

MINUTES OF THE MEETING
STATE ADMINISTRATION COMMITTEE
MONTANA STATE SENATE

January 30, 1985

The fourteenth meeting of the State Administration Committee was called to order at 10 a.m. on January 30, 1985, by Chairman Jack Haffey in Room 331 of the Capitol Building.

ROLL CALL: All members were present with the exception of Senator Haffey who arrived late and Senator Lynch who was called away.

CONSIDERATION OF SENATE BILL 135: Senator Mohar, Senate District #1, is the sponsor of this bill entitled, "AN ACT TO ELIMINATE THE REQUIREMENT THAT THE BOARD OF EXAMINERS APPROVE CHANGE ORDERS CONCERNING THE CONSTRUCTION OF BUILDINGS; AMENDING SECTION 18-2-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE." Senator Mohar stated that this bill would apply for construction of buildings costing more than \$25,000. It would eliminate consent of Board of Examiners. He said that this bill would speed up the change order process. Senator Mohar said that if the changes were to cost over \$25,000 then the Board of Examiners would approve it. This bill provides the opportunity to streamline the process while not losing our checks and balances.

PROPOSERS: Denzel Davis, Volk Construction Company, supports this bill. He said that contract change orders are an integral part of any construction project. Mr. Davis said that in the last 5 years there has been a decline in the number of bids let, and this has forced the contractors to work with very spartan contracts. Because it takes so long to get a contract change, most contractors will stick strictly with what is called for in the contract plans and specifications. Mr. Davis further stated that the change order process is lengthy and time consuming, especially since the Board of Examiners only meets once per month. Mr. Davis felt that passage of this bill will help everyone involved. (See Exhibit "A" attached hereto and by this reference made a part hereof.)

Barbara Martin, staff researcher for Governor's State Building Construction Advisory Council, supports this bill. Barbara Martin asked Senator Mohar if he had explained about the three bills. Senator Mohar said that the three bills would increase the power of the State Administration, while decreasing the power of the Board of Examiners which they feel is necessary to streamline the process. Barbara Martin explained the Board of Examiners and their functions, and she explained what change orders are. She further stated that change orders usually make modifications after construction is underway, causing a significant time loss during construction, and that this affects other stages of the project. Ms. Martin said that the current change order approval

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is cumbersome and time consuming. Removing the Board from the approval process will save time. A survey of surrounding states indicated that none required the level of approval for change orders as required in Montana for building construction. (For more of Barbara Martin's testimony see Exhibit "B" attached hereto and by this reference made a part hereof.)

Wayne Edsall, Edsall Construction Company and a member of the Governor's State Building Construction Advisory Council, supports this bill. He said that he supported this bill for all the reasons listed so far and for the reason that after the change is approved it takes 8 signatures to okay it. He said that sometimes you can find some of the members of the Board of Examiners in the state, but not all of them at the same time. Mr. Edsall said that this a cumbersome, antiquated process that is very time consuming, and it should be changed.

Bill Lannon, member of the Governor's State Building Construction Advisory Council, supports this bill. Bill Lannon said that the purpose of the Advisory Council was to examine the state's building construction process and recommend improvements to the Governor. He felt that this bill is a good recommendation for streamlining the process.

Phil Hauck, Division of Architects and Engineers with the Department of Administration, supports this bill. Mr. Hauck said that he would like to see the Board of Examiners out of this procedure. He said this would eliminate 3 or 4 steps of the 8 steps needed to complete the procedure.

Dave Stover, Montana Contractors Association, supports this bill.

OPPONENTS: There were no opponents.

COMMITTEE QUESTIONS: Senator Conover asked Phil Hauck why this was put in the law to start with. Phil Hauck said that he believes it was put in back during the time the Board of Examiners did everything in the state, before our office was established. Senator Conover then asked if the Board of Examiners was a rubber stamp. Mr. Hauck replied basically. Senator Manning asked if this would put Hauck in control. Mr. Hauck replied that it would subject to audit, of course.

Senator Mohar closed by saying this is a good bill and will streamline the process. SENATE BILL 135 is closed.

EXECUTIVE ACTION ON SENATE BILL 135: Senator Manning made a motion that SENATE BILL 135 do pass. Senator Farrell called question, and the Committee voted unanimously that SENATE BILL 135 DO PASS.

