

MINUTES
HOUSE BUSINESS COMMITTEE

DATE: Wednesday, February 25, 2015

TIME: 1:30 P.M.

PLACE: Room EW41

MEMBERS: Chairman Barbieri, Vice Chairman Clow, Representatives Collins, Crane, Palmer, Thompson, Batt, Hixon, Kauffman, Monks, Anderst, Beyeler, DeMordaunt, Dixon, Troy, Smith, Rusche, Jordan

**ABSENT/
EXCUSED:** Representative(s) DeMordaunt

GUESTS: Kate McCaslin, ABC; Matt Newton, Beniton; Justin Paine, Walker Construction; Dean Haagenson, Contractors Northwest; Joe Stumph, Schindler Elevator; Coby Barlow, Oppenheimer; Ryan Cleverley, Gardner; Dawn Justice, Idaho Bankers Association; Steve Keys, DBS; Ken Fisher, Twin Falls School District; Brady Dickinson, Twin Falls School District; Dave Miles, City of Meridian; Don Tragon, City of Meridian; Suzanne Metzgar, Idaho Charter School Network; Connie Creagen, Northwest Interiors; Tim Pendleton, Northwest Interiors; Dennis Stevenson, Rules Coordinator; Wayne Hammon, Idaho AGC; John Tensen, City of Boise; Joe Jackson, AGC; Amber Renee, City of Boise; Michael Arrington, Staw Comp/Idaho AGC

Chairman Barbieri called the meeting to order at 1:33 PM.

Chairman Barbieri welcomed the committee's new page, **Samantha Ruggels**. Ms. Ruggles is a graduate of Canyon Ridge High School.

H 115: **Phil Hardy**, Vice President of Government Relations for Strategies 360, presented to the committee **H 115**. He said in 2004, Idaho passed a law requiring elevators to be examined by nationally certified inspectors every five years. In addition, it required personnel who performed work, installation and maintenance on elevators to have documented training and experience for these devices and must be licensed in accordance with the Idaho Elevator Code Act. These licenses exist in the Electrical Code but are not specific to the elevator trade. They are classified as Specialty Electrician License/Elevator.

He said this legislation will upgrade licenses to the national standards of safety and put them within the Elevator Safety Code. This legislation fundamentally addresses the wide gulf of knowledge and experience required in Idaho to hold an elevator installation, maintenance, and repair license and what is considered a national industry standard. He then reviewed the bill section-by-section.

Joe Stamph, District Manager for Schindler Elevator and representing Elevator Industry, Inc., testified **in support of H 115**. He said currently there is no guarantee the people working in this industry are adequately trained on the complicated maintenance and repair of elevators. In response to a question, Mr. Stamph said the fees outlined in the legislation are current fees for Specialty Electrician License/Elevator. They are not raising the price for anyone who has a current license.

Coby Barlow, Oppenheimer Development, testified **in support of H 115**. He said this legislation gives contractors confidence that they have certified, tested, national-standard mechanics to do maintenance and repairs on their elevators.

Ryan Cleverley, Gardner Company, testified in support of **H 115**. In response to a question, he said this legislation would not change the way he hires someone to service his elevators because he only hires from those that are nationally certified. It would change for others who do not do this. In response to a question, Mr. Cleverley said those who are grandfathered in will need to take eight hours of continuing education in order to renew their license.

Concern was expressed by members of the committee in regard to the fee cost and the financial impact this would have on the Division of Building Safety and to the State Regulatory-Elevator fund.

MOTION: **Rep. Kauffman** made a motion to send **H 115** to the floor with a **DO PASS** recommendation.

Rep. Crane invoked Rule 38 stating a possible conflict of interest because the company he is employed by does business with elevator and property management companies.

In response to a question, **Mr. Hardy** said they worked with the Division of Building Safety last year and feels this legislation is what they agreed upon then. The Division may have objections to lowering the fees but he said this is a pro-business, public-safety bill.

Steve Keys, Deputy Administrator of Operations from the Division of Building Safety, said one of the premises under which they operate is to avoid bringing forward programs that do not pay for themselves. The projected cost for the licensing program to institute and operate would be more than the revenue generated. He said he did not believe this is a workable bill but would be willing to work with the industry to craft a more comprehensive and workable bill.

In response to a question, **Mr. Keys** said 50% to 100% of the annual operating revenue is a healthy reserve. Their program is in excess of that mark although the stakeholders have not expressed any concern about the level of the fund at any of the annual stakeholder meetings.

