

2017 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2146

2017 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

SB 2146
1/17/2017
Job Number 26940

- Subcommittee
 Conference Committee

Committee Clerk Signature

Eva Liebelt

Explanation or reason for introduction of bill/resolution:

Relating to public improvement bid and bond thresholds

Minutes:

Attachments 1-4

Chairman Klein: Called the committee to order.

Senator Kannianen: (:45-1:53) Introduced the bill. This is a fairly straight forward bill. The purpose is to bring uniformity across the threshold for bidding and bonding requirements. In the previous legislative session, the threshold was increased for architects and engineers, requirements up to 150,000 dollars and this bill would do the same.

Chairman Klein: Have we had issues, have there been problems since we passed that other portion?

Senator Kannianen: I don't think there has been any real issues. This is to bring clarity and uniformity so there aren't some projects that require bidding and bonding but don't require the engineers and architects. Things like that, it seems to just make it cleaner for everybody.

William Sherwin, National Electrical Contractors Association, Dakota Chapter ND Association of Plumbing, heating & Mechanical Contractors: Written Testimony, see attachment #1. (3:00-4:10)

Chairman Klein: Asked how they missed it last session.

William Sherwin: I believe there were attempts to make changes to that, additional thresholds they were at 100,000 dollars and we believe that it is time to bring it into parity and consistency with the other sections.

Eric Volk, Executive Director, ND Rural Water Systems Association: (5:11-6:43) Written Testimony, see attachment #2.

Bonnie Staiger, Lobbyist for the American Institute of Architects of ND: In support. (6:50-8:48) I am not here to testify but will answer a couple of the questions that were asked.

Last session there were eight or nine bills dealing with the thresholds and it became a hearing and hallway nightmare trying to keep up with them all. In the final days of this session there was a bill in the House Education Committee that ended up separating the threshold for architects and engineers at 150,000 and the bonding and bidding was at 100,000. The numbers used to be the same and they realized at the end of the session that they were not.

Steve Tabor, Owner of S.A. Architecture: In support of the bill. Written Testimony, see attachment #3.

Russ Hanson, Associated General Contractors of ND: In support.

Bill Wocken, North Dakota League of Cities: In support. Written Testimony, see attachment #4.

Chairman Klein: Closed the hearing.

Senator Poolman motioned a do pass.

Senator Roers seconded the motion.

Roll Call Vote: Yes-7 No-0 Absent-0

Senator Burckhard will carry the bill.

**2017 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2146**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Senator Poolman Seconded By Senator Roers

Senators	Yes	No	Senators	Yes	No
Chairman Klein	x		Senator Marcellais	x	
Vice Chairman Campbell	x				
Senator Roers	x				
Senator Burckhard	x				
Senator Casper	x				
Senator Poolman	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Burckhard

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

REPORT OF STANDING COMMITTEE

SB 2146: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2146 was placed on the Eleventh order on the calendar.

2017 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2146

2017 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Peace Garden Room, State Capitol

SB 2146
3/13/2017
29121

- Subcommittee
 Conference Committee

Ellen Letang

Explanation or reason for introduction of bill/resolution:

Public improvement bid and bond thresholds.

Minutes:

Attachments 1, 2

Chairman Keiser: Opens the hearing of SB 2146.

Senator Jordan Kannianen ~ District 4: This bill brings consistency across threshold requirements for bidding & bonding.

William Sherwin ~ Representing the members of the Dakota Chapter of the National Electrical Contractor Association & the ND Association of Plumbing, Heating & Mechanical Contractors: Attachment 1.

3:10

Chairman Keiser: When was this last change?

Sherwin: I don't know.

Russ Hanson ~ Associated General Contractors of ND: I believe these thresholds have been in place since 1991, beginning with 25,000. We are adjusted to 50,000 sometime thereafter, I think 1997, was when it was last changed.

Chairman Keiser: Have you ever requested to go down?

Hanson: No we haven't. Our board met & we had a discussion about this bill because we have been in strong defenders of \$100,000 threshold. We like the competitiveness, transparency & the ability to compete for the jobs. The board indicated that having the uniformity is important & we would like to get back to that uniformity.

If the legislature wants to go to the \$150,000 for each, we would be ok with that. However, I would predict that in the future someone would be opposing further increases for some time. We do like the transparent process.

We were opposed to the bill that you dealt with earlier this session that took it to a quarter of a million. We thought that was too high.

Chairman Keiser: This affect bidding & bonding.

Hanson: Yes.

