

15.0486.02000

## **FISCAL NOTE STATEMENT**

Senate Bill or Resolution No. HB 1182

This bill or resolution appears to affect revenues, expenditures, or fiscal liability of counties, cities, school districts, or townships. However, no state agency has primary responsibility for compiling and maintaining the information necessary for the proper preparation of a fiscal note regarding this bill or resolution. Pursuant to Joint Rule 502, this statement meets the fiscal note requirement.

Sheila Sandness  
Senior Fiscal Analyst

15.0486.01000

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Sheila Sandness  
Senior Fiscal Analyst

**2015 HOUSE POLITICAL SUBDIVISION**

**HB 1182**

# 2015 HOUSE STANDING COMMITTEE MINUTES

## Political Subdivisions Committee

Prairie Room, State Capitol

HB 1182

1/22/2015

22385

☐ Subcommittee

☐ Conference Committee

*Amanda Muscha*

### Explanation or reason for introduction of bill/resolution:

Relating to bidding requirements for public purchases and public improvements and plans and specifications for public improvements

### Minutes:

Rick Tonder Testimony #1  
Representative Mooney Testimony #2  
Blake Crosby Testimony #3  
Aaron Birst Testimony #4  
Jason Benson Testimony #5  
Bonnie Staiger Testimony #6  
Ryan Ackerman Testimony #7  
Wayne Kern Testimony #8

**Chairman Klemin:** Opened the hearing on HB 1182.

**Rick Tonder:** (See testimony #1)

**Representative Mooney:** (See testimony #2)

**Representative Maragos:** Are you aware of any interim studies that have gone on for this?

**Representative Mooney:** No I am not.

**Blake Crosby:** (See testimony #3)

**Aaron Birst:** (See testimony #4)

**Jason Benson:** (See testimony #5)

**Chairman Klemin:** The testimony you handed out. Those are the amendments you propose?

**Jason Benson:** Yes.

**Jim Silrum:** I am the deputy secretary of state. As this bill relates to ballots, elections, and supplies we stand in support of that from the secretary of state's office because this does not prohibit the seeking of bids for those supplies, it just takes out the mandate or the dollar

limit. Therefore we stand in support of this bill thinking they will obviously go for the best bid when it comes time to purchase those.

**Opposition:**

**Bonnie Staiger:** (See testimony #6)

**Representative Hatlestad:** The committee that you worked with a couple years ago, you came up with a bill together?

**Bonnie Staiger:** We did and was passed unanimously.

**Representative Koppelman:** You have asked for us to not pass and for a study? What would that study look like?

**Bonnie Staiger:** To your first comment the bill that passed in 2009 stood until this session. I think there was a very minor amendment in that time so we feel confident that the work product we did turn out with the support and the collaboration with that interim committee was successful and we don't have a warding current amendment. We should probably come up with something that would be a study amendment and we would be happy to work with you on that.

**Ryan Ackerman:** (See testimony #7)

**Representative Koppelman:** On the story you told is there any building code for that?

**Ryan Ackerman:** Yes there was. What happens many times is they do not understand the building code.

**Representative Koppelman:** So all the building code was being ignored?

**Ryan Ackerman:** Yes.

**Representative Koppelman:** Dollars are not necessarily the problem. Is there any language you would suggest to modify the law?

**Ryan Ackerman:** I do not have any current ideas but I would like to work with others on finding the language to put there.

**Wayne Kern:** (See testimony #8)

**Representative Hatlestad:** So I would assume you agree with Ryan to make the situation more flexible when you need an engineer?

**Wayne Kern:** I do to an extent. You can do a lot with 100,000 on public projects. It would be difficult to try to identify every situation.

**Representative Hatlestad:** How would you deal with the situation you're in if we don't change anything? Then you're caught up in the same chaos that you are facing now, without some sort of qualification.

**Wayne Kern:** We have learned to work with current threshold. Our obvious preference would be if we didn't have one at all that I think that would not be a reasonable approach. We have learned to work with the current threshold. Our larger concern is if that threshold continues to increase and get rationed up there would become more and more problematic force and quite the issues that I testified about.

**Representative Kelsh:** If it is below 100,000 they do not need to show their plan for you for safety reasons?

**Wayne Kern:** No, under state law systems are still provided to provide us plans and specifications to review and therein lies the problem because at a lot of times small systems do not have the capability to prepare those plans and specifications in a form that shows it in design standards and can be bid and understood by contractors for construction. So we do have to look at all of them.

**Representative Kelsh:** If they are going to do things with water and sewer they have to present you with the plans and if you if need be help them get into the bidding mode and is it possible to be under 100,000?

**Wayne Kern:** Yes that is possible and we want to make sure it meets design standards. More so on mind then the bidding process itself. We want to make sure that whatever is put out there to be constructed does meet design standards.

**Representative Klein:** As I understand it the state health department actually has authority in place of the federal. In other words you have complete control of environmental.

**Wayne Kern:** That is correct. The state health department through agreements we are specifically responsible for projects involving water and things like that are done correctly.

**Representative Klein:** North Dakota is one of the few states where the state health department actually has this complete authority. Is that correct?

**Wayne Kern:** I believe with only one or two exceptions, all states have the same sort of delegation for these programs.

**Bill Kalanek:** I represent the Dakota's Chapter of the National Electrical Contractors Association as well as the North Dakota Association of Plumbing, Heating, Mechanical Contractors. Our organization has been involved in these issues. We were there when the 100,000 was put into place. It is always better to bid more than less. Although this may be a modest change to the threshold we still feel that it is not in the public's best interest.

# 2015 HOUSE STANDING COMMITTEE MINUTES

## Political Subdivisions Committee

Prairie Room, State Capitol

HB 1182

1/23/2015

22462

☐ Subcommittee

☐ Conference Committee

*Amanda Muscha*

### Explanation or reason for introduction of bill/resolution:

Relating to bidding requirements for public purchases and public improvements and plans and specifications for public improvements

### Minutes:

Representative Koppelman Testimony #1

**Chairman Klemin:** Opened hearing on HB 1182

**Chairman Klemin:** This is the bill with a couple of issues relating to the couple of statutes relating to the threshold for seeking bids in section 1 deletes reference to the 10,000 threshold on county buildings. Which seems to be covered by section 7 which is the 100,000 which is proposed to be changed to 150,000? Then section one would only relate to fuel bids and section two would relate to fuel if the bill passes. It was mentioned in the testimony the Representative Mooney that the amount on line 23 pages 1 should be types of fuel instead of amounts. I don't recall any discussion about section 3. Section 7 is where the issue lays changing 100,000 to 150,000.

**Representative Kelsh:** In speaking with the prime sponsor of the bill yesterday, her prime concern, she thinks this should be turned into a study because there are so many factions with engineers, architects, her one main concern is to get the 10,000 out because it is only for counties and they have to bid for 10,000 project and probably have an engineer and an architect look it over. She is satisfied with leaving the 100,000. She wants to get the 10,000 out and turn the rest into a study.

**Representative Koppelman:** I have proposed amendments for this bill which come from the architects and the engineers and basically would turn it into a study resolution. (See testimony #1)

**Representative Hatlestad:** We had talked in testimony two sessions ago that they had a compromise trying to find a copy of that bill that allegedly went through and so I would ask that we hold off on this if we have an existing piece of legislation.

**Representative Koppelman:** What I have heard is that the compromise has lasted but new issues have come up and it is time to get them all together and revise.

**Chairman Klemin:** The interim study they were referring to was during a 2007-2008 interim which resulted in a 2009 session.

**Representative Beadle:** I support the study. What about the wording of having a study?

**Representative Koppelman:** I would be happy with shall consider study.

**Representative Beadle:** We should but do we need to scrap the entire bill? If we removed section 7, turned that into the study, then all these other sections would be referring to the 100,000.