SUBSTITUTE MOTION: **Rep. Monks** made a substitute motion to **HOLD H 115** in committee.

Rep. Monks said he would like the legislation held in committee until the industry has a chance to work out the details with the Division of Building Safety.

ROLL CALL VOTE ON SUBSTITUTE MOTION: Roll call vote was requested. **Substitute motion carried by a vote of 9 AYE, 7 NAY, 1 Absent/Excused. Voting in favor of the motion: Reps. Clow, Collins, Palmer, Hixon, Monks, Anderst, Beyeler, Dixon, and Troy. Voting in opposition to the motion: Reps. Crane, Thompson, Kauffman, Smith, Rusche, Jordan, and Barbieri. Reps. Batt and DeMordaunt were absent/excused.**

H 99: **Rep. Hixon** said a group met to work out the concerns with **H 99** and to his understanding these concerns were satisfied.

MOTION: **Rep. Hixon** made a motion to send **H 99** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Barbieri** will sponsor the bill on the floor.

H 119:

Kate McCaslin, representing the Associated Builders and Contractors (ABC), presented to the committee **H 119**. She clarified their association is not opposed to the Construction Manager/General Contractor (CM/GC) delivery method of construction. They recognize the benefit of it and are not trying to repeal the current law. She said the public bidding laws are put into place for specific reasons, including to protect the taxpayer. The amendments suggested are proven items that protect taxpayers without undermining the benefits of the process. The bill strengthens the law to ensure every public entity in the state who wishes to deploy this method can do so, enjoy the benefits, and still protect the people who are paying the bill. These amendments are seen as best practices in both the public and private sector. She said, when you diminish the competition, it is fundamental that costs will rise.

Matt Newton, President of Beniton Construction, testified **in support** of **H 119**. He said his firm has had a lot of experience in the agency construction management method. His concern with a CM/GC law is there are opportunities for things to go off track and the owners may not be prepared to deal with them. He recounted, in 1998 when the Construction Management law went into effect, it put parameters around what the construction manager could do. It limited the construction manager from performing work with their own forces and set it up for them to be an advocate for the owner. Contracts were publicly bid. He reiterated that they are not against the CM/GC method; however, he believes the 2014 CM/GC law does not clearly define the way the subcontracts are bid. It states they need to be competitively bid but does not say it needs to be publicly advertised or how many contractors is competitive.

Justin Paine, Vice President of Walker Construction, testified **in support** of **H 119**. He said in regard to the requirement for a maximum of 30% self-performance, it was intended the CM/GC be limited in the amount of work they self-perform. This was to further competition in the subcontractor world. In reality, it is an insider game. The CM/GC has the upper hand in choosing packages in which they want to participate. They have an advantage in the project over the subcontractor if they choose to take over the role themselves.

Mr. Paine said this amendment guarantees the price for the public entity. It also provides the distinct opportunity for the contractor to be close enough to completion of the design documents to plan to move forward into construction but also limit their exposure to design changes in the design documents. He said the CM/GC needs to disclose what they are bidding on. The amendment also clarifies at the end of the project who owns the contingency.

Wayne Hammon, CEO of the Idaho Associated General Contractors (AGC), testified **in opposition** to **H 119**. He said years ago, Idaho Code required all public work projects to be conducted using the design/bid/build method. In 1998, the Code was amended to allow for a construction manager representative (CMR). Under this approach, the public owner had the authority to hire a manager for the project but retained all of the responsibilities and obligations. Specific legislation adding CM/CG language was added in 2014. It was worked to avoid possible pitfalls while still maintaining the advantages of the CM/GC approach. For example, it requires all trade-related work be competitively bid. It also limits the GCs ability to self-perform only those parts of the project which they customarily have experience and are licensed by the state to do. It requires the GC to submit a bid along with all the trades before the work, and all the bids be opened in the presence of the owner.

Mr. Hammon said the AGC could support, with revisions, some parts of the legislation. For example, they are not opposed to limiting the amount of work that can be self-performed by a GC. It is also a good idea to include a better definition indicating all affiliated companies are included in the self-performance cap. He said they are even open to discussing limits on incentives but **H 119** does more than that. It removes the part of the CM/GC process that is critical to its success and makes the process work. That is how the contracts are issued.

