

2021 SENATE POLITICAL SUBDIVISIONS

SB 2337

2021 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Sakakawea, State Capitol

SB 2337
2/12/2021

A BILL for an Act to amend and reenact sections 43-19.1-28 and 48-01.2-02.1 of the North Dakota Century Code, relating to bid requirements for public improvements.

Chairman Burckhard opened the hearing on SB 2337 at 10:18 a.m.

Members present: Burckhard, Anderson, Lee, Larson, Kannianen, Oban, Heitkamp.

Discussion Topics:

- Bonding and bidding threshold match
- ADA compliance
- Inflationary increases in language
- Elimination of limits

[10:19] Senator Robert Fors, District 19. Introduced SB 2337

[10:20] Representative Wayne Trottier, District 19. Provided testimony in favor and amendment 21.1021.01001 (testimony #6533).

[10:24] Michael Krumwiede, Executive Director, American Council of Engineering Companies. Provided written testimony #6489 in opposition.

[10:33] Bill Kalanek, Lobbyist, National Electric Contractors Association, Association of Plumbing Heating and Mechanical Contractors. Provided testimony #6477 in opposition.

[10:35] Russ Hanson, Associated General Contractors of North Dakota. Provided testimony #6451 in opposition.

[10:42] David Brushwine, Director, Municipal Facilities Division, North Dakota Department of Environmental Quality. Provided testimony #6474 in opposition.

Senator Lee moves to **ADOPT AMENDMENT 21.1021.01001**

Senator Kannianen seconded.

The motion passed 5-1-1
(vote held open for Senator Larson)

Senators	Vote
Senator Randy A. Burckhard	Y
Senator Howard C. Anderson, Jr.	Y
Senator Jason G. Heitkamp	N
Senator Jordan Kannianen	Y
Senator Diane Larson	Absent
Senator Judy Lee	Y
Senator Erin Oban	Y

Senator Lee moves to **FURTHER AMEND** to ensure “bonding level matches bidding level”.
Senator Anderson seconded.

The motion passed 5-1-1
(Vote held open for Senator Larson)

Senators	Vote
Senator Randy A. Burckhard	Y
Senator Howard C. Anderson, Jr.	Y
Senator Jason G. Heitkamp	N
Senator Jordan Kannianen	Y
Senator Diane Larson	Absent
Senator Judy Lee	Y
Senator Erin Oban	Y

Senator Lee moves **DO PASS, AS AMENDED**.
Senator Oban seconded

The motion failed 3-3-1
(Vote held open for Senator Larson)

Senators	Vote
Senator Randy A. Burckhard	Y
Senator Howard C. Anderson, Jr.	N
Senator Jason G. Heitkamp	N
Senator Jordan Kannianen	Y
Senator Diane Larson	Absent
Senator Judy Lee	Y
Senator Erin Oban	N

Additional written testimony: N/A

Chairman Burckhard closed the hearing on SB 2337 at 10:49 a.m.

Patricia Lahr, Committee Clerk

21.1021.01001
Title.

Prepared by the Legislative Council staff for
Representative Trottier
February 11, 2021

PROPOSED AMENDMENTS TO SENATE BILL NO. 2337

Page 1, line 9, remove the overstrike over "~~two~~"

Page 1, line 9, remove "five"

Page 1, line 9, after "hundred" insert "and fifty"

Page 1, line 19, remove the overstrike over "~~two~~"

Page 1, line 19, remove "five"

Page 1, line 19, after "hundred" insert "and fifty"

Renumber accordingly



Senate Political Subdivisions Committee

Testimony to oppose SB 2337

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 SB 2337. 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 SB 2337 are generally universal to all 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 requirements for utilizing licensed design professionals should be established with appropriate deliberation given to the impact to public safety.

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 we don't feel that is acceptable.

Last session we worked extensively to come up with a compromise to raising the threshold limit. Actually, the language starting on line 21 on page 1 of SB 2337 is the language we agreed to use last session and we came to an agreement to raise the threshold by \$50,000 to its current \$200,000 limit. This is approximately a 33% increase, and this bill would increase it again by 150% in just two years. Arbitrarily raising this threshold again is going to be accompanied by increase risk to public safety.