**Chairman Klemin:** It seems like there are other sections that refer to the 100,000. If we took out section 7, we couldn't leave certain parts in.

**Representative Beadle:** Not saying we would remove the section of code, what I am saying is that if we removed the amendment, then it would still be referring to the existing 100,000.

**Representative Koppelman:** Not opposed but I think that is simply legislative council clean up language. I think there are other bills that deal with these thresholds so if the concedes is that we have to take 100,000 here and raise it to 150 there are other ways to do that. What this would do is make sure we get a study going.

**Representative Anderson:** I think we should do the 30,000 bridge to 100,000. The study is good. The 10,000 for the counties when it doesn't apply to cities doesn't make sense.

**Chairman Klemin:** The amendment for the bridges is a considerable change.

**Representative Anderson:** It does put the threshold to 100,000.

**Chairman Klemin:** He has 50,000 for the bridge amendment.

**Representative Koppelman:** The testimony we heard didn't say dollars were a factor really. Out of the study there might be a benchmark not dollar related.

**Chairman Klemin:** Bidding issues could be a part of the study.

**Representative Strinden:** The part we should pass is taking out the 10,000.

**Chairman Klemin:** We should keep section one in the way it is, in section 2 on line 23 page one change the word amount to types, delete sections 3,4,5,6,and 7, insert new section on the study. Legislative management not council shall consider a study.

**Representative Koppelman:** Motion to adopt amendment

**Representative Kelsh:** Seconded the motion

**A Voice Vote was Taken:** All in favor

Amendment was adopted



**Representative Koppelman:** Motioned to do pass as amended

**Representative Toman:** Seconded the motion

**A Roll Call Vote was Taken:** Yes 13, No 1, Absent 0

Representative Strinden will carry HB 1182

January 23, 2015

*AP*  
*1-23-15*

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1182

Page 1, line 1, replace the first comma with "and"

Page 1, line 1, remove ", 11-11-29, 18-12-04,"

Page 1, line 2, remove "24-05-04.2, 43-19.1-28, and 48-01.2-02.1"

Page 1, line 3, remove "and public improvements and plans and specifications for"

Page 1, line 4, replace "public improvements" with "; and to provide for a legislative management study"

Page 1, line 23, replace "amount" with "type"

Page 2, remove lines 6 through 30

Page 3, replace lines 1 through 31 with:

**"SECTION 3. LEGISLATIVE MANAGEMENT STUDY.** During the 2015-16 interim, the legislative management shall consider studying public improvement issues relating to use of multiple bids versus single prime bids, bidding thresholds, design services thresholds, and indemnification. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fifth legislative assembly."

Renumber accordingly

**2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1182**

House Political Subdivisions Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description: 15.0486.01002

Recommendation: ☒ Adopt Amendment  
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations  
Other Actions: ☐ Reconsider ☐

Motion Made By Koppelman Seconded By Kelsh

Representative	Yes	No	Representative	Yes	No
Chairman Lawrence R. Klemin			Rep. Pamela Anderson		
Vice Chair Patrick R. Hatlestad			Rep. Jerry Kelsh		
Rep. Thomas Beadle			Rep. Kylie Oversen		
Rep. Rich S. Becker			Rep. Marie Strinden		
Rep. Matthew M. Klein					
Rep. Kim Koppelman					
Rep. William E. Kretschmar					
Rep. Andrew G. Maragos					
Rep. Nathan Toman					
Rep. Denton Zubke					
	Voice			Voice	

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

Amendment adopted

**2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1182**

House Political Subdivisions Committee

☐ Subcommittee

☐ Conference Committee

Amendment LC# or Description: \_\_\_\_\_

Recommendation: ☐ Adopt Amendment

☒ Do Pass

☐ Do Not Pass

☐ Without Committee Recommendation

☒ As Amended

☐ Rerefer to Appropriations

Other Actions:

☐ Reconsider

☐ \_\_\_\_\_

Motion Made By Koppelman Seconded By Toman

Representative	Yes	No	Representative	Yes	No
Chairman Lawrence R. Klemin	X		Rep. Pamela Anderson		X
Vice Chair Patrick R. Hatlestad	X		Rep. Jerry Kelsh	X	
Rep. Thomas Beadle	X		Rep. Kylie Oversen	X	
Rep. Rich S. Becker	X		Rep. Marie Strinden	X	
Rep. Matthew M. Klein	X				
Rep. Kim Koppelman	X				
Rep. William E. Kretschmar	X				
Rep. Andrew G. Maragos	X				
Rep. Nathan Toman	X				
Rep. Denton Zubke	X				

Total (Yes) 13 No 1

Absent 0

Floor Assignment Representative Strinden

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

Do pass as amended

**REPORT OF STANDING COMMITTEE**

**HB 1182: Political Subdivisions Committee (Rep. Klemin, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). HB 1182 was placed on the Sixth order on the calendar.

Page 1, line 1, replace the first comma with "and"

Page 1, line 1, remove ", 11-11-29, 18-12-04,"

Page 1, line 2, remove "24-05-04.2, 43-19.1-28, and 48-01.2-02.1"

Page 1, line 3, remove "and public improvements and plans and specifications for"

Page 1, line 4, replace "public improvements" with "; and to provide for a legislative management study"

Page 1, line 23, replace "amount" with "type"

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Page 3, replace lines 1 through 31 with:

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Renumber accordingly

**2015 SENATE POLITICAL SUBDIVISIONS**

**HB 1182**

# 2015 SENATE STANDING COMMITTEE MINUTES

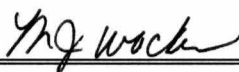
## Political Subdivisions Committee

Red River Room, State Capitol

HB 1182  
3/13/2015  
Job Number 24830

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

Relating to bidding requirements for public purchases

### Minutes:

Written testimony # 1 Rep. Gail Mooney  
Written testimony # 2 Stacy Krumwiede  
Written testimony # 2a Bonnie Staiger  
Written testimony David Bruschwein

**Chairman Burckhard** opened the hearing on HB 1182. Senator Burckhard, V. Chairman Anderson, Senator Bekkedahl, Senator Judy Lee, Senator Grabinger were present. Senator Dotzenrod was not in attendance.

**Rep. Gail Mooney** District 20 (1:43-13:48) testified in favor of HB 1182. Written testimony # 1.

**Senator Judy Lee** I know that in some other bills we've had in earlier discussions whether this session or earlier ones. We've also changed the notification, obviously we're not going to throw those papers under the bus. But that whole lot of this kind of work is now being done through web based options and this hasn't or you didn't mention anything about that. Was there any discussion about that in the House?

**Rep. Gail Mooney** I think it is a really good point. That is another part of the entire equation that I really do believe should be studied in the entire comprehensive approach of how we bid things out. Times have changed. We're clearly in the 21<sup>st</sup> century and I do believe that our newspapers still have an absolute place especially in our rural communities as far as our disseminating information. In addition to the newspapers and the trade publications I would say absolutely we need to be looking at how we can capture the audience through the internet. Absolutely and I think the state could actually play a part in that with some of our web capabilities that we actually have in play right now as far as that's concerned.

**Senator Judy Lee** But there wasn't any discussion about that in the House Committee? I am just wondering if they resisted it or if it hasn't been discussed.

