

**2015 SENATE POLITICAL SUBDIVISIONS**

**SB 2246**

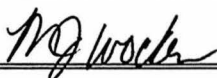
# 2015 SENATE STANDING COMMITTEE MINUTES

## Political Subdivisions Committee Red River Room, State Capitol

SB 2246  
1/30/2015  
Job Number 22871

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



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

Relating to the bidding threshold for plans and specifications for a public improvement contract

### Minutes:

Written testimony #1 Blake Crosby  
Written testimony #2 Bonnie Staiger  
Written testimony #3 Rick Tonder  
Written testimony #4 Wayne Kern

Chairman Burckhard opened the hearing on SB 2246. All senators were present.

**Senator Jerry Klein** Sponsor and introduced the bill. (1:00- 3:06) It increases the threshold for a project to be when an engineer and architect need to be used. There have been a variety of bills in our committee that have dealt with Chapter 48, it was revised in 2007. Certainly a lot of things have changed in the environment in construction and bidding across our state. Where does this come, from is the Kidder County School District, Supt. Miller is here to speak to it. They are in the process of building a bus garage and construction costs have increased substantially. They are kind of on that bubble that maybe we have to cut back on the project so we don't need an engineer because we're building a bus garage. So, the question is where should that threshold be? They still need to bid the project, its over \$100,000 they will bid the project but they just feel that if doesn't necessarily need an architect or engineer to design the bus garage. There will be a lot of opportunities to dig into the numbers as the Superintendent is here and I know there is a school board member here.

**Senator Judy Lee** Do you see a benefit to an emergency clause on this so that it might affect things that would be done this spring?

**Senator Jerry Klein** Great idea! A lot of these things we kind of draft, without considering that in its entirety. And certainly, I think this would be a great place to put in an emergency clause.

**Senator Anderson** Did you just pick the \$250,000 at random or was there a specific reason why that number was thrown in there?

**Senator Jerry Klein** As we looked at some other bills in the House who have attempted to raise the threshold that was totally unworkable. I believe the group that put this together or suggested this to me, felt that this was just an incremental increase rather than trying to eat the whole elephant which we certainly don't have any intentions of doing with this bill.

**Senator Bekkedahl** Why was the number \$100,000 picked when it was? **Senator Jerry Klein** As Senator Lee has just so pointedly demonstrated with her gesture, at that time it seemed to be a number that was quite workable. The building trade has seen a 20-30% change. So, I believe it was well thought out of back then, and it was well within what they believed was a major project but in today's environment and today's dollars it just that \$100,000 just doesn't amount to much anymore.

**Senator Bekkedahl** I may not have the lay of the land in the whole state, but in our area there is a lot of engineers and architects that are very busy and I can't imagine them having time to get to these project with a \$100,000 threshold timely enough for the project to move forward.

**Jack Mc Donald** North Dakota League of Cities. He handed out testimony from Mr. Blake Crosby, Executive Director of the League of Cities; Written testimony #1. We do support the increase and think it is a good idea. When I first started lobbying that level was \$25,000. If they do they just keep bumping it up every session. League of Cities looked at that and obviously there very concerned because a lot of these projects are city projects and so were certainly in favor of this bill. We urge you to give it a do pass, but at the same time maybe you do want to consider a study resolution just to study this whole area. It seems a little counterproductive to keep coming back every session and keep raising it up. Maybe there is a better way to handle it than to keep raising it every single session.

**Ken Miller**, Superintendent at the Kidder County School District (7:53-10:22) We have two K-12 schools in our district, one in Steele and one in Tappen. The reason why I am here to testify, my school board is support of this revision. The reason why is we have a bus garage currently that was built in 1960 and more or less unsafe to continue to use. Our school district is one that uses their dollars wisely and they are just looking at a 50x60 heated bus garage that is detached from the school, just south of the actual plant in Steele. We did put the project out for bids. We'll have our bid opening in February, but the concern of the school board is that it's going to go over the \$100,000 threshold. Even just a simple structure that is a 50x60 which is floor heat, is going to possibly be really close if not over that \$100,000. So, then what the school board will end up having to do is make a couple choices; one do we go ahead and hire an architect and I believe there is one member of this committee that had asked the question, well who is going to do that for just a bus garage. So, then we have those concerns to think about also. But, secondly, even a 10% which I am not sure of that is an accurate amount for an architect, but for \$100,000 that's is a \$10,000 for a 50x60 project that can very easily be put together by himself and some others. So, that is our concern and like Senator Klein said, inflation and supplies have increased and we just feel that the \$250,000 is a good standard amount and the reason for that is that anything that is going to be structurally attached to a school is going to be above that \$250,000. So, smaller projects are going to be below that dollar amount. Our school district is still bidding out the project because we want to save the district as many dollars as we can.

**Senator Bekkedahl** asked Mr. Miller is this just to give me a perspective. Is this a pole barn structure or is it a steel framed structure?

**Mr. Miller** replied it is a wood structure, more or less a 50x60 with two larger garage doors to bring busses in so it's not a metal structure just a wood structure that has a steel siding, steel roof, very simple.

**Senator Bekkedahl** You may not know this, but, are there companies out there, but if I have a project through a municipal project that is a steel frame building that comes pre-designed pre-engineered and I am given those documentations by the company constructing, does that qualify for this as being engineered and stamped by an architect? Usually the contractor brings that along with them.

