

2017 HOUSE POLITICAL SUBDIVISIONS

HB 1290

2017 HOUSE STANDING COMMITTEE MINUTES

Political Subdivision Committee
Prairie Room, State Capitol

HB 1290
1/27/2017
Job # 27543

☐ Subcommittee
☐ Conference Committee

Carmen Hicks

Explanation or reason for introduction of bill/resolution:

Relating to bids, plans, and specifications for public improvements; and to provide for application

Minutes:

1,2,3,4,5

Chairman Klemin: Opened the hearing on HB 1290.

Rep. Trottier: Introduced the bill. (Testimony #1) (Time :20 to 3:35)

Rep. Ertelt: Do you know if an engineer is not utilized in consultation for a project and there isn't an engineer so sign off on a project, where is the liability for that project? If there are any safety concerns who would that fall on?

Rep. Trottier: I can't answer that. One of the problems I encountered as I was going through my district, the counties, the cities, townships and school boards, was that there had been major concerns that there were problems between the contractor and the engineer. In a couple of cases one specifically there was an \$80,000 payment withheld because there was a disagreement between the contractor and engineer. The city got caught in the middle of it and the city attorney said, you might just as well pay it because if we go to court it will cost \$80,000. There was another in the same city too.

Timothy Faller, Director of NDSU Agricultural Experiment Station: (Testimony #2) (Time 5:32 to 10:26)

Bill Kalanek, Dakota Chapter NECA and ND Association for Plumbing and Heating: (Testimony #3) (Time 11:44 to 13:31)

Chairman Klemin: I don't understand your statement about the Senate bill. The threshold was raised last session to \$150,000. Then there is a bill that passed the Senate that would adjust the bidding threshold to \$150,000?

Mr. Kalanek: There are two pieces. The threshold for the design professional to be hired. There is also the threshold for bidding the project. Last session the threshold for hiring a design professional was raised to \$150,000. The threshold for bidding of the project, the construction, the contractors was not raised. The bill that has already been heard and passed in the Senate creates continuity by making both of those thresholds the same amount. As well as the bonding requirement. So they are all at \$150,000.

Chairman Klemin: Do you know the number of that bill?

Mr. Kalanek: 2146.

Rep. Hanson: This relates to Senate bill 2146, the threshold for bidding and bonding right now? What is it raising it from?

Mr. Kalanek: The current threshold for bidding a public project is \$100,000. That has been in place for 30 years.

Bonnie Staiger, Executive Vice President of American Institute of Architects: We are opposed to this bill and I am here to introduce the President of AIA.

Steve Tabor, Owner of S.A.Tabor Architects: (Testimony #4) (Time to 16:15 to 19:13)

Chairman Klemin: You said as written the bill leaves its bonding threshold at \$100,000, I am not seeing that in the bill.

Mr. Tabor: That's correct, what I meant is the bonding threshold will not be addressed per this bill. One of the things we sent regarding 1246 was having a bunch of different dollar thresholds in Chapter 48 does create some confusion.

Rep. Ertelt: You talk about input from the architect or engineer, can you elaborate on input? Specifically does the architect or engineer sign off and assume some liability in the design and completion of the project?

Mr. Tabor: They do assume liability. The state requires professional liability insurance on architect and engineers when they are doing work for state agencies. We do carry liability insurance for errors and omissions that occur.

Rep. Ertelt: Does the liability exist in the design itself or is it in the completion of the project? When the project is deemed complete the architect or engineer will come back and review the project and sign off?

Mr. Tabor: Yes, they do. They provide construction observation process to ensure everything is getting done per the contract documents. In fact, 15 years later and they have a catastrophic failure, the option is there to go back after that design professional.

Chairman Klemin: We heard testimony today about pre-engineered buildings and I have a question about the exemptions you mentioned. Mr. Faller talked about shell type buildings, are you aware of their concern and is that an exemption under here or isn't it?