For these reasons we would ask for a Do Not Pass recommendation on Senate Bill 2337.

SB 2337
February 12, 2021
Senate Political Subdivisions
Bill Kalanek
National Electrical Contractors Association, Dakotas Chapter
ND 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 before you today representing the both the National Electrical Contractors Association and the ND Association of Plumbing, Heating & Mechanical contractors. Both associations I represent stand opposed to the bill you have before you for consideration.

I have been working in this role for 9 sessions now, this is the 9th session in which I have had to stand in opposition to a bill such as this, 9 times. One of my colleagues here today can attest to this bill predating my career as a lobbyist. The reasons for our united opposition to this bill are simple.

First, arbitrarily identifying a dollar figure and using it as a determinant as to whether or not a design professional is necessary on a project has become increasingly questionable as a policy. Secondly, by raising said threshold by 2.5 times you create a situation where the need for design expertise to ensure the safety of the public is circumvented in favor of saved costs.

As someone who represents contractors you might question my interest in the bill? The contractors I represent see the correlation very clearly as they are asked to do the work that brings these projects to completion and help the design professional execute a plan that serves and safeguards the public. We join our design and construction industry friends in opposing the proposed change to the design threshold and encourage the committee to give the bill a DO NOT PASS recommendation.

Thank you.

February 12, 2021

**Senate Political Subdivisions Committee
SB 2337**

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

The AGC of ND is in opposition to SB 2337 which proposes to increase the design bid threshold to \$500,000. Our association has been a consistent opponent of raising bid thresholds throughout the years as they are presented to the Legislature. With public funds utilized for projects governed by NDCC 48, we believe an open and transparent system is important.

Our main reason to oppose raising the thresholds is, if enacted, SB 2337 would once again separate the design and bid thresholds. In 2015 the Legislature raised the design threshold from \$100,000 to \$150,000, while leaving the construction threshold at \$100,000. Since the inception of bid thresholds (I believe in 1991), the design and bid thresholds had been the same. When they became two different numbers, there was confusion and, subsequently, we supported realigning them to the same amount which was settled at \$150,000 by the 2017 Legislature. Then the 2019 Legislature raised both thresholds to \$200,000 and the assumption was this issue would be left alone for a while. SB 2337 obviously would decouple these thresholds and we expect similar confusion to follow should this legislation be enacted. For these reasons, we do not view SB 2337 as necessary and we would request a Do Not Pass Committee Recommendation.



Environmental Quality

Testimony in Opposition of

Senate Bill No. 2337**Senate Political Subdivisions Committee**

February 12, 2021

TESTIMONY OF

David Bruschwein, Director of Municipal Facilities

Good morning, Chairman Burckhard and members of the Senate Political Subdivisions Committee. My name is David Bruschwein. I am Director of the Municipal Facilities Division of the North Dakota Department of Environmental Quality. I am here to provide testimony in opposition to Senate Bill 2337.

Under current state law, public works and public improvement projects costing over \$200,000 cannot proceed to construction without engineer-prepared plans and specifications. Senate Bill 2337 proposes to increase this threshold amount to \$500,000. If Senate Bill 2337 is enacted, the state and its political subdivisions would be allowed to undertake projects up to \$500,000 without engineer-prepared plans and specifications.