**Rep. Gail Mooney** No there was no discussion specific to that but it certainly would be a part of it.

**Aaron Birst** Association with Counties.( 15:37-17:37) Thank you to Rep. Mooney for sponsoring the bill. As your aware and this committee has already heard there has been a number of threshold bills. We've supported all of them; the Association, but quite frankly 1182 is our priority legislation because it actually cleans up some stuff for the county folks and it's a good piece of legislation including we completely support the Legislative Management study. The Counties have 92 statutes that require us to bid across the board that goes from \$30,000 for bridges, \$100,000 for roads, election supplies, fuels, there is a ton of them. So we think this study is good thing to do. This bill is not controversial hopefully because we are not attacking an not looking at the raising the threshold limits, when an engineer or architect, we can work that out during the interim. What this bill does do in my opinion give a technical fix. Quite frankly, when Chapter 48-01.2 was passed that is what we call the vertical construction. The bids for that is \$100,000 for the threshold; 11:11:26 was a piece of legislation that probably should have been changed because that says counties need to bid county buildings over \$10,000. So in other words when 48 was passed we should have struck the county building section out of here because now we have two statutes that have \$10,000 bidding threshold for county buildings and then also \$100,000. It made no sense. So we're happy to see that struck out. Of course the election supplies all leave it to the Secretary of State, to talk about that. But we don't believe that this will be causing any problems or harms to the taxpayers. We certainly encourage counties even though you are not required to bid projects. You still should, its good public policy and there is more flexibility.

**Senator Judy Lee** It talks about the lowest responsible bidder must be accepted. We've had some chats in some city legislation in earlier sessions about this. Have you walked a lot of sidewalks? There is some really crappy sidewalks out there that were built by the lowest bidder. Bringing it to the cities attention they know that and they said that is because we had to accept that lowest bid. That was a few years ago, so I am thinking part of that was the result, but it does need to be some discretion for the public entity, don't you think? Was that part of the study or am I just wondering if you chatted about that?

**Aaron Birst** To me the study will encompass all those kind of thoughts. But that is a common misperception that locals feels that they have to go with the lowest bid which is not true at all. It is the lowest responsible bid. But there are always nervous about litigation if they don't go with the lowest so I think we can talk about that. I am not really sure how you would address that other than education to the committee or maybe some liability protection. Of what I am always told county officials at least is if you have a rational basis why you didn't hire that low bid you're going to be fined when it comes to litigation. Now you still might have some litigation costs but you're still going to win. Ex. Cited(19:05)

**Senator Judy Lee** My city knows it has that option but there doesn't seem to me to be a real cool definition of responsible that creates the heartburn. Example cited (19:25) Do you agree? **Aaron Birst** Agreed.

**Senator Anderson** In your opinion this quandary of the low bid, and getting an inferior product it seems to me our architects and our engineers wrote the specs so that they were



specific enough to what we wanted. We ought to be able to solve that, and then of course the contract can also include some penalty clauses that doesn't measure up to that then there is some re-dress for that. Is that correct?

**Aaron Birst** I would agree. I think part of this study we'll be looking at how we could better define "our responsible". In addition to your suggestions I think liability protections that allow summary judgment upfront would be a good way to go about it. Instead of having to have insurance reserve cover our litigation costs.

**Stacy Krumwiede** (21:40-23:23) appear representing both ACEC, American Council of Engineering Companies and the AIA ND chapter of the American Institute of Architects. Written testimony # 2.

**Bonnie Staiger** Testimony # 2a, not in attendance but asked Stacy Krumwiede to submit it to the committee.

**David Bruschwein** Representing the North Dakota Department of Health Division of Municipal Facilities which is part of the Environmental Health section. I am here to provide testimony of support of Section 3 of Engrossed HB 1182. Written testimony # 3.

**Justin Anderson** Elections Unit of the Secretary of States' Office. I am here just to observe today, but currently I believe there are only four counties that are even affected by the bidding for the election supplies, just the four largest ones. So we have no problem with this thing taken out of there.

**Senator Grabinger** The bidding supplies, the machines and everything are provided by the state now? **Justin Anderson** currently we have a state wide system and they were provided by the state. I believe the state covered the majority of the cost at that time. If there is another statewide system that is implemented we expect the state will pick up the cost for that in the future.

**Senator Grabinger** Even when their used on a local election day, there is no cost to the locals.

**Justin Anderson** Our goal is there is a lot of these more local elections and a lot of the cities and such. You will see on line now because they are run through our systems.

**Chairman Burckhard** asked for anyone in favor of the bill, opposed to the bill or in neutral opposition.

**Chairman Burckhard** closed the hearing on HB 1182.

**Senator John Grabinger** Moved Do Pass on HB 1182.  
2<sup>nd</sup>. Senator Bekkedahl

Committee Discussion

**Senator Judy Lee** The only thing is I want to know if we are playing whoever signs the last wins. Who passes first loses. Is there other bills ahead of us talking about thresholds that if the Governor signs them next, messes this up. Everything is cool with this.

Chairman Burckhard asked for a vote.  
5 Yea, 0 No, 1 Absent

Chairman Burckhard said he will leave that open for Senator Dotzenrod to vote as well.

Minutes:

Roll call vote

5-0-1

Senator Dotzenrod later votes " yea" on the " do pass" motion, changing the roll call vote to 6-0-0 on Job Number 24919, March 16, 2015

Date: 3-13-15  
Roll Call Vote: /

2015 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1182

Senate Political Subdivisions Committee

☐ Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation: ☐ Adopt Amendment  
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Senator Grabinger Seconded By Senator Bekkedahl

Senators	Yes	No	Senators	Yes	No
Chairman Burckhard	X				
Senator Anderson	X		Senator Dotzenrod	X	
Senator Bekkedahl	X		Senator Grabinger	X	
Senator Judy Lee	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Bekkedahl

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

**REPORT OF STANDING COMMITTEE**

**HB 1182, as engrossed: Political Subdivisions Committee (Sen. Burckhard, Chairman)**  
recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).  
Engrossed HB 1182 was placed on the Fourteenth order on the calendar.

**2015 TESTIMONY**

**HB 1182**



NORTH DAKOTA UNIVERSITY SYSTEM  
Facility Planning Department  
4349 James Ray Drive  
P.O. Box 13597  
Grand Forks, ND 58202-3597  
701-777-4270

## HB1182

House Political Subdivisions Committee, 1/22/15

Rick Tonder, NDUS Director of Facilities Planning

Chair and Members of the Committee:

My name is Rick Tonder, NDUS Director of Facilities Planning, and submit this written testimony in support of HB1182. I support a practical and appropriate increase in the threshold for requiring competitive bids and retaining architectural/engineering services.

There are currently several proposed amendments to NDCC 48-01.2 which modify the current bidding requirements or bidding threshold for public improvement projects. With consideration for the testimony provided by the broad range of constituents interested in 48-01.2, it has become apparent there are significant implications related to even modest amendments of this statute. Therefore, we would be happy to participate in any discussions with this legislative body and the many stakeholders regarding changes to NDCC 48-01.2.

Please do not hesitate to contact me regarding any questions you may have on this testimony.

[rick.tonder@ndus.edu](mailto:rick.tonder@ndus.edu)

For the record, I am Rep. Gail Mooney of District 20 - and I thank you for this opportunity to present House Bill 1182.

HB 1182 comes as a result of working through numerous maintenance and capital improvement projects during my tenure as a County Commissioner. Repeatedly, we would find ourselves tripped over two threshold statutes that would inevitably complicate and drive the cost of these smaller projects up.

Bidding thresholds play an important role in ensuring due diligence is followed for public projects. This process of public bidding has a highly effective record of pulling in competitive bids; bidding contractors are required to meet liability and bonding requirements; architects and engineers provide specialized expertise in the areas of new and complex work. Collectively, the thresholds/bidding process serves the public well. However, it is important that these thresholds keep pace with current trends and inflationary costs, or the process can actually backfire, ultimately costing public entities and taxpayers more. This bill looks to update certain chapters, and overhaul in another, as a means to address this. With your permission, Mr. Chairman, I'll walk us through the bill -

**Page 1, Section 1** represents an overhaul of **NDCC 11-11-26**.

- Existing language requires that all county building projects exceeding a \$10,000 threshold must be let out for bid, except as provided in chapter 48 (a separate \$100,000 threshold, we'll discuss next). Counties are responsible for the maintenance and upkeep of a wide range of public buildings & property – from historic Courthouses to shops, garages and parking lots. New construction is not the ordinary project incurred by a county. Today's smaller project costs are skyrocketing as the new construction work continues to escalate throughout North Dakota. Testimony on new building construction costs was provided very recently in another committee, which reported conservative estimates of 25-30% higher costs than original projections on new construction. In the world of maintenance and remodel work, this amount can easily be twice that, or more.

