

Transcript Prepared By the Clerk of the Legislature
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Appropriations Committee
January 31, 2018

[LB775]

The Committee on Appropriations met at 1:30 p.m. on Wednesday, January 31, 2018, in Room 1003 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB775. Senators present: John Stinner, Chairperson; Kate Bolz, Vice Chairperson; Rob Clements; Robert Hilkemann; John Kuehn; Mike McDonnell; Tony Vargas; Dan Watermeier; and Anna Wishart. Senators absent: None.

SENATOR STINNER: (Recorder malfunction)...Appropriations Committee hearing. My name is John Stinner. I'm from Gering and represent the 48th Legislative District. I serve as Chairman of this committee. And I'd like to start off by having members do self-introductions, starting with Senator Clements.

SENATOR CLEMENTS: Hello. I'm Rob Clements from Elmwood: Cass County, Sarpy and part of Otoe; District 2.

SENATOR HILKEMANN: Robert Hilkemann, District 4, west Omaha.

SENATOR STINNER: John Stinner, District 48, all of Scotts Bluff County.

SENATOR BOLZ: Senator Kate Bolz, I represent District 29 in south-central Lincoln.

SENATOR VARGAS: Senator Tony Vargas, I represent District 7 in downtown and south Omaha.

SENATOR STINNER: Assisting the committee today is Jenni Svehla, our committee clerk. On the cabinet to your right you will find green testifier sheets. If you are planning to testify today, please fill out a green sheet...a green sign-in sheet and hand it to the page when you come to testify. If you will not be testifying at the microphone but want to go on record as having a position on a bill being heard today there are white sign-in sheets on the cabinet where you may leave your name and other pertinent information. These sign-in sheets will become exhibits in the permanent record at the end of today's hearing. To better facilitate today's proceeding, I ask that you abide by the following procedures. Please silence or turn off your cellphones. Order of testimony will be introducer, proponents, opponents, neutral, and closing. When we hear testimony regarding an agency we will first hear from a representative of the agency. We will then hear testimony from anybody who wishes to speak on the agency's budget request. When you come up, please spell your first and last name for the record before you testify. Be concise. It is my request that you limit your testimony to five minutes. Written materials may be distributed

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to the committee members as exhibits only when testimony is being offered. Hand them to the page for distribution to the committee and staff when you come up to testify. We need 12 copies. If you have written testimony but don't have 12 copies, please raise your hand now so the page can make copies for you. With that, I will begin today's hearing with LB775. [LB775]

SENATOR BOLZ: Good afternoon, Senator Stinner. [LB775]

SENATOR STINNER: (Exhibit 1) Thank you and good afternoon, Senator Bolz and fellow Appropriations members. For the record, my name is John, J-o-h-n, Stinner, S-t-i-n-n-e-r, and I represent the 48th District, which is comprised solely of Scotts Bluff County. LB775 authorizes the Nebraska Game and Parks Commission to utilize alternative methods of contracting for public projects in the state park system, specifically authorizing the use of design-build, and construction manager or general contractor methods. Other government entities in the state, through previous legislation, have been provided the ability to use alternative delivery methods in addition to the traditional design-build...bid-build method. Some of these entities would be public schools, cities, villages, community colleges, and state colleges. For example, in 2016 the Legislature provided Department of Roads, now known as the Department of Transportation, the ability to use alternative construction methods for road projects, the same methods which are proposed under LB775. LB775 would provide the commission the ability to use these alternative methods of contracting, the same as various other agencies are allowed. The commission is fortunate to have many private donors who have a genuine interest in enhancing future...the future of Nebraska's State Park System. For those donors, having projects completed on time and on budget is very important. Similar...similarly, stipulations under the federal funding grants may impose time lines and efficiency standards which this bill would help to achieve. An example of a project where design-build could have proved instrumental as for the new aquarium at Schramm State Recreation Area in Sarpy County. This recreation area is one of the venture parks projects primarily funded by private donations. Without the use of design-build availability, the commission experienced additional design costs, rework and other charge (sic--change) orders because they did not have the input of the specialist involved in the project. Consultants hired to design the project initially assumed that the portion would be a design-build contract and were unaware that the commission was unable to utilize it even for a very specific need in the capital project. I also have an amendment for consideration which has been distributed to the committee. This amendment would clarify licensed architects' and engineers' involvement with the design-build project. The amendment would revise the definitions under Section 4, 11, 12, and 15. I would also like to add, just for your information purposes, I think we heard testimony from the Department of Roads, now the Department of Transportation. Design-build...utilization of design-build on some of their projects, they felt like it would save the department approximately \$10 million a year. With that, I conclude my testimony. [LB775]

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SENATOR BOLZ: Thank you, Senator Stinner. Any questions from the committee? Seeing none, we'll take our first proponent. [LB775]

