

2009 SENATE POLITICAL SUBDIVISIONS

SB 2401

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2401

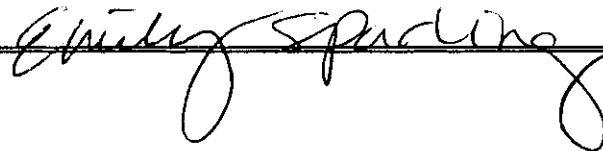
Senate Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: 02/05/2009

Recorder Job Number: 8809

Committee Clerk Signature



Minutes:

Chairman Andrist Opened the hearing on SB 2401.

Representative Klein District #40. Introduced SB 2401. This is a fairly simple bill that raises the figure for when you need to employ an architect or engineer. All this does is raise it from 100,000 to 200,000. On line 15 it talks about having approval for projects using over 2,000 dollars of tax money, which is a little low. I would suggest we raise it to 5,000. This is just an updating of numbers that has not been done for awhile.

Senator Olafson Line 15 seems to deal specifically with schools but I thought this bill dealt with all public buildings?

Representative Klein I'm not sure, I didn't notice that either.

Senator Dave O'Connell District #6. Spoke in support of 2401. Passed out a proposed amendment. See attachment #1. What has happened is that different people have discussed different avenues that they think the bill should take so this amendment turns it into a study so we can find the best solution.

Senator Anderson Does Representative Klein know about the amendment?

Senator O'Connell Yes, I just showed it to him.

Bev Nielson NDSBA. Spoke in support of 2401. The rationale behind getting approval from the Department of Public Instruction is that if anything goes wrong with the funding or ownership of the building goes to the department and they feel they should have a say in what happens to the building. We feel if there was rationale to put a limit in to law the first time around than every ten years or so we should readjust the number for inflation. I am ok with the study but then we are 2-3 years away from an answer.

Chairman Andrist When was it set at 100,000?

Nielson 1997.

Chairman Andrist Do you think 200,000 is enough?

Nielson I'm not sure, I couldn't answer that but someone who wants a limit might think so.

Chairman Andrist Is 5,000 enough for you?

Nielson I don't know. I wasn't aware of that figure myself and I am not even sure of how many schools are doing this. This might be archaic and many schools may not even enforce the policy.

Chairman Andrist Maybe Dane can check on that.

Nielson We do have to have approval on all large construction projects.

Senator Olafson I find it odd that this language about schools is even in here because as I understand it, we are talking about all public buildings.

Nielson There is just a whole lot of stuff that is specific to schools.

Todd Sando Assistant State Engineer: ND State Water Commission. Spoke in support of 2401. See attachment #2.

Chairman Andrist If you had your druthers, do you think 200,000 is enough?

Sando If you push the limit too high you are competing with the private sector. I think 200,000 is pretty fair.

Jeffry Volk President and CEO of Moore Engineering, Inc. Spoke in opposition. See attachment #3.

Senator Olafson Do you have an objection to passing the bill and adding the amendment? In other words we raise these limits from 100-200 to provide a short term solution, we have the study and then we fix the number based on the results. I want to know what we can do in the short term.

Volk My biggest concern would be that there are a lot of people of interest and if the minimum gets raised some of the players that need to be at the table won't come because their issues will be solved.

Senator Anderson I am wondering if with the extra 100,000 dollars, more structures could be built without an engineer's design?

Volk Yes, and I understand that the number is low in relation to inflation but it does not change the underlying problem which is the same as 1997. That problem is that 100,000 dollars means different things to different projects. We need to find a better way to solve this issue than just raising the minimum.

Senator Olafson You point out that we are talking about different processes in sections 1,2 & 4 as compared to 3,5,6 &7. What if we leave 3,5,6 &7 but we raise the minimums in 1,2, &4 and add the study?

Volk That would be less palatable because as a design professional I am more concerned about that issue than the bidding issue. I understand that they always get brought together, I am ok with that if we all have to work together. I have more problem with the design safety than with the bidding process.

Senator Lee This would make the study mandatory rather than a resolution, have you seen it? Very few legislatures know enough about this to be smart in the discussion. I would wonder if it would be appropriate for the stakeholders to create a task force to deal with this.