Mr. Tabor: My understanding of current statute is based on the proposed or the current definition of a political subdivision these would apply to. I believe these exemptions apply to are that the private entities do not have to hire an architect or engineer to do these types of buildings. State agencies would still have to abide by that \$100,500 limit or in this case a \$250,000 limit. The question from my perspective is what is considered a political subdivision? If a county wanted to put up a pre-engineered metal building my understanding of the statute right now is they may not be considered a political subdivision.

Chairman Klemin: You said if the political subdivisions wanted to do it they wouldn't be considered a political subdivision?

Mr. Tabor: My understanding is there is a difference on what exactly is a political subdivision? Which is why there is some legislation being introduced to try better define that. There are public school entities that do a certain level of projects but they do not abide by Century Code when they do them. They will tell you the political subdivision definition does not apply to them.

Chairman Klemin: The paragraph on the exemptions do not apply to public works or public improvement contractions? But it applies to private?

Mr. Tabor: That's correct.

Vice Chairman Hatlestad: A pre-engineered building wouldn't that fit into the category that you have a professional, that has signed off on the building?

Mr. Tabor: With pre-engineered they have typically a structural engineer within that company that does all the designs calculations. They would need to be registered in ND.

Rep. Guggisberg: By passing legislation like this any idea what the additional risk would be?

Mr. Tabor: I do not have information on that. When I was working for the National Guard and directing the construction there is value added by having that architect and engineer designing those and ensuring they meet egress requirements. They meet the ADA, there is value having professionals involved on these projects.

Russ Hanson, Associated General Contractors of ND: (Testimony #5 handed out)

Chairman Klemin: Closed the hearing on HB 1290.

2017 HOUSE STANDING COMMITTEE MINUTES

Political Subdivision Committee Prairie Room, State Capitol

HB 1290
1/27/2017
Job # 27552

☐ Subcommittee
☐ Conference Committee

Carmen Hickle

Explanation or reason for introduction of bill/resolution:

Relating to bids and plans and specifications for public improvements; and to provide for application.

Minutes:

Chairman Klemin: Opened for committee work.

Rep. Beadle: The one that passed today in Senate took the language we had last time of \$150,000. And adjusted the bonding requirements in order to match the requirements that we passed last time. The intent of the counties is whatever we end up doing here, they want to keep those thresholds the same.

Rep. Johnson: Made do pass motion.

Rep. Pyle: Second the motion.

Rep. Beadle: I am going to resist the motion. Last Legislative session we went through this and they came up to \$150,000 from \$100,000. I don't see any compelling reason why it needs to go higher.

Rep. Longmuir: It should actually be higher, because each one of those bills that come in from the engineer or architects is 8 to 15%.

Rep. Johnson: \$150,000 is a drop in the bucket. The park district wanted to do a revision of a golf course, you are saving the taxpayers money if it can be done in house.

Rep. Beadle: When we were discussing this bill last time, they referenced a culvert they were replacing under a gravel road and they put the wrong size because they did not use engineering services. When you get to that threshold is where you start getting some projects that can have larger ramifications going on. Sometimes the engineering is required so that it's done right by not having a higher threshold in there they might choose that they don't need to do that.

Rep. Pyle: I have done several public works projects, we had to hire an architect and engineering firm because we did a buy America project. We got a \$60,000 grant is they bought all American products. The Contractor failed to buy the wrong stuff so I lost half of my grant. So even if you do hire these people does not mean you are going to get quality.

Rep. Ertelt: I agree with Rep. Johnson's question about the definition of public works. I do believe that public works projects that may not have much of a ramification to them even at \$150,000. My concern is with the liability that is assumed by the political subdivision if they are not using an engineer. That is at the risk of the taxpayer, using the engineer is buying an insurance policy.