**Aaron Birst** (11:15-13:19) Association of Counties. We support this bill. I can tell you the last time I've seen the change to the \$100,000 was in 1997, so our position has always been we support a continuing to look at these dollars anytime they are in the statute. Inflation of course eats into that. I do now that there is at least five or six other bills and we've testified in support of and in fact there is one in the House that I think is a good comprehensive bill. Currently counties have 92 statutes dealing with competitive bidding. Bridges for counties are \$30,000; there is even a county building section that is \$10,000 that we need to competitively build. We think the House bill is more comprehensive but if there is a way we can blend these altogether. Now the House bill is \$150,000, a raising of that threshold, and we think that is reasonable too. We certainly support this. We know that Bonnie Staiger is going to mention potentially resolution and we support that. It is a little difficult when you use dollar amounts for when you need to have an engineer or architect because as Senator Laffen mentioned in one of those hearings if you had a \$5,000 door you want to put up, but it requires some structural things, then perhaps you should have an architect or engineer. So it is a little awkward, it's just easier to do the threshold amounts but we certainly would be willing to look at those too. If there are structural issues you certainly should have an engineer or architect. I am not saying you should not. We support the bill.

**Bonnie Staiger** (14:21-20:02) Appear representing both the ACEC (American Council of Engineering Companies, and AIA, North Dakota American Institute of Architects). Written testimony #2. She spoke in opposition to SB 2246. Right now the current thresholds are based on dollars. That always isn't a good fit. In sessions since 2007, conversations have come up about what is another filter or alternative to just dollars, because even in a market like we are in right now, with things changing so rapidly, perhaps something besides dollars is better rather than just arbitrarily raising the threshold again using the dart method. I think we are on the cusp of perhaps finding what that other currency might be. We are, and there is some chatter about the possibility of it being public safety. Ex. Cited. Maybe buildings like the garage for school buses could be exempt depending on what those factors might be. We would like very much to deal with that as a whole rather than piecemeal.

**Senator Grabinger** asked Ms. Staiger. You heard the question from Senator Bekkedahl, in the last testimony about how busy in his area the architects and engineers are and the ability to get one to even look at a project of \$100,000 is very difficult. We're going to see

an expansion in my area very quickly and we'll probably be in a similar situation. How do you respond to that and in concern of this bill?

**Bonnie Staiger** replied going back to the separation of the bidding threshold versus the A&E services, architecture and engineering services. Those two factors we believe should be separated and dealt with separately. Again, the issue of a non-public safety matter, the need for an architect and engineering services could be dealt with as a separate issue and perhaps release some of those projects from that requirement depending on what the project is. What I think you're referring to is expediency and the market place. Again, I think the marketplace is so fluid right now, that to try to deal with all of these matters using the dart method with eight different bills and coming out with a hodgepodge isn't going to serve the public necessarily very well. I am convinced from what I know about the marketplace that architects and engineers are available and willing and able to do those projects as required. I also know that the average fee is seldom 10% as it might have been considered before. It is far less than that.

**Chairman Burckhard** You refer to the dark method? What is that exactly? **Senator Judy Lee** explained it was the dart method. I was throwing a dart. It was not my goal to start a new term that will now be used.

**Bonnie Staiger** interesting that Senator Lee would use that visual aid of a dart because I have used that in referring to all of these eight plus bills that are circulating around as a dart method, so I would've used that term without her supportive visual aid.

**Rick Tonder** NDUS Director of Facilities Planning (23:50-25:36) written testimony #3. He spoke in opposition to SB 2246. We would like to participate in any additional study that might take and perhaps reduce these 8 or 9 bills down to one.

**Senator Bekkedahl** asked Mr. Tonder just for my information. In your background are you a registered architect or engineer? **Mr. Tonder** replied I am a project or construction manager coordinator.

**Senator Judy Lee** asked Mr. Tonder can you answer Senator Bekkedahl's earlier question about whether or not a pre-engineered facility qualifies for the statutory engineered participation.

**Rick Tonder** replied the process whereby you obtain services would be different. In other words, you would be getting a pre-engineered structure like acquiring an automobile that is already engineered versus an automobile that is crafted for the area that it is meant to be built in. So, note to that the architectural services, the acquiring of the services can be a relatively straight forward matter. The statute for selecting architectural services already allows you to if the fee is expected to be less than \$25,000 you can retain your services for the most part with a phone call. So, it's not a cumbersome process for you to retain architectural services, therefore, even though the building might be pre-engineered the soil loadings, the things that go along with making sure that building will stay where you put it, those are things that you really want to have a local professional deal with because there are familiar with local conditions. If that engineered building is suitable to be built in Florida, where there is no frost, it may be wholly unsuitable to be built in North Dakota where you

have to deal with frost issues. It might go down deep as 5 ft. and lift the building out of the ground. So those things are some of the considerations for the local design professional. They are the ones for are very reasonable fee are going to be able to give you a building that stays in place. I can understand the issue about everyone's busy, and at that at the same time know that is its reasonable scope of work, usually they can fit it in for you.

**Senator Anderson** asked Mr. Tonder about the engineer or the architects responsibility once the project is bid and under construction to be sure that it is built according to the specifications that he wrote.

**Rick Tonder** replied by statute the architect is prohibited from doing anything more than construction administration which is to verify that you are getting what was designed, that the building is being built according to specifications to observation, but cannot coordinate anything on the site, so he is limited to that observation saying that yes, that was how it was supposed to be built, therefore I will approve the pay request from the contractor to have that paid for.

**Senator Bekkedahl** asked Mr. Tonder, I am going to take it a little bit further from what you said about the pole barn construction. You indicated some reference to soils and geotechnical analysis. For a normal pole barn structure 50x60 width, is that part of that? Do you take an analysis and going further would that would also demand some type of environmental review process, a Phase1 review or Phase 2 review? Are we getting that technical in these smaller projects at this time?

**Mr. Tonder** replied for a pole barn let's say a closed structure that is less than \$100,000 certainly it would be my opinion because I built one that way, that it didn't require an architect. Yes, you could do that, but once you get to that threshold of \$100,000 you're talking about something a little bit larger and perhaps a little more complex than your average pole structure. Whereby, now you want to take into consideration those soil issues that might be of concern for you, simply for the purpose of having a floor in it, a slab on grade floor. Will that work with that pole structure with its footings 5 ft. below grade. What will the movements be, will it affect the overhead door operation; will the overhead door jar, so that you cannot get into the facility when it comes to January. So, there is a consideration there, yes.