Volk Chapter 48 is what most of this comes out of. Chapter 48 has been a very controversial chapter. Out of the controversy there was a group formed called the Construction Leaders Coalition and it is a very good group made of multiple players. I think we do have the framework to do a good study, I like that this is a mandatory study. Maybe a sunset clause would help solve the problem in the short term but bring the players back to the table.

Senator Olafson Would there be some wisdom to the proponents and opponents to sitting down and seeing if there is anything that can be done now?

Volk I think I know what you are trying to accomplish but I think the issue on the design side needs so much discussion that it might take awhile. I think we need to get away from dollars. This needs time and thinking.

Senator Dotzenrod In your testimony you want to draw a distinction between plans and bidding. It seems to me that this is requiring an engineer to be involved with both parts. I'm not so sure you want to do one without the other. I think it makes sense to have an engineer on a large project. Why do you want different requirements?

Volk That has been the traditional wisdom in the past but I'd like to give an example of how they could be different. Bidding and designing are strictly economic issues. In my mind, it costs extra money to bid on some projects. There are times when it is far more economical to go and find the right contractor and negotiate a price. Spoke about the design and bid process.

Bonnie Staiger Executive Director of the American Institute of Architects and the American Council of Engineering Companies, Chair of the Construction Leadership Coalition. Gave history of Chapter 48 discussions and previous legislation including the interim study in 2005

that brought all the parties to the table. Spoke in opposition to the bill but not the study. If you accept the amendment we will work with the same vigor to have a bill ready in 2011 that we can all agree on.

Bill Kalanek National Electrical Contractors Association and the ND Plumbing, Heating and Mechanical Contractors Association. Spoke in opposition. We are opposed to the bill in its current form. We would entertain the idea of doing a study and participating in that process. From our perspective, our concern from an economic standpoint is that we are able to bid things at the current threshold especially in instances of school retrofits. From our perspective those projects can range from 100-200,000 dollars. Those should be publicly bid. We had good results from the study last session and are open to doing it again.

Doreen Riedman ND Association of Builders who are a member of the Construction Leaders Coalition. Opposes 2401 in its current form. Our members do all sorts of services outside of contracting that would fall into these projects and we would like to be able to bid on these projects. With today's economy, these projects would help out our contractors.

Senator Dotzenrod I want to make sure that I understand why you are opposed, is it mostly so that your members do not get shut out of the bidding process?

Riedman Yes, we want to keep the system open. These projects are a big deal to some of our contractors.

Lynn Bergman Retired Civil Engineer with over 50 years of bidding experience. I am opposed to this bill. With the current economic climate, we are about to embark on a bunch of new infrastructure projects which will bring in a lot of money. Contractors will be in the driver seat soon, when that happens, contractors often do not want small jobs (250,000 or less). The temptation becomes to then do it without the bidding process which is detrimental to the process and the public.

Discussion about limits.

Chairman Andrist Closed the hearing on SB 2401

Job #8820

Chairman Andrist Reopened the hearing on SB 2401.

Discussed whether or not DPI upheld the current policy regarding approving projects.

Senator Lee Rather than changing and studying, I favor leaving the numbers, studying and then changing.

Senator Olafson I move the amendment pass as proposed by Senator O'Connell

Senator Lee Second

Discussion related to bidding and raising the minimum. Tried to contact DPI once again.

Senator Bakke What would the study cover? Would some of the number issues be covered by the study?

Senator Anderson It is hard to set a number. This would be a good time to use a study to set a number.

Chairman Andrist I think the bidding is fairly reasonable already.

Discussed levels of risk: health and safety risks vs. economic values. They trust the process already in place but would like to have the study. Also discussed escape clauses for low bids.

Senator Lee gave examples of sidewalks in her neighborhood and the bidding process involved in that problem.

Chairman Andrist Do you want to act or wait on this? I am comfortable either way.

Senator Bakke I am of the opinion that obviously it has not been a huge problem for DPI because they have not been down here asking about it.

Senator Olafson In a worst case scenario can we do a floor amendment?

Senator Lee In a worst case scenario we can have the house deal with it.

Senator Olafson I say we act.

Chairman Andrist Ok, let's call the roll on Senator Olafson's motion.

Discussed whether Representative Klein had seen the amendment.

The Clerk called the role on the motion to pass the amendment. **Yes: 6, No: 0, Absent: 0.**

Senator Bakke I move SB 2401 Do Pass as Amended.