TIMOTHY McCOY: Good afternoon, Senator Bolz, members of the committee. My name is Timothy McCoy, T-i-m-o-t-h-y M-c-C-o-y. I'm the deputy director of the Nebraska Game and Parks Commission at 2200 North 33rd Street in Lincoln. We appreciate Senator Stinner bringing this bill because we believe it will provide us some additional flexibility with our capital projects. And I will give you, you know, one of those examples that he started to talk about with the Schramm Aquarium. I'll probably provide just a little more information on that. And that's...that aquarium is in a building that's being expanded into our larger nature center. As we started into this project, the consultants we were working with for the design portion were hoping that we would be able to do a design-build contract for the aquarium feature because that's very specialized. And to have the integration of those specialists in the overall design of the building--in terms of water, electrical, structural support for the rest of the project--would have saved a significant amount of time. And I think it's resulted, for us, in additional design costs that came later because of trying to match those things up before you build them. So, we...and it has resulted in some other change orders and some additional costs because of the changes in the project that had to be made after it was bid. So there are some potentials with design-build, we believe, as especially an alternative method for us where we have those very specialized sort of activities that can happen in our parks system, very different from a standard building where you have things that are included. You know, we have another example of a project we're working on where we're putting a climbing wall into an addition to a center at Mahoney State Park. And we could have done some similar things there of actually identifying that contractor early, having all of their involvement in the up-front design, and avoiding needing to come back and rework some design things for the installation of the wall that doesn't happen really until after it's bid. You know, there are some cost controls that we believe, looking at the information on design-builds, that can benefit the agency. From our standpoint, when we initialize a project we are looking at a set budget. Using design-build allows both that design cost and that build cost to be balanced together through a joint entity that's working on it to ensure that your project is delivered on budget. We think there...and looking at the research on design-build, there is a history there of being able to maintain those cost controls, because currently you have a design contract that you set the design, you do your, you know, you do your bid, and you don't really know the cost of that construction until you bid it out. And so that separation has led to...can lead to some cost increases, as can the change orders, as I mentioned. The other benefit is it can make projects go quicker, where you have those specialists on board. You have the people that are going to do construction on board so their input is during the design, not after it's bid, which can cost...lead to some efficiencies there. And then, just the...there is some potential on certain projects to decrease your total costs. And some of that really is, I believe, by avoiding some of that rework and redesign. So we see this as an opportunity. We also understand it's not going to be a silver-bullet solution. I know we've had some people ask, is that all you're going to do? No, we will

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continue to use design-bid-build. We will utilize our engineering staff, our parks administration staff, and our administrative staff in looking at any project, because we want to ensure whatever process we do it's the most cost-effective and most efficient for the agency. So there will be many of our projects that will continue to be done design-build. And we just really appreciate Senator Stinner bringing this forward. We think it's a good opportunity for us to be more effective and efficient as an agency. Thank you, and if you have any questions I'd be happy to answer. [LB775]

SENATOR BOLZ: Senator Kuehn. [LB775]

SENATOR KUEHN: Thank you, Senator Bolz. There's been a lot of discussion about the cost savings and efficiency associated with design-build. One of the criticisms that emerges is that it inhibits the competitive bid process, that there are a limited number of firms then that are able to participate in these public contracts because they're not able to offer the full spectrum of design-build services. How do you plan to ensure the process of competitive bids for public contracts with this legislation? [LB775]

TIMOTHY McCOY: Well, if you design...if you select a design-build firm, you're still identifying that project up-front. You have to go through a competitive process for that. We do see some opportunity, maybe with smaller projects actually, in looking at some of the research done on structural work that's out there. I'm talking about things like picnic shelters and small cabins, that likely you may have some folks that already do that sort of design-build work that are smaller. We think there may be some definite opportunities for that in the state. I don't know that...I mean, in terms of the scope and size of projects compared to roads, we're not going to be working in that realm. And even in the size, when you look at, you know, buildings that we do in our park system, they're pretty small. They're huge for us. You know, a \$5 million or a \$3 million project is huge. It's not big in the scheme of those big builders. So we think it's likely some of these specialty features and then also maybe some smaller projects to work with that opportunity we're going to have. And the other challenge that we is we're spread out all across the state. And we know that there are many of these projects we will need to continue to do the design-bid-build. [LB775]

SENATOR BOLZ: Senator Hilkemann. [LB775]

SENATOR HILKEMANN: Yeah, following up on Senator Kuehn's, what are the drawbacks to design-build? [LB775]

TIMOTHY McCOY: Probably the biggest drawback that's been identified that I saw with design-build in these sorts of...especially the structural side of where you have somebody building a building that's a confined design-build contract, the biggest concern out there is that you could

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end up with a reduced quality. If you end up with a designer and contractor that are trying to, you know, in some cases, I'd look at it as they're trying to meet a specific square feet. And, you know, they short...if they shortcut somewhere on cost and materials, that's the place you would run into that. That's probably the biggest potential shortfall in it. [LB775]