Chairman Klemin: Most not all of the political subdivisions are participating in the ND Insurance Reserve fund which is like having an insurance policy. So you don't have to rely on the insurance policy of the engineer or architect you might be wrong sometimes. If this motion doesn't pass we aren't going to end up with \$150,000 on everything. Look at line 18 the threshold for bidding, we would be \$100,000 and it wouldn't be consistent all the way across.

Vice Chairman Hatlestad: If we look at the Senate bill, would everything be consistent across the board. So we could kill this and deal with the Senate bill.

Chairman Klemin: Does the Senate cover all of these?

Rep. Beadle: The Senate bill leaves that Section 1 of the Code in place. It changes for Section 2 where instead of it going to \$250,000 from \$100,000 it moves it to \$150,000.

Chairman Klemin: The Senate bill is not identical?

Rep. Beadle: The Senate bill is not identical but is seeking to make \$150,000 consistent across everything. Where this one bumps it to \$250,000.

Chairman Klemin: If we do pass this bill and then get the Senate bill, it could go to Conference Committee.

Rep K. Koppelman: Was there any discussion on threshold, to me it is what price level projects need to be bid out versus a contractual letting of the project? I don't mind raising the engineering threshold but I am concerned bidding not being done on public projects until they get to be expensive.

Chairman Klemin: I don't think it addressed that specific issue.

Carried yes 8, no 6, absent 1.

Rep. Johnson will carry the bill.

Date: 1-27-17
Roll Call Vote: 1

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1290

House 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 Rep Johnson Seconded By Rep Pyle

Representatives	Yes	No	Representatives	Yes	No
Chairman Klemin	/		Rep. Guggisberg		/
Vice Chairman Hatlestad	/		Rep. Hanson		/
Rep. Beadle		/			
Rep. Becker	/				
Rep. Ertelt		/			
Rep. Johnson	/				
Rep. Koppelman	/				
Rep. Longmuir	/				
Rep. Maragos	/				
Rep. Pyle	/				
Rep. Simons		/			
Rep. Toman		/			
Rep. Zubke	/				

Total (Yes) 8 No 6

Absent 1

Floor Assignment Rep. Johnson

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

REPORT OF STANDING COMMITTEE

HB 1290: Political Subdivisions Committee (Rep. Klemin, Chairman) recommends **DO PASS** (8 YEAS, 6 NAYS, 1 ABSENT AND NOT VOTING). HB 1290 was placed on the Eleventh order on the calendar.

2017 TESTIMONY

HB 1290

WAYNE TROTTIER

HB 1290

HB 1290

#1

1-27-17

GOOD MORNING Chairman Klemin, and members of the Political
Subs committee,

For the record, I AM REP WAYNE TROTTIER, REPRESENTING DIST
19, WHICH RUNS FROM NORTHWOOD ON THE SOUTH, TO
HOOPLE ON THE NORTH.

HB 1290 AS READ BY THE CLERK, RELATES TO ENGINEERING AND
BIDDING REQUIREMENTS FOR THE STATE AND IT'S POLITICAL
SUBDIVISIONS.

CURRENTLY, IF THE STATE OR ANY ENTITY, SUCH AS A COUNTY,
CITY, SCHOOL, TOWNSHIP OR PARK DISTRICT WANTS TO DO A
CONSTRUCTION OR PUBLIC IMPROVEMENT OVER \$150,000,
THEY ARE REQUIRED TO CONTRACT WITH AN ARCHITECT OR
ENGINEER AND THEY MUST PUT THAT PROJECT UP FOR BIDS, IF
THE

PROJECT IS OVER \$150,000.

AT LAST SESSION, IN 2015, THE LEGISLATURE RAISED THE
REQUIREMENT FROM
\$100,000 TO \$150,000. THE PREVIOUS LIMIT OF \$100,000, HAD
BEEN IN PLACE FOR MANY YEARS.

OBVIOUSLY, TODAY'S DOLLAR IS WORTH MUCH LESS THAN IT
WAS 30 YEARS AGO.