Senator Dotzenrod Second

The Clerk called the role on the motion to **Do Pass as Amended. Yes: 6, No: 0, Absent: 0.**

Senator Olafson will carry the bill.

Date: 2/5/09
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2401

Senate Political Subdivisions Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do pass Do not pass Amend

Motion Made By J. Olafson Seconded By J. See

Senators	Yes	No	Senators	Yes	No
Chairman John M. Andrist	/		Senator Arden C. Anderson	/	
Vice Chairman Curtis Olafson	/		Senator JoNell A. Bakke	/	
Senator Judy Lee	/		Senator Jim Dotzenrod	/	

Total (Yes) 6 No 2

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:
To amend the bill to become a study.

Date: 2/5/09
Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2401

Senate Political Subdivisions Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do pass Do not pass Amend

Motion Made By J. Bakke Seconded By J. Dotzenrod

Senators	Yes	No	Senators	Yes	No
Chairman John M. Andrist	/		Senator Arden C. Anderson	/	
Vice Chairman Curtis Olafson	/		Senator JoNell A. Bakke	/	
Senator Judy Lee	/		Senator Jim Dotzenrod	/	

Total (Yes) 6 No 0

Absent 0

Floor Assignment J. Olafson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2401: Political Subdivisions Committee (Sen. Andrist, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2401 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative council study relating to requirements for plans and specifications and bids for public improvements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY - PUBLIC IMPROVEMENTS.

The legislative council shall study, during the 2009-10 interim, public improvement and capital construction bid requirements, plans and specifications, and the employment of architects and engineers. The legislative council shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-second legislative assembly."

Renumber accordingly

2009 HOUSE POLITICAL SUBDIVISIONS

SB 2401

2009 HOUSE STANDING COMMITTEE MINUTES

Bill No. SB 2401

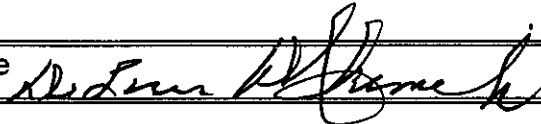
House Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: March 5, 2009

Recorder Job Number: 10803

Committee Clerk Signature



Minutes:

Chairman Wrangham opened the hearing on SB 2401.

Jeffry Volk: President and CEO of Moore Engineering, Inc. (see testimony #1).

Rep. Koppelman: You talk about the fact that these are different public concerns and

therefore the dollar value might not be the measurement. Can you illustrate how the lack of selecting a design professional has an impact on public safety and health etc? Is it because of the energy efficiency or structural integrity; what are we talking about?

Jeffry Volk: There are a number concerns that need to be addressed as you start to talk about public utilities. It is structural integrity to be occupied by the people so that it is safe so no one will fall down and there are all kinds of issues that are completely independent of one party.

Senator O'Connell: this is really a simple bill. We changed one work. We went from \$100,000 to \$200,000.

Rep. Koppelman: Do municipalities follow this very rigidly or do some of them seek this kind of expertise before these dollar levels kick in based on the type of project. Do you know?

Senator O'Connell: I think a lot of these throughout the counties out in that area design buildings and they have architect on the drawing boards but our law says now anything over a

\$100,000 in the start of it. A number of years; at that time there are no limit and they probably should have designed some type of responsibility and that is how the \$100,000 that the political subdivisions.

Bonnie Steiger, I am here representing a collation of organizations that help with Construction Coalition, architects, engineers, land owners, AGC and other small contractors that all come together since 2005 to collaborate on issues. The caps were at \$25,000 twelve years ago so since that time it has been at \$100,000. This issue as well as others that weren't addressed and we wanted to let the legislature know that we are going to assist in the process as we do in any other times for those of your who were here prior to that remember that I have come affectionately call the great construction wars due to this chapter 48. As a result we thought that rather than asking you to do an upfront battle that we would attempt to hand them out and come to you with language that we think we could allow for and assistance in this matter and we will partner with the legislature and the legislative council in the interim to help with this study. We are in favor of this amended bill.

Rep. Koppelman: You talked about a very positive coalition that developed during the last interim and cooperation ideas coming to conclusions that you could support etc. Do you need a legislative study then to spur that kind of continuation of that discussion or do you think it is something that could get done on your own as industry folks?

