2025 SENATE INDUSTRY AND BUSINESS

SB 2130

2025 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee
Fort Union Room, State Capitol

SB 2130
1/14/2025

A bill relating to prequalification, selection, and contracting of architect, engineer, construction management, and land surveying services.

11:00 a.m. Chairman Barta opened the hearing.

Members present: Chairman Barta, Vice-Chairman Boehm, Senator Klein, Senator Kessel, Senator Enget

Discussion Topics:

- Department of Transportation
- Federal funding each biennium
- North Dakota National Guard
- Maintenance, repair, and modernization
- Preservation of facility investments
- Reduction in funds
- Authority clarification
- Process efficiency
- Construction contractors
- Rapid response unit of the state
- Federal equipment
- Budget percentage
- Consistency in allocations
- Expedition of bids
- Engineer prequalification

11:01 a.m. Brigadier General Jackie Huber, the Deputy Adjutant General of the North Dakota National Guard, testified in favor and submitted testimony #28842.

11:19 a.m. Russell Hanson, Association of General Contractors of ND testified in neutral.

11:20 a.m. Mike Krumwiede, American Council of Engineering Companies ND, testified in neutral.

11:22 a.m. Chairman Barta closed the hearing.

11:23 a.m. Senator Klein moved a Do Pass.

11:24 a.m. Senator Boehm seconded the motion.

Senators	Vote
Senator Jeff Barta	Y
Senator Keith Boehm	Y
Senator Mark Enget	Y
Senator Greg Kessel	Y
Senator Jerry Klein	Y

Motion passed 5-0-0.

Senator Boehm will carry the bill.

11:25 a.m. Chairman Barta closed the hearing.

Audrey Oswald, Committee Clerk

Reconsidered SB 2130 on 1/15/25 at 3:19 p.m.

TESTIMONY OF

BRIGIDIER GENERAL JACKIE HUBER

DEPUTY ADJUTANT GENERAL

NORTH DAKOTA NATIONAL GUARD

BEFORE THE

SENATE BUSINESS AND INDUSTRY COMMITTEE

14 JANUARY 2025

SENATE BILL 2130

Good morning, Chairman Barta, members of the committee, I am Brigadier General Jackie Huber, the Deputy Adjutant General of the North Dakota National Guard. I am here today to testify in support of SB 2130. This bill proposes a new section of chapter 37-10 that allows for the prequalification of consultants in the areas of architecture, engineering, construction management, and land surveying. This bill, which is based off similar authority given to the director of the Department of Transportation, would give our agency authority that ensures the state receives the full benefit of over 23 million dollars in federal funding each biennium.

Over the last three years, the state has received approximately 28 million dollars in federal reimbursement for 83 separate projects to maintain, repair and modernize North Dakota National Guard facilities. With 330 buildings on 12 separate complexes under the responsibility of the Adjutant General, we rely heavily on federal funds to perform much needed maintenance and repair projects each year, as well as limited modernization projects. These projects are critical to ensuring the North Dakota National Guard has properly maintained facilities to carry out our important federal and state missions, as well as, preserving the state's investment in these facilities.

The key to maximizing these federal funds is prompt execution of these projects. The federal reimbursement dollars for these projects are only appropriated for a single federal fiscal year. The use of an efficient procurement processes is necessary to ensure the maximum amount of federal funds find their way to North Dakota. If we fail to execute all federal funds, the state not only loses the benefit of those funds, but we also risk losing future federal dollars, as a lack of execution often leads to a reduction in funds the next fiscal year.

For decades, the North Dakota National Guard has taken full advantage of available federal funds by utilizing a competitive process that selects consultants to perform services based on demonstrated competence and qualification, falling in line with the legislative policy goal declared in section 54-44.7-02 of the North Dakota Century Code. While we are confident that the process utilized fell in line with the policy goals of Chapter 54-44.7, and that we acted based on a good-faith interpretation of our authority, we have ceased using that process after receiving clarification of our authority from the Office of the Attorney General.