WHEN I SHOWED THE BILL TO ALL MY COUNTY
COMMISSIONERS, CITY COUNCIL MEMBERS & SCHOOL BOARD
MEMBERS, THEY ALL HAD THE SAME VERY COMMENT- IT
COULD BE A MILLION DOLLARS, AND "LET US MAKE THE
DECISION". THEY ARE ALL ELECTED OFFICIALS, ELECTED BY
LOCAL FOLKS, THAT PUT THEIR TRUST AND CONFIDENCE IN

THEM.

THEY UNDERSTAND THAT NOT ONLY SAFETY SHOULD BE THE TOP PRIORITY IN A BUILDING OR IMPROVEMENT PROJECT, BUT ALSO DO THE PROJECT THAT WILL SAVE MONEY.

I BELIEVE THAT NO ONE LIKES WHEN THE FEDERAL GOVERNMENT PUTS RESTRICTIONS AND REQUIREMENTS ON OUR STATE, PUBLIC SUBDIVISIONS, OR EVEN ON US AS INDIVIDUALS, COSTING TIME AND DOLLARS. WE HEARD MUCH OF THIS IN OUR RECENT ELECTION, ABOUT GIVING THE POWER BACK TO THE PEOPLE.

THE MAIN OBJECTIVE HERE, IS TO LET THE ENTITY DECIDE WHETHER OR NOT TO EMPLOY AN ENGINEER OR OFFER THE BIDDING PROCESS FOR ANY PROJECT UNDER \$250,000, IF THEY FEEL THEY NEED AN ENGINEER FOR ANY PROJECT UNDER \$250,000 IT IS THEIR DECISION. THE SAME IS FOR BIDDING A PROJECT. FOR INSTANCE, THEY MAY WANT TO BID A \$25,000 PROJECT, BUT IT IS THEIR DECISION.

I KNOW YOU WILL HEAR A LOT OF CONCERN FOR SAFETY, AS IT SHOULD BE, BUT AGAIN, REMEMBER THESE ARE ELECTED OFFICIALS, THAT WERE GIVEN THE AUTHORITY TO MAKE THESE DIFFICULT DECISIONS.

WHAT WOULD THE COST SAVINGS AMOUNT TO?

A \$250,000 PROJECT AND WHAT WE HAVE BEEN TOLD CAN COST 8% TO 15%.

AT 8%, THAT WOULD COST \$20,000 AND AT 15%, IT WOULD COST \$37,500.

AT A TIME WHEN EVERYONE IS DEALING WITH VERY TIGHT AND RESTRICTED BUDGETS, IT COULD MEAN A LOT TO ANY AND ALL ENTITIES.

THIS IS WHAT OVER REGULATION CAN COST OUR STATE'S ENTITIES!!!!

Chairman Klemin and members of the committee, I thank you all for your time and consideration, and will try to answer any questions you may have.

NORTH DAKOTA REPRESENTATIVE WAYNE TROTTIER, DISTRICT 19

1-27-17

Testimony to political Sub-divisions committee Hearing January 9:00 AM January 27, 2017

For the record my name is Timothy Faller and I serve as a half time assistant to the Director of the NDSU Agricultural Experiment Station. I spent 38 years as a Director of one of your Agricultural Research Extension Centers. One of my responsibilities now is to provide additional support to the seven Research Extension Centers and the Agronomy Seed Farm. In that process one of the universal concerns that surfaces at most or all locations is the architectural and engineering costs associated construction of routine farm buildings that could have been met with a pre-engineered structures. In these times of budget restriction it becomes even more important to "Getting the job done".

There are a number of very experienced legislators who are members of the building trades and they ask why does a farm storage building cost in excess of \$300,000.00 when we testify about our needs. This was a question of us in the recent joint House Senate Ag. Committee hearing. Increasing this threshold as suggested in HB 1290 would be helpful to minimize costs associated with providing these needed storage facilities at some point in the future when our economy improves. Due to the fact that equipment costs have increased greatly in the last decade quality storage facilities are of increasing importance to extending years of use.

