

2019 HOUSE POLITICAL SUBDIVISIONS

HB 1356

2019 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee

Prairie Room, State Capitol

1/17/2019

HB 1356

Job # 31005

☐ Subcommittee

☐ Conference Committee

Committee Clerk: Carmen Hickle

Explanation or reason for introduction of bill/resolution:

Relating to bids, plans, and specifications for public improvements and bond thresholds

Minutes:

1,2,3,4,5,6,7

Chairman J. Dockter: Opened the hearing on HB 1356.

Rep. Schreiber-Beck: (Handout #1) Introduced the bill by reading her testimony.

David Paulson: He stated he was representing small communities across ND. The cost of business goes up so this cap restricts housing in small communities for updates in their own communities. Once you go over that cap they require the bonding be put in place. I would like to see the cap raised to \$250,000. That would give communities the ability to do housing without restrictions that are currently written in the bill.

Rep K. Koppelman: Were these adjusted recently that you are aware of? Have prices gone up that much in the last few years or are we still behind the curve despite those increases in recent years?

Mr. Paulson: As I understand Legislation it looks like the bonding was increased but nothing else. That was brought up to the \$150,000 standard.

Rep K. Koppelman: What prices of projects are you running up against? Is it common that you see this threshold?

Mr. Paulson: Our local housing authority is attempting to build new homes in our communities, they ran up against the \$150,000 cap to build a home. \$150,000 does not build a new home anymore. I am not opposed to bonding for construction, it's just they do add costs and that is why I bring this forward.

Chairman J. Dockter: Submitted testimony # 2 was received from ND Rural Water Systems Association for review.

Stephanie Dassinger: (Handout #3) Deputy Director and attorney for ND League of Cities: Read her testimony. Ms. Dassinger pointed out the exhibit that is attached to her testimony. She urged a do pass.

Rep. Johnson: Is there a definition in Code that describes what public works is?

Ms. Dassinger: I looked for a definition of public works and couldn't find one. With the window example that falls under our definition of construction of a public improvement. So, there are two different statutes that apply and it might not be public works. But in section 2 there is a definition that applies to construction of a public improvements. We believe windows would fall under that.

Rep. Johnson: Is there a definition of a public improvement? In my mind replacing windows is maintenance not public improvements.

Ms. Dassinger: The way the definition has been written is improvements and maintenance is very broad. I could send you the definition.

Rep K. Koppelman: I wonder if a dollar limit is the best way to identify the need for these kinds of services. Is there another way to identify types of things where the services are needed versus just throwing a dollar threshold in there?

Ms. Dassinger: We have not come up with a comprehensive and logical way to do that. But we are open to looking at something like that.

Rep. Adams: If we up the threshold you would be able to make better repairs for \$250,000 without engaging the engineering cost so the city would be able to make the decision?

Ms. Dassinger: That is basically our position, there are going to be circumstances where professional decisions of engineers and architects would be necessary. But most contractors that would come in would have a good idea what these projects entail.

Rep. Magrum: This threshold has been raised many times most recently in 2017. Do you have a set goal at a certain point where it will stop being raised?

Ms. Dassinger: We don't have a set number in mind but what we have heard from cities was that \$150,000 change to the bidding threshold did help but it didn't help enough. There are a lot of projects falling in \$150,000 to \$250,000 range that have to be broken up in different projects or done differently to try and save the city and the tax payer money.

Rep K. Koppelman: I wonder if there may be some middle ground instead of doing away with the dollar threshold and coming up with a different description, maybe a combination. Do you have any thoughts?

Ms. Dassinger: We are open to that and I can bring that back and talk to our city auditors and other groups supporting this bill and those opposing and see if there is a medium ground.

Rep K. Koppelman: If you do that there might be some logical and a creative way to solve the issue.

Rep. Johnson: In your estimate does this basically affect smaller communities?

Ms. Dassinger: I think that observation is true to some degree they certainly feel the price of it more. They don't have some of the services in their communities so if they need to have a contractor come to your city twice to get it done they are paying for the mobilization costs twice.

Rep. Rep. Hatlestad: Do you see the political subdivisions, as the numbers goes up and we use fewer specialists, assuming significant more liability?

Ms. Dassinger: I think that is important to point out ultimately liability goes back to the contractor that did the work if they had a significant defect in their project. But there is risk involved with every project.

Linda Svihovic: ND Association of Counties. Defining what a public improvement is would be a nice way to clear up a lot of these threshold issues. We have discussed that maybe the dollar threshold also isn't the only scenario when you are making structural changes. There is some opportunity for cleaning up the language and defining public improvements and when those services should be required.

Rep K. Koppelman: I would encourage you to work with the League of Cities and those who oppose the bill on definitions.

Rep. Hatlestad: In the definition could we include common sense?

Diane Affeldt: (Handout #4) City Auditor for City of Garrison and board member of ND League of Cities: Read her testimony.

Loren Hague: Dept of Corrections: My responsibility is to maintain all the property for corrections. We have over \$250M in property and buildings insured under corrections. So the amount of construction projects, repairs, alterations can be quite considerable for an agency our size. The definition of public improvement includes construction and the definition of construction is repair or alteration. Even if the threshold doesn't set well with you, remove repair or alteration as part of the construction would go a long way. We still have to secure appropriations as a state agency.

Stacy Krumweide: ACEC ND American Council of Engineering Companies. Introduced Ryan Ackerman.

(29:10) **Ryan Ackerman:** Professional Engineer in Minot. (Handout #5) Read his testimony. We urge a no not pass.

Rep K. Koppelman: I understand your definition and your attempt. I am worried about health, safety and welfare is a pretty broad term. Would you be willing to work with the folks

on the other side on this bill to come up with some language that does strike some common sense?

Mr. Ackerman: We are willing to work with the other stakeholders. Do we need to define that within the Century Code or can we define that in administrative code and let the agencies come up with definitions based on their expertise?

Rep K. Koppelman: The Legislature prefers we craft public policy in statute.

Bill Kalanek: (Handout #6) National Electrical Contractors Association, Dakota Chapter, ND Association of Plumbing, Heating and Mechanical Contractors. Read his testimony. Recommends a no not pass.

Tavis Greff: (Handout #7) Commercial Estimator for HA Thompson and Sons. Read his testimony. He asked a no vote and keep the threshold at the current level.

Rep K. Koppelman: You are concerned mainly about the bid threshold? Does the architectural side concern you at all? If the bid threshold remained the same would you have any concern with the bill?

Mr. Greff: The bid threshold is the big one. The architect engineering gets to be a slippery slope. You can easily say you are just replacing a rooftop but replacing the rooftop might structurally affect the building. There are so many grey areas that I don't know where you would draw the line. It would be a very long definition of what constitutes that.

Jeff Klemetsrud: Klemetsrud Plumbing. If the limit is set at \$150,000 a bid will come in at \$149,900. Bidding is good for the public, it makes people put their number down and it allows for whoever is spending the money to see how much it costs. Some jobs do only have one bidder. To be fiscally responsible raising the limit allows more trouble.

Chairman J. Dockter: Closes the hearing.

2019 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Prairie Room, State Capitol

2/1/2019
HB 1356
Job # 32024

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Carmen Hickle by Donna Whetham

Explanation or reason for introduction of bill/resolution:

Minutes:

Chairman J. Dockter: Opened the hearing on HB1356. Does the committee want to keep it at \$250,000.00 or go to \$200,000.00

Rep. Adams: I would go for a Do pass and leave it at the \$250,000.00

Rep. Koppelman: I think there we were holding this for amendments. I'm not sure setting a number is the answer. We are supposed to hear from some engineers. I wonder if we can't find some better language. Can we use a language that one project will differ from another project?

Chairman J. Dockter: So do you want to wait until we hear from the engineers.

Rep. Koppelman: Yes I do.

Rep. Adams: I will withdraw my motion.

Chairman J. Dockter: We will hold this for more information.

Hearing closed.

2019 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee

Prairie Room, State Capitol

2/14/2019

HB 1356

32794

☐ Subcommittee

☐ Conference Committee

Committee Clerk: Carmen Hickle by Elaine Stromme
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Explanation or reason for introduction of bill/resolution:

Relating to bids, plans, and specifications for public improvements and bond thresholds.

Minutes:

Attachment: 1-3

Chairman J. Dockter: Opened the hearing on HB1356. Rep. Koppelman do you have the amendment for this bill? I think an amendment is just to go to \$200,000. To just jump from \$150,000 to \$250,000 seems a lot. I would be comfortable with \$200,000.

Information from The Surety and Fidelity Association of America. (Attachment 1)

Rep. Ertelt: Is the amendment just for a change in the value?

Mike Krumweite: No, it would be in the language that talks about taking into account health, safety and welfare and the people when you come up with a number. It has to do with the policy in there.

Rep. K. Koppelman: The engineers and architects met with the League of Cities and they reached a compromise. We are constantly being asked to change these dollar thresholds. So we asked what other kind of terminology could be used that would be better. Presented the amendment and email where the amendment came in. (Attachment # 2,3)

Rep. K Koppelman: Moved the Amendment to HB 1356. (See Attachment 2)

Vice Chairman Pyle: Seconded.

Chairman J. Dockter: Any discussion?

Rep. Ertelt: I will resist the amendment because that any public improvement project would impact public health, welfare or safety. That is why there are public improvement projects. If we put this language in it is saying every project that is taken for public improvement will have to have consultation with an engineer. I don't think we want to place that burden on the political subdivisions.

Rep. K Koppelman: There is not much certain but I am certain that the North Dakota League of Cities would not have agreed to this if they believed that. I think what they are saying if we are doing a big project we may need an engineer to look at it and it may not be necessary. Common sense dictates that it would have an impact in this way.

Rep. Ertelt: I will use a sidewalk repair as an example, if it is broken that is a safety issue. I think what this amendment would do would open the political subdivisions to liability if they are not using an engineer in the project. I think what we have is fine.

Rep. Adams: I would like on the amendment instead of “will” it should be “may” consult. Would that be a better word?

Rep. K Koppelman: I think the “may” is there to put the burden on the political subdivision when those kind of factors are present.

Voice Vote: Not determined.

Chairman J. Dockter: I will ask the clerk to call the roll on the amendment to HB 1356.

A Roll Call Vote was Taken: Yes 6 No 8 Absent 0. Motion failed to amend.

Rep. Simons: Made a motion for a Do Not Pass.

Rep. Fegley: Seconded.

A Roll Call Vote was taken: Yes 11 No 3 Absent 0.

Do Not Pass Carries

Rep. Ertelt: will carry HB 1356.

Hearing closed.

PROPOSED AMENDMENTS TO HOUSE BILL 1356

Page 1, line 18, before "The" insert "1."

Page 1, after line 21, insert:

2. With respect to construction of a public improvement of any value, the state or any of its political subdivisions undertaking such public improvement, will consult with an engineer or architect when there is reason to believe the construction of the public improvement would impact the public health, safety, or welfare.

Date: 2-14-19
Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE

ROLL CALL VOTES HB
BILL/RESOLUTION NO. 1356

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. Koppelman Seconded By Rep. Pyle

Representatives	Yes	No	Representatives	Yes	No
Chairman J. Dockter:	<u>/</u>				
Vice Chairman Pyle:	<u>/</u>				
Rep. Ertelt:		<u>/</u>			
Rep. Fegley:		<u>/</u>			
Rep. Hatlestad:	<u>/</u>	<u>/</u>			
Rep. Johnson		<u>/</u>			
Rep K. Koppelman:	<u>/</u>				
Rep. Longmuir		<u>/</u>			
Rep. Magrum:		<u>/</u>			
Rep. Simons:		<u>/</u>			
Rep. Toman:		<u>/</u>			
Rep. Strinden:	<u>/</u>	<u>/</u>			
Rep. Adams:	<u>/</u>	<u>/</u>			
Rep. Guggisberg	<u>/</u>				

Total (Yes) 6 No 8

Absent 0

Floor Assignment _____

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

Motion Failed

Date: 2-14-19
Roll Call Vote #: 2

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES ^{HB}
BILL/RESOLUTION NO. 1356

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. Simons Seconded By Rep. Fegley

Representatives	Yes	No	Representatives	Yes	No
Chairman J. Dockter:	/				
Vice Chairman Pyle:	/				
Rep. Ertelt:	/				
Rep. Fegley:	/				
Rep. Hatlestad:	/				
Rep. Johnson	/				
Rep K. Koppelman:	/	/			
Rep. Longmuir	/				
Rep. Magrum:	/				
Rep. Simons:	/				
Rep. Toman:	/	/			
Rep. Strinden:	/				
Rep. Adams:	/				
Rep. Guggisberg	/	/			

Total (Yes) 11 No 3

Absent 0

Floor Assignment Rep. Ertelt

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

REPORT OF STANDING COMMITTEE

HB 1356: Political Subdivisions Committee (Rep. Dockter, Chairman) recommends **DO NOT PASS** (11 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1356 was placed on the Eleventh order on the calendar.

2019 SENATE POLITICAL SUBDIVISIONS

HB 1356

2019 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Red River Room, State Capitol

HB1356
3/14/2019
Job # 33728

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Mary Jo Wocken

Explanation or reason for introduction of bill/resolution:

Relating to bids, plans, and specifications for public improvements and bond thresholds.

Minutes:

Written attachment#1: Rep. Cindy-Schreiber-Beck Written attachment #2: Jill Grossman Written attachment #3: Stephanie Dassinger Written attachment #4: Eric Volk Written attachment #5: Diane Affeldt Written attachment #6: Bill Kalanek & amendments Written attachments #7: Surety & Fidelity Written attachments #8: Mike Krumwiede Written attachment #9: Ryan Ackerman Written attachment # 10: Jeff Volk
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Chairman Burckhard opened the hearing for HB1356. All senators are present.

Representative Cindy Schreiber-Beck: District 25 introduced HB1356 (1:00-5:50) **Written attachment #1**. She referenced an interpretation from Jill Grossman (**Written attachment #2**). She then continued with her testimony.

Chairman Burckhard: So this is basically saying that construction inflation is higher than consumer price index inflation? Do you have to increase it so often?