Some context in what makes the \$10k threshold a problem: When a project is necessary, a quote process begins, wherein the given authorized department make inquiries of contractors to submit their quotes. If the quotes come in less than \$10,000, the lowest responsible quote is accepted. If the quotes exceed \$10k, the bidding threshold kicks in; the quotes are set aside; the request for bids and job specifications are published in the appropriate newspaper(s) and professional association publications – and the project sits on hold until all bids are in.

Here is the main issue with this process in your average county in North Dakota in 2015... the small mom & pop construction company in your local community does not engage in the bid process. As a matter of practicality, the bonding process in particular, does not fit with their business model or practices, so the local contractors are rarely engaging in the bid process. This leaves the bidding process to the General Contractors who tend to have little interest in these smaller, often 'messy' projects, which are often simply impractical for their business model. So, after quoting out the project, and then bidding out the project, often the county is left with no takers on these smaller jobs. Or, if bids are received, they are often far in excess of the quotes provided.

These small jobs however, are important – and no doubt must be accomplished – so the county is faced with either piggy-backing other projects together (if so, re-prioritization of

#### **NDCC 11-11-26 Overview**

##### **1991 –**

- Increased to \$10k

##### **Pre 1991 –**

- \$2500 Threshold

##### **1983 –**

- NDCC 48-01.2 included in statute

##### **Note –**

This statute only affects counties. Cities, Schools, and other public works have no dual threshold requirements

projects, establishing specs and bidding process are started all over again) – or – they are faced with accepting inflated bids in order to simply get the job done and move on.

In either case, this threshold defeats any intended purpose of protecting the taxpayers interests with relation to effective and responsible purchasing discretion by essentially robbing counties of the ability to leverage their local resources - as deemed appropriate by the governing board. This inability to engage common sense and practical, solution-based practices is very costly overall.

HB 1182 seeks to strike the \$10,000 bid process for counties based the fact that the (1) "erection of county buildings" is wholly antiquated; and (2) that no other governmental entity is required to meet two bidding thresholds.

The second piece of 11-11-26 that we would look to strike from the chapter is related to "election ballots and supplies". I believe the Secretary of State's office will provide more detailed information regarding this portion of the bill, but the short-hand regarding election supplies is that our election processes, supplies and suppliers are vastly different today – as compared to the last time this chapter was updated in 1991.

The remaining piece of chapter 11-11-26 (still on page 1) relates to the bidding process for fuel for county needs, which has no changes applied to it.

**Pages 1 & 2, Section 2, 11-11-27**, Line 23 has been changed to reflect the changes made in 11-11-26. With buildings and election supplies removed, this line now references requirements for the advertising of fuel bids. Mr. Chairman and committee members, line 23 erroneously referenced "amount of fuel", when the more appropriate bidding specifications would reference the "types of fuel" to be bid on (Diesel #1, diesel #2, heating, gasoline, etc). To that end, I have a proposed amendment to this section for this change.

Additional changes are made on page 2, line 4 to update the verbiage "shall" to "must" and the use of "may" to meet current drafting standards, per Legislative Council.

**Page 3, Section 3, 11-11-29** is updating the contract procedure as it pertains to fuel bid purchases in 11-11-26. All references to standard construction practices have been stricken leaving the standard majority vote, with chairman and county seal of approval on behalf of the county board.

**Page 3, Section 4, 18-12-04** is moving the established monetary threshold dollar amount in to Chapter 48-01.2-02.1

**Page 3, Section 5, 24-05-04.2** is moving the established monetary threshold dollar amounts of the two specified thresholds within this chapter in to Chapter 48-01.2-02.1

- In addition, this chapter will now specify the publication process for these bid projects

**Page 3, Section 6, 43-19.1-28** is moving the established monetary threshold dollar amount in to Chapter 48-01.2-02.1

**Page 3, Section 7, 48-01.2-02.1** is the chapter that identifies the thresholds for bidding projects, and represents an increase to the established threshold of \$100,000 to \$150,000 - in the attempt accommodate at least a moderate amount of the inflation of construction costs throughout the state.

The changes to sections 4, 5, 6 and 7 now reference this chapter in NDCC 48 as a means to clean up and streamline thresholds in to the one chapter.

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Mr. Chairman and committee members, I think it's important to take a moment to recap in clarifying the types of construction work typically engaged in: There is new vertical (buildings), new horizontal (roads, bridges, grounds) - and then there is this mixed bag that doesn't necessarily have a nice, tidy category, but is none-the-less a very important part of the capital improvements plan of any public entity. Getting a handle on the inflationary factors that affect these improvement works is becoming increasingly difficult.

An excerpt of an interim Economic Impact Committee report that addressed highway construction costs states (in part):

*"...The construction cost index in the state has risen substantially - construction that cost \$1 in 2001 cost \$2.61 in 2013. In general, the cost of construction rose much more dramatically in the western portion of the state. The cost of concrete overlay in the west was approximately 61% higher than the east; the cost of minor rehabilitation of road surface was 74% higher in the west with the cost of milling and overlaying a two-lane road approximately 240% higher".*

As a separate note, and independently, to understand exactly how stretched resources are with regards to road and bridge management, Traill County recently conducted a study of a 30-year history of road and bridge expenses in that county. The results found that, in the east, this region has experienced an increase of 410% in highway costs and 230% increase in bridge costs.

Construction increases are not exclusive to horizontal projects, and as described in earlier testimony, new vertical construction costs are coming in easily 20-30% over budget, while smaller remodel-type work can run the gamut of what the market will bear.

With this in mind, an increase to \$150,000 seems very appropriate; maintains the integrity of the intent of the law to hold public projects to a competitive bidding process; insures larger projects will remain tied to the experts for guidance and liability purposes; while allowing the smaller contract work to be managed with appropriate local resources, reason and practicality.

As a final note, the amendment presented includes an emergency clause. With spring and summer contract work already in the planning stages across the state, moving this forward sooner - as opposed to later - would allow public entities greater flexibility in their planning processes, broaden the pool of contract resources to work with, and potentially lower costs for many of these smaller projects.

With that, I thank you for this opportunity to present HB 1182 and stand for any questions.

15.0486.01001  
Title.

Prepared by the Legislative Council staff for  
Representative Mooney  
January 21, 2015

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1182

Page 1, line 4, after "improvements" insert "; and to declare an emergency"

Page 1, line 23, replace "amount" with "type"

Page 3, after line 31, insert:

"**SECTION 8. EMERGENCY.** This Act is declared to be an emergency  
measure."

Renumber accordingly

January 22, 2015

House Political Subdivisions

HB 1182

CHAIRMAN KLEMIN AND MEMBERS OF THE COMMITTEE:

For the record my name is Blake Crosby. I am the Executive Director of the North Dakota League of Cities representing the 357 cities across the State.

We are here today in support of HB 1182 which would increase the public improvement construction threshold in NDCC 48-01.2-02.1 from \$100,000 to \$150,000. Cities are saying they are finding it difficult to receive bids on small projects and the projects need to be done. In previous testimony on bid thresholds as per HB 1077; you saw willingness from the construction industry to accept the \$150,000 threshold.