Similarly it is that basic building that is at the heart of housing requirements for new cleaning facilities at a number of the Research Extension Centers producing seed. They will be utilizing a shell building as new cleaning facilities are more horizontal than vertical. The 2015-2017 legislative session allowed \$750,000.00 with authorization to raise external funds of a similar amount at two of these centers. It would be very helpful that they could buy a pre-engineered building to minimize the amount of external funds needed to accomplish the task.

Another example of necessity would include private fund raising to construct a greenhouse addition to the Williston Research Extension Center. When the legislature graciously supported construction of an Agronomy Laboratory at that location a greenhouse was part of the original plans but due to the increased building costs associated with growth in the oil industry the green house had to be left off. The mechanical needs for the greenhouse were included in the building that was constructed. This would allow a pre-engineered greenhouse to be purchased and located on a concrete slab. The cost for the slab and greenhouse package is about \$400,000.00. That center is waiting for final approval from SBARE and has a number of potential commitments with the hope that they could have a facility in place for their scientists by the next winter season when much greenhouse research is done.

Because of the very minimal need for engineering and architecture for pre-engineered buildings that can be bought off the shelf like a Buick and the fact that we have both of those disciplines as curriculums at NDSU it would at least be surmised that any needs could be met as student projects. I recognize that most likely no buildings will be built during the 2017-2019 biennial period but your action now to increase this threshold would let us hit the ground running when the economy is more favorable.

Thank you for your consideration of HB1290 with the hope that you will look favorably on raising this limit with careful consideration of looking to a limit at levels closer to \$500,000.00

HB 1290

H3

1-27-17

Testimony on HB 1290
Bill Kalanek
National Electrical Contractors Association, Dakotas Chapter
ND Association of Plumbing, Heating & Mechanical Contractors
House Political Subdivisions Committee
January 27, 2015

Good Morning Chairman Klemin and members of the House Political Subdivisions Committee. My name is Bill Kalanek, here today representing the members of the Dakotas Chapter of the National Electrical Contractors Association and the ND Association of Plumbing, Heating & Mechanical Contractors.

On behalf of our contractor members I'd like to voice opposition to House Bill 1290 which seeks to raise the threshold for the bidding of taxpayer funded public projects.

The bill as drafted would allow the State and its political subdivisions to assign projects that are estimated to cost less than \$250,000 dollars to the contractor of their choice without public bidding. Admittedly, this is an appealing proposition to a contractor who has close ties to a school board or city commission and could easily provide the work. However, as stewards of the public trust those entities have an obligation to make sure the public is getting fair value and transparency when it comes to completing a project.

Over the years both of the groups I represent have worked closely with AGC, AIA and ACEC to promote legislation that the industry groups can agree on. It doesn't always happen, but in this instance we are united in our opposition to the bill before you. The threshold for determining the need for a design professional on a project was raised just last session to \$150,000, and currently there is a bill that has already passed the Senate and is making its way to the House that adjusts the bidding threshold to \$150,000. We felt this a necessary change to achieve continuity throughout this section of law. Also, I think you would agree it is important especially in tougher economic times that public projects be bid and taxpayer dollars be managed to maximize their impact.

I respectfully request that the committee give HB 1290 a "Do Not Pass" recommendation and would be happy to answer and questions.

Thank you.

HB 1290 #4
1-27-17

Good afternoon Chairman Klemin and Committee Members. My name is Steve Tabor. I am the owner of S.A. Tabor Architecture here in Bismarck. I appear here in opposition to House Bill 1290.

Raising these thresholds from current levels to two hundred and fifty thousand dollars will allow governing bodies to request a single price for larger projects that should have architect or engineer input to ensure public health, safety and welfare are protected. Projects such as small building additions electrical service upgrades or boiler replacements can pose health and/or safety risks and added liability for the state agency or governing body if not installed correctly and in accordance with applicable codes. While some of these types of projects could be completed by a competent contractor without professional architect or engineer design and inspection services, the public's interests and safety are better protected by having a professional involved at the lower dollar threshold of one hundred and fifty thousand dollars.