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CONSIDERATION OF SENATE BILL 136: Senator Mohar, Senate District #1, is the sponsor of this bill entitled, "AN ACT TO REQUIRE APPROVAL OF THE BOARD OF EXAMINERS ONLY FOR THE AWARD OF PROTESTED CONSTRUCTION CONTRACTS OR CONSTRUCTION CONTRACTS NOT AWARDED TO THE LOW BIDDER; AMENDING SECTION 18-2-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE." Senator Mohar said that the new language, "However, any contract award that is protested or any contract that is awarded to a bidder other than the lowest bidder is subject to approval by the board of examiners.", is self-explanatory.

PROPOSERS: Barbara Martin, staff researcher for the Governor's State Building Construction Advisory Council, supports this bill. She said that this bill removes the requirement for the Board of Examiners to approve construction contracts unless there is a protest or the contract is awarded to someone other than the lowest bidder. The Board would continue to approve contract awards in which cases a judgment call is required. Making this change would give the department more flexibility in setting bid opening dates. As it is now, bid openings must be held close enough to a Board meeting so the contract can be awarded within 30 days of the bid opening date because this is the length of time a contractor must honor the price stated in his bid. (For more of Barbara Martin's testimony, see Exhibit "C" attached hereto and by this reference made a part hereof.)

Wayne Edsall, Edsall Construction Company, supports this bill. Mr. Edsall said that contract award process gets burdened again with approval of Board of Examiners. He has waited 67 days for contract to be awarded to him as the low bidder. Mr. Edsall felt that it was a necessity to get them awarded and get them on line.

Bill Lannon, Governor's State Building Construction Advisory Council, supports this bill.

Phil Hauck, Department of Administration, supports this bill. Mr. Hauck said that this would end up in his department if it is passed. He said with the Board of Examiners meeting only once per month, it is an unnecessary delay. He said that 95% of these contracts are routine bids.

OPPOSERS: There were no opposers.

COMMITTEE QUESTIONS: Senator Farrell asked if, after reading the book, there is an appeals process on a bid through the Department of Administration. Mr. Hauck replied that there was not, the next step is a court of law. Senator Farrell felt that we should establish an appeals process and get rid of the Board of Examiners.

EXECUTIVE ACTION ON SENATE BILL 136: Senator Conover made a motion that SENATE BILL 136 do pass. Senator Manning called question, and the Committee voted unanimously that SENATE BILL 136 DO PASS.

January 30, 1985

CONSIDERATION OF SENATE BILL 137: Senator Mohar, Senate District #1 is the sponsor of this bill entitled, "AN ACT TO LIMIT THE REQUIREMENT FOR BOARD OF EXAMINERS APPROVAL OF APPOINTMENTS OF ARCHITECTS AND CONSULTING ENGINEERS TO PROJECTS COSTING MORE THAN \$100,000; AMENDING SECTION 18-2-112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

PROPOSERS: Barbara Martin, staff researcher for the Governor's State Building Construction Advisory Council, supports this bill. This bill would eliminate the Board from approving appointments of architects and consulting engineers on projects costing \$100,000 or less. The Board will still approve all appointments on projects over \$100,000. Ms. Martin said that 50% of the appointments made are for projects under \$100,000. She said that it was very rarely that the Board of Examiners turned down an applicant and then it was on projects costing more than \$100,000. Otherwise, the Department of Administration appoints them. The benefit of removing the requirement for Board approval of these appointments is that it will eliminate the delay between the time the department makes an appointment and the Board's approval of the appointment at their monthly meeting. She said that since the Department of Highways and the Department of Natural Resources & Conservation may appoint consulting engineers and architects, if they need such services, on all projects so giving authority to the Department of Administration on projects under \$100,000 has precedent in the executive branch and would save time.

Bill Lannon, Governor's State Building Construction Advisory Council, supports this bill. Mr. Lannon said that during the hearings and testimony of the Advisory Council that he suggested doing away with the Board of Examiners all together. He said he was voted down, but that this is a step in the right direction.

Phil Hauck, Department of Administration, supports this bill. Mr. Hauck said that the original law was enacted back in 1967 when \$25,000 was a big contract and a lot of money. Mr. Hauck said that each step that we take is streamlining the system and will help get the jobs on line, bit and completed. Please pass this bill.

OPPOSERS: There were no opposers.

COMMITTEE QUESTIONS: There were no committee questions.

Senator Mohar closed by saying that he felt privileged to carry these three bills. He feels the process needs streamlining and these bills will help implement that end. SENATE BILL 137 is closed.