**Senator Bekkedahl** Mr. Tonder in the Williston area I can tell you as a contractor myself, were not building any pole barns anymore for under \$100,000. So that threshold is far exceeded in that area. Maybe the rest of the state is. The other thing is from the perspective if I have a local contractor that has been doing pre-designed and pre-engineered building structures and has been doing that for 30 years in the area and is successful at it, I question whether we need geo-technical analysis for somebody with kind of experience level with the soils and the background that we have in the area. I will take your expertise as square testimony from that.

**Wayne Kern** (31:05-35:51) Director of the North Dakota Department of Health's Division of Municipal Facilities. Spoke in opposition to SB 2246. Written testimony #4.

**Chairman Burckhard** Mr. Kern it seems like this kind of legislation, these thresholds are more in-line or more favorable to small communities. When I hear this testimony, it seems like they just want to get a project done and they honestly don't want to incur any more expense than they have to. Is that kind of the jest of this stuff?

**Mr. Kern** replied the only projects that we have received with respect to the threshold have been small projects from the small communities. As I mentioned in my testimony, that does create a lot of issues for us. We want to work through that. Many times we can spend 10 times as much time on that project as we can if it was prepared by engineers and we get more time and review on approval on construction. That is the type of thing that we're trying to avoid.

**Senator Judy Lee** commented to the committee, but there are people in the room who have been a part of this discussion in the past. We've had chats about the Uniform Building Code and I come from a community which has one, has adopted it. But there are other parts of the state that didn't want to do it; and the argument is that it is unfair to the people in the rural areas because there are fewer people available and all of those kinds of things. I get that part. The question in this and many areas is, well do those folks deserve less high quality construction when they are buying a building, whether it's a house or some other project. You said the same thing about licensing contractors, do we just give to somebody with a hammer and pickup or do we expect some actual credentials and criteria to be in place for someone who is a licensed contractor. Those are protections that certainly in some state become onerous and I recognize that and fence building but there also needs to be something in place that says we're going to at least guarantee that this level of capability and competence is going to be a part of it. But, there have been other conversations with folks, in this room that have been a part of that in 2007, and other occasions as well. So it is not a new chat and it wasn't really a matter of picking on small communities, it was a matter of trying to make sure that everybody no matter where they lived might have the same base level at least of competence and I recognize the challenges for the gentlemen from the Kidder School District, but also hear what the folks are saying who are supporting as well, and it's not a new chat.

**Senator Anderson** Isn't it true that most of the projects that you're looking at has to be installed by a licensed individual who are supposed to know that they are doing, when they install them?

**Mr. Kern** replied I think that is expectation of any construction project. I say it needs to be through a licensed contractor, yes that is the case.

**Senator Anderson** continued, does a plumbing board regulate the people who install septic systems, water systems and so forth?

**Mr. Kern** replied there are some basic rules underneath the plumbing code for design and installation of private sewage disposal systems. Historically the plumbing board has not been active in that area because it's not really considered classic plumbing. Most states if not all, generally don't have private sewage disposal under there plumbing code. It is handled otherwise like through your local public health units.

**Senator Anderson** if we wanted to break out the projects that you're talking about, which any times if you need a septic system or whatever, it comes in at a smaller amount of money than some building that you might be building. So could you give us language to break those out and say those kinds of projects that you're talking about or dealing with wouldn't come under the increased cap. Please give us language for that.

**Mr. Kern** I think the kind of projects you may be referring to would be projects that would be under taken like by a private individual which would not fall under what we're referring to here to the state and political subdivisions. So installation of private sewer is not something that is covered underneath this threshold.

**Senator Anderson** My point is the projects that you're worried about in your testimony and if we raised this to \$250,000 we could say that except that project that you're telling us about would have to stay at \$100,000. That is my point.

**Mr. Kern** I believe that might be an extreme challenge to try and create a pick list of projects that maybe you could exclude. Others as well as may can point out project that were well under the \$100,000 that had significant public health and safety ramifications. I think it would be extremely difficult to come up with that list that everyone could agree on, and I would like to reinforce to that maybe we shouldn't be looking at this so much as a dollar and cents issue as others have said, because in our experience we do receive projects that are around \$100,000 that have significant applications. A small community can put in a couple blocks of water and sewer and they could put in a lift station, with a well and well house. There is still a lot you can do underneath that \$100,000 so there are still significant implications with that. One, this could be certainly an area that could be undertaken in an interim study with Legislative Management and all the parties together to try to see if there was some way of making some distinction based on the interim project. I would say that probably a very challenging thing to do, but it certainly could be considered by pulling all these together and trying to sit down and consider it.

**Senator Bekkedahl** Mr. Kern I guess I took the same track as Senator Anderson and I underlined here in your testimony involving water work, sewage and solid waste. So, simply exempting what you've told us the public improvement areas that you deal with, you're saying there is more of a list than that, that there is a longer list in those areas that you deal with. Is it more than just evolving water works, sewage and solid waste?

**Mr. Kern** I believe the definition of public improvements goes well beyond the kind of facilities. **Senator Bekkedahl** I am talking about the kind of review that you need to do in your office. Do you only review projects that involve water works, sewage, and solid waste? **Mr. Kern** that's correct. In my narrow portion of work, that relates to this area, that is what would do. That does not take into account the other types of public improvements that would fall under this law.

**Senator Bekkedahl** Because I understand the importance of those areas and we do a lot of water line replacement for a block in Williston, ND and it's going to be \$350,000. It is well above this threshold. I don't know what it costs in other areas but there are expensive projects. Of course, we have in house engineers but we also have approximately 15 other engineering firms on contract for projects we're doing out there too, so, it exceeds what we



can do I am sure. My second question is you talk about how busy it's become with 150 projects to 400 for review. Does your office need more staff and help because of these issues?