The Department of Environmental Quality opposes Senate Bill 2337 for the following reasons:

- The Department of Environmental Quality is responsible for review and approval, prior to construction, of all projects involving water works, sewerage, and solid waste. These reviews are done to ensure that projects meet design standards. This is crucial to ensure system functionality and integrity, and to protect public health and the environment. Improperly designed or constructed facilities can fail, leading to loss of service and direct contamination of drinking water, groundwater or surface waters.
- Based on the current threshold of \$200,000, communities occasionally submit projects for review that have not been prepared by an engineer. We spend considerable time working with these communities to get their submittals in a form that satisfies design standards and can be quoted for construction purposes. Many times, communities realize that getting their submittal into an approvable condition is beyond their expertise and they hire an engineer. This is inefficient and causes delays in project approval and construction. Increasing the threshold to \$500,000 will significantly exacerbate this situation as larger and more complex projects will be involved. This will add more work to already heavy workloads and delay approval of all projects. More projects may be rejected and not approved, leading to further delays and expense for communities.
- The Department's role is to review and approve already-prepared projects to ensure that design standards are met, not to design projects. We are often asked and do provide design recommendations. However, we cannot both design and approve projects, as this

represents a conflict of interest. To avoid conflict of interest, we may have to reject projects that do not initially meet design standards, which may result in project delays.

- The proposed increased threshold could reduce funding assistance opportunities for communities. Funding assistance agencies typically require engineer involvement in public improvement projects. This is likely in recognition of their technical complexity and public health and safety implications.
- Finally, engineers are uniquely equipped to prepare plans and specifications that meet design standards and that are sufficiently detailed for construction purposes. Over the last four years, there has been an average of 180 projects submitted for approval each year. Nearly all of these projects were prepared by engineers. This enabled timely review and approval. The proposed increased threshold has the potential to significantly reduce engineer involvement and our ability to approve projects in a timely manner. It also has the potential to impede needed public improvement projects statewide.

The Department of Environmental Quality takes its responsibility for public health, safety and environmental protection seriously. Keeping the current threshold of \$200,000 in place for engineer-prepared plans and specifications will allow us to do this.

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

2021 SENATE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Sakakawea, State Capitol

SB 2337
2/18/2021

A BILL for an Act to amend and reenact sections 43-19.1-28 and 48-01.2-02.1 of the North Dakota Century Code, relating to bid requirements for public improvements.

Chairman Burckhard opened the discussion on SB 2337 at 8:45 a.m.
Members present: Burckhard, Anderson, Lee, Larson, Kannianen, Oban, Heitkamp.

Discussion Topics:

- Bonding parallel to bids
- Design specifications

Senator Kannianen moved to adopt the verbal amendment LC 21.1021.01002
Senator Larson seconded

Motion passed 6-1-0

Senators	Vote
Senator Randy A. Burckhard	N
Senator Howard C. Anderson, Jr.	Y
Senator Jason G. Heitkamp	Y
Senator Jordan Kannianen	Y
Senator Diane Larson	Y
Senator Judy Lee	Y
Senator Erin Oban	Y

Senator Kannianen moved **DO NOT PASS, AS AMENDED.**
Senator Oban seconded.

The motion passed 7-0-0

Senator Kannianen will carry SB 2337.

Senators	Vote
Senator Randy A. Burckhard	Y
Senator Howard C. Anderson, Jr.	Y
Senator Jason G. Heitkamp	Y
Senator Jordan Kannianen	Y
Senator Diane Larson	Y
Senator Judy Lee	Y
Senator Erin Oban	Y

Additional written testimony: N/A

Chairman Burckhard closed the discussion on SB 2337 at 8:54 a.m.

Patricia Lahr, Committee Clerk

February 18, 2021

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2/18
1 of 1

PROPOSED AMENDMENTS TO SENATE BILL NO. 2337

Page 1, line 1, replace the second "and" with a comma

Page 1, line 1, after "48-01.2-02.1" insert ", and 48-01.2-10"

Page 1, line 9, remove the overstrike over "~~two~~"

Page 1, line 9, remove "five"

Page 1, line 9, after "hundred" insert "and fifty"

Page 1, line 17, after "hundred" insert "and fifty"

Page 1, line 19, remove the overstrike over "~~two~~"

Page 1, line 19, remove "five"

Page 1, line 19, after "hundred" insert "and fifty"

Page 2, after line 2, insert:

"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 two hundred and 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."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2337: Political Subdivisions Committee (Sen. Burckhard, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2337 was placed on the Sixth order on the calendar.

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Renumber accordingly