EXECUTIVE ACTION ON SENATE BILL 137: Senator Manning made a motion that SENATE BILL 137 do pass. Senator Conover called question, and the Committee voted unanimously that SENATE BILL

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137 DO PASS.

Senator Haffey said that we would defer action on SENATE BILL 134 until Friday so Senator Lynch could be present. He further explained that Larry Nachtsheim will give the committee an explanation of the spread sheets that were handed out regarding retirement systems on Friday, February 8, 1985. Also on February 8, 1985, we will hear and consider the confirmation of Judge Holmstrom.

The meeting was adjourned at 10:45 a.m.



SENATOR JACK HAFLEY, CHAIRMAN

DATE. January 30, 1985.

COMMITTEE ON

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

(This sheet to be used by those testifying on a bill.) SB-135
1-30-85

NAME: Denzel C Davis DATE: JAN 30, 1985

ADDRESS: Box 5653 Helena Mont

PHONE: 449-7031

REPRESENTING WHOM? SELF.

APPEARING ON WHICH PROPOSAL: SB 135

DO YOU: SUPPORT? ✓ AMEND? OPPOSE?

COMMENT:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

TESTIMONY GIVEN BEFORE THE SENATE STATE ADMINISTRATION COMMITTEE
REGARDING SENATE BILL #135 ON JANUARY 30, 1985 BY DENZEL C. DAVIS

Contract change orders are an integral part of any construction project. A contract change order is defined by Article 12 of the General Conditions as a written order to the contractor signed by the owner.

Within the past five years there has been a continual decline in the number of construction projects available for bid. This has forced contractors into a very competitive situation. If a contractor is the low bidder for a construction project he is usually faced with a very spartan contract to complete.

A prudent contractor has but one choice; build for the owner only what is called for in the contract plans and specifications. Any additional work requested, errors or omissions to the contract drawings will require a contract change order. This is the reality of doing business today. Good contract administration by the contractor can make the difference in business survival. This situation has contributed to an increase in requests for contract modifications.

Change orders are designed to cover the time and cost for errors, inconsistencies or omissions in the plans and specifications, concealed conditions or additions that might be added to a contract. Contract change orders may also be issued to cover time and cost for delays due to strikes, acts or neglect of the owner or architect,

adverse weather or any causes beyond the contractor's control.

Today, the change order process is lengthy and time consuming. If any part of a proposed change order is not satisfactory to either the owner, the architect or the contractor the process can start all over again.

The State of Montana has recently prepared fast track projects in which "time is of the essence". With the issuance of this contract language they have set up the proverbial "tortoise and the hare" scenario. The contractor being the "hare" and required by contract to build a project in a limited or fast time.

The Department of Administration, "the tortoise", which is bound by out-of-date administrative laws and procedures, is left in a position of doing its best trying to keep up with the hare. The result of this situation is construction time delays.

Montana Law #18-2-103 MCA states in essence that there is no change order until it is signed by the Board of Examiners. This has led to projects stopped in there tracks awaiting completion of a contract change order.

By amending this law, the elimination of the Board of Examiners from the change order process is a step in the right direction to streamline administrative laws and procedures. Any step in this direction will be extremely helpful to all parties involved

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and may be instrumental in limiting contract disputes and litigation.

Respectfully submitted

A handwritten signature in cursive script, reading "Denzel C. Davis". The signature is written in dark ink and is positioned above a horizontal line.

Denzel C. Davis

SECTION 01153 - CHANGE ORDER PROCEDURES

PART 1 GENERAL

1.01 REQUIREMENTS INCLUDED

- A. Promptly implement change order procedures.
 - 1. Provide full written data required to evaluate changes.
 - 2. Provide full documentation to Architect on request.
- B. Designate in writing the member of Contractor's organization:
 - 1. Who is authorized to accept changes in the work.
 - 2. Who is responsible for informing others in the Contractor's employ of the authorization of changes in the work.
- C. Owner will designate in writing the person who is authorized to execute change orders.

1.02 RELATED REQUIREMENTS

- A. Agreement: The amounts of established unit prices.
- B. Condition of the Contract:
 - 1. Methods of determining cost or credit to Owner resulting from changes in work made on a time and material basis.
 - 2. Contractor's claims for additional costs.

1.03 DEFINITIONS

- A. Change Order: See General Conditions.
- B. Architect's Supplemental Instructions, AIA documents G710. A written order, instructions, or interpretations, signed by Architect making minor changes in the work not involving a change in Contract Sum or Contract Time.