This bill seeks the authority to reduce red tape and utilize a more efficient process to procure architect and engineer services. This efficient process will still rely on the selection criteria outlined in 54-44.7-03. We are only looking to expedite the process for certain projects, and again, only for procuring architect and engineer services. Additionally, even after prequalification, firms will be evaluated a second time based on criteria listed in 54-44.7-03 before being selected for a project. Projects utilizing a greater amount of non-reimbursed state funds, will require a more in-depth evaluation process. The goal of the bill seeks to balance efficiency with the state's interest in competition.

I want to close today by emphasizing several key points. First, we are only seeking this authority for architect and engineer services. We are not looking to use this process for the selection of contractors for the actual construction associated with these projects. We will continue to utilize the contracting procedures required for public improvement projects. Second, we are only looking to use this process for the procurement of architect and engineer services associated with maintenance, repair, and modernization projects. These projects include things like roof repair, roadway/driveway repair, and boiler replacements. We are not seeking to use this process for large construction projects like building a new armory or a field maintenance shop. Lastly, the proposed process is critical to allow us to continue to take full advantage of these much-needed federal funds in the relatively short window we have to use them. This process provides us the ability to complete approximately 28 of these projects each year. Without this authority, we estimate that we will only be able to complete eight. This places us at risk of losing the benefit of 14-16 million dollars in federal funding each biennium.

In summary, SB 2130 gives us the authority we need to efficiently execute the projects necessary to maintain our facilities and ensure our continued readiness. The process proposed in this bill will allow us to fully leverage available federal funding, all the while adhering to the policy goals of Chapter 54-44.7. This bill strikes a balance between efficiency and competition. I ask for your support on SB 2130, and I am happy to stand for any questions you may have.

2025 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee
Fort Union Room, State Capitol

SB 2130
1/15/2025

A bill relating to prequalification, selection, and contracting of architect, engineer, construction management, land surveying services; and to declare an emergency.

3:19 p.m. Chairman Barta opened the hearing.

Members present: Chairman Barta, Vice-Chair Boehm, Senator Klein, Senator Kessel, Senator Enget

Discussion Topics:

- Emergency clause addition

3:21 p.m. Senator Klein moved to Reconsider.

3:21 p.m. Senator Boehm seconded the motion.

Senators	Vote
Senator Jeff Barta	Y
Senator Keith Boehm	Y
Senator Mark Enget	Y
Senator Greg Kessel	Y
Senator Jerry Klein	Y

Motion passed 5-0-0.

3:24 p.m. Senator Boehm moved to adopt an amendment adding an emergency clause.

3:24 p.m. Senator Enget seconded the motion.

Senators	Vote
Senator Jeff Barta	Y
Senator Keith Boehm	Y
Senator Mark Enget	Y
Senator Greg Kessel	Y
Senator Jerry Klein	Y

Motion passed 5-0-0.

3:25 p.m. Senator Klein moved a Do Pass As Amended.

3:25 p.m. Senator Kessel seconded the motion.

Senators	Vote

Senator Jeff Barta	Y
Senator Keith Boehm	Y
Senator Mark Enget	Y
Senator Greg Kessel	Y
Senator Jerry Klein	Y

Motion passed 5-0-0.

Senator Boehm will carry the bill.

3:27 p.m. Chairman Barta adjourned the meeting.

Audrey Oswald, Committee Clerk

25.8101.01001
Title.02000

Adopted by the Industry and Business Committee

January 15, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

1-15-25
1 of 3

SENATE BILL NO. 2130

Introduced by

Industry and Business Committee

(At the request of the Adjutant General)

A BILL for an Act to create and enact a new section to chapter 37-10 of the North Dakota Century Code, relating to prequalification, selection, and contracting of architect, engineer, construction management, ~~and~~ land surveying services; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 37-10 of the North Dakota Century Code is created and enacted as follows:

Prequalification, selection, and contracting for consultants - Solicitations.