Representative Cindy Schreiber-Beck: I think there are certain projects that come up. I did not learn all the numbers on this and I think if you looked at inflation it may not be. But just on inflation, what is the cost of construction today? You can hardly do anything for \$150,000. This in Hankinson was pertaining to a housing development that they wanted to put on the north side of the town. It is a small community but a very progressive community. Because of that, the cost having to go back. It wasn't that they were going to use engineers for the right things, it was a housing project, they just ran into a big issue with it. I wish I had his testimony here, but I do not.

Senator Anderson: What is your opinion about if we separate the bonding requirement from the other changes going to \$250,000 so that the local subdivision is still protected by the bond even though we don't require them to do engineering or architecture or whatever? What is your opinion on that?

Representative Cindy Schreiber-Beck: At this point I would like to keep the bill as it exists. Your referring to but at a lower level for bonding. They still can. They still can't preclude them; this is just a threshold. They still could. They could require bonding for any amount.

Stephanie Dassinger: Deputy Director, North Dakota League of Cities. Spoke in favor of HB1356. (5:50-12:32) **Written attachment #3.** Ms. Dassinger referenced a handout from Erik Volk with the North Dakota Rural Water Systems Association (NDRWSA) **Written attachment # 4;** and Ms. Diane Affeldt, City Auditor from the City of Garrison, **Written attachment #5.**

Senator Judy Lee: I support your amendment because I think there are circumstances when a project may not need to have all the professional work done by the engineer or the architect, but I think it is terribly important that in situations where one doesn't recognize at first blush that there may be a health or safety or welfare impact on something. That a consultant is asked to do that. So, I can't imagine that that and I don't even want to say 'may' I want to say 'will' consult on a project if we raise those dollars. Because it doesn't mean they are going to do the work, it means there is going to be some consultation done. Because sometimes there are structural things particularly on a re-hab project. I agree that it doesn't take much to get to the \$250,000 on anything that is a re-working project but there certainly are circumstances in which something might be re-done and the input from that professional may be important. So, I realize that you've reached an impact, but was there some general. I was interested in knowing what the objections might be from your point of view to having that consultation just to determine whether or not there is a structural issue that needs to be viewed that if we're the city council and were not all smart about construction and architecture, and you are, and you see that used building that were buying that we want to rehab, or that project that we want to do is going to be actually needing more work than we think we see, and somebody gets hurt. The liability costs are going to be way higher than the cost of having a consultant.

Ms. Stephanie Dassinger: I could support the language that I proposed to you. I think that it is a fair, it puts a fair burden and I can tell you the practical effect, when I've talked to city attorneys about this particular language. When they talk to their clients and they give their clients a checklist, it's going to specifically say discuss whether an engineer or architect is needed for this project.

Senator Judy Lee: I think that all elected officials are not only trying to be practical but they are trying to be frugal and so we might collectively say well it looks fine to me. That's why the 'may' gives me a little bit of a rush on this.

Ms. Stephanie Dassinger: I don't see may in here. It says "will consult an engineer or architect when there is reason to believe".

Senator Judy Lee: But it's when there is reason to believe, its permissive it's not in point.

Ms. Stephanie Dassinger: I think if you take that out, you're saying that every project that happens in the state of North Dakota, you need to have an engineer or architect on.

Senator Judy Lee: I am saying that they don't have to do the drafting of the project or engineer or do the construction of the project, but that asking a consulting person either an

architect or an engineer on a project to look at the project and see whether or not there may be health, safety and welfare concerns which need to be addressed by whoever does this is an important thing to do. It is very different having one consultation, one inspection of the property, one review of the project and then you can go on and have Joe Smatch with a pick up and a hammer, do the work if you want him to do that.

Ms. Stephanie Dassinger: I don't disagree with you in a general sense, but I think it is important to remember what those costs are and that if we put in language saying that we will under consult an engineering or architectural service anytime how safety and welfare is in question, your putting every single project. If carpet is laid and there's a bump somebody could trip and now you've got a health concern, so I think it ends up being very broad and frankly my small cities cannot afford it. We can't afford to do a project if we have to consult an engineer on every project.

Linda Svihovec, North Dakota Association of Counties. I have no formal prepared testimony or written testimony. I am just here to stand in support of changing the bid threshold on public improvements from the current law to \$150,000 to \$250,000. (examples cited 18:14-20:41)

Opposition testimony on HB1356.

Bill Kalanek, National Electrical Contractors Association, spoke in opposition to HB1356 as it currently stands. (**Written attachment #6, testimony and amendments**). (21:38-) Mr. Kalanek explained the amendment before you, addresses the engineering and architecture piece by removing the dollar threshold, and it is similar language to what the League of Cities presented. Additionally, within the amendment we ask that you restore the threshold for bidding and bonding of a project back to \$150,000. Specifically speaking on behalf of subcontractors we understand what the sponsor of the bill was saying when she said you can't build a house for \$150,000 anymore. But there are a lot of projects and this isn't always about building something, it might be a boiler replacement, window replacement, lighting retro-fit, all those things or a lot of those things are under \$250,000. Without an appropriate threshold then we feel that \$150,000 is that appropriate threshold. Those projects end up going to the same contractors. I would like to mention that these amendments occurred between both of the groups that I represent, AIA, which is the architects; ACEC which is the engineering companies; North Dakota Association of Counties where Aaron Birst weighed in on these amendments; the IDEW, your electrical workers and the American Property and Casualty Insurance Association; and the Surety and Fidelity Association of America (**Written attachment #7**) for their concerns over the bonding threshold.

Chairman Burckhard: We don't have an amendment number on here, that was drafted by Mr. Kalanek.

Senator Kannianen: Could you just clarify for me now, if you have a difference of multi prime or single prime you know that place comes into effect here, you have a project that say if it were the total project as an example is \$500,000 but it had been broken up instead if it were bid multi-prime if each job were approximately \$150,000, does that make a difference here on meeting these thresholds?

Mr. Bill Kalanek: Actually it has no bearing on this. That is how a bid is done, not why a bid is required. So you're talking about the process for the bidding. This just determines whether the bid is required at all.

Senator Kannianen: So, as far as engineers, if it is just the total project no matter how it's split off or bid out that doesn't have any effect?

Mr. Bill Kalanek: Right, it is the total project cost that determines that the project needs to be bid.

Chairman Burckhard: So that was in favor of. It started out opposed to and with amendments.

Mike Krumwiede, American Council of Engineering Companies spoke in opposition to HB1356. **Written attachment # 8.** (28:05-32:30) For clarification the last five pages are from Ryan Ackerman of Ackerman-Estvold out of Minot who could not be here today. **Written attachment #9.** Mr. Krumwiede referenced his handouts to the committee. He would support the amendment handed out by Mr. Kalanek and we recommend a do not pass as it currently sits but would recommend the amendment.

Senator Judy Lee mentioned an email she received from Jeff Volk regarding 1356. It is included as **written attachment #10.**

Chairman Burckhard closed the hearing on HB 1356.

Committee Discussion:

Senator Judy Lee: This is a request for you to consider. Would you consider separating the bid from the amendment about the consultant, to be discussed one at a time, and then put them back together again, however, we want.

Chairman Burckhard: Are we talking about the one that Bill Kalanek talked about?

Senator Judy Lee: It was provided also by Stephanie with the League of Cities. I would be willing to just talk about that part. As I stated earlier, I would support that amendment because I think it is important that they have somebody review as you can see in Mr. Ackerman's testimony there, it doesn't have to be big. I think about the rooms falling in at home. Some of them are on small structures certainly you need to need to know a little more about what the structure actually is in order to do things. I don't think that is an unreasonable request. If it is not, add the \$15,000 in costs for engineering services because we aren't asking them to design or supervise the project or architect, but just to look at the safety, health and welfare of that project. So I support that part.

Chairman Burckhard: Can you read the part what you're specifically referring too so that I am on the right page with you?

Senator Judy Lee: "With respect to construction of a public improvement of any value the state or any of the political subdivisions undertaking such public improvements shall consult

with an engineer, architect when the construction of the public improvement would impact the health, safety or welfare of the public.” (**Written attachment #3, page 3**, number 2, Stephanie Dassingers’ proposed amendment).

Chairman Burckhard: So the word “shall” is in there. **Senator Judy Lee:** It shall but it does say would impact, so I realize there is a judgment call in there and I’m willing to recognize that we have some confidence in the elected officials. But I do think it is important just to have that initial inspection of the review of the project.

Chairman Burckhard: Is that a motion?

Senator Judy Lee: **That is a motion to adopt that amendment.** I don’t know if there is a legal definition for reason to believe. I feel a little more comfortable with the language in Mr. Kalanek’s amendment. I think it is the same purpose but I am open to discussion on that whole thing. I just think it is a little clearer.

Chairman Burckhard: Senator Lee your suggesting the one that was handed by Bill Kalanek would be the one that we’re moving here, is that correct?

Senator Judy Lee: Yes, I view it as the same goal and I am not as comfortable with ‘when there is reason to believe’ that is a pretty ephemeral kind of.

Chairman Burckhard: The reason to believe was in Stephanie’s amendment. So I have a motion for a do pass on the amendment as proposed by Bill Kalanek and the many agencies and groups that he represented. Is there a 2nd to that amendment? Well then I am going to 2nd it for the sake of discussion. Can I do that? You can hand the gavel over to your Vice-chair for a moment and then you can second it and then take the gavel back.

Vice Chairman Anderson: Senator Burckhard 2nd the motion.

Senator Diane Larson: **Replied I will just 2nd it.**

Chairman Burckhard: Okay. **Senator Larson seconded it.** Now we can discuss it.

Senator Kannianen Do you have some hesitation on this?

Senator Kannianen: My question is, so what is the definition of consult then? I mean could somebody construe that to mean the full consultation of the full plans. Or would it be understood to mean that it could be as simple as an hour inspection walk through and report. Or could that be construed to mean requiring them for the full job? So that concern was that it would require any dollar amount and always require an engineer and architect drawings and plans.

Senator Judy Lee: I understand Senator Kannianen’s question and maybe we need to say something like for an evaluation or something that just indicates a review. Because that would tighten up the language on something like that too. I am just talking about somebody just looking at the project.

Senator Anderson: I think really what we need here is an engineer’s opinion on what that terminology means.

Chairman Burckhard: Do we have one in the House? I want us to get an opinion.

Senator Kannianen: I would support that as long as we can be sure that is what it would mean of what our intention of what a consultation means is what would really be.

Chairman Burckhard: "Shall consult with" an engineer. Is that what you're asking?

Senator Kannianen: As long as consult means a simple review or an inspection or what we've talking about here and not mean.

Senator Dotzenrod: I am just thinking of an example of one little community in my legislative district they had a city park. It was surrounded with a stone wall and it was concrete and rock, and it was built in the 1930's. About 15 years ago one of those walls started to tilt and it gradually and it became kind of concern that it might tip over. So they found a contractor and he did quite a bit of work with concrete and this contractor came in and did the work that was needed to push the wall and do some stabilization of the foundation and so it was done and it stayed straight now for many years. Is that the kind of thing that if we pass this they would have to consult, have an engineer come and look at it before they could hire a contractor to fix that wall?

Chairman Burckhard: I see a nodding head saying that yes that would be one of those.

Senator Dotzenrod: This a community of 400-450 people and they got the work done and had very experienced reputable contractors to do the work. They didn't take the time or expense to consult with an engineer, but it does seem to me that we would asking and forcing by state law, forcing them to do that if we adopt that.

Chairman Burckhard: I think it would.

Senator Anderson: If I am looking at this amendment that also changes everything back to.

Senator Judy Lee: I asked if we could split off the one and two, and just talking about that because we can talk about 1 and 2 some other time. They are two separate things.

Senator Anderson: It would be on line 21.

Chairman Burckhard: Any other discussion on the do pass on the amendment as submitted by Bill Kalanek.

Roll call vote: 3 Yes, 3 No, 0 absent

Chairman Burckhard: Motion fails.

Senator Diane Larson: I really don't really see the difference nuances in the two versions of the amendment. I am wondering if there would be a way to combine it so that it could take care of the concerns on both sides of that. The differences are kind of.

Chairman Burckhard: Well the one says, 'when there is reason to believe' so that's kind of

Senator Diane Larson: The other one says, 'necessary to protect' and so certainly we want something if it is something that is going to put somebody's safety at risk.

Senator Judy Lee: Is there a legal definition of reason to believe or would have an impact.

Alex: I am pretty positive there isn't a legal definition for reason to believe, but I will double check. Is there another one?

Chairman Burckhard: Would impact the health and safety. **Senator Judy Lee:** Would impact yes. That's where it should say effective impact of an...

Senator Diane Larson: We need another word or something.

Chairman Burckhard: Maybe we need the two sides to get together and see what they can figure is that possible Stephanie and Bill?

Senator Diane Larson: Maybe what they could do, is explain in more detail what the real differences between the two, because they sound so similar to me. One is looking at impact the health and safety or welfare of the public and the other one is necessary to protect the public health, safety and welfare, so it sound almost the same to me. Maybe the one side could say the reason the words are important to us in this version is because of this. Then we could hear the other side then we would have a better idea of what the real difference is.

Chairman Burckhard closed the hearing on HB1356.

2019 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Red River Room, State Capitol

HB1356
3/21/2019
Job # 34140

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Mary Jo Wocken

Explanation or reason for introduction of bill/resolution:

Relating to bids, plans and specifications for public improvements and bond thresholds.

Minutes:

Chairman Burckhard: asked the committee for discussion on HB 1356. We had those in favor of it were League of Cities, and the Association of Counties. This is the one where we had the amendments that we didn't really agree on. As we left we had suggested that the League of Cities and Mr. Bill Kalanek get together to see what they could agree on.

Bill Wocken: representing the North Dakota League of Cities. The amendments to 1356 that were proposed an amendment by the League of Cities and an amendment by Bill Kalanek and as we left the last meeting, we were to take a look and see what we could do with those amendments. We've not been able to come to an agreement with the other amendments and the League of Cities is looking at its amendment and it is the only one we could support.

Chairman Burckhard: Can you explain in simple layman's terms why we can't get together. What is the biggest difference?