1.04 PRELIMINARY PROCEDURES

- A. Owner or Architect may initiate changes by submitting a Proposal Request to Contractor. Request will include:
 - 1. Detailed description of the Change, Products, and location of the change in the project.
 - 2. Supplementary or revised Drawings and Specifications.
 - 3. The projected time span for making the change, and a specific statement as to whether overtime work is, or is not, authorized.
 - 4. A specific period of time during which the requested price will be considered valid.
 - 5. Such request is for information only, and is not an instruction execute the changes, nor to stop work in progress.
- B. Contractor may initiate changes by submitting a written notice to Architect containing:
 - 1. Description of the proposed changes.
 - 2. Statement of the reason for making the changes.
 - 3. Statement of the effect on the Contract Sum and the Contract Time.
 - 4. Statement of the effect on the work of separate contractors.
 - 5. Documentation supporting any change in Contract Sum or Contract Time, as appropriate.

VOLK CONSTRUCTION

Inc.

P.O. BOX 2603
1505 - 14th ST. S.W.
GREAT FALLS, MONTANA 59403

(406) 761-4260

No.	1 ST DATE OF REQUEST OR QUOTE	WILLARD'S TRADING CO. 4/15/75-23-01		APPROX TIME FROM WEEK - C.O.
		COBT	SCHEED AREA STATE	
G-1	10-20-83	1-23-84	1-19-84	2-21-84
G-2	10-17-83	2-6-84	6-5-84	7-12-84
G-3	5-18-84	10-8-84	9-6-84	~
G-4 REVISED	11-28-84	1-21-85	1-15-85	~
G-5	CUT			
G-6	CUT			
G-7	CUT			
G-8	CUT			
G-9	12-14-84	12-18-85	12-22-85	~
G-10	12-14-84	12-18-85	12-22-85	~

Term Quoted 24

All work done time +

Some Time OLD

8 MC

12 MC

VOLK CONSTRUCTION

Inc.

P.O. BOX 2603
1505-14th ST. S.W.
GREAT FALLS, MONTANA 59403

(406) 761-4260

	INITIAL OR REQUEST OR QUOTE	CODT	SIGNED ARCH	STATE	APPROX. TIME FROM WORK - CO.
C-0 *					
C-1	12-14-82	12-23-82	1-16-83	1-17-83	NONE
C-2	3-17-83	4-27-83	5-2-83	9-19-83	10 mo
C-3	DEAL 4-15-83 WITTEN 7-19-83	9-23-83	9-27-83	1-25-84	WORK DONE FROM 3-15-83 TO 6-28-83 (CARRIED 10 mo)
C-4	SMITH 6-1-83	1ST 9-14-83 3-7-84	3-20-84	3-28-84	NONE
C-5	3-20-84	3-22-84	3-30-84	4-26-84	
C-6	4-4-84	4-11-84	4-13-84	4-26-84	
C-7		5-1-84	5-21-84	5-25-84	

TOTAL SQUARES SUMMED 34

Exhibit B
SB-135
1-30-85

TESTIMONY

Approval of Change Orders

SB135

Background:

This bill eliminates the requirement for Board of Examiners' (the Governor, Attorney General, and Secretary of State) approval of change orders on all projects. Currently, the Board approves additive and deductive change orders exceeding \$2500 individually, or cumulatively of \$5000 or 5% of the project cost, whichever is less, and change orders for time extensions. Since 1976, there has been only one change order recommended by the department that was not approved by the Board.

A change order is a modification in the contract after the contract is awarded. These may be due to an owner requesting a change, unanticipated condition at the building site, corrections to the plans, or other reasons. For change orders subject to the Boards' approval, the changes must either be authorized at the Board's monthly meeting, or they must be taken to each Board member for signature individually which removes the opportunity for any Board discussion of the change order.

Change orders usually make modifications after construction is underway, causing a significant time loss during construction. Delays resulting from change orders, lasting from a few days to several weeks, may cause an adverse impact on other aspects of the project's progress.

Before a change order is approved by the Board, the architect or consulting engineer, the contractor, and the Department of Administration's A/E staff review the request for reasonability and then checks to see if there are sufficient funds to cover the cost of the change in the project budget and, if so, approves it.

Requiring the Board approval of change orders may cause additional delays of up to four weeks of time to process a change order if it is discussed at a Board meeting.