**Mr. Kern** Additional people would help. It does not get to the issue though that if the threshold is raised and we have many more projects come in by other than engineers, we still may be put into a position where we have to reject them because we can never get them in an approval form to meet design standards in a form that any contractor could quote for construction purposes.

**Senator Bekkedahl** I guess where I was headed with that was if it was raised, if the current level you would require more help than, I am insinuating you would require more help in your department to try and deal with those issues.

**Mr. Kern** That would certainly help. As I tried to explain that would not solve any issues that we would be dealing with in the Health Department.

**Chairman Burckhard** Has it ever been suggested to you that you look like Franklin Delano Roosevelt? Mr. Kern that is the first time someone has ever mentioned it. I would take that as a compliment.

**Chairman Burckhard** closed the hearing on SB 2246.

Committee Discussion Followed

**Senator Judy Lee** I think the concept of a study is a good idea and again having all the stakeholders involved I was around in 2007 when this was done before and it was a lot of work that was done by the various professional organizations including the county commissioners and so forth. So there was a real advantage to that, so I would encourage us to look at the possibility of adopting that study because it is way more complicated than a dollar amount. \$100,000 goes nowhere any place I don't think as far as a title is concerned. But even building a bus barn if it's got floor heat the sandier soil in Jamestown and the absolute concrete type clay in her back yard are two entirely different things and floor heat is just practically a non-issue for us because of that. My point is that the structure itself isn't is as important as the ground upon which it is standing and whether or not something like the floor heat is a big deal. So, I don't have an answer here, I am just saying I think the study is perhaps the answer in order to figure out what is most appropriately done.

**Senator Anderson** All those things are true. However, in our local school board they have these three farmers on the school board who have already built \$300,000 buildings on their farm and are fairly familiar with the process and the difficulties. It isn't like they don't know anything about it.

**Senator Bekkedahl** The Legislative Management Study proposal that was put before us today, says the Legislative Management shall consider studying. Does that the words shall means you will, and consider means you may not. So, is there language that comes out of study bills that says "you shall" , legislative management shall do this and seek passage

that way so that you know it gets handled. My concern is we can do this, not answer the question before us or reject this bill, but it still means in this language that Legislative Management may not even take this up as a study issue?

**Chairman Burckhard** I believe that is what it means that Legislative Council may not, but I think they would seriously consider it.

**Senator Judy Lee** It is standard language and yet it means that it is an option for Legislative Management. We better be really serious about making it a mandatory study because Leadership on both side of the aisle is not very crazy about a mandated legislative management study. So it's a matter of having them to prove the need and I think it is a good project there. We have the option as a committee of making it a mandatory study, but we had better be pretty careful about we stick 'shall' on instead of 'shall consider'.

**Chairman Burckhard** asked the committee if they wanted to come back and take action on another day.

# 2015 SENATE STANDING COMMITTEE MINUTES

## Political Subdivisions Committee

Red River Room, State Capitol

SB 2246

2/5/2015

Job Number 23328

☐ Subcommittee

☐ Conference Committee

Committee Clerk Signature



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

Relating to the bidding threshold for plans and specifications for a public improvement contract.

### Minutes:

"Click to enter attachment information."

**Chairman Burckhard** opened the committee for discussion on SB 2246.

**Bonnie Staiger** asked this committee to consider a study proposal. So did Blake Crosby from the League of Cities.

**Senator Bekkedahl** I talked to Senator Laffen and he indicated that it should be the same. You are supposed to define projects in the skill and expertise necessary without having or just using a monetary indication. I think most people I've talked too, relative to this bill that have any expertise in the area, are saying a study would be a good thing.

**Chairman Burckhard** and maybe base it on public safety.

**Senator Judy Lee** Well, Bonnie Staiger did provide language for us attached to the last page of her testimony which would save us a little effort.

**Senator Anderson** I think most people would agree a reasonable increase maybe \$50,000 would be in line with inflationary issues and so forth. Let's not jump it too far. I think Bonnie would even agree with that.

**Senator Judy Lee** And you mean you would like to raise the threshold for the 2 year period and then have this study at the same time? **Senator Anderson** it could be done, yes. That would be one option.

**Senator Dotzenrod** One of the things I got out of this is that if you're talking about a fairly straight forward structure that is pre-engineered, pre-stressed, and comes with plans and blueprints and really the only argument against allowing a larger one there, is the soil conditions. That is about the only argument there. But most of the builders that are out there know where they are working and what they are doing there. But the thing that

puzzled me was how do to deal with some of these things like sewer lift stations, and water handling systems. It does seem that you get into a certain category of work that you really should have somebody that knows what they are doing technically current and competent review of what is being proposed. I kind of separate out a \$200,000 project that is a pole barn building to park busses in from a \$200,000 project that is a sewer lift station. I do think that just going by dollars only is going to get difficult. If a city spends \$200,000 on a sewer lift station and they are just going by the experience and knowledge of an installer, but they don't have that engineering work done, it does seem like the potential to get into some kind of problem could be kind of high. I don't know how to fix that necessarily.

**Senator Bekkedahl** Are lift stations \$200,000? In my area lift stations are \$1million dollar project. Are they different in different areas?

**Chairman Burckhard** this bill was kind of geared towards smaller communities for one reason or another. No, some lift stations are probably quite a bit more expensive.

**Senator Bekkedahl** That is why I agree with you that in areas of public water supply, public sewage systems demand significant and sophisticated engineering work and we don't want just a licensed water installer to do that.

**Chairman Burckhard** Therefore again it was suggested that it be based on public safety basis instead of dollar basis is what I heard Bonnie Staiger say.