As written, this bill will leave the dollar threshold for bonding requirements for public improvement projects at one hundred thousand dollars, which may create confusion for governing bodies that are executing public improvements. Senate Bill 2146 is proposing that the dollar thresholds for the bidding of a public improvement and the bonding requirement for a public improvement be raised to one hundred and fifty thousand dollars to match the current dollar threshold for procuring architect or engineering services for public improvements established by the 64th Legislative Assembly.

The proposed dollar amount of one hundred and fifty thousand dollars will ensure that a larger number of projects will be bid utilizing professionally prepared bidding documents. This process ensures that the state agency or governing body will receive competitive bids for the same level of effort and work from all entities participating in the bidding process.

In addition, the following exemptions in Chapter 43-03-02 of the North Dakota Century Code allows the following projects to be undertaken without procuring the services of a registered architect.

- a. A person supervising the erection, enlargement, or alteration of a building; or
- b. A person preparing plans and specifications or designing, planning, or administering the construction contracts for the construction, alteration, remodeling, or repair of:
 - (1) A private residence;
 - (2) A building that under applicable building code does not exceed two stories in height exclusive of a one-story basement, and is:
 - (a) A garage;
 - (b) A building not considered to have a primary building code occupancy classification of assembly group A-1, educational group E, high-hazard group H, or institutional group I;
 - (c) A building considered to have a primary building code occupancy classification of assembly groups A-2, A-3, A-4, or A-5; business group B; factory industrial group F; mercantile group M; or residential group R;
 - (d) A pre-engineered metal building;
 - (e) A building for the marketing, storage, or processing of farm products; or
 - (f) A warehouse;
 - (3) Rental apartment units that do not exceed three stories in height exclusive of a one-story basement;
 - (4) A farm building; or
 - (5) A building remodeling or an addition or both, which does not change its use to a primary building code occupancy classification of assembly group A-1, educational group E, high-hazard group H, or institutional group I.

That completes my testimony. I would be glad to answer any questions the committee may have.

Steve Tabor, AIA
S.A. Tabor Architecture
(701) 258-7032

1-27-17

#5

January 27, 2017

HB 1290

**House Political Subdivisions Committee
HB 1290**

Mr. Chairman and members of the House Political Subdivisions Committee, my name is Russ Hanson and I am with the Associated General Contractors of North Dakota (AGC of ND). The AGC of ND is the largest construction trade association in North Dakota representing 400 members who perform all types of commercial construction (highway/bridge, vertical commercial, water/utility). Our membership also consists of equipment and material suppliers and been in existence since 1951.

I apologize for not being personally there to present this testimony but appreciate the opportunity to enter this into your record as you consider HB 1290. The AGC of ND is in opposition to SB 1290 which proposes to increase the design and bid threshold to \$250,000. Our association has been a consistent opponent of raising bid thresholds throughout the years as they are presented to the Legislature.

Our main reason to oppose raising the thresholds is for the purpose of a transparent bid process and the ability for any entity interested in bidding on a public project to be able to submit. Transparency in bidding usually leads to more bidders. More bidders usually lead to more competitive bids which in turn save the valuable resources of the political subdivision.

We did go on record in SB 2146 which raises the construction threshold from \$100,000 to \$150,000 earlier this session. We did this more in an effort to realign the design and bid thresholds to the same dollar amount. The 2015 Legislature raised the design threshold from \$100,000 to \$150,000 while leaving the construction threshold at \$100,000. Since the inception of the bid thresholds (I believe

1991), the design and bid thresholds had been the same. When they became two different, there was confusion.

For those reasons, we do not view HB 1290 as necessary and we would request a Do Not Pass Committee Recommendation.

Thank you for allowing me to present this testimony.