5:15

Bonnie Staiger ~ Executive Director of AIA ND: We support this bill. We are not in favor of the thresholds being raised. We opposed the \$250,000 that was an earlier bill in this session. We know that it's important for these numbers to be the same, so it does not create confusion. We suffered for the last 2 years that the numbers were different, so we are recognizing the need for the same numbers.

6:50

Chairman Keiser: Anyone else here to testify in support, opposition of SB 2146?

John Boyle ~ Director of Facility & Management: I'm not so opposed to raising the threshold to \$150,000, I would prefer that the architect threshold came back to \$100,000.

What I'm really opposed to, is how many times are you allowed to give a contractor a job during a 12-month period. If we really want to make it similar to the architect, the architect today can do 2 jobs or a job up to \$25,000, \$50,000. There is a bill that says \$35,000, \$70,000 but on this it's a \$150,000 but it's not limited. I could give somebody 8 jobs that are a \$125,000 & it's a million dollars' worth of work. There's no competition.

I would the committee could consider you could give \$150,000 of work in one shot or up to a \$450,000 during a 12-month period. If one is capped they both should be capped.

Chairman Keiser: Capped at what?

Boyle: Something like \$450,000.

Chairman Keiser: Is that the architect?

Boyle: No the architect is capped today at \$50,000. You can get multiple jobs, but you can't pay an architect more than \$50,000 in a 12-month period.

Rep Laning: If that same contractor would bid a job, it would be something separate?

Boyle: That's correct, there's no bidding in this process right here.

Chairman Keiser: Aren't we comparing apples & oranges? An architect makes 10% on a project. These are construction projects. The cost can be significantly higher for the construction site for the bid of the bond than for the architect. Isn't it?

Boyle: I not arguing that point at all. If you want to raise it to \$150,000, I don't have a problem with that. I would much rather the architect limit come down to a \$100,000. Without any cap, I had 15 jobs that were less than a \$150,000, I could give them to one contractor over a biennium. That doesn't seem right to me.

Chairman Keiser: Anyone here to testify in opposition, neutral position? Closes the hearing. We will hold the bill.

Testimony for the recorded but they did not testify:

Bill Wocken ~ On Behalf of the ND League of Cities: Attachment 2 in support.

2017 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Peace Garden Room, State Capitol

SB 2146
3/15/2017
29210

- Subcommittee
 Conference Committee

Selen LeTang

Explanation or reason for introduction of bill/resolution:

Public improvement bid and bond thresholds.

Minutes:

Chairman Keiser: Opens the hearing of SB 2146.

Vice Chairman Sukut: Moves a Do Pass.

Rep Beadle: Second.

Chairman Keiser: Further discussion?

Chairman Keiser: The only negative comment was John Boyle opposition. He wanted a cap placed on it because it could be a multiple job. So you bid & win multiple jobs, what's the problem.

Rep Louser: Seems we heard that argument 2 years ago. No examples, just the possibility it could occur. Yet we are not seeing this happen.

Rep Ruby: It's very unlikely it would 5 projects on site. I'm ok with it.

Chairman Keiser: I read this as on page 1, line 9, "a public improvement is \$150,000". It's certainly my intent in voting for this is that means \$150,000 for one project, \$150,000 for another project. If I bid & win 5 projects, I should not be limited to a \$150,000 accumulatively with a cap. That's the reason I'm voting the way I will vote.

Chairman Keiser: Further discussion?

Roll call was taken for a Do Pass on SB 2146 with 14 yes, 0 no, 0 absent & Rep Becker is the carrier.

Date: Mar 15, 2017

Roll Call Vote #: 1

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 2146

House _____ Industry, Business and Labor _____ 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 Sukut

Seconded By Rep Beadle

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep Laning	X	
Vice Chairman Sukut	X		Rep Lefor	X	
Rep Beadle	X		Rep Louser	X	
Rep R Becker	X		Rep O'Brien	X	
Rep Bosch	X		Rep Ruby	X	
Rep C Johnson	X		Rep Boschee	X	
Rep Kasper	X		Rep Dobervich	X	

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep Becker

REPORT OF STANDING COMMITTEE

SB 2146: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
SB 2146 was placed on the Fourteenth order on the calendar.