Bonnie Steiger: We have been meeting almost monthly for over a year. One of the issues that are on the table is on Chapter 48 bill. In 2007 we helped do the actual drafting of that bill.

Opposition: None

Neutral: None

Hearing closed.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill No. SB 2401

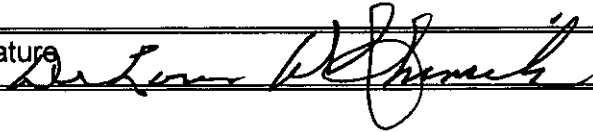
House Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: March 19, 2009

Recorder Job Number: 11248

Committee Clerk Signature



Minutes:

Chairman Wrangham reopened the hearing on SB 2401.

Motion Made By Rep. Koppelman to amend it to say consider studying on line 5:

Seconded By Rep. Zaiser

Voice vote carried.

Do Pass As Amended Motion Made By Rep. Koppelman: Seconded by Rep. Hatlestad:

Vote: 12 Yes 0 No 1 Absent Carrier: Rep. Hatlestad

Hearing closed.

March 19, 2009

VR
3/19/09

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2401

Page 1, line 5, replace "study" with "consider studying"

Renumber accordingly

Date: 9/19/09
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2401

HOUSE POLITICAL SUBS COMMITTEE

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DP DNP DP AS AMEND DNP AS AMEND

Motion Made By Rep. Koppelman Seconded By Rep. Zaiser

Representatives	Yes	No	Representatives	Yes	No
Ch. Wrangham			Rep. Conrad		
Vice Chair Rep. Headland			Rep. Kelsh		
Rep. Hatlestad			Rep. Kilichowski		
Rep. N. Johnson			Rep. Mock		
Rep. Klemin			Rep. Zaiser		
Rep. Koppelman					
Rep. Kretschmar					
Rep. Pietsch					

Total (Yes) _____ No _____

Absent _____

Floor Carrier: _____

If the vote is on an amendment, briefly indicate intent:

*Vote
Carried!*

Date: 3/19/09
Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2401

HOUSE POLITICAL SUBS COMMITTEE

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DP DNP DP AS AMEND DNP AS AMEND

Motion Made By Rep Koppelman Seconded By Rep. Hatlestad

Representatives	Yes	No	Representatives	Yes	No
Ch. Wrangham	✓		Rep. Conrad	✓	
Vice Chair Rep. Headland	✓		Rep. Kelsh	○	
Rep. Hatlestad	✓		Rep. Kilichowski	✓	
Rep. N. Johnson	✓		Rep. Mock	✓	
Rep. Klemin	✓		Rep. Zaiser	✓	
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Pietsch	✓				

Total (Yes) 12 No 0

Absent 1

Floor Carrier: Rep. Hatlestad

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2401, as engrossed: Political Subdivisions Committee (Rep. Wrangham, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2401 was placed on the Sixth order on the calendar.

Page 1, line 5, replace "study" with "consider studying"

Renumber accordingly

2009 SENATE POLITICAL SUBDIVISIONS

CONFERENCE COMMITTEE

SB 2401

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2401

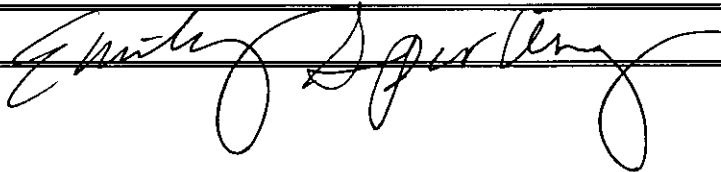
Senate Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: 04/21/2009

Recorder Job Number: 12031

Committee Clerk Signature



Minutes:

Chairman Olafson Opened the hearing on 2401. All members were present. Requested that the House explain their amendment

Representative Headland Explained that they thought that it should say consider study but after some discussion they are prepared to Recede from the House Amendments

Representative N. Johnson Second.

Senator J. Lee Commented about the importance of this study although she does not usually support mandatory studies, this one is important.

Representative N. Johnson Agreed with Senator Lee's sentiments and stated that is the reason they are receding.

The Clerk called the role on the motion to **Recede from the House Amendments. Yes: 6,**

No: 0, Absent: 0.