Mr. Bill Wocken: Mr. Kalanek's amendments and the League of Cities amendments use pretty much the same starting and ending verbiage. But in the middle of the verbiage Mr. Kalanek, says on the second line of his amendment that the political subdivision undertaking the improvement "shall" consult with an engineer or architect. The League of Cities said the public unit "will" consult. We are okay with shall there. The only difference comes really in the reason for the consultation. Our League of Cities says 'they will consult when there is reason to believe when engineering or architectural services are necessary to protect the public health, safety and welfare'. Mr. Kalanek's amendment talks to the 'we will consult when the construction of the public improvement would impact the public, health, safety or welfare of the public'. The concern that we have with Mr. Kalanek's language is that 'would impact' would cover a positive or negative impact and we would basically be talking about having engineering or architectural consultation on almost any decision. That is not acceptable to the League of Cities. We believe that there are certain improvements like cleaning out a ditch for example or a chip seal where we wouldn't necessarily have to have that consultation. We are equally uncomfortable with the present law which requires the consultation on the basis

of a dollar amount because there can be projects that are less than that dollar amount which consultation would be best for the city and best for the citizens. So, we would need to stick to language that talks about the necessity to protect health, safety and welfare rather than just an impact.

Senator Judy Lee: How about if we eliminate the dollar amount and let the cities figure out what they are doing on their own? Whether or not it affects us. I don't even know if I like it, it just occurs to me that if that is one of the bones of contention, do we trust our local elected officials to make decisions at least as well as we can? Should we eliminate the dollar amount entirely to make it do what we think is right?

Mr. Bill Wocken: Yes, League of Cities is looking at this and has felt for some time that the dollar amount is not a proper way to decide whether or not you need to design engineering or architecture to assist with the solution to a problem. So that was where we were trying to come up with if it's not the dollar amount then what is it? I think both Mr. Kalanek and the League of Cities agree that it is the public, health, safety and welfare that is to be considered. It is just a matter of the wording that gets us to that point. If the amendments were to fail we still would be in favor of the bill, but the dollar amount here is of concern and we believe that the language about 'the necessity to protect public health, safety and welfare' is the language that is best for that amendment.

Mr. Kalanek: I want to be clear on something here. The amendments that were offered were group amendments. I was not in consultation with Mr. Wocken on this language. The engineering and architects involved which is Mr. Krumweide, and his groups consulted with him on that language. So, I have not been involved in those discussions over the last few days because that was outside my per-view. I am just going to be frank on this. My concern primarily I presented a unified sort of message on these amendments and not being nominated to do that. My major concern for the folks that I represent which is the Electrical Contractors and Mechanical Contractors is the threshold itself for bidding. That is the big bone of contention for us. So I mean, personally, not representing the entire group, if the committee sees it that they want to tweak some language and make an adjustment to that, personally I am fine with that, for the engineering and architects. Because I believe that that's something the dollar amount is not the best determinant of whether or not you need that service. I don't want to through any of my colleagues under the bus who aren't here in the room, but I don't have issue with the language either way when it comes to the engineering and architect personally. There are other people out there that do. So, I know that's not helping you a whole heck of a lot. But, for my contractor perspective the threshold is always the biggest thing because being able to bid the projects as I spoke to you about earlier this morning. So when you raise that it takes a number of projects off the table for bidding. So that was the big bone of contention.

Chairman Burckhard: So \$150,000 versus \$250,000 you would prefer the smaller amount?

Mr. Bill Kalanek: Right, because then more projects are bid.

Senator Judy Lee: How about more money?

Mr. Bill Kalanek: Then, no projects are bid. From a public policy perspective, I think a threshold for determining when you need a bid makes a lot more sense than determining

when you need an engineer. Because it's a matter of prudent spending of a public's tax dollars and equal opportunity for those public projects. That's our biggest concern in this bill. When it comes to electrical and mechanical jobs there are a lot of jobs in that \$200,000 range.

Senator Judy Lee: Do you frankly think that using \$200,000 instead of \$250,000 or \$150,000, would be sort of? Is that a number everybody would be unhappy with so it would be a good compromise?

Mr. Bill Kalanek: You are probably correct in that. That is something that I would be willing to do. That would represent 100% increase in the last 4 years on the threshold. That's a big jump after not having had a jump for a while. That was a compromise I was willing to make. I am still willing to make.

Senator Judy Lee: I would like both Bills' to let me know then do we need something in there about the health and safety and all of that kind of stuff, or I know there are people who really want it in there. But I want to know how on a priority list where are we? I know there are some who really do and some who really don't. Tell me what you think please and then maybe Mr. Wocken could say what he really thinks about the priority of that compared to the bidding amount or not.

Mr. Bill Kalanek: I think that, that's intrinsic in this whole decision whether you hire an engineer or an architect, as other people's lives are at risk, is their safety at risk. How it is stated I don't have an issue with you know? I think we know where the other Bill stands, but.

Senator Kannianen: So then the language of public health, safety, welfare and what not; I mean on a case by case basis, of course in the question of who determines that. If someone wants to take, if people want to take each other to court on every last little project to determine what the definition is, how exactly with no dollar amount, and then some language in there about public, health, safety and welfare, so forth, does that just open it up to every project being susceptible to a lawsuit.

Chairman Burckhard: Lawyers love this kind of stuff I guess.

Senator Anderson: I don't hear many people except one senator whose saying that we should eliminate the numbers altogether. However, I think that the compromise number might be satisfactory as far as that is concerned. Now if we are going to go with some language, I think the language that we had that Mr. Wocken said, that he might agree with is on the second page of somebody's testimony where it says ' With respect to construction of a public improvement of any value' the state or any of its political subdivisions undertaking such improvement will consult with an engineer or architect when there is reason to believe that engineering or architectural services are necessary to protect the public health, safety and welfare'.

Senator Judy Lee: Did that come from Mr. Bill Kalanak.

Chairman Burckhard: No that came from the League of Cities. I thought when Mr. Kalanak when the construction of public improvement of the public health, safety and welfare or the public.

Mr. Bill Wocken: North Dakota League of Cities. I understand that we are talking about a \$200,000 threshold. I believe the League of Cities would agree to that threshold. As far as the amendment is concerned, Senator Kannianen's comments are of concern. I don't know if they are more concerned with the dollar amount or not, but those are still of concern. We would be willing to continue on with the existing law and try and take a look at language for an amendment into the future.

Chairman Burckhard: So, change the number to \$200,000 and leave the rest the way it is?

Mr. Bill Wocken: That would be our preference as were just not sure where the rest of this is leading.

Ms. Stephanie Dassinger: The amendment is on the back page of my testimony. (Refer to attachment #3. pg 3, Job # 33728)

Mr. Bill Wocken: Which one were you lacking as I have both of them here.

Senator Dotzenrod: It is on the back of the League of Cities.

Senator Anderson: However, that is kind of the issue, so maybe we should go with the change that they compromise to the \$200,000 and let it go at that.

Chairman Burckhard: I could use a motion that would suggest that.

Senator Judy Lee: I move that we adjust the number for the bidding limit to \$200,000.

Chairman Burckhard: That is the number on page 1, line 10, 18, 20, and on pg2 line 2. Was that a motion Senator Lee?

Senator Judy Lee: Yes, it was. Moved to amend the threshold to \$200,000 on the four mentioned items or references on the bill, three on page 1 and one on page 2.

Chairman Burckhard: On page 1 lines 10, 18, 20, on page 2 line 2.

Senator Anderson: 2nd that motion
Roll call vote: 4 Yea, 1 No, 1 Absent

Senator Anderson: I move do pass as amended

Senator Dotzenrod: 2nd on that motion

Roll call vote: 5 Yea, 0 No, 1 Absent

Carrier: Senator Burckhard

PROPOSED AMENDMENTS TO HB 1356

Page 1, Line 10, Overstrike "~~two~~"

Page 1, Line 10, Remove overstrike from "one"

Page 1, Line 18, Before "The" insert "1."

Page 1, Line 18, Overstrike "~~two~~"

Page 1, Line 18, Remove overstrike from "one"

Page 1, Line 20, Overstrike "~~two~~"

Page 1, Line 20, Remove overstrike from "one"

Page 1, after Line 21, Insert:

2. With respect to construction of a public improvement of any value, the state or any of its political subdivisions undertaking such public improvement, shall consult with an engineer or architect when the construction of the public improvement would impact the health, safety, or welfare of the public.

Page 2, Line 2, Overstrike "~~two~~"

Page 2, Line 2, Remove overstrike from "one"

19.0385.01001
Title.02000

Adopted by the Senate Political Subdivisions
Committee

March 21, 2019

3/21/19

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1356

Page 1, line 10, overstrike "fifty"

Page 1, line 18, overstrike "fifty"

Page 1, line 20, overstrike "fifty"

Page 2, line 2, overstrike "fifty"

Renumber accordingly

Date: 3.14.19
Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. H.B. 1356

Senate Political Subdivisions Committee

☐ Subcommittee

Amendment LC# or Description: Amendment from Bill K.

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 Sen. Judy Lee Seconded By Sen. Diane Larson

Senators	Yes	No	Senators	Yes	No
Chair Randy Burkhard	<u>X</u>		Sen. Jim Dotzenrod		<u>X</u>
Vice chair Howard Anderson		<u>X</u>			
Sen. Diane Larson		<u>X</u>			
Sen. Judy Lee	<u>X</u>				
Sen. Jordan Kannianen		<u>X</u>			

Total (Yes) 3 No 3

Absent 0

Floor Assignment Fails

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

Roll Call Vote #:

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1356**

Senate	Political Subdivisions	Committee
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☐ Subcommittee

Amendment LC# or Description: Amend \$200,000. Number on pg 1, line 10, 18, 20
and on page 2, line 2.

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 Sen. Judy Lee Seconded By Sen. Anderson

[illegible]

Total (Yes) 4 No 1

Absent /

Floor Assignment

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

Date: 3-21-2019
Roll Call Vote#: 2

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1856**

Senate Political Subdivisions Committee

☐ Subcommittee

Amendment LC# or Description: 19.0385.01001

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 Sen. Anderson Seconded By Sen. Dotzenrod

Senators	Yes	No	Senators	Yes	No
Chair Randy Burkhard	X		Sen. Jim Dotzenrod	X	
Vice chair Howard Anderson	X				
Sen. Diane Larson					
Sen. Judy Lee	X				
Sen. Jordan Kannianen	X				

Total (Yes) 5 No 0

Absent 1

Floor Assignment Sen. Burkhard

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

REPORT OF STANDING COMMITTEE

HB 1356: 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). HB 1356 was placed on the Sixth order on the calendar.

Page 1, line 10, overstrike "fifty"

Page 1, line 18, overstrike "fifty"

Page 1, line 20, overstrike "fifty"

Page 2, line 2, overstrike "fifty"

Renumber accordingly

2019 CONFERENCE COMMITTEE

HB 1356

2019 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee

Prairie Room, State Capitol

HB 1356
4/9/2019
Job # 34635

☐ Subcommittee
☒ Conference Committee

Committee Clerk Signature	Carmen Hickie
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Explanation or reason for introduction of bill/resolution:

Relating to bids, plans, and specifications for public improvements and bond thresholds

Minutes:

1,2

Chairman Pyle: Opened HB 1356 for conference committee. The House did not concur with the amendments from the Senate. Can someone from the Senate explain these?

Sen. Lee: We looked at changing the public works and having it be the same amount for construction threshold. We have done the same amount for the construction project bid as we for the bonding. They are very different and for them to be in the same bill is far from ideal. There is a concern about the health and safety component. There were examples given of inexpensive projects that had structural shortcomings. No one wants the liability to become an issue for any political subdivisions. We came out with the same amount for both. I still have reservations about not dividing that.

Chairman Pyle: Rep. Fegley was the opposing vote for the same reasons. I agree with the impact on the health and safety of the public. I had an amendment prepared. Handed out a proposed amendment (#1 – 19.0385.01002).

Sen. Dotzenrod: What I found was in the House hearing there was discussion about housing authorities and the difficulties that they are having in building single family dwellings. We did not have housing authority in our committee meeting so that was never discussed in our hearing. I have been in touch with some of the housing authority people and they would like to have the ability to go out and put together a plan to build a home. They run into the architecture requirement if they go over the dollar amount, which a private builder wouldn't be required to have to get an architect involved as most of the materials going to homes are already engineered. It seems like we have two different avenues, one has to do with the public buildings and public bidding on projects. Then we have the subject that was the intention of the bill that we didn't get any discussion on. I brought an amendment (#2) that involves housing and being able to exempt them for construction of single family dwellings.

Chairman Pyle: The amendments I passed out adds in some language to protect the political subdivisions so when it undertakes the construction of a public improvement project that

would impact the health, safety and welfare of the public, the state or political subdivisions shall consult with an engineer or architect. For the bigger projects either the \$200,000 or \$250,000 threshold, not the housing projects, more of the public building project.

Sen. Lee: Things such as park improvement or walking trail?

Chairman Pyle: That was my intent behind this amendment to add onto the bill.

Sen. Dotzenrod: We had something similar in our committee but wouldn't this essentially be all projects?

Chairman Pyle: That is a possibility.

Sen. Burckhard: The part that stands out for me, an improvement that would impact the health, safety and welfare of the public that is everything, right?

Sen. Lee: Are we looking at saying if it's a less expensive project, if it does impact health, safety and welfare they need to consult? Or if it's any price?

Chairman Pyle: This puts the ownership on the political subdivision.

Sen. Lee: But over \$250,00 or \$200,000 I personally think there are things that don't occur to a layperson necessarily. Doesn't mean they have to do a big audit.

Sen. Dotzenrod: In my town in the public park they consulted a contractor who was experienced, he came in and fixed the project. But I imagine if we have a provision like this in law they would have had to hire an engineer because it would affect health, safety and welfare. I'm concerned that if you look at the subdivisions and how they operate they know who is reputable to do it right. In the more expensive projects it is common for bidding to take place whether it's required or not. I'm concerned on the smaller projects that we would have to hire an engineer on?

Chairman Pyle: On the bottom line of the amendment maybe "shall" should be a "may"? It would give the political subdivisions a choice to decide for themselves. On your example they wouldn't have to consult an engineer.

Sen. Lee: We used to require that bids go to the lowest bidder. We changed that a few years ago now there can be other factors that go into the consideration by political subdivisions so it doesn't have to go to the lowest bidder.

Rep. Fegley: The aspect of taking the lowest bidder gets you into the bonding aspect. Taking the lowest bid with the bonds you have less than ideal contractors on a low bid basis. That is a concern for me.

Sen. Lee: Would your committee members look at the possibility of a different number for the bonding part than for the (inaudible).

Chairman Pyle: That is not anything we have discussed prior so it would be something we have to meet again so I can confer with the whole committee.