The current change order approval process is cumbersome and time consuming. Removing the Board from the approval process will save time.

A survey of surrounding states indicated that none required the level of approval for change orders as required in Montana for building construction. At the Montana Department of Highways and Department of Natural Resources & Conservation, the department directors may approve any change orders, and in some cases division administrators also have approval authority.

Exhibit C
SB-136.
1-30-88

TESTIMONY

SR136 Contract Awards

Background:

Currently, contract awards on all projects costing more than \$25,000 must be approved by the Board of Examiners (the Governor, Secretary of State, and Attorney General). Since state law requires the contract to be awarded to the lowest responsible bidder, deciding who should be awarded the contract is usually just a matter of determining which bid is the lowest bid.

This bill removes the requirement for the Board of Examiners to approve construction contracts unless there is a protest or the contract is awarded to someone other than the lowest bidder. This provision is included in this bill because occasionally, the responsibility of the lowest bid is called into question if the bid forms are not complete, the bidder is working past time on another public project, or due to other complications. The Board would continue to approve contract awards in these cases in which judgment calls are required.

Assessment:

Requiring the Board to approve award of contracts can add up to up to four weeks of delay in getting the construction started because the Board only meets monthly. Considering the short season for construction due to Montana's weather conditions, it is difficult to justify this delay when awarding a construction contract to the lowest bidder.

Making this change would give the department more flexibility in setting bid opening dates. As it is now, bid openings must be held close enough to a Board meeting so the contract can be awarded within 30 days of the bid opening date because this is the length of time a contractor must honor the price stated in his bid.

Exhibit 7
SB-137
1-30-85

TESTIMONY

SB137

Design Professional Appointments on Projects Under \$100,000

Under current law, all appointments of architects and consulting engineers must be made by the Department of Administration and all of these appointments are subject to the approval of the Board of Examiners. However, the Board has allowed the Director of the Department of Administration to make appointments on projects under \$25,000.

This bill would eliminate the Board from approving appointments of architects and consulting engineers on projects costing \$100,000 or less. The Board will still approve all appointments on projects over \$100,000.

About 50% of the appointments made are for projects under \$100,000. Therefore, removing the Board from approving these appointments would substantially reduce the Board's workload on architect and engineer appointments.

If the Board is not required to approve these appointments, the selection process on these projects would not be solely in the hands of the Department of Administration, because on all projects the user agencies select three firms and submit those names to the Department of Administration. Furthermore, the instances in which the Board has rejected a recommended appointment are rare, and in those cases, they were on projects costing over \$100,000.

The benefit of removing the requirement for Board approval of these appointments is that it will eliminate the delay between the time the department makes an appointment and the Board's approval of the appointment at their monthly meeting.

The directors of the Department of Highways and Department of Natural Resources & Conservation may appoint consulting engineers and architects, if they need such services, on all projects so giving authority to the Department of Administration on projects under \$100,00 has precedent in the executive branch and would save time.

STANDING COMMITTEE REPORT

January 30 19. 85

MR. PRESIDENT

We, your committee on **STATE ADMINISTRATION**

having had under consideration **SENATE BILL** No. **137**

first reading copy (**white**)
color

LIMIT BOARD OF EXAMINERS APPROVAL OF ARCHITECT TO PROJECTS OVER \$100,000.

Respectfully report as follows: That **SENATE BILL** No. **137**

DO PASS

~~RECEIVED~~

Chairman.

STANDING COMMITTEE REPORT

January 30 1985

MR. PRESIDENT

We, your committee on **STATE ADMINISTRATION**

having had under consideration **SENATE BILL** No. **136**

first reading copy (**white**)
color

**REQUIRE BOARD OF EXAMINERS APPROVAL FOR ONLY SOME CONSTRUCTION
CONTRACTS**

Respectfully report as follows: That **SENATE BILL** No. **136**

DO PASS

XXXXXXXXXX

Chairman.

STANDING COMMITTEE REPORT

January 30 19 85

MR. PRESIDENT

We, your committee on **STATE ADMINISTRATION**

having had under consideration **SENATE BILL** No. **135**

first reading copy (**white**)
color

**REMOVE BOARD OF EXAMINERS CHANGE ORDER APPROVAL IN BUILDING CON-
STRUCTION**

Respectfully report as follows: That **SENATE BILL** No. **135**

DO PASS

XXXXXXXXXX

Chairman.