**Senator Judy Lee** Mr. Kern's testimony from the Health Department suggested that the best thing to do is to keep the threshold where it is then and to discuss the study that would allow us to respond to the concern that has been expressed about the dollar amount being the wrong number. We could leave it \$100,000 for another 2 year period, and then there is time for a study to figure out what the right answer is as far as whether it is a public safety.

**Senator Anderson** I am always leery about these studies because first I wonder whether Legislative Council is going to study it. Second thing, I am wondering what are we, going to learn that we don't know now. We could maybe solve both people's problems by writing into the legislation a 'limit' for what water works, sewage and solid waste projects of \$20,000 or \$50,000. We could say they need an engineer if it is over that amount and then let them build there pole barn if they want too for \$250,000. I wouldn't have a problem with that.

**Senator Judy Lee** Could you just clarify for me when you talked about just \$50,000?

**Senator Anderson** well you would be adding language that would say for water works, sewage, and solid waste projects then you would have a much lower threshold and put that right into the bill. **Senator Lee** then you would eliminate the rest? **Senator Anderson** Say for other projects it could go to \$150,000 or whatever we are comfortable with.

**Senator Bekkedahl** I did try to get that out of Mr. Kern. I would agree with Senator Anderson, that if we had some language that said 'projects involving water works, sewage, and solid waste projects' are at the \$100,000 level. Leave it at \$100,000 because that is what he is recommending here. He wants to keep them at \$100,000. **Senator Anderson** He actually wants to keep it lower than that, because now they are spending time working on designs for even \$100,000 projects.

**Senator Bekkedahl** But then Mr. Kern said keeping the current threshold at \$100,000 in place will allow us to do this. Keeping it there and adding the language that specifically says barns and other structures. It got to me that he's specifically tied into water works, sewage and solid waste which are public safety and public health issues. I would agree with Senator Anderson if we could keep language in, that keeps that level there, increase \$50,000 or \$100,000 for the other project areas to grant the small school district that was trying to get a bus barn built. Grant that ability to move forward and request the study.

**Senator Anderson** That is one of the problems you know. If you can get it built for \$100,000 and then you add the engineering costs you're at \$120,000 just to pay for the same building.

**Senator Bekkedahl** I think put our argument for this sake just on the inflation factor.

**Senator Anderson** Let me, make this suggestion. We could say just do with what we have here. The threshold for bidding construction of a public improvement involving water works, sewage and solid waste is \$100,000. Other projects, the limit would be \$150,000 even Bonnie would go with that much increase. The threshold for procuring plans drawing investigation from an architect or engineer for construction.

**Chairman Burckhard** Change that from \$250,000 to \$150,000? **Senator Anderson** I think we should probably change it to \$150,000 not \$250,000. We can go to the \$250,000 as I am comfortable with that too.

**Senator Judy Lee**, I am not comfortable with the \$250,000. I could live with \$150,000 and a study.

**Senator Anderson** You want the study language in there too?

**Senator Judy Lee** Even if the Legislative Management does not choose to study, if the stake holders here which would be the League of Cities, Township Officers, school districts and so forth, if they want to get together and chat because they are the experts here, and come up with a proposal two from now about what we ought to do, they can find one of us to sponsor the bill. Because that is where the issue is, so I still think a study language is important and if it doesn't get chosen then it is up to the folks who are affected by this to come forward and say this is what we really need to have done and we've talked about it and come up with some agreement with some consensus.

**Senator Bekkedahl** Just so that I get it straight, what we're talking about is on the language in the original bill proposal, Century Code 22:46 on line 8, the threshold for bidding construction of a public improvement is \$100,000. That stays the same. The bidding requirement stays the same. It's the second line, the threshold for procuring plans, drawings and specifications from an architect or engineer for construction of a public improvement involving water works, sewage and solid waste, is \$100,000; other projects is \$150,000 is the way I am looking at this, because then they didn't want to change the bidding threshold nobody did.

**Senator Dotzenrod** The current proposal there is to that \$250,000. Are we thinking that is a little too much, that maybe it should be what?

**Chairman Burckhard** \$150,000. **Senator Dotzenrod** so the way I am thinking of this is to leave the sentence 9 & 10, would be \$150,000. **Senator Anderson** No its central to bidding is going to stay at \$100,000. **Senator Dotzenrod** So we are leaving that alone. Line 8 stays like it is. So, line 9, would have \$150,000, yes on line 10. Now how do we get the distinction between the water and sewer?

**Senator Bekkedahl** I will make a motion to amend. I will move to amend SB 2246 with the following language inserted on lines 9 and 10. " The threshold for procuring plans, drawings and specifications from an architect or engineer for construction of a public improvement involving water works, sewage, and solid waste is \$100,000". For all other projects for construction of a public improvement it shall be \$150,000. (For this threshold shall be \$150,000).

**Senator Anderson** 2<sup>nd</sup>

**Senator Dotzenrod** should we ask for a study? Make a section 2, of the bill? I think we can move and further amend.

**Senator Bekkedahl** I would also with my motion to amend add language, for in Section 1, additional language that the Legislative Management should consider studying public improvement issues relating to use of multiple bids versus single prime bids, bidding thresholds, design services thresholds and identification. The Legislative Management shall report its findings and recommendations together in any legislation required to implement direct recommendations to the 65<sup>th</sup> Legislative Assembly.