Rep. Fegley: From my perspective that could be a possibility because even though you have the threshold, you can still require a bond on a lower basis and have the assurance that work may be done right. You might have an issue but with the bond there you can have some leverage.

Chairman Pyle: Any discussion on the amendment before you?

Sen. Lee: I am not quite ready, and want to see Sen. Dotzenrod's amendment also. I think if we can assemble some information and you have a chance to run it by the absent member. We have had more thoughts that have come out of the conference committee than we had available in our initial meetings.

Sen. Dotzenrod: (Inaudible).

Chairman Pyle: You want to add in the underlined portion?

Sen. Dotzenrod: Yes, subsection 21 section 48.

Chairman Pyle: If it were amended that whole section would have to go into the bill?

Sen. Dotzenrod: The bill as it is drafted now refers to public improvement on line 17 page 1. The amendment I am offering is a slight modification of the term public improvement. When they are talking for the good of public, paid with public funds, that would be housing authority or maintenance. At the end of the definition there are some exemptions and it adds "single-family residential construction or maintenance" to the exemptions. The limits that currently apply on the bill would not allow to single family residential construction.

Chairman Pyle: Is there ever any multi family home construction or permanent buildings built in housing authority?

Sen. Dotzenrod: I think housing authorities do build apartment houses so they get into the larger project and have to have engineers or architects. On single family most of the building that is done, the materials used are pre-engineered that are stamped and certified. It's rare for some to build a family home and hire an architect.

Chairman Pyle: Generally, they are smaller homes so they wouldn't reach a \$200,000 or \$250,000?

Sen. Dotzenrod: They would be \$250,000 and in a few years \$300,000.

Sen. Lee: Did you intend this would include the cost of the lot? The Farmer's Home Administration limited to single attached garages, one bathroom, it was intended to be basic housing. But if you added the cost of the structure and the lot you are going to have a hard time in my community.

Sen. Dotzenrod: The cost of the public improvement is the house but the lot is not part of public improvement. I can check on that and find out.

Chairman Pyle: That would be a great idea.

Sen. Lee: Looking at the growth in the last 20 years of twin homes for affordable housing in new homes, if we might want to consider to go to from one to two family homes.

Chairman Pyle: Absolutely, both the Senate and the Representatives both need to look at bonding and construction thresholds. Adjourned.

2019 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee

Prairie Room, State Capitol

HB 1356
4/11/2019
Job # 34696

☐ Subcommittee
☒ Conference Committee

Committee Clerk Signature	Carmen Hickle
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Explanation or reason for introduction of bill/resolution:

Relating to bids, plans, and specifications for public improvements and bond thresholds

Minutes:

1

Chairman Pyle: Opened HB 1356 for conference committee work. She stated she had the two amendments combined. It's the same language except on second portion of it we put a "shall consider" instead of "shall". I have had conversations with League of Cities and offered an amendment with a little different wording. I would like to start with Sen. Dotzenrod's definition exemption for the single family residential construction and maintenance.

Sen Dotzenrod: This amendment would create an exemption for housing authorities. I had some conversations with some people have said there might be some problems in terms of, you can have multiple use million dollar projects where you have a large central area and single dwelling homes around the perimeter. The concern was it be unclear. It wouldn't affect the smaller communities that are characteristic of my district, but not sure about how it would affect the larger developments. The League of Cities and others thought it might have some unintended effects. I have some ideas on alternative ways to do this. We are not raising the cap on housing authorities, but that is an alternative that I thought about. From my point of view if this would work, I would be happy with it. But if there is someone here that can point out to me why it's not going to work I would like to hear that.

Sen. Lee: We learned yesterday that there are only two legal housing authorities. There is Section 8 voucher that people with low income that we have in our communities, large buildings in communities that is all rental. The second one is a 10-year old housing authority; those were intended to provide affordable apartment housing in small communities. Like 4-plexes and 8-plexes so folks could stay closer to home. The Hankinson project is privately funded, there economic development group has put money in and a local banker has put money in, in order to build the speck house on city owned lot and sold that and paid it back. Now they want to build another one. It seems that everyone would be better off to keep government idea out of this and keep doing what they are doing which is private. People who are investing their own money and a supportive community banker, the city is not financing it. So it is different from we thought it might have been at the beginning. You had testimony in the House that was unavailable to Senate. We didn't come up with a solution but maybe we don't want to put that in here.

Sen. Dotzenrod: I did communicate with the Hankinson banker and he said they are using the housing authority as a developer. They have the community development corporation and they have the housing authority. Community development spends a lot of time and money on businesses and

trying to put together job creation. They felt the housing authority was for housing. I talked to Legislative Council and Housing Finance about this. There are questions and if you look at Section 1, it talks about public works, they don't think housing authority fits. This is not a section of the Code that you would normally think of for building a house. This isn't a section that should govern in a case of a housing authority. They looked at Section 2, public improvement. There is some question about, is the construction of a house, my thought it's not a public space. I thought I could modify that paragraph. The first sentence says, "the threshold for bidding construction of a public improvement", is whatever dollar amount we put. Then have a second sentence that said, "the threshold for bidding construction of a housing authority project would be", a different number than the first number. If the housing authority fits under public improvement construction, and if they do then have a second sentence for them.

Chairman Pyle: That is actually a conversation we had, we consulted a contractor that works in the House. To put a dollar amount on the housing portion of that because it is a separate project, it's not necessarily for the public but it's public use of funds. The Representatives agree with your statement.

Sen. Lee: I think it is important to note that the group in Hankinson should not be using the term housing authority, because legally there are the only two. They can call themselves something else otherwise they will be thrown in with the two legally defined housing diagrams and definitions when they are truly not one. They are either going to Section 8 low income rental housing or they are going to be rental, for low income, age or disability related projects. They are not a housing authority, so they have to name themselves something else and continue to do the good work they are doing. It's going to take some time to define a whole new entity that will as a privately functioning group with a civic goal what's going on.

Chairman Pyle: In this so called housing authority in Hankinson is it city money that is being used?

Sen. Dotzenrod: For the first house which ended up costing \$246,000 they got \$46,000 from community development corporation and then a loan from local bank, a \$200,000 loan with a one year note. There might be some public money in the community development. In the chapter on Section 23.11, which is the housing authority law, they have the powers to make and execute contracts and other instruments necessary to exercise their powers. Then on the next page item 14, to sell, lease, exchange, transfer or exchange any property or any interest in property. Most of the references in their duties has to do with federal grants, different types of arrangements with the federal government. It does appear there is the authority for them to do that. Someone in Legislative Council thought there was another housing authority in the state that was doing this. They gave me the name of the town but I haven't had time to check.

Rep. Fegley: Is your development corporation a non-profit or profit corporation?

Sen. Dotzenrod: There are a lot of things I can't answer and I wish they were here to provide that information. I can try and find out if they are non-profit or profit.

Sen. Lee: I am also looking at 23.11.02 and it talks about under B and this is about housing authorities. A real housing authority under the legal definition is intended for lower to moderate people under specific conditions. I wonder if Hankinson is better off not getting involved in this. They are doing a good job on their own and they shouldn't have to worry about a bid unless there is public money in it.

Sen. Dotzenrod: It seems we are down to one question, can a housing authority act as a developer? I don't know the answer. If we know they could then it seemed like there was some way to fit this in. But if we know based on the language in Chapter 23.11 that all these terms and definitions that they can't do that it would make our decision here easier.

Rep. Fegley: In the committee this issue was talked about because our initial development was for profit, we sold stock and developed funds and created several projects through the city and then the next group came in and said if we were non-profit we could get federal funds. It got to be a huge discussion about which side we really wanted to be on. They finally got everyone to agree and contribute to stock and rolled into a non-profit. But it created new rules and regulations they couldn't do anymore.

Sen Lee: I cannot support that portion of the amendment.

Chairman Pyle: I concur. If you look at 23.11.03 we don't know if there is a resolution determining that the housing authority is necessary. All the housing authorities that I am aware of build the structures, the homes, the apartments and its done by rent, I don't think they have ever been sold. I agree with Senator Lee. Let's move on to the second part of the proposed amendment notwithstanding the thresholds. League of Cities proposed a new idea in the wording and possibly what the Senate heard during their discussion. My one question is this wasn't a part of the original bill and neither chamber put it. So do we want it in?

Sen. Lee: It does relate to the topic. We will have to depend on our Senate and House colleagues to decide for sure but it seems if we are finding an improvement collectively what we generally have done is proceed.

Chairman Pyle: Mike, if you could walk us through the amendments and why this wording is needed.

Mike Kromweide, American Council of Engineering Companies: The reason the amendment came forward is every time we go to raise the thresholds one of the questions is about engineering fees. What we see as engineers is the dollar amount is less of an issue if we understand that the things underneath that threshold still can pose a problem to the health, safety and welfare of the public. What we have tried to do is come up with language that says "shall consider" consulting an engineer or an architect in order to look at those projects where they are under \$150,000 or \$200,000 or \$250,000 but that is something that needs to be looked at and analyzed so it does protect the public. That is the whole reasons behind the amendment because otherwise we feel by artificially raising the threshold you are creating a liability on the counties and the cities that otherwise were stamped by an engineer or architect they would be taking on more of the liability.

Stephanie Dassinger, League of Cities: (Handout #1). The engineers and the League of Cities both agree there are projects that are below the \$150,000 threshold, \$200,000 threshold, \$250,000 threshold that are appropriate and need to have professional consultants involved. The issue comes down to the language that accomplishes that. We worked on language that provides more reasonableness and less of a trap for unwary city councils to step into and be in violation of the law without realizing it. The first and last part of my proposed amendment would match what the engineers are supporting. The middle part has differences. Mine says we need to consider consulting an engineer where is reason to believe that engineering or architectural services are necessary to protect public health, safety, and welfare. What that means is when I am training my city auditors, city council members are basically any projects that appear to be outside of your normal course of business. Filling pot holes, patching a roof, those types of projects that you want to discussion and make that finding in your council meeting that yes, this is something we need professional help. If there is question on whether you need professional services, then you need to make the phone call. The purpose of the amendment is to try and avoid making a trap. Any language that says impact public health, safety and welfare as the other amendment says. What that means to me is anything a city does impacts health, safety and welfare positively or negatively. So every project we do we need to have a discussion at the city council level saying do we need an engineer or architect and have that in our minutes.

Sen. Burckhard: What are the main difference legally between your proposed amendment and the other one proposed earlier today? There is lots of legal language and I want to make sure I understand the difference between the two.

Ms. Dassinger: As I see it the differences are the language proposed by the League of Cities does not require a discussion on everyday projects. I think the language that would impact health, safety and welfare would require a city council to have a discussion on every project they do.

Chairman Pyle: Beau pointed out one difference and the one I handed out says, the health, safety or welfare. The other one says, the public health, safety and welfare. There is a big difference.

Sen. Lee: I think public health is the right answer.

Chairman Pyle: What about the words, "or" and "and"?

Rep. Johnson: I think it should be "or".

Chairman Pyle: Any thought, do we want to rewrite the amendment?

Sen. Lee: Made a motion that the House accede to Senate amendment and further amended. That we change it to, safety or welfare instead of safety and welfare.

Rep. Johnson: Second the motion.

Vote yes 6, no 0.

Chairman Pyle: Will carry the bill for House.

Sen. Burckhard: Will carry the bill for the Senate.

Sen. Dotzenrod: On the question of the housing authority. I am getting the impression that essentially this conference committee thinks that the activities of the housing authority don't fit and if they want to continue their activities they should be subject to the limits we have, the \$200,000. There is no interest in creating an exception for them? Is that because the committee members believe they are operating outside of Chapter 23.11? I need to be able to explain this to them. The conference committee believes they are currently operating and performing their function of housing and building home they are operating outside the requirements that are in 23.11?

Chairman Pyle: I would agree with that. Most housing authorities still own the structures and not use them as developing entities.

Sen. Dotzenrod: Rep. Fegley mentioned they were doing that in Berthold, that they had a for-profit there. If they were a for-profit they could do this?

Rep. Fegley: Inaudible.

Sen. Lee: They weren't incorporated under the federal and state statutes which are providing for only two true housing authorities.

Sen Dotzenrod: What I would need to tell Hankinson and any others is that they would need to form some other entity that is not one of those two that are in public law. This would be a private for-profit one?

Chairman Pyle: Correct.

Rep. Johnson: This doesn't limit the city or the local political subdivisions from contributing to the project up to the bid limit? The city could say they want to donate to the project and none of it applies? No bidding requirement, no architect, no engineer, nothing?

Stephanie Dassinger: I think there is a way to set it up and they could do some grants from the economic development corporation. But it has to be set up in very specific way because it's public money our North Dakota Constitution prohibits gifts.

Chairman Pyle: Closed the conference committee hearing.

DR 4/11/19

April 11, 2019

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1356

That the House accede to the Senate amendments as printed on page 1325 of the House Journal and page 1050 of the Senate Journal and that House Bill No. 1356 be further amended as follows:

Page 1, after line 17, insert:

"1."

Page 1, after line 21, insert:

"2. Notwithstanding the thresholds in subsection 1, if the state or a political subdivision undertakes the construction of a public improvement and there is reason to believe that engineering or architectural services are necessary to protect the health, safety, or welfare of the public, the state or political subdivision shall consider consulting with an engineer or architect."

Renumber accordingly

2019 HOUSE CONFERENCE COMMITTEE
ROLL CALL VOTES

BILL NO. HB 1356

House Political Subdivision Committee

- Action Taken ☐ HOUSE accede to Senate Amendments
☒ HOUSE accede to Senate Amendments and further amend
☐ SENATE recede from Senate amendments
☐ SENATE recede from Senate amendments and amend as follows
- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Sena tor Lee Seconded by: Rep. Johns on

Representatives	4-9	4-11		Yes	No	Senators	4-9	4-11		Yes	No
Chairman Pyle	X	X		X		Sen. J. Lee	X	X		X	
Rep. Johnson	-	X		X		Sen. Burckhard	X	X		X	
Rep. Fegley	X	X		X		Sen. Dotzenrod	X	X		X	
Total Rep. Vote						Total Senate Vote					

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier Rep. Pyle Senate Carrier Sen. Burckhard

LC Number 19.0385 . 01004 of amendment

LC Number 19.0385 . 03000 of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

Insert LC: 19.0385.01004
House Carrier: Pyle
Senate Carrier: Burckhard

REPORT OF CONFERENCE COMMITTEE

HB 1356: Your conference committee (Sens. J. Lee, Burckhard, Dotzenrod and Reps. Pyle, M. Johnson, Fegley) recommends that the **HOUSE ACCEDE** to the Senate amendments as printed on HJ page 1325, adopt further amendments as follows, and place HB 1356 on the Seventh order:

That the House accede to the Senate amendments as printed on page 1325 of the House Journal and page 1050 of the Senate Journal and that House Bill No. 1356 be further amended as follows:

Page 1, after line 17, insert:

"1."