The motion carried. Senate Carrier is Olafson, House Carrier is Headland.

Date: 4/21/09

Roll Call Vote #: 1

2009 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2401 as (re) engrossed

Senate Political Subdivisions Committee

[X] Check here for Conference Committee

- Action Taken SENATE accede to House Amendments
- SENATE accede to House Amendments and further amend
- HOUSE recede from House Amendments
- HOUSE recede from House amendments and amend as follows

Senate/House Amendments on SJ/HJ pages(s) _____ -- _____

Unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) 2401 was placed on the Seventh order of business on the calendar.

Motion Made By Rep. Headland Seconded By Rep. Johnson

Senators				Representatives			
	Y	N			Y	N	
	e	o			e	o	
	s				s		
Senator Olafson	X				X		
Senator J. Lee	X				X		
Senator Bakke	X				X		

Vote Count 6 Yes 0 No 0 Absent

Senate Carrier Olafson House Carrier Headland

LC NO. _____ of amendment

LC NO. _____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

REPORT OF CONFERENCE COMMITTEE

SB 2401, as engrossed: Your conference committee (Sens. Olafson, J. Lee, Bakke and Reps. Headland, N. Johnson, Mock) recommends that the **HOUSE RECEDE** from the House amendments on SJ page 952 and place SB 2401 on the Seventh order.

Engrossed SB 2401 was placed on the Seventh order of business on the calendar.

2009 TESTIMONY

SB 2401

#1

Sixty-first
Legislative Assembly

SENATE BILL NO. 2401

PROPOSED AMENDMENTS TO SB 2401

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an act to provide for a legislative council study relating to requirements for plans and specifications and bids for public improvements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Legislative Council Study. The legislative council shall study public improvement and capital construction bid requirements, plans and specifications, and employment of architects and engineers. The legislative council shall report its findings and recommendations to the sixty-second legislative assembly.

Renumber accordingly

TESTIMONY ON SENATE BILL 2401

Senate Political Subdivisions Committee

**Todd Sando
Assistant State Engineer
North Dakota State Water Commission**

February 5, 2009

Mr. Chairman and members of the Senate Political Subdivisions Committee, I am Todd Sando, Assistant State Engineer to the North Dakota State Water Commission.

The Water Commission supports Senate Bill 2401, which includes amendment of N.D.C.C. § 48-01.2-04. The portion of this bill that would be very beneficial for the Commission is raising the cap for public improvements from \$100,000 to \$200,000 before it must go to bid.

The Water Commission has a three-person crew and several pieces of construction equipment capable of doing repair/rehabilitation work for publicly owned dams or water related structures. The rehabilitation of low head dams or repair of existing spillways are the Commission's typical projects, but with increasing costs in materials, equipment, and labor we have found the \$100,000 estimated cost limit excludes some projects from consideration.

Rock, concrete, gravel, and steel quantities required for even small structures can push the estimated cost over the limit. For example, material costs on a project completed last year on the Sheyenne River were over \$50,000. Most of this was for the 2,300 cubic yards of rock needed on the project. High fuel prices can also add extra surcharges on materials delivered and any necessary hauling, which can be difficult to correctly estimate but must be included on future project cost estimates.

N.D.C.C. § 48-01.1-04 was created in 1995 with a \$50,000 project limit; in 1997 this was increased to \$100,000. Therefore, increasing the estimated project cost limit from \$100,000 to \$200,000 will enable the Water Commission to continue to repair water projects.

Senate Political Subdivisions Committee
Testimony Opposing SB 2401

February 5, 2009

Chairman Andrist and Committee Members

My name is Jeffry Volk. I currently serve as a President and CEO of Moore Engineering, Inc. and I am a Professional Engineer and Registered Land Surveyor in North Dakota. My testimony today is on behalf of the American Council of Engineering Companies/North Dakota and Moore Engineering, Inc. I have spent my entire professional career as an engineering consultant in North Dakota.

My testimony today is in opposition to SB 2401. There are two issues this bill is trying to address. Sections 1, 2 and 4 address when a political subdivision must retain a registered design professional while constructing a public improvement project, increasing the threshold from \$100,000 to \$200,000. Sections 3, 5, 6 & 7 guide political subdivisions with bidding and contracting limits for the construction of public improvement projects, again raising the threshold from \$100,000 to \$200,000.