2017 TESTIMONY

SB 2146

Testimony on SB 2146
William Sherwin
National Electrical Contractors Association, Dakotas Chapter
ND Association of Plumbing, Heating & Mechanical Contractors
Senate Industry, Business & Labor Committee
January 17, 2017

Good Morning Chairman Klein and members of the Senate Industry, Business, and Labor Committee, my name is William Sherwin, 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 our combined support of Senate Bill 2146, which brings consistency and parity across the bidding and bonding process located under NDCC 48-01.2. The proposed changes as suggested by the bill would raise the bidding and bonding thresholds to one hundred fifty thousand dollars bringing these sections into agreement with other requirements in NDCC 15.1-36-01, NDCC 43-19.1-28, and NDCC 48-01.2-02.1. In the 64th Assembly, HB 1426 made multiple changes to thresholds in the previously mentioned sections raising the base amounts from one hundred thousand dollars to one hundred fifty thousand dollars. By passing SB 2146, the legislature will bring the bidding and bonding thresholds up to one hundred fifty thousand dollars and into parity with the changes made by the 64th Assembly in HB 1426.

For these reasons I would ask the committee in its wisdom give SB 2146 a "Do Pass" recommendation and bring consistency and clarity to the bidding and bonding process.

Thank you.

Sixty-fourth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2015

HOUSE BILL NO. 1426
(Representatives Steiner, Rick C. Becker, Devlin, Trottier)

AN ACT to amend and reenact subsection 1 of section 15.1-36-01 and sections 43-19.1-28 and 48-01.2-02.1 of the North Dakota Century Code, relating to approval of school construction projects by the superintendent of public instruction and bids and plans and specifications for public improvements; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 15.1-36-01 of the North Dakota Century Code is amended and reenacted as follows:

1. Notwithstanding the powers and duties of school boards provided by law, the superintendent of public instruction shall approve the construction, purchase, repair, improvement, modernization, or renovation of any public school building or facility before commencement of the project if the cost of the project, as estimated by the school board, is in excess of one hundred fifty thousand dollars.

SECTION 2. AMENDMENT. Section 43-19.1-28 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-28. Public works.

Except as otherwise provided by law, the state and its political subdivisions may not engage in the construction of public works involving the practice of professional engineering when the contemplated expenditure for the project exceeds the sum of one hundred fifty thousand dollars, unless the engineering drawings and specifications and estimates have been prepared by, and the construction administration and construction observation services are executed under the supervision of, a registered professional engineer. Any engineering contract executed in violation of this section is void.

SECTION 3. AMENDMENT. Section 48-01.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

48-01.2-02.1. Public improvement construction threshold.

The threshold for bidding construction of a public improvement is one hundred thousand dollars. The threshold for procuring plans, drawings, and specifications from an architect or engineer for construction of a public improvement is one hundred fifty thousand dollars.

SECTION 4. APPLICATION. Sections 2 and 3 of this Act apply to any public improvement project for which a contract or agreement for plans, drawings, or specifications is executed after the effective date of this Act.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-fourth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1426.

House Vote: Yeas 54 Nays 37 Absent 3

Senate Vote: Yeas 26 Nays 19 Absent 2

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2015.

Approved at _____ M. on _____, 2015.

Governor

Filed in this office this _____ day of _____, 2015,

at _____ o'clock _____ M.

Secretary of State

Testimony of Eric Volk, Executive Director**ND Rural Water Systems Association****Senate Bill 2146****Senate Industry, Business and Labor Committee – January 17, 2017**

Chairman Klein and members of the Senate Industry, Business and Labor 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. Those rural/regional water systems provide water to nearly 250,000 residents. Today I am submitting testimony in support of Senate Bill 2146.

The NDRWSA is committed to ensuring all 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. Last session, the NDRWSA supported changes to the public improvement construction thresholds (supported increasing both thresholds to \$150,000). One thing to remember, bidding a project requires very detailed engineering specifications and preparation of official bid documents. These two thresholds go hand in hand and should be kept at the same levels.

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 projects. The current engineering/architect threshold was increased to one hundred fifty thousand dollars in 2015. The current bid threshold was increased to one hundred thousand dollars in 1997. Today's value of one hundred thousand dollars is a little over one hundred fifty thousand dollars. In talking with several rural water systems, some routine maintenance items and numerous system

improvements are exceeding today's threshold. 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 sometimes over the thresholds, 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 or was subject to the bidding process, it was a successful project that did not endanger the public and did not waste money.

A vast array of water projects could be completed in a similar manner. Many more could be completed if the bidding threshold is 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.

Water system projects are normally approved by the governing board. Decisions approved by the governing 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 give SB 2146 a do pass recommendation. Thank you for your time and I will stand for any questions. EV

Senate Bill 2146

Good Morning Chairman Klein and Committee Members. My name is Steve Tabor. I am the owner of S.A. Tabor Architecture here in Bismarck. I appear here in favor of Senate Bill 2146.