**Chairman Burckhard** We've clarified the motion and we've got a second to that motion.  
Roll call vote 5 Yea, 0 Nay 1 absent

Chairman Burckhard asked for a motion  
Chairman Anderson move motion SB2246 do pass as amended  
2<sup>nd</sup> Senator Bekkedahl  
Roll call vote  
5 Yea, 0 Nay 1 Absent  
Carrier: Senator Anderson

February 5, 2015

2/5/15  
Jove

PROPOSED AMENDMENTS TO SENATE BILL NO. 2246

Page 1, line 3, after "contract" insert "; and to provide for a legislative management study"

Page 1, line 10, after "improvement" insert "involving water works, sewerage, or solid waste"

Page 1, line 10, remove the overstrike over "one"

Page 1, line 10, remove "two"

Page 1, line 10, remove "fifty"

Page 1, line 10, after "dollars" insert "and for construction of other public improvement projects is one hundred fifty thousand dollars"

Page 1, after line 10, insert:

**"SECTION 2. LEGISLATIVE MANAGEMENT STUDY.** During the 2015-16 interim, the legislative management shall consider studying public improvement issues relating to the 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

Date: 2.5.15  
Roll Call Vote: 1

2015 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2246

Senate Political Subdivisions Committee

☐ Subcommittee

Amendment LC# or Description: Senator Bekkedahl amendment

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 Bekkedahl Seconded By Senator Anderson

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

Total (Yes) 5 No 0

Absent 1

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

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



Date: 2.5.15  
Roll Call Vote: 2

2015 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2246

Senate Political Subdivisions Committee

☐ Subcommittee

Amendment LC# or Description: 15.0672.01001

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 Anderson Seconded By Senator Bekkedahl

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

Total (Yes) 5 No 0

Absent 1

Floor Assignment Senator Anderson

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

**REPORT OF STANDING COMMITTEE**

**SB 2246: Political Subdivisions Committee (Sen. Burckhard, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2246 was placed on the Sixth order on the calendar.

Page 1, line 3, after "contract" insert "; and to provide for a legislative management study"

Page 1, line 10, after "improvement" insert "involving water works, sewerage, or solid waste"

Page 1, line 10, remove the overstrike over "one"

Page 1, line 10, remove "two"

Page 1, line 10, remove "fifty"

Page 1, line 10, after "dollars" insert "and for construction of other public improvement projects is one hundred fifty thousand dollars"

Page 1, after line 10, insert:

**"SECTION 2. LEGISLATIVE MANAGEMENT STUDY.** During the 2015-16 interim, the legislative management shall consider studying public improvement issues relating to the 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 POLITICAL SUBDIVISIONS**

**SB 2246**

# 2015 HOUSE STANDING COMMITTEE MINUTES

## Political Subdivisions Committee

Prairie Room, State Capitol

SB 2246

3/13/2015

24807

☐ Subcommittee

☐ Conference Committee

Amanda Muscha

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

Relating to the bidding threshold for plans and specifications for a public improvement contract; and to provide for a legislative management study.

### Minutes:

Testimony 1-5

Chairman Klemin: Opened hearing on SB 2246

Senator Klein: This bill originated in the Cater county as the Steel public school was working on building a bus garage and realized they were bumping up to the 100,000 limit to require an engineer or architect to help them build. I initially set out at 250,000 but there were concerns about sewer and water projects that would just go up to the 250,000. We need those folks involved and we lowered the threshold in the bill to 150,000 and didn't involve water work, sewer, sewage, or solid waste projects.

Representative Kretschmar: Under the current law right now is it 100,000 for everything?

Senator Klein: I believe you are correct. Times have changed and we can't get the neighbors together for a project anymore.

Blake Crosby: Testimony 1

Chairman Klemin: Looking at HB 1182 we also amended that into a study except for the fuel bids. The study language looks identical.

Blake: That is why I am trying to mend them together.

Chairman Klemin: HB 1429 failed to pass the house

Blake: Typo I meant 1426

Chairman Klemin: I don't know if we can put them together because they are senate and house bills. The studies will stay the same. HB 1426 amended school construction projects to change the cost threshold from 100,000 to 150,000.

Blake: Correct, it changed it for schools.

Chairman Klemin: On public works it was also the same and 48-01.2-02.1 was also in HB 1426 where we had the increase from 100,000 to 150,000. The same as in SB 2246 except the part about the sewer and water. We didn't address that in HB 1426 but did in this one.

Blake: Correct

Chairman Klemin: We are very close

Representative Klein: You said most of it was covered so why do we need this bill?

Chairman Klemin: The difference is that in SB 2246 it remains at 100,000 for sewer and water. The other bills allowed that to increase to 150,000.

Eric Volk: Testimony 2

Stacy Staiger Krumwiede: Testimony 3

Chairman Klemin: You want to leave the sewer and water at 100,000 and everything else to be 150,000?

Stacy: We understand you want collaboration but we would support this without any other amending.

Chairman Klemin: The other bill that we passed out of here HB 1426 also amended this same section and it is just 150,000 for everything and I believe you were at that hearing?

Stacy: Yes

Representative Zubke: 1426 does go a little further than this one does because it does not delineate between public water works projects and sewers and it just includes them in there. This looks to be the bill that is probably the cleanest because it doesn't touch public works and water projects which I think the state health department has had some concern about. It also doesn't affect the bidding process where I think Steiner's bill also affects the bidding process.

Stacy: Yes

Chairman Klemin: In HB 1426 everything is 150,000 and in SB 2246 everything but sewer and water is at 150,000.

Stacy: That's how I understand it as well but we would be willing to work together.

Wayne Kern: Testimony 4

Representative Zubke: It seems that SB 2246 addresses some of your concerns about the other bills. In listening to the amount of uproar it would seem to me that 2246 would accomplish what you want and still keep the state health department in a position where it is and allow us to increase this for some of the other projects and still allow us to study. Would it not?

Wayne: I agree. This bill would address the concerns the health department has.

Representative Zubke: In 1182 it talks about diesel so we may not care what happens with that one. We agree.

Chairman Klemin: Section one is covered by HB 1426 section 3 but doesn't differentiate between all and sewer and water; and section two is covered by HB 1183 section 3. Seems that we made a policy decision in HB 1426. If we go with what was proposed in this bill we will be changing the policy and going back to the house to say what we passed already in HB 1426 what we should do but rather what is in SB 2246. I am not sure if that is the wisest course of action we should take.