There has been discussion for higher thresholds but we have heard much testimony on a public safety aspect and protection of the tax payer's dollars if the threshold was increased. I believe that locally elected officials act in the best interest of their city and they should be trusted until proven otherwise. But, rather than get into a protracted argument on the need for a higher threshold, I have a suggestion.

Bid thresholds inherently create conflict. They are a cookie-cutter, one-size-fits-all answer. Based on the number of sessions where bid thresholds continue to come to the forefront; there are obviously some problems in that concept.

I would recommend that this committee request an interim study on moving away from strict bid thresholds and look at bids being required based on components of the project such as public safety, structural integrity, public access, public health, potential liability, other prudent components and yes, cost of the project. To keep coming back session after session and arguing about an arbitrary threshold is a waste of taxpayer's dollars.

On behalf of the North Dakota League of Cities, I ask for a Do Pass on HB 1182.

THANK YOU FOR YOUR TIME AND CONSIDERATION. I will try to answer any questions.

Testimony to the: House Political Subdivisions  
Prepared January 22, 2015 by the North Dakota Association of Counties  
Aaron Birst, Legal Counsel

**CONCERNING SB 2156**

Chairman Klemin and members of the committee, my name is Aaron Birst and I am with the Association of Counties. We are here today to support HB 1182.

HB 1182 is an attempt to clarify and bring some consistency to the competitive bidding chapters of the North Dakota Century Code.

Currently 92 separate statutes deal with counties and competitive bidding. These statutes are spread throughout the code and are simply a result of decades of new laws being created without revising or updating the old ones.

HB 1182 in no way is a comprehensive attempt at changing this structure. However, I do believe it contains at least one very helpful clarification. Under NDCC 11-11-26, which has been on the books since Statehood and relatively unchanged, counties are required to bid "county buildings" exceeding \$10,000. However, NDCC 48-01.2-02.1 states public improvement construction must be bid at \$100,000. This contradiction has led to confusion. HB 1182 strikes out the county building section which would then result in the bidding clearly being that as provided for in NDCC 48-01.2-02.1.

As you can see, HB 1182 also raised the bidding thresholds from \$100,000 to \$150,000. As I have previously mentioned, NDACo supports periodically reviewing dollar amount in law as those amounts over time become outdated. Without fully researching the issue it appears the \$100,000 dollar limits has been on the books since at least 1997.

I would like to mention to the committee simply because we are attempting to raise the legal limit in no way should suggest the counties are not interested in trying to seek out the best value for taxpayer dollars. Counties can and do bid many projects under the legal threshold already but by raising the limit they would have more flexibility in how they undertake that effort.

Thank you,

## **HB 1182 Testimony, January 22, 2015**

### **Jason Benson, Cass County Engineer**

#### **Introduction:**

The changes outlined in HB 1182 are effective and will improve the bidding process for today's construction environment. Last Legislative Session changes were made to how Counties advertise and contract rental agreements in 24-05-04 and Counties appreciate these changes. Your efforts in HB1182 to update and amend the process for fuel bids, highway construction, and public works will further benefit Counties in their ability to affectively bid to reduce unnecessary paperwork and ensure taxpayers get the best product at the lowest cost.

#### **Suggested Amendments:**

While the changes outlined in HB 1182 help improve the County Roads section 24-05 of the Century Code, they do not include the same changes to the County Bridge section 24-08. I would ask that this committee look to modify the sections of 25-08 to bring the bridge bidding process up to the same standards as the road process. I propose to align the Bridge Bidding and Advertising in 24-08-01 and 24-08-03.2 to reflect the proposed Highway Bidding and Advertising requirements in HB1182. Current law requires bidding for bridge work over thirty thousand dollars and advertising for 30 days. Both of these requirements do not meet the necessities of today's construction environment. Aligning both the Road and Bridge bidding and advertising requirements will alleviate confusion and streamline smaller bridge projects. Bridge repair and replacement is a costly endeavor and even a minor repair can cost over thirty thousand dollars. In addition, many bridge issues come to light over the summer months. Under the current thirty day advertising requirement it is difficult to get projects completed that year. If a bridge is found to need repairs in June and the cost is over thirty thousand dollars, under the current law it nearly impossible to award a project before the beginning of September. If the repair includes a concrete box beam or concrete box culvert, it will take an additional thirty days for a supplier to form and cast the concrete products. Effectively, under today's law, many projects can't be completed until late fall or the next construction season. Aligning the Bridge and Road bidding and advertising requirements will improve both process. Below are the recommended changes:

**Proposed Amendment: 24-08-01. Construction of bridges by board of county commissioners - Petition – Bids - Rejection**

Whenever a majority of the freeholders of a civil township, or a majority of the freeholders living within a radius of three miles [4.83 kilometers] of the proposed location, petition the board of county commissioners for a bridge at a specified location within such township, or within any incorporated city, if the cost of the bridge exceeds the sum of ~~five hundred dollars~~ fifty thousand dollars, the board of county commissioners shall view and investigate the necessity of the proposed bridge. If the board approves the petition, it shall proceed to advertise ~~in the official newspaper of the county, for a period of thirty days~~ at least once each week for two successive weeks in the official newspaper of the county and in other publications as the board of county commissioners deems advisable, the plans and specifications of the proposed bridge, asking for sealed bids for the building of such bridge, to be submitted to it at the next regular or special meeting, at which the board shall proceed to examine all proposals or bids for the building of such bridge. The board shall award the contract to the lowest responsible bidder, requiring the bidder to give a bond in a sum not less than the amount stipulated in the bid or contract, conditioned for the faithful compliance with the terms of the bid or contract, the bond to be approved by the board and filed in the office of the county auditor but the board may reject all bids. If all bids are rejected, the board shall readvertise as provided herein. Provided, however, that if the amount of the lowest responsible bid is less than fifteen thousand dollars, the board may refuse all bids received and proceed to construct the bridge under its own supervision as it deems most expedient and may enter into contracts for the labor or material to be used in the construction of the bridge.

**Proposed Amendment: 24-08-03. Bridges - Supervision, repairs, bids, signs - Liability.**

1. Each bridge built under the provisions of section 24-08-01 is under the supervision of the board of county commissioners, and the county shall pay the cost of rebuilding or repairing these bridges.
2. If the cost of rebuilding or repairing a bridge would exceed ~~thirty thousand dollars~~ the public improvement construction threshold for bidding under section 48-01.2-02.1 on estimate of the county engineer and upon the approval of the estimate by the department, the county commissioners shall advertise for bids and award the contract pursuant to

section 24-08-01. If a bridge is destroyed by flood, fire, or other casualty and the public interest would suffer by the delay from advertising for bids and awaiting the contract pursuant to section 24-08-01, the county commissioners may promptly contract for the rebuilding or repair of the bridge without advertising for bids, regardless of the cost.

3. The board of county commissioners at least every four years, and so far as time and conditions may permit, shall cause an inspection to be made of all bridges on the county road system in the county.

4. If any bridge on the county road system is deemed unsafe for public use by the board of commissioners, it immediately shall take steps to close the bridge and prevent its use by the public.

5. If any bridge on the county road system is deemed unsafe for loads in excess of a certain weight, the board of commissioners shall post, by January 1, 1985, load limit Page No. 1 signs which must comply with the standards for uniform traffic control devices prescribed by the director under section 39-13-07.

6. The county is not immune from claims or suits for damages arising out of negligent failure to perform the inspection, signing, and repair duties required by this section.

**Conclusion:**

I would like to thank the Committee for moving forward the changes outlined in HB 1182 and ask that the additional amendments be added so the County Bridge section can be brought up to the same standards as the County Roads. These changes will allow Counties to more consistently bid and award both Road and Bridge projects without confusion as to bid limits and advertising periods.