The proposed amendments to Chapter 48 of the North Dakota Century Code contained in this bill seek to bring consistency to the dollar values in both of the referenced sections of Chapter 48. During the last legislative session the threshold for procuring plans, drawings and specifications from an architect or engineer for the construction of a public improvement was changed from one hundred thousand dollars to one hundred fifty thousand dollars. The dollar threshold for bidding the construction of a public improvement in section 48-01.2-02.1 and the dollar threshold requiring a bond for a public improvement in section 48-01.2-10 were left at one hundred thousand dollars. This difference in dollar thresholds can create confusion for state agencies and political subdivisions when undertaking public improvements.

These amendments would alleviate confusion by requiring the same dollar thresholds for bidding, procurement of architectural or engineering services and bonding for public improvements.

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

Steve Tabor, AIA
SA Tabor Architecture
(701) 258-7032

Testimony in Support of Senate Bill 2146
January 17, 2017
Senate Industry, Business and Labor Committee
Bill Wocken on behalf of the North Dakota League of Cities

Good Morning Mr. Chairman and members of the Senate Industry, Business and Labor Committee. For the record, my name is Bill Wocken, appearing on behalf of the North Dakota League of Cities in support of Senate Bill 2146.

This bill is very easy to summarize and so, I hope, will be my testimony. The bill increases the threshold for required public bidding on public buildings from \$100,000 to \$150,000. The North Dakota League of Cities believes this is a reasonable thing to do.

Increasing the public bidding threshold as the bill suggests, will match the trigger point at which professional design assistance needs to be incorporated into a public building project. Having both these thresholds set at \$150,000 will lessen confusion in the planning for building projects.

This bill also helps to offset the inflationary pressures on the existing threshold. A \$100,000 building is not much to point at anymore. Units of government can still bid at a lower level than the threshold if they wish and many do that today if competition and availability of work make that a wise decision.

Mr. Chairman and Committee members, I would ask you for your consideration of a DO PASS recommendation on Senate Bill 2146. I will be happy to try to answer any questions you might have of me.

Testimony on SB 2146

William Sherwin

**National Electrical Contractors Association, Dakotas Chapter
ND Association of Plumbing, Heating & Mechanical Contractors
House Industry, Business & Labor Committee**

March 13, 2017

Good afternoon Chairman Keiser and members of the House Industry, Business, and Labor Committee, my name is William Sherwin, 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 our combined support of Senate Bill 2146, which brings consistency and parity across the bidding and bonding process located under NDCC 48-01.2. The proposed changes as suggested by the bill would raise the bidding and bonding thresholds to one hundred fifty thousand dollars bringing these sections into agreement with other requirements in NDCC 15.1-36-01, NDCC 43-19.1-28, and NDCC 48-01.2-02.1. In the 64th Assembly, HB 1426 made multiple changes to thresholds in the previously mentioned sections raising the base amounts from one hundred thousand dollars to one hundred fifty thousand dollars. By passing SB 2146, the legislature will bring the bidding and bonding thresholds up to one hundred fifty thousand dollars and into parity with the changes made by the 64th Assembly in HB 1426.

For these reasons I would ask the committee to give SB 2146 a "Do Pass" recommendation and bring consistency and clarity to the bidding and bonding process.

Thank you.

**Sixty-fourth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2015**

HOUSE BILL NO. 1426
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43-19.1-28. Public works.

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48-01.2-02.1. Public improvement construction threshold.

The threshold for bidding construction of a public improvement is one hundred thousand dollars. The threshold for procuring plans, drawings, and specifications from an architect or engineer for construction of a public improvement is one hundred fifty thousand dollars.

SECTION 4. APPLICATION. Sections 2 and 3 of this Act apply to any public improvement project for which a contract or agreement for plans, drawings, or specifications is executed after the effective date of this Act.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-fourth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1426.

House Vote: Yeas 54 Nays 37 Absent 3

Senate Vote: Yeas 26 Nays 19 Absent 2

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2015.

Approved at _____ M. on _____, 2015.

Governor

Filed in this office this _____ day of _____, 2015,

at _____ o'clock _____ M.

Secretary of State

p3

Testimony in Support of Senate Bill 2146

March 13, 2017

House Industry, Business and Labor Committee

Bill Wocken on behalf of the North Dakota League of Cities

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This bill also helps to offset the inflationary pressures on the existing threshold. A \$100,000 building is not much to point at anymore. Units of government can still bid at a lower level than the threshold if they wish and many do that today if competition and availability of work make that a wise decision.

Mr. Chairman and Committee members, I would ask you for your consideration of a DO PASS recommendation on Senate Bill 2146. I will be happy to try to answer any questions you might have of me.