The issues this bill is trying to address are very complex and tend to get blended together. The conditions when a design professional is required for the design and construction of a public improvement project should not be intermixed with the conditions for bidding and contracting a public improvement project.

On the issue of when should a project be designed, the real challenge is to determine if the cost of construction should be used to determine the need to protect the health, safety and welfare of the public. This threshold probably should not be measured by cost of construction but by some other indicator. At this time I do not know what that other indicator should be. When measured by dollars, the safety threat to the public is considerably different for different types of work. For example a \$200,000 structure built without a design professional can create a considerably different level of risk to the public than a \$200,000 seal coat, asphalt overlay, ditch

cleanout etc. project constructed without a design professional. The risk to the public is created more by the use of a project than the cost of a project.

The threshold for when a design professional must be utilized for a public improvement project generally gets mixed in with the bidding and contracting limit threshold. When these specific dollar limits have been raised in the past, it appears the limits for both of the issues were deliberately amended to remain consistent throughout the statutes. These issues really should be separated. While it may be easy to use the same dollar threshold for both of these issues there are reasons why they should be different. The most compelling reason to keep these issues separate is that the need for a design professional is a health, safety and welfare issue while bidding and contracting matters are economic issues.

In conclusion, we strongly recommend this bill be changed into an interim study. This will enable the appropriate parties to engage in good discussion and bring a recommendation on both of these issues back for consideration during the next legislative session. We would ask however if this committee rejects the interim study idea, that any changes in limits to any one section of the bill would be changed for all sections.

Thank you for considering my testimony.

Jeffrey J. Volk, PE & RLS
ND Registration # PE & LS 2524
President & CEO
Moore Engineering, Inc.
925 10th Ave East
West Fargo, ND 58078

#1

House Political Subdivisions Committee
Testimony Supporting SB 2401

March 12, 2009

Chairman Wrangham and Committee Members

My name is Jeffrey Volk. I currently serve as a President and CEO of Moore Engineering, Inc. and I am a Professional Engineer and Registered Land Surveyor in North Dakota. My testimony today is on behalf of the American Council of Engineering Companies/North Dakota and Moore Engineering, Inc. I have spent my entire professional career as an engineering consultant in North Dakota.

My testimony today is in support of SB 2401.

There are two issues relating to public improvement projects this bill asks the legislative council to study.

- 1) When must a political subdivision advertise for bids when contracting for the construction of a public improvement project; and
- 2) When must a political subdivision retain a registered design professional for the design and construction of a public improvement project.

These issues are very complex and tend to get blended together. The requirement for when a political subdivision must utilize a design professional for the design and construction of a public improvement project should not be intermixed with the requirement for when a political subdivision must advertisement for bids for the construction of a public improvement. Currently there is a \$100,000 threshold for most political subdivisions for both of these issues.

On the issue of when should a political subdivision utilize a design professional, the real challenge is to determine if the cost of construction alone should be the factor used to determine the need to protect the health, safety and welfare of the public.

This threshold probably should not be measured by cost of construction but by some other indicator. At this time I do not know what that other indicator should be. When measured by dollars, the safety threat to the public is considerably different for different types of work. For example a \$100,000 structure built without a design professional can create a considerably different level of risk to the public than a \$100,000 paint job, seal coat, ditch cleanout etc. project constructed without a design professional. The risk to the public is created more by the use of a project than the cost of a project.

The threshold for when a design professional must be utilized for a public improvement project generally gets mixed in with the bidding and contracting limit threshold. When these specific dollar limits have been raised in the past, it appears the limits for both of the issues were deliberately amended to remain consistent throughout the statutes. These issues really should be separated. While it may be easy to use the same dollar threshold for both of these issues there are reasons why they should be different. The most compelling reason to keep these issues separate is that the need for a design professional is a public health, safety and welfare issue while bidding and contracting matters are economic issues.

In conclusion, we support SB 2401 and pledge to participate with the legislative council study process. This will enable the appropriate parties to engage in good discussion and bring a recommendation on both of these issues back for consideration during the 62nd legislative session.

Thank you for considering my testimony.

Jeffrey J. Volk, PE & RLS
ND Registration # PE & LS 2524
President & CEO
Moore Engineering, Inc.
925 10th Ave East
West Fargo, ND 58078