Page 1, after line 21, insert:

"2. Notwithstanding the thresholds in subsection 1, if the state or a political subdivision undertakes the construction of a public improvement and there is reason to believe that engineering or architectural services are necessary to protect the health, safety, or welfare of the public, the state or political subdivision shall consider consulting with an engineer or architect."

Renumber accordingly

HB 1356 was placed on the Seventh order of business on the calendar.

2019 TESTIMONY

HB 1356

/
1-17-19

House Political Subdivisions – Chairman Jason Dockter
January 17, 2019
Testimony by C Schreiber-Beck
House Bill 1356 / 19.0385.01000

Chairman Dockter and Members of the Committee:

For the record, I am Cindy Schreiber-Beck, District 25 Representative. I was asked by the community of Hankinson ND to bring this bill before the legislature.

HB 1356 provides for an increase from the current \$150,000 threshold to a \$250,000 threshold for the following:

- professional engineering drawings and specifications and estimates for public works expenditures (page 1, line 10)
- bidding construction of a public improvement (page 1, line 18)
- procuring plans, drawings and specifications from an architect or engineer for the construction of a public improvement (page 1, line 20)
- bonds from a contractor for public improvements (page 2, line 2)

The history of the thresholds as provided by Legislative Counsel follows –

- Public Works 43-19.1-28
 - 1967: \$5,000
 - 1983: \$50,000
 - 1997: \$100,000
 - 2015: \$150,000
- Public improvement construction threshold 48.01.2-02.1
 - Bidding construction of a public improvement
 - 2011: \$100,000
 - 2017: \$150,000
 - Procuring plans, drawings and specification from an architect or engineer for construction of a public improvement
 - 2011: \$100,000
 - 2015: \$150,000
- Bonds from contractors for public improvements 48-01.2-10
 - 1997: \$100,000
 - 2017: \$150,000

I do not claim to be an expert and can only reflect on my personal experience with the cost of home construction and the costs related to construction on a federal airport. Thus, although there have been increases to the thresholds over time, the current thresholds for various reasons, including labor and material costs, do not reflect the increases in costs related to construction and improvements. Thank you for your time and consideration.

I will attempt to answer questions but there others in support of this bill who are better suited to respond.

#2
1-17-19

Testimony of Eric Volk, Executive Director

ND Rural Water Systems Association

House Bill 1356

House Political Subdivisions Committee – January 17, 2019

Chairman Dockter and members of the House Political Subdivisions Committee, my name is Eric Volk and I am the executive director of the North Dakota Rural Water Systems Association (NDRWSA). Our vision is to ensure all of North Dakota has access to affordable, ample, and quality water. Today I am submitting testimony in support of House Bill 1356.

Last session, the NDRWSA supported changes to the public improvement construction thresholds (setting 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 always be kept at similar 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. 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.

Rural Water 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

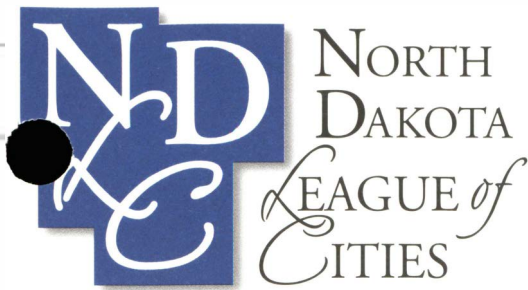
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#2

this project was just below the current 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 public safety 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 and engineering thresholds were 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 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 always 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 HB 1356 a do pass recommendation. Thank you for your time and please email me with any questions, ericvolk@ndrw.org . EV



#3
1-17-19

January 17, 2019

House Political Subdivisions Committee

HB 1356

Chairman Dockter and members of the committee, my name is Stephanie Dassinger and I am the deputy director and attorney for the North Dakota League of Cities. I appear before you today to express the League's support of HB 1356.

One topic that continually comes up in conversations with our city elected and appointed officials is the difficulty they encounter trying to get public improvement projects completed. One of the hurdles cities struggle with is the minimum bid and minimum engineering threshold requirements.

Currently, public bidding and engineering is required for construction of any public improvement projects that exceeds \$150,000. Unfortunately, in the construction world, \$150,000 does not get you a lot anymore. By way of example, one city provided me with information showing the original estimates for 4 blocks of street repair cost over \$150,000.

I have attached an exhibit to my testimony of different projects that cities have had completed that are in the \$100,000 to \$250,000 range. Also, included is information about projects that cities modified in order to stay under the \$150,000 threshold. Some examples of projects where this seems to happen is for replacement of water pipes, lining water pipes, chip sealing streets, and striping streets. Please note, circumstances occur where engineering fees may be higher than expected; nonetheless, I believe a review of the numbers may be quite enlightening.

Another item to note is that when a city breaks a project into two or more pieces, the city ends up incurring mobilization costs more than once to get the project completed. Mobilization costs

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#3

generally cover the costs of a contractor getting plans ready for the project, preparing workforce, and getting equipment and materials to the project location. For example, a city may need to replace the windows in its building. If the cost of replacing the windows exceeds \$150,000, by law, the city is required to hire an engineer or an architect. So, instead, even though the seals are broken on all the windows, the city may only replace half the windows one year and the other half of the windows the next year in order to reduce the cost of the project. The problem is that the city would likely then be paying a contractor mobilization costs twice to work on the project twice.

HB 1356 would provide cities with the ability to perform projects in a timelier and more cost-effective manner, saving taxpayer dollars. As such, the League requests a DO PASS recommendation on HB 1356.

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Projects that have been modified:

Type of Project	Est. Cost	Est. Engineering Costs	Changes made to project
Building for sand & salt storage	\$153,000	\$40,000	Project was changed to build the building one year and pouring the floor the second year
10 Unit Garage Building	\$157,000	\$43,000	Variations were made to the project
4 blocks street repair	\$168,307.75	Did not seek engineering estimate	Reduced curb and gutter and driveway aprons from project
4 blocks street repair	\$157,631.20	Did not seek engineering estimate	Negotiated with contractor on mobilization costs

Projects that cities completed in the \$150,000 to \$250,000 that engineering was completed on:

Type of Project	Original Est. Cost	Est. Cost of Engineering
Street striping	\$241,000	\$26,510
Street striping	\$136,000	\$80,000
Sanitary Sewer	\$120,000	\$13,200
Storm Sewer	\$250,000	\$27,500
Bituminous Overlay	\$120,000	\$13,200
Bituminous Overlay	\$200,000	\$22,000

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1-17-19

Thursday January 17, 2019

9:00 AM

Political Subdivisions Committee

HB 1356

Chairman Dockter and members of the committee, for the record I am Diane Affeldt, city auditor for the City of Garrison and a board member for the North Dakota League of Cities.

I appear before you today to express support of HB 1356. This bill was drafted to increase the bidding threshold for construction of public improvement project from \$150,000 to \$250,000.

The current threshold of \$150,000 does not meet today's cost of construction. Small projects such as repairing water lines that have experienced numerous breaks over a harsh winter can be over the \$150,000, when you figure in the new water line (most cities have the old cast water lines), any lead service lines to residents, (which are required to be changed), curb and gutter that may have been disturbed and the street repair. Another example can be a storage building for sand and salt for the winter roads. This type of building with a concrete floor exceeds \$150,000.

The two examples I mentioned are not projects I would deem necessary to hire engineering.

Engineering estimates are typically 15% to 18% of the project and normally costlier on small projects vs million-dollar projects. This is a significant added expense to communities especially since most cities in ND are under population of 5,000. And the cities over 5,000 already have an engineer on staff.

The increase to \$250,000 would allow local government to make improvements and still be fiscally responsible to the residents.

For these reasons, I urge the committee to vote DO PASS on HB 1356.

Thank you for your time and consideration. Have a great session. I stand for any questions you may have.

#5
1-17-19

Testimony to House Political Subdivisions Committee

Re: House Bill 1356
Date: Thursday, January 17, 2019
By: Ryan Ackerman, PE
1112 Sunrise Court SE
Minot, North Dakota 58701
(701) 720-7794
ryan.ackerman@ackerman-estvold.com

My name is Ryan Ackerman. I am a professional engineer and I reside in Minot. I am here to express concerns with House Bill 1356, and those concerns are generally universal to all of the threshold bills that I have seen come before the Legislative Assembly over the past several biennia.

My primary concern is that the issue of thresholds as a requirement for project bidding and thresholds as they relate to a requirement of utilizing licensed design professionals have historically been tied together, and they should not be.

Thresholds related to project bidding for construction should be established by striking a balance between the agility of agencies to procure services and being fiscally responsible, while giving the contracting industry an opportunity to bid projects in an open, fair and consistent manner.

However, thresholds related to requirements for utilizing licensed design professionals should be established with appropriate deliberation given to the impact to public safety. I want to present you with a real example.

In 2010, I was serving as the city engineer for town in northwestern North Dakota. I was on a routine trip through the city in late April of that year, and I noticed that there was a large water slide being unloaded in pieces at the City's swimming pool. I recognized some of the men working on the project, so I decided to stop by to simply ask what the plan was. The encounter was troubling.

The local Park Board had purchased the used water slide from the Minot Air Force Base for \$250. They were well within their right to do that and seemed to be making a low-cost, high-return investment in the quality of life for their community. They had already procured the services of local mechanical and electrical contractors to help with the install of the pumps and piping, and they had a local general contractor that would be able to install this water slide for the benefit of the children of the community within a couple of weeks, with a total cost of under \$5,000.

I didn't have any questions about the benefits that this slide would provide or the quality of life enhancements that a slide like this could provide to the community. I did, however, have questions about how this slide and the stair case assembly, with its relatively small footprint and an approximate height of 25 feet, was going to be anchored to safely withstand the North Dakota wind. The plan was

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simple – they were going to install concrete anchors, purchased from the local hardware store, in the existing concrete slab.

My gut told me this was a bad idea. I immediately began research on the existing pool facility and quickly concluded that this installation would not be safe for the general public. Failure of this installation would have been imminent. Kids could have been hurt or even killed. I blew the whistle and stopped this project out of concern for the public welfare. We were given direction by the city to design an appropriate foundation for the slide. The cost for the design was approximately \$5,000 and the estimate to complete the foundation work was approximately \$35,000. The city council and the Park Board ultimately chose to not move forward with the installation of the slide due to the construction costs and the ‘complications’ that my judgment had inserted into their idea. For a long period of time, I wasn’t very popular in this town.

The actions taken by the Park Board and the City, as public agencies, were seemingly legitimate. They purchased materials and hired a contractor without getting a Professional Engineer involved since the anticipated total cost was \$5,000 – well beneath the \$100,000 threshold prescribed in State law at the time. I don’t feel like these officials and agencies were negligent in their duty. They had no malicious intent. They looked at the State law and they, unfortunately, just didn’t know any better.

This story illustrates the flaw. Agencies are making judgments of whether or not to get a licensed professional involved in the design of a project based on the project cost, because that is the metric prescribed in State law. The reality is that a \$500 project could have a higher degree of impact to public safety than a \$5 million project, depending on the scope of the project. Simply increasing the threshold amount by any factor is going to be accompanied by a corresponding increase in risk to public safety, and I don’t feel that is acceptable.

There is a need to give our agencies and local governments the agility to get their projects done without additional bureaucratic nonsense that provides little or no value. I couldn’t agree more with that sentiment. Without modifications to the language, however, this bill will have the unintended consequence of trading agility for public safety.

I think it may be possible to increase agility without increasing risk to public safety. I would offer the language on the sheet that follows my testimony as a suggested improvement to the bill, whereby the threshold for bidding projects and for requiring the services of licensed professionals is increased, with the exception of projects that could have implications to the health, safety and welfare of the public. Absent an amendment that preserves public safety, I would urge a Do Not Pass recommendation.

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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 which may affect the health, safety or welfare of the public, 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. The state and its political subdivisions may not engage in the construction of public works when the contemplated expenditure for the project exceeds the sum of two hundred fifty thousand dollars, unless 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.

48-01.2-02.1. Public improvement construction threshold.

The threshold for bidding construction of a public improvement is one two hundred fifty thousand dollars. The threshold for procuring plans, drawings, and specifications from an architect or engineer for construction of a public improvement is one two hundred fifty thousand dollars, except that there shall be no threshold for procuring plans, drawings, and specifications from an architect or engineer for construction of a public improvement which may affect the health, safety or welfare of the public.

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Park Board says water slide is unlikely to ever be installed here

The water slide purchased for the swimming pool by the City of Kenmare remains in pieces in the Jaycees Park where it was unloaded nearly four years ago.

5/22/13 (Wed)

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A good idea at the time . . . The used water slide purchased for the Kenmare swimming pool in 2009 remains dismantled in the Jaycees Park south of the pool. Soil testing and other preparatory work have delayed the installation for three years, and the project may have to be abandoned.

By Caroline Downs

The water slide purchased for the swimming pool by the City of Kenmare remains in pieces in the Jaycees Park where it was unloaded nearly four years ago.

"Yes, it is an eyesore," said Kenmare Park Board president Arlen Gartner.

The city paid the Minot Air Force Base \$250 after winning the bid for the slide in October 2009. The slide seemed like an ideal attraction for the local pool at the time, and the cost included the pump needed to draw water from the pool to operate the slide.

The slide was supposed to be installed on the west side of the Kenmare pool during the summer of 2010, when Gartner approached the city council about the project. However, city engineer Ryan Ackerman told the council soil testing would have to be done in order to build an adequate foundation and secure the structure.

The council approved up to \$5000 to spend on soils investigation at the pool, but that work delayed the slide installation.

"When it was brought in, we weren't aware we were going to have to go through all the testing of the soil samples," Gartner said, "and we weren't aware of the structural requirements. That took almost a year."