Representative Zubke: I agree and move a do not pass

Representative Klein: Second

Chairman Klemin: I think the reason for the do not pass is because we have it covered by two house bills that have already passed and they are in the senate already.

Representative Maragos: What if they don't pass our bills?

Chairman Klemin: Then the law is as it exists today. I am sure someone will tell them though.

Representative Kelsh: I do have the same concern as Representative Maragos. If we kill this and senate could kill ours then we have no bill. I think we need a study. I would request we hold this to see what happens over there.

Chairman Klemin: We do have a motion pending but for sake of discussion there are some other alternatives. We could amend this bill in section to be the same as what reads in HB 1426, or we could delete section one entirely and leave the study part in.

Representative Beadle: I don't remember which it was regarding of the two (1426, 1182) but someone made a comment as they were leaving that one of the senate committees gave one of them a do pass recommendation this morning.

A Roll Call Vote Was Taken: Yes 8, No 5, Absent 1 (Strinden)

Motion carries

Representative Klein will carry the bill

Rick Tonder provided testimony by email after the hearing (testimony 5)

Date: 3/13/2015  
Roll Call Vote #: 1

**2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2246**

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 Zubke Seconded By Klein

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	/	
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) 8 No 5

Absent 1 (Strinden)

Floor Assignment Klein

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

Motion carries

**REPORT OF STANDING COMMITTEE**

**SB 2246, as engrossed: Political Subdivisions Committee (Rep. Klemin, Chairman)**  
recommends **DO NOT PASS** (8 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING).  
Engrossed SB 2246 was placed on the Fourteenth order on the calendar.



**2015 TESTIMONY**

**SB 2246**

January 30, 2015

Senate Political Subdivisions  
SB 2246

SB 2246  
1.30.15  
#1

CHAIRMAN BURCKHARD AND MEMBERS OF THE COMMITTEE:

I am 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 SB 2246 which would increase the public improvement construction threshold in NDCC 48-01.2-02.1 from \$100,000 to \$250,000. Cities are saying they are finding it difficult to receive bids on small projects and the projects need to be done. I have previously testified on two other bills raising the bid thresholds: HB 1077 and HB 1182. Obviously, there is the need or we wouldn't be seeing so many bills in the works.

There has been discussion for much higher thresholds and we have heard much testimony on the public safety aspect and protection of the taxpayer's dollars if the threshold was increased beyond a prudent amount. There is validity in the public safety concern. However, in protection of the taxpayer's dollars, 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 answers. 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 not a prudent use of taxpayer's dollars.

On behalf of the North Dakota League of Cities, I ask for a Do Pass on SB 2246.

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

**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

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.

A BILL for an Act to provide for a legislative management 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 MANAGEMENT STUDY.** 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.

SB2246

Senate Political Subdivisions Committee, 1/30/15

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 testimony in opposition of SB2246. Although I support a practical and appropriate increase in the threshold for requiring architectural/engineering services, this threshold should be the same as that for competitive bids in order to avoid confusion and ascertain competitive bid documents are prepared by a registered design professional.

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)

SB2146  
1.30.15  
#4

**Testimony**  
**Senate Bill 2246**  
**Senate Political Subdivisions Committee**  
**January 30, 2015, 9:00 a.m.**  
**North Dakota Department of Health**

Good morning, Chairman Burckhard and members of the Senate Political Subdivisions Committee. My name is Wayne Kern. 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 Senate Bill 2246.

Senate Bill 2246 addresses requirements for construction of public improvement projects by the state and its political subdivisions. Under current state law, projects costing over \$100,000 cannot proceed to construction without engineer-prepared plans and specifications. Senate Bill 2246 proposes to increase this threshold amount to \$250,000. If Senate Bill 2246 is enacted, the state and its political subdivisions would be allowed to undertake public improvement projects up to \$250,000 without engineer-prepared plans and specifications.

The Department of Health opposes Senate Bill 2246 for the following reasons:

- 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 are done to ensure that projects meet design standards. This is 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 \$250,000 dollars will exacerbate this situation as larger and more complex projects will be involved. This will 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 communities.

- 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 conflict 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.
- Finally, engineers are uniquely equipped to prepare plans and specifications that meet design standards and that are sufficiently detailed for construction purposes. Over the last four years, we have experienced an increase from 150 to 400 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 further 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 of Health takes its responsibility for public health, safety and environmental protection seriously. Keeping the current threshold of \$100,000 in place for engineer-prepared plans and specifications will allow us to do this.

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



SB 2246

3/13/2015

1.1

March 13, 2015

HOUSE POLITICAL SUBDIVISIONS COMMITTEE  
SB 2246

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.

SB 2246 is one of three bills (HB 1182 and HB 1429) still alive having to do with bid thresholds for public purchases and public improvement construction. You may hear testimony on the public safety aspect and jeopardizing of the tax payer's dollars if the threshold were to be increased beyond some amount. And, there is validity in the public safety concern. However, relative to protection of the tax payer's dollars, I believe that locally elected officials act in the best interest of their city and they should be trusted until proven otherwise.

I have some suggestions on amendments:

- 1) Include amendments of Sections 11-11-26 and 11-11-27 as in HB 1182 which was amended to address concerns about bids for fuel for counties.
- 2) For consistency change the \$100,000 amount on line 11 to match the \$150,000 amount on line 12.

With those changes I believe most objections would be addressed...everyone gets something.

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

Page 2

SB 2246

HOUSE POLITICAL SUBDIVISIONS

March 13, 2015

I strongly encourage your support for the study. Let those of us who have "skin in the game" come together and compromise on bid thresholds going forward so we can see if this issue not come before you quite so regularly.

On behalf of the North Dakota League of Cities, I would ask for a Do-Pass on SB 2246 with the amendments I suggested.