Chairman Klemin and Members of the Committee

My name is Bonnie Staiger, Today I appear representing both the ACEC (American Council of Engineering Companies) and AIA North Dakota (American Institute of Architects) Each organization is requesting that you give this bill the same Do Not Pass recommendation that you gave a similar bill (HB 1077) in the opening days of the session so that further collaboration can occur among all stakeholders.

I'd like to take you through a short time-travel of how various industry groups have slogged their way through a history not unlike the Hatfields and McCoys which pitted many (sitting behind me) against one another and evolving to an unprecedented level of collaboration on issues and a peaceful coexistence in Chapter 48. The undertaking started at the end of the 2007 session and represented the following design and construction industry organizations:

- ACEC/ND (American Council of Engineering Companies)
- AIA North Dakota
- AGC (Associated General Contractors of ND)
- National Electrical Contractors Association
- ND Home Builders Association
- ND Plumbing, Heating, and Mechanical Contractors Association
- ND Society of Professional Engineers

The coalition formed after a mandatory interim study passed to look at procurement and delivery options. We came to the interim committee, chaired by Sen. Karen Krebsbach, offering to be a resource, partner with them and maybe if we were really successful, help craft a bill draft that collectively we could support and would also protect the public trust and taxpayers of North Dakota.

Her committee --all too familiar with The Great Construction Wars--was relieved by our offer and we did come up with a bill--which was no small feat because first we had to learn how to be in the same room together, then work toward a compromise, and turn out a work product that we could support.

During those 2 years, we met at least monthly and created a culture of collaboration and trust. We also worked with many other groups representing public owners and agencies such as Board of Higher Ed, Fargo Public Schools, Department of Transportation, the Office of Facilities Management and the Association of Counties.

Today we believe HB 1182 --which goes beyond the scope and stakeholders of Chapter 48-- should be moved to an interim study with enough time to



collaborate under the auspices of an interim committee. This would provide an alternative to having this bill pass or fail without this critical cooperation.

We ask for a **do not pass on HB 1182** and I will be happy to answer questions however I respectfully request you save more technical questions for the practitioners here today.

Testimony in Opposition to House Bill 1182

North Dakota House of Representatives  
Political Subdivisions Committee  
January 22, 2015

Testimony of:

Ryan Ackerman  
1112 Sunrise Court Southeast  
Minot, North Dakota 58701

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Good morning and greetings Mr. Chairman and members of the committee. For the record, my name is Ryan Ackerman. I am the President and CEO of Ackerman-Estvold, an engineering and architectural consulting firm with offices in Minot and Williston. I am also a registered professional engineer.

I'd like to start with a true story.

A part of my job as an engineer with Ackerman-Estvold is to serve as the city engineer for communities that appoint us to serve the public's interest. One of the cities that I have had the privilege of serving for over 10 years is the City of Kenmare.

Five years ago, I happened to be in Kenmare on a routine trip in late April, and I noticed that there was a large water slide being unloaded in pieces at the City's pool. Being curious and recognizing some of the people working with this slide, I thought that I would stop by and see what they were up to.

Both the information that I gathered and what I noticed during this innocent encounter really troubled me.

The local Park Board had purchased the used water slide, a large water slide by my standards, from the Minot Air Force Base for under \$500. They were well within their right to do that and seemed to be making a low-cost, high-return investment in the quality of life for their community. They had already procured the services of local mechanical and electrical contractors to help with the install of the pumps and piping, and they had a local general contractor that would be able to install this water slide for the benefit of the children of the community within a couple of weeks, with a total cost of under \$5,000.

I didn't have any questions about the benefits that this slide would provide or the quality of life enhancements that a slide like this could provide to the community. I did, however, have questions about how this slide and the stair case assembly, with its relatively small footprint and an approximate height of 25 feet, was going to be anchored to safely withstand the North Dakota wind. The plan was simple – they were going to install concrete anchors, likely purchased from the local hardware store, in the existing concrete slab.

I had immediate concerns regarding the safety of this approach. I immediately began research on the existing pool facility and quickly concluded that this installation would not be safe for the general public. Failure of this installation would have been imminent. Kids could have been hurt or even killed. I blew the whistle and stopped this project out of concern for the public welfare. We were then given direction by the city to design an appropriate foundation for the slide. The cost for the design was approximately \$5,000 and the estimate to complete the foundation work was approximately \$35,000. The city council and the Park Board ultimately chose to not move forward with the installation of the slide due to the construction costs.

For a period of time, I wasn't very popular in Kenmare. Members of the Park Board felt that the city was meddling in Park Board business. There was an article in the local newspaper in which a vocal Park Board member was interviewed and essentially denounced my actions as getting in the way of progress. I have relatives in Kenmare, and I recall being jokingly branded the 'Fun Police' at a family function.

The actions taken by the Park Board and the City of Kenmare, as public entities, were all legitimate. They purchased materials and hired a contractor without getting a Professional Engineer involved since the anticipated total cost was \$5,000 – well beneath the \$100,000 threshold of the existing State law. Even if they had intended to install the properly designed foundation elements for the project, they could have done so in a similar fashion – without a Professional Engineer's involvement, as the total cost would have still been well beneath the \$100,000 threshold.

This story illustrates a flaw in the current State law. And I am deeply troubled by any proposals in this legislature that would increase the monetary threshold for requiring professional design services on public projects. Increasing the threshold amount by any factor will be accompanied by a risk factor for public safety that is at least equivalent. And I don't feel that is acceptable. The threshold for engaging an engineer must remain sufficiently low so that the governing body is compelled to rely on the expertise of licensed design professionals to appropriately manage the risks of constructing a public improvement.

There is a need to give our cities and counties the agility to get their projects done without additional bureaucratic nonsense that provides little or no value. I couldn't agree more. What this bill does, though, is that it trades procurement agility for public safety. There should be no relationship between thresholds for bidding the construction of a project and engaging an engineer. These are separate considerations, and their relative independence is oftentimes obscured because they are mentioned in the same paragraph of the Century Code (NDCC 48-01.2-02.1).

When House Bill 1077 was reconsidered and ultimately defeated on the House Floor last week, much was discussed regarding the cost savings associated with the bidding process and whether or not professional errors and omissions insurance could be procured by contractors. While those are valid arguments against both that bill and this bill, the bigger issue is that of public safety and risk management. Whether or not insurance can be secured by the agency or by the contractor is a moot point. Design professionals provide sound risk management for the public before the public is impacted. A contractor or agency's liability insurance provides risk management as compensation for damages only after the public has been impacted. In terms of what best serves the public interest, I think it's clear that it's the first of these two scenarios I just mentioned.

There was an argument heard on the floor last week about letting the cities decide their own fate and to limit the State's involvement in local affairs. Whether or not you agree with this political argument is moot, in my opinion, when considered in the broader context of public safety. The existing State law and this bill essentially place the burden of determining the public safety implications of projects whose costs fall below the threshold on the locally elected or appointed officials. I don't feel that it is in the best interests of either local elected officials or the public welfare.

In my Kenmare example, I don't feel like these officials were negligent in their duty. They had no malicious intent. They just didn't know any better.

The first fundamental canon in my code of ethics is to hold paramount the safety, health and welfare of the public in the performance of my professional duties. And that is why I am here to testify in opposition to this bill.

**Testimony**  
**House Bill 1182**  
**House Political Subdivisions Committee**  
**January 22, 2015; 9:30 a.m.**  
**North Dakota Department of Health**

Good morning, Chairman Klemin and members of the House Political Subdivisions Committee. My name is Wayne Kern, and I am Director of the North Dakota Department of Health's Division of Municipal Facilities, which is part of the Environmental Health Section. I am here to provide testimony in opposition to House Bill 1182.