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According to Gartner, by the time the soil test results were available, the Park Board was facing the wet spring of 2011, and the super-saturated soils at the time prevented any construction from taking place.

"We had to make sure that when we put the pillars in for the slide, we wouldn't crack the foundation of the pool," said Gartner. "We still don't know if the slide will fit in the area designated for it because we've never been able to get the measurements done for that."

The delays and uncertainties have taken a toll. "You lose that enthusiasm for getting the slide up," Gartner said. "It was a great project that we can't fulfill."

As the 2013 summer season approaches, Gartner doesn't see any way to get the slide installed for public use. "Unless some individuals who are energetic and have the skills to do it come forward," he added. "Otherwise, we should sell the slide and get rid of it."

City swimming pool will open soon

The pool itself will open for business as usual under the supervision of the Kenmare Recreation Board, according to Gartner. "It's not a money maker, but it's something the community needs, for the kids and for the adults," he said. "You're funding the pool, funding the lifeguards and constantly fixing things, but the manager and board have worked hard and kept costs down so the pool isn't losing \$20,000 to \$30,000 a year anymore."

Erika Lemere will take over as manager of the facility, replacing Karen Medlang who formerly served in that capacity.

Gartner noted repairs will be made to the bathhouse at the pool this summer, and the foundation on the west side of the facility will be reinforced with additional concrete.

The pool will offer daily swimming sessions and several rounds of lessons. The opening date, hours and lesson schedule will be announced and advertised in a later issue of *The Kenmare News*.

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Testimony
House Bill 1356
House Political Subdivisions Committee
January 17th, 2019
Bill Kalanek
National Electrical Contractors Association, Dakotas Chapter
North Dakota Association of Plumbing, Heating & Mechanical Contractors

Good Morning Chairman Dockter and members of the Political Subdivisions Committee. My name is Bill Kalanek and I'm here today on behalf of the Dakotas Chapter of the National Electrical Contractors Association (NECA) and the ND Association of Plumbing, Heating & Mechanical Contractors.

I'd like to begin by expressing our combined opposition to House Bill 1356. It was just 2 years ago, during the 2017 session that the legislature raised the threshold for bidding public projects 50% going from a threshold of \$100,000 to \$150,000 in SB 2146.

It has been our position to support public policy that encourages the bidding of more projects, not less. The current threshold which some may view as too low, ensures that there is fair access to public projects small and large and helps prevent potential corruption in the award process. There are plenty of small contractors out there that appreciate the opportunity to bid \$200,000 electrical, hvac or plumbing jobs. Raising the threshold only increases the possibility that those taxpayer funded projects could regularly go to the same contractors as some city or county official might prefer.

Just because it might be easier doesn't make it right. I ask that you give HB 1356 at DO NOT PASS recommendation and continue the fair and prudent bidding process we enjoy today.

Thank you.

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Chairman Dockter

Members of House Political Subdivisions Committee

My name is Travis Greff. I am the Commercial Estimator for HA Thompson and Sons a plumbing and heating company located here in Bismarck. I am also the President of the North Dakota Association of Plumbing, Heating and Mechanical Contractors an association that has been in the state for almost 100 years. I am here today to voice opposition to this bill as a concerned tax payer of the state.

Currently the threshold is set at \$150,000 to have to publicly advertise and bid any taxpayer funded project. This threshold was just raised from \$100,000, where it had stood for quite a few years up to \$150,000 just last session to match the Architects threshold to design a project. We supported that raise as it made things clearer for public entities for when they needed to bid a project.

By raising the threshold to \$250,000, we are giving any publicly entity within the state the ability to hand a project over to their preferred contractor to avoid a having to go out and actively seek competitive bids. A small school district similar to where my kids go, could award a quarter of a million dollar contract without having to at least try and obtain the lowest possible price for the project by allowing every responsible contractor the opportunity to bid it.

These thresholds have saved taxpayers millions of dollars over the years. Arbitrarily raising it will only cost the state and local governments more money over the long term. I ask you to vote no on HB 1356 and keep the threshold at the current level.

Thank you



American Property Casualty
Insurance Association

House Bill 1356 --Increasing State Bond Thresholds... It Hurts Small Contractors and Puts State Taxpayers and Laborers at Risk

House Bill 1356 would increase the state's bond threshold for \$150,000 to \$250,000, a 66% increase. North Dakota raised the bond threshold from \$100,000 to \$150,000 when it last met in 2017. If enacted, the result would be that only three other states—North Carolina, Virginia, and Wisconsin—would have higher bond thresholds than North Dakota. Most states have bond thresholds between \$50,000 and \$100,000. The federal government bonds its projects at \$150,000. SFAA and APCIA oppose HB 1356 for the following reasons.

Many Small Subcontractors Are Left with Far Less Protection—Mechanics liens cannot be asserted against public property. Laborers, subcontractors, and suppliers on public projects must rely on the general contractor's payment bond for protection. If no bond is required, these parties are left with no means to collect for their services and supplies if the contractor does not or cannot pay them. Under HB 1356, subcontractors and suppliers will be working on larger projects with no payment protection. Many of these entities are small businesses for whom not getting paid could be catastrophic. This is especially true on smaller projects, so that the most vulnerable contractors will be the ones deprived of payment protection.

Taxpayers are at Greater Risk—The performance bond ensures that the construction contract is completed. The surety provides a bond only to contractors that, in the surety's estimation, are capable of performing the work. The surety examines the contractor's expertise in the work, character, ability to work in the region where the project is located, current work in progress, and overall management as well as its capital and record of paying its obligations. By issuing a bond, the surety provides the public contracting entity with assurance from an independent third party, backed by the surety's own funds, that the contractor is capable of performing the construction contract. By raising the bond threshold, there will be more and larger contracts for which the taxpayers will be the burden for the cost of stopping the project, re-letting work, re-starting the project, and paying any excess completion costs if the contractor defaults. Contractors perform multiple jobs and when they default, they do not default on just one job, but on many of them. The risk to the taxpayers and state and local budgets.

State and Local Jurisdictions Will Need to Screen and Qualify More Contractors—Without the performance bond or payment bond, such qualification assessment is left solely to the state and local public contracting entities for the construction projects that are under the contract size threshold. Public contracting entities will be stretched to make such a detailed evaluation of each bidder for a greater number of projects.

1

H B 1356

2-14-19

Increasing the Bond Threshold May Have Unintended Consequences--Increasing the bond threshold does not necessarily mean that small and/or local contractors will obtain more state construction business, but rather that all contractors will be able to bid on much larger state projects without being required to provide payment and performance bonds. One result of that may be that larger regional and national contractors will be able to secure more unbonded work in North Dakota, freeing up their bonding capacity for bonded work elsewhere. Another result may be that financially unstable contractors in the state and from surrounding states who cannot obtain bonding and are not prequalified by sureties will be bidding and obtaining construction projects.

Conclusion

For the reasons listed above, increasing state bond threshold is contrary to sound public policy and should be vigorously opposed. Bonding requirements exist to provide vital safeguards for those who work on public projects and the taxpayers who pay for them.

PROPOSED AMENDMENTS TO HOUSE BILL 1356

#2

2-14-19

K. Koppelman

Page 1, line 18, before "The" insert "1."

Page 1, after line 21, insert:

2. With respect to construction of a public improvement of any value, the state or any of its political subdivisions undertaking such public improvement, will consult with an engineer or architect when there is reason to believe the construction of the public improvement would impact the public health, safety, or welfare.

NDLA, Intern 10 - Cummings, Beau

#3
2-14-19
HB 1356

From: Koppelman, Kim A.
Sent: Thursday, February 14, 2019 10:48 AM
To: NDLA, Intern 10 - Cummings, Beau
Subject: Fwd: HB 1356

Rep. Kim Koppelman
North Dakota
West Fargo, ND -- District 13
Chairman, Judiciary Committee
Co-Chairman, Shared State Legislation Committee of the Council of State Governments
Past Chairman, Administrative Rules Committee, Constitutional Revision Committee
Past National Chairman, The Council of State Governments (CSG)
Business Office: 701-492-7317; Capitol: 701-328-2916
Email: KKoppelman@nd.gov

Begin forwarded message:

From: Stephanie Dassinger <Stephanie@ndlc.org>
Date: February 7, 2019 at 4:23:54 PM CST
To: "jddockter@nd.gov" <jddockter@nd.gov>, "kkoppelman@nd.gov" <kkoppelman@nd.gov>
Cc: Mike Krumwiede <mike@scgnd.com>, Aaron Birst <aaron.birst@ndaco.org>, "linda.svihovec@ndaco.org" <linda.svihovec@ndaco.org>
Subject: HB 1356

Chairman Dockter and Representative Koppelman,

Mike Krumwiede, on behalf of the engineers and architects he represents, and the League of Cities have reached a compromise on language to be added to HB 1356.

We agreed to adding the following:

2. With respect to construction of a public improvement of any value, the state or any of its political subdivisions undertaking such public improvement, will consult with an engineer or architect when there is reason to be believe the construction of the public improvement would impact the public health, safety, or welfare.

This language acknowledges that there are projects that fall below the \$250,000 threshold that need engineers and architects to protect public health, health safety, or welfare but also acknowledges that not every project needs these professional services.

I have attached a version of the bill that shows the inline changes in red and I have also attached a draft of an amendment for you to review.

I apologize for the delay in getting this to you but hopefully it helps facilitate resolving conflicts with this bill in your committee.

#3

2-14-19

178 1356

Please let me know if you have any questions or can help with this.

Sincerely,

Stephanie

Stephanie Dassinger

ND League of Cities | *Deputy Director/Staff Attorney*

410 E Front Ave | Bismarck, ND 58504

701-223-3518 800-472-2692

<image001.jpg> <image002.png> <image003.jpg>

Please be advised that the information you receive from the North Dakota League of Cities office is not legal advice. In addition, you must consult your local city attorney to make sure that any of the material you receive from NDLC is in accordance with your particular facts and situation.

<Amendment to 1356.docx>

<1356 Bidding Threshold (LOC edit 2-7-2019).docx>

*H.B. 1356
3.14.19
att #1*

Senate Political Subdivisions – Chairman Senator Randy Burckhard
March 14, 2019 – 10:45am
House Bill 1356 / 19.0385.01000

Chairman Burckhard, Vice-Chairman Anderson and Members of the Committee:

For the record, I am Cindy Schreiber-Beck, District 25 Representative. I was asked by the community of Hankinson ND to bring this bill before the legislature.

HB 1356 provides for an increase from the current \$150,000 threshold to a \$250,000 threshold for the following:

- professional engineering drawings and specifications and estimates for public works expenditures (page 1, line 10)
- bidding construction of a public improvement (page 1, line 18)
- procuring plans, drawings and specifications from an architect or engineer for the construction of a public improvement (page 1, line 20)
- bonds from a contractor for public improvements (page 2, line 2)

The history of the thresholds as provided by Legislative Council follows –

- Public Works 43-19.1-28
 - 1967: \$5,000
 - 1983: \$50,000
 - 1997: \$100,000
 - 2015: \$150,000
- Public improvement construction threshold 48.01.2-02.1
 - Bidding construction of a public improvement
 - 2011: \$100,000
 - 2017: \$150,000
 - Procuring plans, drawings and specification from an architect or engineer for construction of a public improvement
 - 2011: \$100,000
 - 2015: \$150,000
- Bonds from contractors for public improvements 48-01.2-10
 - 1997: \$100,000
 - 2017: \$150,000

Keep in mind this is a threshold. Local officials can make the decision if and when an architect or engineer should be involved or at what level a contractor should be bonded if the project is below \$250,000. Beyond the community of Hankinson, this legislation would be beneficial for numerous communities, airports and counties.

I will not claim to be an expert and can only reflect on my personal experience with the cost of home construction and the costs related to construction on an airport. Thus, although there have been increases to the thresholds over time, the current thresholds for various reasons, including labor and material costs, do not reflect the increases in costs related to construction and improvements.

Thank you for your time and favorable consideration of HB1356. I will attempt to answer questions but there others in support of this bill who are better suited to respond.

Thank you for your attention and favorable consideration of HB1356.

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att #2

From: Grossman, Jill A. jillgrossman@nd.gov
Subject: RE: In reference to HB1356
Date: Mar 13, 2019 at 2:10:19 PM
To: Schreiber-Beck, Cynthia cschreiberbeck@nd.gov
Cc: Assel, Dustin dassel@nd.gov

Rep. Schreiber-Beck,

This bill does not preclude a political subdivision from utilizing an architect or engineer if the threshold is below \$250,000.

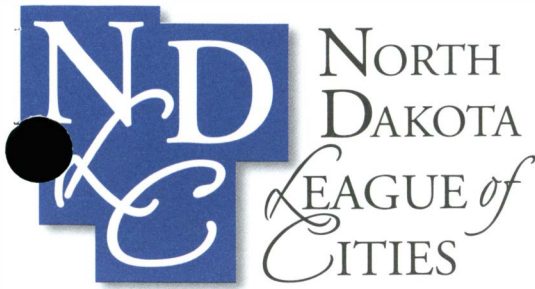
NDCC § 48-01.2-02 (which is not amended in the bill) states "if the estimated cost for the construction of a public improvement is in excess of the threshold established under section 48-01.2-02.1, the governing body shall procure plans, drawings, and specifications for the improvement from an architect or engineer." This section requires a governing body to consult with an architect or engineer if the estimated cost of the project exceeds the thresholds under section 48-01.2-02.1.

Section 2 of the bill simply increases the threshold from \$150,000 to \$250,000.

I hope that answers your question. Please let me know if you need anything else.

Thanks,

Jill Grossman
Counsel
Legislative Council
600 East Boulevard Ave
Bismarck, ND 58505
[\(701\)328-2916](tel:(701)328-2916)
jillgrossman@nd.gov



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Att #2
p.1

March 14, 2019

Senate Political Subdivisions Committee

HB 1356

Chairman Burckhard and members of the committee, my name is Stephanie Dassinger and I am the deputy director and attorney for the North Dakota League of Cities. I appear before you today to express the League's support of HB 1356.

One topic that continually comes up in conversations with our city elected and appointed officials is the difficulty they encounter trying to get public improvement projects completed. One of the hurdles cities struggle with is the minimum bid and minimum engineering threshold requirements.