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

SB 2246  
3/13/2015  
2.1

**Testimony of Eric Volk, Executive Director**

**ND Rural Water Systems Association**

**Senate Bill 2246**

**House Political Subdivisions Committee – March 13, 2015**

Chairman Klemin and members of the House Political Subdivisions Committee, my name is Eric Volk. I am the executive director of the North Dakota Rural Water Systems Association (NDRWSA) which serves a membership of more than 250 cities, 28 rural/regional water systems, and four tribal systems.

The NDRWSA is committed to ensuring all of North Dakota's residents receive affordable drinking water of excellent quality and sufficient quantity. NDRWSA is committed to completing and maintaining North Dakota's water infrastructure for economic growth and quality of life. Today I am submitting testimony in support of Senate Bill 2246, with the following amendments: 1) The threshold for bidding construction of a public improvement be changed to one hundred fifty thousand dollars and 2) the threshold for procuring plans, drawings, and specifications from an architect or engineer for construction of ALL public improvement projects be set at the same one hundred fifty thousand dollar level. Increasing these thresholds and keeping them the same are important issues to our industry.

For the record, I want to say that we fully understand the importance of the bid process and we support the roles engineers and architects play in most North Dakota water/wastewater projects. Current thresholds were increased to one hundred thousand dollars in 1997. Today's value of one hundred thousand dollars is close to one hundred fifty thousand dollars. In talking with several rural water systems, some routine maintenance items and numerous minor system improvements are exceeding current thresholds. These items are tasks that can be done in house

without the need to bid them or to involve an engineer, but since they are over one hundred thousand dollars, they are required to follow current law.

### **Booster Station Example**

A water system in North Dakota needed to improve pressure and flow in one area of their system. After much research, they decided that an inline booster station would solve their problems. With the help of the system's control, pump and pipe experts, they designed an inline booster station. Using a familiar local contractor, the project was completed. Total price tag of this project was just below the one hundred thousand dollar threshold. Even though this improvement project did not have an engineer's stamp, it was a successful project that did not endanger the public and did not waste money.

A vast array of water/wastewater projects could be completed in the similar manner of using non-engineer industry experts. Many more could be completed if the thresholds are increased. Small systems must be allowed to find ways to save money. A study completed by the United States Environmental Protection Agency revealed the rates needed to cover future infrastructure repair and replacement for small systems will be four times as high as their larger counterparts.

Most small system projects are approved by their governing board. Decisions approved by the full board on no bid contracts protect the public from collusion and kickbacks from contractors/suppliers. Systems that feel more comfortable with lower thresholds have the choice to put engineering and bidding ordinances/policies in place to meet their specific requirements.

With that said, I urge you to consider the presented amendments and give SB 2246 a do pass recommendation. Thank you for your time and I will stand for any questions. EV

SB 2246  
3/13/2015

13 Mar 2015

**House Political Subs Committee**

**Testimony in opposition to any further changes to SB 2246**

Chairman Klemin 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.

Your committee is most familiar with HB 1182 (Representative Mooney's Bill.) 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. Based on your recommendation, the House chose to retain certain parts of the bill and to include our requested interim study language, which set the tone for the remaining bills dealing with this issue.

Each organization (ACEC and AIA) is requesting that you do not further amend SB 2246 as sent to you from the Senate. We feel that we can live with the changes but would oppose any further amendments.

By way of review, I've attached Bonnie Staiger's testimony on SB 2246 provided to the Senate Political Subs committee to serve as handy refresher of the 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

**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

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.



SB 2246

3/13/2015

4.1

**Testimony**  
**Senate Bill 2246**  
**House Political Subdivisions Committee**  
**March 13, 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. I am here to provide information regarding engrossed Senate Bill 2246.

Under current state law, public improvement projects costing over \$100,000 cannot proceed to construction without engineer-prepared plans and specifications. Section 1 of engrossed Senate Bill 2246 proposes to increase this threshold amount to \$150,000 for public improvement projects except those involving water works, sewerage, or solid waste. If engrossed Senate Bill 2246 is enacted, the state and its political subdivisions would be allowed to undertake all other public improvement projects costing up to \$150,000 without engineer-prepared plans and specifications.

Section 2 of engrossed Senate Bill 2246 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. It is also important to note that Section 2 proposes to study one of the same issues that Section 1 proposes to change now, the design services threshold. Engrossed HB 1182 proposes the same type of study.

Several bills have been introduced this session proposing changes to the design services threshold and other requirements pertaining to 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 changes. The result may be one bill draft that addresses and balances pertinent issues and has stakeholder support. In summary, the Department of Health advocates a "study before change" approach and proposes that engrossed Senate Bill 2246 be amended to solely an interim study.

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



SB 2246  
3/13/2015 5.1

Chair Klemm and members of the House Political Subdivisions Committee:

Due to a scheduling conflict I am unable to attend the hearing on Senate Bill 2246 you have scheduled for 9:30am this morning. In lieu of attendance, I would like to affirm the support of the NDUS via email for this bill as currently engrossed and respectfully ask you enter my comments into the record for that purpose.

Raising the threshold for requiring A/E services on a construction project from \$100,000 to \$150,000 poses no significant hardship for the NDUS institutions, and although it results in having different thresholds for competitive bidding and A/E selection, that difference is very manageable.

And I strongly support the inclusion of an interim study to review and recommend changes as needed for NDCC 48-01.2, and would be pleased to serve in any capacity during that time to assist in the study. Please do not hesitate to contact me on any questions you may have regarding my testimony in support of SB2246, or any other construction statute related matter.

Best regards,

Rick Tonder  
Director, Facility Planning

NORTH DAKOTA UNIVERSITY SYSTEM  
Facility Planning Department  
4349 James Ray Drive  
P.O. Box 13597  
Grand Forks, ND 58202-3597  
701-777-4270  
[www.ndus.edu](http://www.ndus.edu)