Under current state law, public improvement projects exceeding a threshold of \$100,000 must be bid and cannot proceed to bidding and construction without engineer-prepared plans and specifications. House Bill 1182 proposes to increase this threshold to \$150,000. If House Bill 1182 is enacted, the state and its political subdivisions would be allowed to undertake any public improvement project up to \$150,000 without engineer-prepared plans and specifications and without bidding.

The Department of Health opposes House Bill 1182 as it pertains to public improvement projects involving water works, sewerage, and solid waste for several reasons which were shared with the Committee on January 9 during testimony on House Bill 1077.

- The Department of Health is responsible for review and approval, prior to construction, of all public improvement projects involving water works, sewerage, and solid waste. These reviews ensure that projects meet design standards, and are crucial to ensure system functionality and integrity, and to protect public health and the environment. Improperly designed or constructed facilities can fail, leading to loss of service and direct contamination of drinking water, groundwater, or surface waters.
- Based on the current threshold of \$100,000, communities occasionally submit projects for review that have not been prepared by an engineer. We spend considerable time working with these communities to get their submittals in a form that satisfies design standards and can be quoted for construction purposes. Many times, communities realize that getting their submittal into an approvable condition is beyond their expertise and hire an engineer. This is inefficient and causes delays in project approval and construction. Increasing the threshold to \$150,000 will exacerbate this

situation. At a minimum, more projects may face extended approval periods. This may add more work to already heavy workloads and delay approval of all projects. More projects may be rejected and not approved, leading to further delays and expense for the applicants.

- The Department's role is to review and approve already-prepared projects to ensure that design standards are met, not to design projects. We are often asked and do provide design recommendations. However, we cannot both design and approve projects, as this represents a conflict of interest. To avoid conflicts of interest, we may have to reject projects that do not initially meet design standards, which may result in project delays.
- The proposed increased threshold could reduce funding assistance opportunities for communities. Funding assistance agencies typically require engineer involvement in public improvement projects. This is likely in recognition of their technical complexity and public health and safety implications.
- Engineers are uniquely equipped to prepare plans and specifications that meet design standards and that are sufficiently detailed for bidding and construction purposes. Over the last four years, we have experienced a huge increase in the number of projects submitted for approval. Nearly all of these projects were prepared by engineers. This enabled timely review and approval. The proposed increased threshold has the potential to reduce engineer involvement and our ability to approve projects in a timely manner. It also has the potential to impede needed public improvement projects statewide.

The Department takes its responsibility for public health, safety and environmental protection seriously. Keeping the current threshold will allow us to do just that.

This concludes my testimony. I would be happy to answer any questions you have at this time.

A BILL for an Act to provide for a legislative council study of public improvement issues relating to use of multiple bids versus single prime bids, bidding thresholds, design services thresholds, and indemnification.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. LEGISLATIVE COUNCIL STUDY.** The legislative council shall study public improvement issues relating to use of multiple bids versus single prime bids, bidding thresholds, design services thresholds, and indemnification. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fifth legislative assembly.

H.B. 1182  
3.13.15  
#1

Good morning! -

Mr. Chairman and members of the Senate Political Subdivisions Committee –

For the record, I am Rep. Gail Mooney of District 20 - and I thank you for this opportunity to present House Bill 1182.

HB 1182 comes as a result of working through numerous maintenance and capital improvement projects during my tenure as a County Commissioner. Repeatedly, we would find ourselves tripped over conflicting threshold statutes that would inevitably complicate and drive the cost of smaller projects up.

As you are well aware, bidding thresholds play an important role in ensuring due diligence is followed for public work projects. This process of public bidding has a highly effective record of:

- pulling in competitive bids;
- bidding contractors are required to meet liability and bonding requirements;
- architects and engineers provide specialized expertise in the areas of new and complex work.

Collectively, the thresholds/bidding process serves the public well.

However, the existing conflict between Sections 11-11-26 and 48-01.2 is confusing in interpretation, and is ultimately contributing to an unnecessary increase in construction costs, limits availability to appropriate contractors, and is disproportionately burdensome and prohibitive for common sense processes and practices.

**Section 1, of HB 1182** removes the ambiguous language relating to the \$10,000 threshold, and further removes outdated requirements relating to election ballots and supplies.

**NDCC 11-11-26  
Overview**

**1983 –**

- NDCC 48-01.2  
\$100k threshold  
included in statute

**Pre 1991 –**

- \$2500 Threshold

**1991 –**

- Increased to \$10k

**Note –**

This statute only affects counties. Cities, Schools, and other public works have no dual threshold requirements



**NDCC 11-11-26.**

- Existing language requires that all county building projects exceeding a \$10,000 threshold must be let out for bid, except as provided in chapter 48 (a separate \$100,000 threshold).
- New construction is not the ordinary project incurred by a county. Counties are responsible for the modernization, maintenance and upkeep of a wide range of public buildings & property – from historic Courthouses to shops, garages and parking lots.
- Today's smaller project costs are skyrocketing as the new construction work continues to escalate throughout North Dakota. Testimony on new building costs, as provided by a recent hearing related to hospital construction, reported conservative estimates of 25-30% higher costs than original projections on new construction. In the world of maintenance and remodel work, this amount can easily be twice that, or more.

Some context to what makes the \$10k threshold a problem:

When a project is necessary, a quote process begins, wherein the given department make inquiries of contractors to submit their quotes. If the quotes come in less than \$10,000, the lowest responsible quote is accepted and the project is moved forward. If the quotes exceed \$10k, the bidding threshold kicks in; the quotes are set aside; the request for bids and job specifications are published in the appropriate newspaper(s) and professional association publications – and the project sits on hold until all bids are in.

Here is the main issue with this process in your average county in North Dakota in 2015... the small mom & pop construction company in your local community does not engage in the bid process. As a matter of practicality, the bonding process in particular, does not fit with their business model or practices, so the local contractors are rarely engaging in the bid process. This leaves the bidding process to the General Contractors who tend to have little interest in these smaller, often 'messy' projects - which are often simply impractical for their business model. So, after quoting out the project, and then bidding out the project, often the county is left with no takers on

these smaller jobs. Or, if bids are received, they are often far in excess of the quotes provided to make it equitable to the general contractor.

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These small jobs however, are important – and no doubt must be accomplished responsibly and safely – so the county is faced with either piggy-backing other projects together (if so, re-prioritization of projects, establishing specs and bidding process are started all over again) – or – they are faced with accepting inflated bids in order to simply get the job done and move on.

In either case, this threshold defeats any intended purpose of protecting the taxpayers interests with relation to effective and responsible purchasing discretion by essentially robbing counties of the ability to leverage their local resources - as deemed appropriate by the governing board. This inability to engage common sense and practical, solution-based practices is very costly overall.

HB 1182 seeks to strike the \$10,000 bid process for counties based the fact that the (1) "erection of county buildings" is wholly antiquated; and (2) that no other governmental entity is required to meet two bidding thresholds.

The second piece of 11-11-26 that we would look to strike from the chapter is related to "election ballots and supplies". I believe the Secretary of State's office will provide more detailed information regarding this portion of the bill, but the short-hand regarding election supplies is that our election processes, supplies and suppliers are vastly different today – as compared to the last time this chapter was updated in 1991.

The remaining piece of chapter 11-11-26 (still on page 1) relates to the bidding process for fuel for county needs, which has no changes applied to it.

**Section 2, 11-11-27**, Line 23 has been changed to reflect the changes made in 11-11-26. With buildings and election supplies removed, this line now references requirements for the advertising of fuel bids.

Additional changes are made on page 2, line 4 to update the verbiage "shall" to "must" and the use of "may" to meet current drafting standards, per Legislative Council.

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**Section 3** - Directs Legislative Management to consider a study of public works bidding thresholds.