SENATOR HILKEMANN: Are there things that you can do to try to overcome that? [LB775]

TIMOTHY McCOY: Yes, because I think...well, from our standpoint as an agency, we would want...we will want to be involved with tracking where these projects are going with whoever the design-build firm is through the combination of our engineering team and our parks team. Because, you know, there still can be decisions in this design-build that you change, you know, whether it's you change and reduce your specifications or, if you really have to, you add dollars. But we just...we will want to maintain that input. We don't want to hand something off and not look at it until you get the keys. I mean, any of us that have built a house have probably not done that either. [LB775]

SENATOR HILKEMANN: Thank you. [LB775]

SENATOR BOLZ: Any further questions for Mr. McCoy? Thank you. [LB775]

TIMOTHY McCOY: Thank you. [LB775]

SENATOR BOLZ: Next proponent. [LB775]

WARD F. HOPPE: My name is Ward F. Hoppe, W-a-r-d F. H-o-p-p-e. I'm a lawyer, a builder, and a developer of real estate. I'm a member of the Home Builders Association of Lincoln. And I'm here representing the Lincoln builders and Omaha builders who have a coalition and are in support of this bill. Design-build is an effective tool in a builder's repertoire to most efficiently, or more efficiently in many cases, build buildings for clients. It's becoming more popular all the time. We're in the process today, my brother and I, of using a design-build contract to put together a rather large \$15 million project. It's...we're using it in that situation to control the budget we're going forward with and to keep the builders in the loop the entire time the building is constructed and designed to make sure it's got the most efficient construction process in the whole program. So, I'm here to advocate the ability to use design-build when it's appropriate, and lots of times it is. It's appropriate on simple situations. It's appropriate on situations where you have unique features that you need to move forward and involve the builder through the design process to work through with the designers how most efficiently to get the building built. That said, I leave it up for questions. [LB775]

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SENATOR BOLZ: Thank you. Seeing none, thank you for your testimony. [LB775]

WARD F. HOPPE: Thank you. [LB775]

SENATOR BOLZ: Next proponent. [LB775]

VANESSA SILKE: Good afternoon, members of the committee. My name is Vanessa Silke. That's spelled V-a-n-e-s-s-a S-i-l-k-e. I'm an attorney with Baird Holm and a lobbyist for the Nebraska chapter of the American Institute of Architects. I'm here in support of LB775 as amended by AM1723; I understand Senator Stinner passed that out to the committee. Well, first of all, I want to thank Senator Stinner and the Game and Parks Commission for listening to the concerns of AIA. We had some very limited concerns and they're primarily to ensure that architects, licensed architects in Nebraska, could qualify to participate in the processes outlined in this act. And that's primarily our goal. So the first...and that's captured in AM1723 by expressly including licensed architects within the scope of definitions under the terms "design builder" and then also "construction manager." So, with those amendments, that would capture architects and settle one of the concerns that they have with the bill. The second concern that we have with the bill that AM1723 addresses is to clarify ownership of intellectual property. For any of the bids that are submitted through this process, if a bid is not selected the bill addresses a mechanism where the commission could take ownership of that intellectual property for bids that they don't accept. I think in the original language that's in Section 25. So, AM1723 clarifies that the architects or any of the other bidders for these projects will retain ownership of their intellectual property unless the commission pays a stipend and the architect or that bidder accepts the stipend. Otherwise, that intellectual property remains with the bidder. So, again, with AM1723 we believe this captures all of AIA's concerns. If the committee intends to move this bill out, we support it with that amendment. So, with that, I'm happy to answer any other questions that you might have. [LB775]

SENATOR BOLZ: Thank you, Ms. Silke. Any questions? [LB775]

VANESSA SILKE: Thanks, everybody. [LB775]

SENATOR BOLZ: Seeing none, further proponents. [LB775]

WALT RADCLIFFE: (Exhibit 2) Senator Bolz, members of the committee, my name is Walter Radcliffe. I'm appearing before you today as a registered lobbyist of Friends for Nebraska Parks and also at the request of the Nebraska Building Chapter of the Associated General Contractors. Jean Petsch, who's their executive director, was unable to attend today and asked that I report to

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the committee that the AGC supports LB775 and gave me a letter in support. So, just an excerpt from it: The Association General Contractors-Nebraska Building Chapter supports the right of the owner/client, whether public or private, to have an option to choose the best project delivery method to meet the type of project and schedule at hand. So, they asked me to put their support in the record. I'll leave this letter with the committee for your file and be happy to answer any questions. [LB775]

SENATOR BOLZ: Thank you. Seeing none,... [LB775]

WALT RADCLIFFE: Thank you. [LB775]

SENATOR BOLZ: ...thank you. Further proponents. Do I have any opponents? Any testifiers in a neutral capacity? Seeing none, Senator Stinner, would you like to close? Senator Stinner waives closing. That concludes the hearing on LB775. Thank you. [LB775]