Mr. Hammon said the bill states that bids are done according to the public bidding process in Idaho Code. By requiring the public owner to conduct all contracting, the bill removes the CM/GC's authority to execute the plan for the project. Instead, it makes him another expensive bystander. This would eliminate any of the cost savings public owners experience for using the CM/GC method. **H 119** would require the GC to promise a guaranteed maximum price and a specific completion date then strip away his powers to meet those promises. He said this legislation is trying to fix problems that do not exist.

In response to questions, **Mr. Hammon** said there are contracting laws that protect the public owners from contractors who would try to get away without finishing a product. He said the purpose of the original 2014 CM/GC law was to help the public entities save taxpayer dollars. The amendments proposed would increase the cost for public entities and provide little relief. Current law is more cost efficient to the taxpayer.

Dean Haagenson, CEO of the Contractors Northwest, testified **in support of H 119**. He said while he sees the appropriateness in the CM/GC method in the private sector, he does not see it in the public sector. He contends, the public entities putting out a request for qualification are invariably inflating the qualifications greatly, way beyond the necessity for the contractors to successfully complete the project. This is so they can push the project to their favorite big contractor friends.

Kenneth Fisher, representing Twin Falls School District and Paradigm of Idaho, testified **in opposition to H 119**. He said the CM/GC process worked well in the Twin Falls School District. The CM/GC law has shown that it reduces the liability of the owner. It places the responsibility back onto the CM/GC thereby giving the CM full ability to manage the schedule and the budget.

Brady Dickenson, Director of Operations for the Twin Falls School District, testified **in opposition to H 119**. He said the CM/GC method gives options and local control to the school districts. He recounted the successful project using the CM/GC method for the Twin Falls School District.

Joe Jackson, Vice President of ESI Construction, testified **in opposition to H 119**. He said the 2014 CM/GC legislation allows for a strong collaboration between the CM/GC, the design professionals, and the owner while allowing the owner to delegate the financial, schedule and liability responsibility to one entity as opposed to many.

Michael Arrington, President of Star Corporation, testified **in opposition to H 119**. He said most of the people testifying have similar goals: to provide quality projects for public owners, have a properly managed budget, to ensure proper stewardship so monies are spent correctly; and to keep the promises made to the patrons of their district. He said it was not his experience that the bidding process used for the Twin Falls School District was positioned towards large contractors. He said this legislation would be a major change to the process. He compared the new legislation to an arranged marriage for the contractors.

Concern was expressed by members of the committee whether small subcontractors had opportunities to bid on these types of projects.

John Tensen, City Engineer from the City of Boise, testified **in opposition** to **H 119**. He said the CM/GC project delivery method is a useful tool for projects that are complex, high-risk, and have tight time or budget constraints. Expertise and ability to collaborate are also key areas needed. He said his main concern is in regard to the change in the public bidding requirements. This bill substantially guts the benefit of the 2014 CM/GC legislation. It will result in returning to a low bid situation in which quality, expertise, and the potential for risk reduction, takes a back seat to a low bid.

MOTION: **Rep. Thompson** made a motion to **HOLD H 119** in committee.

Kate McCaslin was recognized to close testimony on **H 119**. She said this legislation will not repeal the current law and, with it, ensure the highest standard of care. She said all qualified contractors should have the opportunity to bid on a project. The bidding process should adhere to Idaho public bidding law.

Rep. Crane invoked Rule 38 stating a possible conflict of interest because the company he works for has been a member of the AGC and is currently a member of the ABC. The company also bids public works projects.

Rep. Monks invoked Rule 38 stating a possible conflict of interest because the business he owns is a member of the AGC.

SUBSTITUTE MOTION: **Rep. Crane** made a substitute motion to send **H 119** to the floor with a **DO PASS** recommendation.

ROLL CALL VOTE ON SUBSTITUTE MOTION: Roll call vote was requested. **Substitute motion carried by a vote of 9 AYE, 7 NAY, 2 Absent/Excused. Voting in favor** of the motion: **Reps. Collins, Crane, Palmer, Batt, Kauffman, Monks, Beyeler, Dixon, and Troy. Voting in opposition** to the motion: **Reps. Clow, Thompson, Anderst, Smith, Rusche, Jordan, and Barbieri. Reps. Hixon and DeMordaunt was absent/excused. Rep. Crane** will sponsor the bill on the floor.

MOTION: **Rep. Jordan** made a motion to approve the minutes of the February 17, 2015, meeting. **Motion carried by voice vote.**

ADJOURN: There being no further business to come before the committee, the meeting adjourned at 4:35 PM.

Representative Barbieri
Chair

Francoise Cleveland
Secretary