GOODOVER	X		
SENATOR ALLEN KOLSTAD	X		
SENATOR TED NEUMAN	X		
SENATOR GENE THAYER	X		
SENATOR BOB WILLIAMS	X		

Each day attach to minutes.

(This sheet to be used by those testifying on a bill.)

NAME: DENZEL C DAVIS DATE: 1-22-85

ADDRESS: Box 5653 Helena Mont

PHONE: 449-7031

REPRESENTING WHOM? _____

APPEARING ON WHICH PROPOSAL: 120

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENT: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

EXHIBIT 1
BUSINESS & INDUSTRY
January 22, 1985

EXHIBIT 1
BUSINESS & INDUSTRY
JANUARY 22, 1985

TO: Chairman & Members of the Senate Committee on
Business & Industry

RE: Testimony on Senate Bill #120
Hearing Held January 22, 1985

Gentlemen:

In my testimony on Senate Bill #120 after introducing myself I failed to inform the Committee of my background. I have been employed in the construction industry for the past twenty-three years. For the past eleven years I have been employed by Volk Construction, Inc. as a Vice President and Treasurer of the Corporation and as a project manager. I am and have been involved with the construction and contract administration of private, government, city/county and State of Montana contracts.

Yours truly

A handwritten signature in cursive script that reads "Denzel C. Davis". The signature is written in dark ink and is positioned above the printed name and address.

Denzel C. Davis
P. O. Box 5653
Helena, Montana 59604

TESTIMONY GIVEN BEFORE THE SENATE COMMITTEE ON BUSINESS AND
INDUSTRY REGARDING SENATE BILL #120 ON JANUARY 22, 1985 BY
DENZEL C. DAVIS.

This amendment, as written, will eliminate potential pre-bid problems that now exist for the contractor and owners. The key wordage to be eliminated deals with contract time and project completion.

In most cases, contractors engaged in public and State contracting work have more than one contract in progress and, most likely, will have one or more contracts in dispute over contract completion.

Section 37-71-203MCA, as written before this proposed amendment, leaves the contractor and the owner of a new project that is out for bid in a precarious situation. The contractor who may be in a dispute over completion of a previous project cannot bid this project and the owner is deprived of accepting a potential low bid.

Past history has indicated that disputes with owners over completion dates can lead to lengthy and complicated debates before they are resolved.

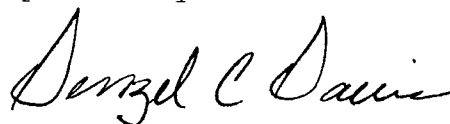
The law, as written, precipitates the potential of very costly litigation to both the owners and the contractor with the potential of big dollar damage assessed against the loser. Historically, the potential of litigation is diffused by the owner issuing a Certificate of Substantial Completion for the project or a hastily prepared contract time extension is issued prior to the contract bid time.

In my estimation, the law as now written, presents no safeguards for the owner and only creates a potentially damaging situation for both the owner and the contractor.

With the amendment of this law there still exists protection for the State of Montana. In all State bid documents Section: Invitation for Bid, "the owner reserves the right to accept or reject any or all bids". The Montana State Board of Examiners has the authority to reject any or all bids received. Thus, the Board may reject a contractor's bid if he is working beyond contract time on a construction project and if award of this contract will not be in the best interest of the State of Montana. I believe that the Montana Board of Examiners' authority was enforced by the Supreme Court of Montana, Case No. 83-254 , Martel Construction, Inc. vs. Montana State Board of Examiners.

In conclusion, by amending this law, one does not weaken the State's ability to bid and award State construction projects, but will eliminate the potential for costly litigation and the possibility of big dollar damages.

Respectfully submitted

A handwritten signature in cursive script, reading "Denzel C. Davis".

Denzel C. Davis

(This sheet to be used by those testifying on a bill.)

NAME: WAYNE EDSALL DATE: 1-22-85

ADDRESS: P.O. Box 1147 BOZEMAN

PHONE: 587-0614

REPRESENTING WHOM? EDSALL CONST & CON. STATE BUILDING ^{CONST} ^{ADVISORY} ^{COM.}

APPEARING ON WHICH PROPOSAL: REMOVE RESTRICTION ON BIDDING

DO YOU: SUPPORT? ✓ AMEND? OPPOSE?

COMMENT:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

EXHIBIT 2
BUSINESS & INDUSTRY
January 22, 1985

STANDING COMMITTEE REPORT

JANUARY 22

35

19.....

MR. PRESIDENT

BUSINESS & INDUSTRY

We, your committee on.....

SENATE BILL

103

having had under consideration.....

No.....

first

white

reading copy ()

color

INCLUDE SOCIAL WORKERS IN INSUR. LAWS RE COVERAGE FOR
MENTAL ILLNESS

Respectfully report as follows: That.....

SENATE BILL

103

No.....

~~DO PASS~~

~~DO NOT PASS~~

Mike Halligan

Chairman.