The main change in the bill is found in Section 2 and I will address that change last. Section 1 of the bill makes a change to the part of the Century Code related to licensing engineers. It changes the threshold from \$150,000 to \$250,000 for requiring the services of a registered professional engineer in public works projects. It appears anything that would be considered a public works project would also be considered construction of a public improvement and be covered under Section 2 of the bill. This change makes that section consistent with the change made in Section 2.

Section 3 of the bill is on the bond that a political subdivision must get from a contractor for construction of a public improvement. In Section 3, the bonding requirement is changed from \$150,000 to \$250,000 to match the change made in Section 2 with relation of construction of a public improvement.

Section 2 of the bill changes the threshold from \$150,000 to \$250,000 for when specific bidding procedures are required and for when an engineer's or architect's services are needed for construction of a public improvement.

Construction of a public improvement covers a very broad array of projects and we really need to look at the definitions of "construction" and "public improvement" in chapter 48-01.2, NDCC, to understand the broadness of the projects covered. "Construction" means "the process of building, altering, repairing, improving, or demolishing any public structure or building or other improvement to any public property." "Public improvement" means "any improvement undertaken by a governing body for the good of the public and which is paid for with any public funds, including public loans, bonds, leases, or alternative funding, and is constructed on public land or within an existing or new public building or any other public infrastructure or facility if the result of the improvement will be operated and maintained by the governing body." In other words, it applies to pretty much any improvement that a city would make.

Unfortunately, in the construction world, \$150,000 does not get you a lot anymore. By way of example, one city provided me with information showing the original estimates for 4 blocks of street repair cost over \$150,000.

I have attached an exhibit to my testimony of different projects that cities have had completed that are in the \$100,000 to \$250,000 range. Also, included is information about projects that cities modified in order to stay under the \$150,000 threshold. Some examples of projects where this seems to happen is for replacement of water pipes, lining water pipes, chip sealing streets, and striping streets. Please note, circumstances occur where engineering fees may be higher than expected; nonetheless, I believe a review of the numbers may be quite enlightening.

Another item to note is that when a city breaks a project into two or more pieces, the city ends up incurring mobilization costs more than once to get the project completed. Mobilization costs generally cover the costs of a contractor getting plans ready for the project, preparing workforce, and getting equipment and materials to the project location. For example, a city may need to replace the windows in its building. If the cost of replacing the windows exceeds \$150,000, by law, the city is required to hire an engineer or an architect. So, instead, even though the seals are broken on all the windows, the city may only replace half the windows one year and the other half of the windows the next year in order to reduce the cost of the project. The problem is that

the city would likely then be paying a contractor mobilization costs twice to work on the project twice.

As you may have heard, the League has been working with the engineers and the architects to try to find language to satisfy concerns that a dollar threshold is not the most prudent way to determine whether these professional services are necessary on a project. Our discussions have met an impasse and it is the League's position that no additional language is necessary; however, if the committee feels an amendment is beneficial to the bill, we suggest the following language be inserted into Section 2:

"2. With respect to construction of a public improvement of any value, the state or any of its political subdivisions undertaking such public improvement will consult with an engineer or architect when there is reason to believe that engineering or architectural services are necessary to protect the public health, safety, and welfare."

I've included a redlined version of this potential amendment with my testimony for your convenience.

The League has very strong concerns about some of the language proposals we have seen having the practical effect of requiring an engineer or an architect to be hired for every project.

HB 1356 would provide cities with the ability to perform projects in a timelier and more cost-effective manner, saving taxpayer dollars. As such, the League requests a DO PASS recommendation on HB 1356.

Projects that have been modified:

Type of Project	Est. Cost	Est. Engineering Costs	Changes made to project
Building for sand & salt storage	\$153,000	\$40,000	Project was changed to build the building one year and pouring the floor the second year
10 Unit Garage Building	\$157,000	\$43,000	Variations were made to the project
4 blocks street repair	\$168,307.75	Did not seek engineering estimate	Reduced curb and gutter and driveway aprons from project
4 blocks street repair	\$157,631.20	Did not seek engineering estimate	Negotiated with contractor on mobilization costs

Projects that cities completed in the \$150,000 to \$250,000 that engineering was completed on:

Type of Project	Original Est. Cost	Est. Cost of Engineering
Street striping	\$241,000	\$26,510
Street striping	\$136,000	\$80,000
Sanitary Sewer	\$120,000	\$13,200
Storm Sewer	\$250,000	\$27,500
Bituminous Overlay	\$120,000	\$13,200
Bituminous Overlay	\$200,000	\$22,000

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att #3
p.5

19. _____

Sixty-sixth
Legislative Assembly
of North Dakota

BILL No. 1356

Introduced by: Rep. Schreiber-Beck, M. Johnson, Lefor, Mitskog, Trottier, Zubke
Sen. Hogan, Klein, Kreun, J. Lee, Luick

AN ACT to amend and reenact sections 43-19.1-28, 48-01.2-02.1 and 48-01.2-10 of the North Dakota Century Code, relating to bids, plans and specifications for public improvements and bond thresholds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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~~ two 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 2. 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.

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

2. With respect to construction of a public improvement of any value, the state or any of its political subdivisions undertaking such public improvement will consult with an engineer or architect when there is reason to believe that engineering or architectural services are necessary to protect the public health, safety, and welfare.

SECTION 3. AMENDMENT. Section 48-01.2-10 of the North Dakota Century Code is amended and reenacted as follows:

48-01.2-10. Bonds from contractors for public improvements.

1. Unless otherwise provided under this chapter, a governing body authorized to enter a contract for the construction of a public improvement in excess of ~~one~~ two hundred fifty thousand dollars shall take from the contractor a bond before permitting any work to be done on the contract. The bond must be for an amount equal at least to the price stated in the contract. The bond must be conditioned to be void if the contractor and all subcontractors fully perform all terms, conditions, and provisions of the contract and pay all bills or claims on account of labor performed and any supplies, and materials furnished and used in the performance of the contract, including all demands of subcontractors. The requirement that bills and claims be paid must include the requirement that interest of the amount authorized under section 13-01-14 be paid on bills and claims not paid within ninety days. The bond is security for all bills, claims, and demands until fully paid, with preference to labor and material suppliers as to payment. The bond must run to the governing body, but any person having a lawful claim against the contractor or any subcontractor may sue on the bond.
2. A governing body may not require any person required to provide a surety bond to obtain the surety bond from a specified insurance or surety company or insurance producer or to submit financial data to the company or producer.

Testimony of Eric Volk, Executive Director

ND Rural Water Systems Association

House Bill 1356

Senate Political Subdivisions Committee – March 14, 2019

Chairman Burckhard and members of the Senate Political Subdivisions Committee, my name is Eric Volk and I am the executive director of the North Dakota Rural Water Systems Association (NDRWSA). Our vision is to ensure all of North Dakota has access to affordable, ample, and quality water. Today I am submitting testimony in support of House Bill 1356.

Last session, the NDRWSA supported changes to the public improvement construction thresholds (setting 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 always be kept at similar 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. 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.

Rural Water Booster Station Example:

A rural 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

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3.14.19
Att #4 p. 2

this project was just below the current 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 public safety 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 and engineering thresholds were increased. Small systems must be allowed to find ways to save money. A study completed by the United States Environmental Protection Agency revealed the water rates needed to cover future infrastructure repair and replacement for small/rural systems will be four times as high as their larger counterparts.

Water system improvement projects are approved by the governing board. Decisions approved by governing boards on no bid contracts protect the public from collusion and kickbacks from contractors/suppliers. Systems that feel more comfortable with lower thresholds always 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 HB 1356 a do pass recommendation. Thank you for your time and please email me with any questions, ericvolk@ndrw.org. EV

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att # 5

Thursday March 14, 2019

10:45 AM

Senate Political Subdivisions Committee

HB 1356

Chairman Burckhard and members of the committee, for the record I am Diane Affeldt, city auditor for the City of Garrison and a board member for the North Dakota League of Cities.

I appear before you today to express support of HB 1356. This bill was drafted to increase the bidding threshold for construction of public improvement project from \$150,000 to \$250,000.

The current threshold of \$150,000 does not meet today's cost of construction. Small projects such as repairing water lines that have experienced numerous breaks over a harsh winter can be over the \$150,000, when you figure in the new water line (most cities have the old cast water lines), any lead service lines to residents, (which are required to be changed), curb and gutter that may have been disturbed and the street repair. Another example can be a storage building for sand and salt for the winter roads. This type of building with a concrete floor exceeds \$150,000.

The two examples I mentioned are not projects I would deem necessary to hire engineering.

Engineering estimates are typically 15% to 18% of the project and normally costlier on small projects vs million-dollar projects. This is a significant added expense to communities especially since most cities in ND are under population of 5,000. And the cities over 5,000 already have an engineer on staff.

Projects that cities completed in the \$150,000 to \$250,000 that engineering was completed on:

Type of Project	Original Est. Cost	Est. Cost of Engineering
Street striping	\$241,000	\$26,510
Street striping	\$136,000	\$80,000
Sanitary Sewer	\$120,000	\$13,200
Storm Sewer	\$250,000	\$27,500
Bituminous Overlay	\$120,000	\$13,200
Bituminous Overlay	\$200,000	\$22,000

The increase to \$250,000 would allow local government to make improvements and still be fiscally responsible to the residents.

For these reasons, I urge the committee to vote DO PASS on HB 1356.

Thank you for your time and consideration.

Diane Affeldt
City Auditor
City of Garrison

*H. B. 1356
3.14.19
att #6 p.1*

Testimony
House Bill 1356
Senate Political Subdivisions Committee
March 14, 2019
Bill Kalanek
National Electrical Contractors Association, Dakotas Chapter
North Dakota Association of Plumbing, Heating & Mechanical Contractors

Good morning Chairman Burckhard and members of the Senate Political Subdivisions Committee. My name is Bill Kalanek and I'm here today on behalf of the Dakotas Chapter of the National Electrical Contractors Association (NECA) and the ND Association of Plumbing, Heating & Mechanical Contractors.

I'd like to begin by expressing our combined opposition to House Bill 1356 at it currently stands. It was just 2 years ago during the 2017 session that the legislature raised the threshold for bidding public projects 50% going from a threshold of \$100,000 to \$150,000 in SB 2146.

It has been our position to support public policy that encourages the bidding of more projects, not less. The current threshold which some may view as too low, ensures that there is fair access to public projects small and large and helps prevent potential corruption in the award process. There are plenty of small contractors out there that appreciate the opportunity to bid \$200,000 electrical, HVAC, or plumbing jobs. Raising the threshold only increases the possibility that those taxpayer-funded projects could regularly go to the same contractors as some city or county official might prefer. Just because this practice might be easier doesn't make it right.

While we stand in opposition to the current version of HB 1356, we do see an opportunity for compromise. In collaboration with other affected parties, we have drafted several amendments to address the engineering and architecture consulting needs the bill sets forth while limiting the consequences to fair public bidding practices.

With the addition of these amendments, I ask that you give HB 1356 a DO PASS recommendation and continue the fair and prudent bidding process we enjoy today.

Thank you.

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3.14.19
att # 6 p. 2

PROPOSED AMENDMENTS TO HB 1356

Page 1, Line 10, Overstrike "~~two~~"

Page 1, Line 10, Remove overstrike from "one"

Page 1, Line 18, Before "The" insert "1."

Page 1, Line 18, Overstrike "~~two~~"

Page 1, Line 18, Remove overstrike from "one"

Page 1, Line 20, Overstrike "~~two~~"

Page 1, Line 20, Remove overstrike from "one"

Page 1, after Line 21, Insert:

2. With respect to construction of a public improvement of any value, the state or any of its political subdivisions undertaking such public improvement, shall consult with an engineer or architect when the construction of the public improvement would impact the health, safety, or welfare of the public.

Page 2, Line 2, Overstrike "~~two~~"

Page 2, Line 2, Remove overstrike from "one"



American Property Casualty
Insurance Association

House Bill 1356 --Increasing State Bond Thresholds... It Hurts Small Contractors and Puts State Taxpayers and Laborers at Risk

House Bill 1356 would increase the state's bond threshold for \$150,000 to \$250,000, a 66% increase. North Dakota raised the bond threshold from \$100,000 to \$150,000 when it last met in 2017. If enacted, the result would be that only three other states—North Carolina, Virginia, and Wisconsin—would have higher bond thresholds than North Dakota. Most states have bond thresholds between \$50,000 and \$100,000. The federal government bonds its projects at \$150,000. SFAA and APCIA oppose HB 1356 for the following reasons.

Many Small Subcontractors Are Left with Far Less Protection—Mechanics liens cannot be asserted against public property. Laborers, subcontractors, and suppliers on public projects must rely on the general contractor's payment bond for protection. If no bond is required, these parties are left with no means to collect for their services and supplies if the contractor does not or cannot pay them. Under HB 1356, subcontractors and suppliers will be working on larger projects with no payment protection. Many of these entities are small businesses for whom not getting paid could be catastrophic. This is especially true on smaller projects, so that the most vulnerable contractors will be the ones deprived of payment protection

Taxpayers are at Greater Risk—The performance bond ensures that the construction contract is completed. The surety provides a bond only to contractors that, in the surety's estimation, are capable of performing the work. The surety examines the contractor's expertise in the work, character, ability to work in the region where the project is located, current work in progress, and overall management as well as its capital and record of paying its obligations. By issuing a bond, the surety provides the public contracting entity with assurance from an independent third party, backed by the surety's own funds, that the contractor is capable of performing the construction contract. By raising the bond threshold, there will be more and larger contracts for which the taxpayers will be the burden for the cost of stopping the project, re-letting work, re-starting the project, and paying any excess completion costs if the contractor defaults. Contractors perform multiple jobs and when they default, they do not default on just one job, but on many of them. The risk to the taxpayers and state and local budgets.

State and Local Jurisdictions Will Need to Screen and Qualify More Contractors—

Without the performance bond or payment bond, such qualification assessment is left solely to the state and local public contracting entities for the construction projects that are under the contract size threshold. Public contracting entities will be stretched to make such a detailed evaluation of each bidder for a greater number of projects.

Increasing the Bond Threshold May Have Unintended Consequences--Increasing the bond threshold does not necessarily mean that small and/or local contractors will obtain more state construction business, but rather that all contractors will be able to bid on much larger state projects without being required to provide payment and performance bonds. One result of that may be that larger regional and national contractors will be able to secure more unbonded work in North Dakota, freeing up their bonding capacity for bonded work elsewhere. Another result may be that financially unstable contractors in the state and from surrounding states who cannot obtain bonding and are not prequalified by sureties will be bidding and obtaining construction projects.