The original bill, as presented to the House Political Subdivisions, looked to update several sections of code relating to bidding thresholds, of which each are currently set to \$100,000. This trigger amount sets in to motion the requirements to retain project engineers or architects and establishes protocols for bid announcements. With no inflationary increases since the 90's, the original bill would have increased this threshold from \$100,000 to \$150,000 – based on construction industry inflationary costs, and coupled with the inflationary impacts associated increased construction across the state.

After hearing opposition from a number of the trade associations, it was decided a friendly amendment to study all public works thresholds may now be in order. A comprehensive understanding of each type of construction (whether vertical buildings – or horizontal roadways) is needed. Considerations for the potential impacts to public safety are paramount. Establishing thresholds that meet the needs for all - while allowing for reasonable expectations of practical outcomes - is essential.

Threshold statutes abound throughout our Century Code. Some (perhaps most) have not been updated for decades. Some are completely antiquated and no longer relevant to today's practices and standards (there is a bridge statute with a \$30,000 threshold). I am confident a study conducted by Legislative Management, in tandem with Legislative Council, the trade associations, League of Cities, NDACo, and other relevant stakeholders, would provide great outcomes.

As a final side note: This seems to be the year of "thresholds". All total, a document search arrived at six bills (including this one) related to thresholds, of which four remain active in the Senate. Legislative Council may be able to provide a more comprehensive list of the bills relating to thresholds in this session for comparisons, but obviously, the sheer number of bills related to bidding thresholds would indicate this is an issue across the state. To date, in addition to HB 1182:

SB 2171 – RE: 48-01.206, \$150k

SB 2233 – RE: Moved to a study

SB 2246 – RE: 48-01.2-02.1 (follows this hearing) \$150 plus study

I point these out only to caution that we may want to ensure that any bidding thresholds adjusted in this session are carefully considered to avoid inadvertent negative impacts.

With that, Mr. Chairman and committee members, I would be glad to answer any questions.

U.B. 1182  
3.13.15  
#2a

13 Mar 2015

Senate Political Subs Committee

Testimony in opposition to any further changes to HB 1182

Chairman Burckhard and members of the Committee

My name is Stacy Staiger Krumwiede (#159) Today I appear representing both the ACEC (American Council of Engineering Companies) and AIA North Dakota (American Institute of Architects).

By now, you are all familiar with the issues regarding bidding, procurement, and thresholds in Chapter 48 and a few similar tweaks to other related chapters. As it turns out there are a total of 9 bills introduced this session.

For HB 1182 (during the House hearing) we requested a "do not pass" recommendation or in the alternative, amend the bill into an interim study so that further collaboration can occur among all stakeholders. The House chose to retain certain parts of the bill and to include our requested interim study language. Each organization (ACEC and AIA) is requesting that you do not further amend this bill as sent to you from the House. We feel that we can live with those changes but would oppose any further amendments.

By way of review, I've attached Bonnie Staiger's testimony provided to your committee on SB 2246 which gives an historical overview and rationale for further interim collaboration.

**Overview of several bills dealing with these issues this session:**

Interim Study Included

HB 1182 (Mooney)

SB 2233 (Dever)

SB 2246 (Klein) Hearing 3/13 HPS

Defeated

HB 1077 (Trottier)

SB 2203 (Laffen)

SB 2140 (Laffen)

Others currently in committee

HB 1426 (Steiner) pending action by Senate Education –

Interim study amendment requested

SB 2149 (Burckhard) pending in House Pol Subs

SB 2171 (Klein) awaiting hearing in House IBL

L.B. 1182

3.3.15

# 26

**30 Jan 2015**

**Senate Political Subdivisions Committee  
Testimony in opposition to of SB 2246**

Chairman Burckhard and Members of the Committee

My name is Bonnie Staiger, Today I appear representing both the ACEC (American Council of Engineering Companies) and AIA North Dakota (American Institute of Architects) Each organization is requesting that you give this bill a Do Not Pass recommendation or in the alternative, amend the bill into an interim study so that further collaboration can occur among all stakeholders.

Today HB 2246 is among, at last count, 8 assorted bills introduced to make widely disparate and uncoordinated changes to Chapter 48 and similar provisions to other chapters. One of those bills –heard a couple of weeks ago by this committee and at the request of the bill's sponsor was given a unanimous DNP recommendation and defeated on the Senate floor. We believe this bill should be moved to an interim study thus allowing enough time to collaborate under the auspices of an interim committee. This would provide an alternative to having this bill pass or fail without this critical coordination of all stakeholders. I have discussed our intentions with Senator Klein so he is aware of our goal to amend his bill. He has also heard several of the other bills in his committee and for all of them we have proposed the same idea.

For some background, I'd like to take you through a short time-travel of how various industry groups have slogged their way through a history not unlike the Hatfields and McCoys which had pitted many (in this room today) against one another and evolving to an unprecedented level of collaboration on issues and a peaceful coexistence in Chapter 48. The undertaking started at the end of the 2005 session and represented the following design and construction industry organizations:

- ACEC/ND (American Council of Engineering Companies)
- AIA North Dakota
- AGC (Associated General Contractors of ND)
- National Electrical Contractors Association
- ND Home Builders Association
- ND Plumbing, Heating, and Mechanical Contractors Association
- ND Society of Professional Engineers

The coalition formed after a particularly contentious session dealing with procurement and delivery options. After an impasse among the

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industries and out of desperation a mandatory interim study was passed. We came to the interim committee, chaired by Sen. Karen Krebsbach, offering to be a resource, partner with them and maybe if we were successful, help craft a bill draft that collectively we could support and would also protect the public trust and taxpayers of North Dakota.

Her committee--all too familiar with The Great Construction Wars--was relieved by our offer and we did come up with a bill--which was no small feat because first we had to learn how to be in the same room together, then work toward a compromise, and turn out a work product that we could support in 2007.

During those 2 years, we met at least monthly and we created a culture of collaboration and frequently reported our progress to the interim committee. We also worked with many other groups representing public owners and agencies such as Board of Higher Ed, Fargo Public Schools, Department of Transportation, the Office of Facilities Management, the Association of Counties and Legislative Council.

Sen. Krebsbach is still a vocal advocate for the work of the group and the outcome. I know she'd be happy to chat about it if you'd like to visit with her.

With great respect for Sen. Klein, we ask for a **do not pass on HB 2246** as introduced or if you should have an interest in amending the bill deferring these issues to an interim study I have provided potential language for your consideration.

H.B. 1182  
3.13.15  
#3

**Testimony**  
**House Bill 1182**  
**Senate Political Subdivisions Committee**  
**March 13, 2015; 9 a.m.**  
**North Dakota Department of Health**

Good morning , Chairman Burckhard and members of the Senate Political Subdivisions Committee. My name is Wayne Kern, and I am Director of the North Dakota Department of Health's Division of Municipal Facilities, which is part of the Environmental Health Section. I am here to provide testimony in support of Section 3 of engrossed House Bill 1182.

Section 3 of engrossed House Bill 1182 proposes an interim legislative management study. The study would address current state law requirements for public improvement projects pertaining to use of single and multiple prime bids, bidding thresholds, design service thresholds, and indemnification. It is important to note that the current requirements resulted from legislation introduced in 2007. The legislation came from an interim committee study that used a collaborative process involving input from a broad array of stakeholders. A similar study is proposed in SB 2246.

Several bills have been introduced this session proposing changes to current state law requirements for public improvement projects. These changes need to be coordinated and further evaluated as to their consequences. Deferring these issues to an interim study would enable lawmakers to thoroughly evaluate current requirements and gather input from stakeholders on possible changes. The result may be one bill draft that addresses and balances pertinent issues and has stakeholder support. In summary, the Department supports Section 3 of engrossed House Bill 1182.

This concludes my testimony. I would be happy to answer any questions you have at this time.