Conclusion

For the reasons listed above, increasing state bond threshold is contrary to sound public policy and should be vigorously opposed. Bonding requirements exist to provide vital safeguards for those who work on public projects and the taxpayers who pay for them.

HB 1356
3.14.2019
att # 8



Senate Political Subdivisions Committee

Testimony to oppose HB 1356

Chairman Burckhard and Members of the Committee, my name is Mike Krumwiede appearing on behalf of the American Council of Engineering Companies in opposition of HB 1356. The American Council of Engineering Companies of North Dakota (ACEC/ND) is a nonprofit, voluntary, self-governing organization which represents 29 member firms and nearly 1500 employees.

The concerns ACEC has about HB 1356 are generally universal to all of the threshold bills that have come before the Legislative Assembly over the past several biennia. The primary concern is that the issue of thresholds as a requirement for project bidding and thresholds as they relate to a requirement of utilizing licensed design professionals have historically been tied together, and they should not be.

Thresholds related to project bidding for construction should be established by striking a balance between agility of agencies to procure services and being fiscally responsible, while giving the contracting industry an opportunity to bid projects in an open, fair and consistent manner. However, thresholds related to requirements for utilizing licensed design professionals should be established with appropriate deliberation given to the impact to public safety.

There is a need to give our agencies and local governments the agility to get their projects done without additional bureaucratic nonsense that provides little or no value. We couldn't agree more with that sentiment. Without modifications to the language, however, this bill will have the unintended consequence of trading contracting agility for public safety, and that should not be acceptable.

In its current form, we would ask for a Do Not Pass recommendation on HB 1356.

H.B. 1356
3.14.19
att #9p.1

Testimony to Senate Political Subdivisions Committee

Re: House Bill 1356
Date: Thursday, March 14, 2019
By: Ryan Ackerman, PE
1112 Sunrise Court SE
Minot, North Dakota 58701
(701) 720-7794
ryan.ackerman@ackerman-estvold.com

Greetings, Chairman Burckhard.

My name is Ryan Ackerman. I am a professional engineer and I reside in Minot. I am here to express concerns with House Bill 1356, and those concerns are generally universal to all of the threshold bills that I have seen come before the Legislative Assembly over the past several biennia.

My primary concern is that the issue of thresholds as a requirement for project bidding and thresholds as they relate to a requirement of utilizing licensed design professionals have historically been tied together, and they should not be.

Thresholds related to project bidding for construction should be established by striking a balance between agility of agencies to procure services and being fiscally responsible, while giving the contracting industry an opportunity to bid projects in an open, fair and consistent manner.

However, thresholds related to requirements for utilizing licensed design professionals should be established with appropriate deliberation given to the impact to public safety. I want to present you with a real example.

In 2010, I was serving as the city engineer for town in northwestern North Dakota. I was on a routine trip through the city in late April of that year, and I noticed that there was a large water slide being unloaded in pieces at the City's swimming pool. I recognized some of the men working on the project, so I decided to stop by to simply ask what the plan was. The encounter was troubling.

The local Park Board had purchased the used water slide from the Minot Air Force Base for \$250. They were well within their right to do that and seemed to be making a low-cost, high-return investment in the quality of life for their community. They had already procured the services of local mechanical and electrical contractors to help with the install of the pumps and piping, and they had a local general contractor that would be able to install this water slide for the benefit of the children of the community within a couple of weeks, with a total cost of under \$5,000.

I didn't have any questions about the benefits that this slide would provide or the quality of life enhancements that a slide like this could provide to the community. I did, however, have questions about how this slide and the stair case assembly, with its relatively small footprint and an approximate

height of 25 feet, was going to be anchored to safely withstand the North Dakota wind. The plan was simple – they were going to install concrete anchors, purchased from the local hardware store, in the existing concrete slab.

My gut told me this was a bad idea. I immediately began research on the existing pool facility and quickly concluded that this installation would not be safe for the general public. Failure of this installation would have been imminent. Kids could have been hurt or even killed. I blew the whistle and stopped this project out of concern for the public welfare. We were given direction by the city to design an appropriate foundation for the slide. The cost for the design was approximately \$5,000 and the estimate to complete the foundation work was approximately \$35,000. The city council and the Park Board ultimately chose to not move forward with the installation of the slide due to the construction costs and the 'complications' that my judgment had inserted into their idea. For a long period of time, I wasn't very popular in this town.

The actions taken by the Park Board and the City, as public agencies, were seemingly legitimate. They purchased materials and hired a contractor without getting a Professional Engineer involved since the anticipated total cost was \$5,000 – well beneath the \$100,000 threshold prescribed in State law at the time. I don't feel like these officials and agencies were negligent in their duty. They had no malicious intent. They looked at the State law and they, unfortunately, just didn't know any better.

This story illustrates the flaw. Agencies are making judgments of whether or not to get a licensed professional involved in the design of a project based on the project cost, because that is the metric prescribed in State law. The reality is that a \$500 project could have a higher degree of impact to public safety than a \$5 million project, depending on the scope of the project. Simply increasing the threshold amount by any factor is going to be accompanied by a corresponding increase in risk to public safety, and I don't feel that is acceptable.

There is a need to give our agencies and local governments the agility to get their projects done without additional bureaucratic nonsense that provides little or no value. I couldn't agree more with that sentiment. Without modifications to the language, however, this bill will have the unintended consequence of trading contracting agility for public safety, and that should not be acceptable.

In its current form sent over from the House, I would urge a Do Not Pass recommendation on this bill.

L.B. 1356
3.14.19
att # 9 p.3

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Park Board says water slide is unlikely to ever be installed here

The water slide purchased for the swimming pool by the City of Kenmare remains in pieces in the Jaycees Park where it was unloaded nearly four years ago.

5/22/13 (Wed)



A good idea at the time . . . The used water slide purchased for the Kenmare swimming pool in 2009 remains dismantled in the Jaycees Park south of the pool. Soil testing and other preparatory work have delayed the installation for three years, and the project may have to be abandoned.

By Caroline Downs

The water slide purchased for the swimming pool by the City of Kenmare remains in pieces in the Jaycees Park where it was unloaded nearly four years ago.

"Yes, it is an eyesore," said Kenmare Park Board president Arlen Gartner.

The city paid the Minot Air Force Base \$250 after winning the bid for the slide in October 2009. The slide seemed like an ideal attraction for the local pool at the time, and the cost included the pump needed to draw water from the pool to operate the slide.

The slide was supposed to be installed on the west side of the Kenmare pool during the summer of 2010, when Gartner approached the city council about the project. However, city engineer Ryan Ackerman told the council soil testing would have to be done in order to build an adequate foundation and secure the structure.

The council approved up to \$5000 to spend on soils investigation at the pool, but that work delayed the slide installation.

"When it was brought in, we weren't aware we were going to have to go through all the testing of the soil samples," Gartner said, "and we weren't aware of the structural requirements. That took almost a year."

According to Gartner, by the time the soil test results were available, the Park Board was facing the wet spring of 2011, and the super-saturated soils at the time prevented any construction from taking place.

"We had to make sure that when we put the pillars in for the slide, we wouldn't crack the foundation of the pool," said Gartner. "We still don't know if the slide will fit in the area designated for it because we've never been able to get the measurements done for that."

The delays and uncertainties have taken a toll. "You lose that enthusiasm for getting the slide up," Gartner said. "It was a great project that we can't fulfill."

As the 2013 summer season approaches, Gartner doesn't see any way to get the slide installed for public use. "Unless some individuals who are energetic and have the skills to do it come forward," he added. "Otherwise, we should sell the slide and get rid of it."

City swimming pool will open soon

The pool itself will open for business as usual under the supervision of the Kenmare Recreation Board, according to Gartner. "It's not a money maker, but it's something the community needs, for the kids and for the adults," he said. "You're funding the pool, funding the lifeguards and constantly fixing things, but the manager and board have worked hard and kept costs down so the pool isn't losing \$20,000 to \$30,000 a year anymore."

Erika Lemere will take over as manager of the facility, replacing Karen Medlang who formerly served in that capacity.

Gartner noted repairs will be made to the bathhouse at the pool this summer, and the foundation on the west side of the facility will be reinforced with additional concrete.

The pool will offer daily swimming sessions and several rounds of lessons. The opening date, hours and lesson schedule will be announced and advertised in a later issue of *The Kenmare News*.

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N. B. 1356
3.14.19
att #10

Lee, Judy E.

From: Jeff Volk <JVolk@mooreengineeringinc.com>
Date: Thursday, March 14, 2019 9:39 AM
To: Kannianen, Jordan L.; Burckhard, Randall A.; Anderson, Jr., Howard C.; Lee, Judy E.; Dotzenrod, Jim A.; Larson, Diane K.
Subject: HB 11356 -

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Chairman Burkhard & Senate Political Subdivision committee members

HB 1356 again attempts to raise the dollar threshold to which Political Subdivisions must hire a design professional and bid public improvements. Unfortunately, the threshold for when a public works projects need a design professional (a public health, safety and welfare issue) gets combined with the threshold for when a political subdivision needs to solicit bids (a use of public funds issue). These two public improvement matters are dramatically different.

Personally, and ACEC/ND (American Council of Engineering Companies), offer no opinion on the bidding threshold matter. That is an economic/fiscal responsibility issue.

We do however oppose using dollar values to establish a health, safety and welfare threshold for our citizens.

Please consider the proposed amendment being offered to require all political subdivisions, as they pursue any public improvement project, consult with a design professional to help determine if the proposed public improvement has any public health, safety or welfare issues that need to be considered. We can accept HB 1356 with the increased financial thresholds with this amendment added. Without this amendment, we ask that you move HB 1356 to the floor with a "Do Not Pass" recommendation.

Your consideration is be appreciated.

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L of Cities

3/20/19

PROPOSED AMENDMENTS TO HOUSE BILL 1356

Page 1, line 18, before "The" insert "1."

Page 1, after line 21, insert:

2. With respect to construction of a public improvement of any value, the state or any of its political subdivisions undertaking such public improvement will consult with an engineer or architect when there is reason to believe that engineering or architectural services are necessary to protect the public health, safety, and welfare.

NDLA, S PSD - Wocken, Mary Jo

From: Lee, Judy E.
Sent: Thursday, March 21, 2019 5:25 PM
To: -Grp-NDLA Senate Political Subdivisions; NDLA, Intern 02 - Carthew, Alexandra; NDLA, S PSD - Wocken, Mary Jo
Subject: FW: Variances

Senator Judy Lee
1822 Brentwood Court
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From: Dennis Huber <Dennis@eappraisaloffice.com>
Sent: Thursday, March 21, 2019 5:04 PM
To: Lee, Judy E. <jlee@nd.gov>
Subject: Variances

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Please see Grand Forks Board of zoning adjustment terms regarding variances. Unless this is also addressed elsewhere, Rep Vetter is correct regarding a denial of a variance not ever reaching the city commission.

Over the years, we have asked for a letter outlining whether there was a history of approving major damage repair or recommended that a homeowner ask for a variance or change of zoning at least 10 times. We have received one letter of denial from the zoning official, and no others. Grand Forks does not play by the same rules. By reading the administration of the rules it appears that if the zoning administrator is against it, it has little or no chance of making it through and that's when people drop their case. If fact, that is exactly what happened when a buyer asked them to reconsider the zoning on a duplex property next to a duplex property built in 1957, the same year adjoining houses were built.

I contacted Tim Kramer from Dakota Guarantee and Title, with 25 years of experience, of whether the typical attorney's opinion on title addresses conformity with the zoning regulations. He has never seen them do it. Tim is the most honest man I know. Previously I asked to get an opinion from his Title Insurance Co regarding whether a loss due to the inability to repair or rebuild is or could be covered in the event of a loss. They stated that they it does not, and that they do not provide any coverage for that event in either the mortgage or homeowner policies.

Thank you!

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PROPOSED AMENDMENTS TO HOUSE BILL NO. 1356

That the House accede to the Senate amendments as printed on page 1325 of the House Journal and page 1050 of the Senate Journal and that House Bill No. 1356 be further amended as follows:

Page 1, after line 17, insert:

"1."

Page 1, after line 21, insert:

"2. Notwithstanding the thresholds in subsection 1, if the state or a political subdivision undertakes the construction of a public improvement that would impact the health, safety, or welfare of the public, the state or political subdivision shall consult with an engineer or architect."

Renumber accordingly

HB 1356

PROPOSED AMENDMENTS TO HOUSE BILL 1356

2

4-9-19

Page 1, line 14 insert:

SECTION 2. AMENDMENT. Subsection 21 of section 48-01.2-01 of the North Dakota Century Code is amended and reenacted as follows:

21. "Public improvement" means any improvement undertaken by a governing body for the good of the public and which is paid for with any public funds, including public loans, bonds, leases, or alternative funding, and is constructed on public land or within an existing or new public building or any other public infrastructure or facility if the result of the improvement will be operated and maintained by the governing body. The term does not include a county road construction and maintenance, state highway, or public service commission project governed by title 11, 24, or 38, or single-family residential construction or maintenance.

Renumber accordingly

#1
4-11-19

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1356

That the House accede to the Senate amendments as printed on page 1325 of the House Journal and page 1050 of the Senate Journal and that House Bill No. 1356 be further amended as follows.

Page 1, after line 17, insert:

"1."

Page 1, after line 21, insert:

"2. Notwithstanding the thresholds in subdivision 1, if the state or a political subdivision undertakes the construction of a public improvement and there is reason to believe that engineering or architectural services are necessary to protect the public health, safety, and welfare, the state or political subdivision shall consider consulting an engineer or architect."

Renumber accordingly

#1
4-11-19
HB1356

Practical effect of the language

Training would be provided that any projects that are more complicated than general improvement activities, such as filling potholes, cleaning ditches or road grading, requires a discussion about whether consulting an engineer or an architect is necessary. Training will also be provided that if any doubt exists about whether specialized knowledge is necessary, an engineer or architect should be consulted.

Advantages of proposed language

1. Adds a level of reasonableness to when the discussion must occur.
2. Conserves city time and resources.
3. City officials would not be in violation of the law if they overlook discussing whether to consult an engineer or architect on a simple project.