1. The adjutant general or the adjutant general's designee may prequalify, select, and contract for consultants in the areas of architecture, engineering, construction management, land surveying, and related matters.
   a. The prequalification of the consultant must be based on detailed information provided to the adjutant general and evaluated using the criteria outlined in subsection 5 of section 54-44.7-03.
   b. If a consultant meets the prequalification criteria established by the adjutant general, and the consultant agrees to the terms and fee limits established by the adjutant general, the adjutant general or the adjutant general's designee may contract with the consultant for the delivery of an indefinite quantity of services in the area in which the consultant is prequalified. The contract:
      (1) May not exceed a term of five years, including optional renewal periods; and

(2) Must be selected and negotiated in accordance with subsection 7 of section 54-44.7-03.

c. The selection of a contracted consultant under this section for the delivery of services for a specific project must be determined according to the criteria listed in subdivisions a through g of subsection 5 of section 54-44.7-03.

2. The adjutant general is not required to comply with subsection 3 of section 54-44.7-03 or section 54-44.7-04 and may procure consultant services for:

a. A project for which the estimated state share of consultant costs is no more than two hundred fifty thousand dollars through direct negotiation with a selected prequalified firm, after considering:

(1) The nature of the project;

(2) The proximity of the consultant services to the project;

(3) The capability of the consultant to produce the required services within a reasonable time;

(4) The consultant's past performance; and

(5) The consultant's ability to meet project budget requirements.

b. A project for which the estimated state share of consultant costs is greater than two hundred fifty thousand dollars but not more than five hundred thousand dollars after:

(1) Following the criteria listed in subdivisions a through g of subsection 5 of section 54-44.7-03;

(2) Providing notice of the specific project to all prequalified firms in the specific area of need; and

(3) Allowing a minimum of seven calendar days to submit information the firm did not provide in response to the prequalification solicitation and additional information related to the firm's ability to:

(a) Perform the services required for the specific project;

(b) Produce the required results within the time required for the specific project; or

(c) Meet budget requirements of the specific project.

3 of 3

c. A project for which the estimated state share of consultant costs is greater than five hundred thousand dollars, after:

(1) Notifying all prequalified firms;

(2) Allowing the prequalified firms a minimum of twenty-one days to respond; and

(3) Following the requirements provided in subsections 4 through 7 of section 54-44.7-03.

3. As deemed appropriate by the adjutant general or the adjutant general's designee, if a project for which the estimated state share of consultant costs is less than:

a. Two hundred fifty thousand dollars, the adjutant general or the adjutant general's designee may use any of the procurement processes under subsection 2.

b. Five hundred thousand dollars, the adjutant general or the adjutant general's designee may use the procurement process under subdivision b or c of subsection 2.

4. Notwithstanding any other provision of law, if the adjutant general or the adjutant general's designee solicits consultant services under this section, the adjutant general or the adjutant general's designee may include more than one project in one solicitation. For purposes of a multiple project solicitation, the requirements for the project with the highest dollar threshold under subsection 2 apply to all projects in the multiple project solicitation.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

REPORT OF STANDING COMMITTEE
SB 2130

Industry and Business Committee (Sen. Barta, Chairman) recommends **AMENDMENTS (25.8101.01001)** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2130 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

2025 HOUSE GOVERNMENT AND VETERANS AFFAIRS

SB 2130

2025 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Pioneer Room, State Capitol

SB 2130
3/6/2025

Relating to prequalification, selection, and contracting of architect, engineer, construction management, land surveying services; and to declare an emergency.

11:55 a.m. Chairman Schauer opened the hearing.

Members present: Chairman Schauer, Vice Chairman Satrom, Representatives Bahl, Brown, Grindberg, Karls, McLeod, Rohr, Schneider, Steiner, VanWinkle, Vetter, Wolff

Discussion Topics:

- Maximization of Federal funding
- Balance of Efficiency and competition

11:56 a.m. Brigadier General Huber, Deputy Adjutant General of the North Dakota National Guard, testified in favor and submitted testimony, #39040.

12:07 p.m. Russ Hanson, Executive Vice President of the Associated General Contractors of North Dakota, testified in favor.

12:09 p.m. Mike Krumwiedy, ND Chapter of the American Institute of Architects, testified in favor.

12:11 p.m. Chairman Schauer closed the hearing.

12:11 p.m. Steiner moved a Do Pass.

12:11 p.m. Representative Karls seconded the motion.

Representatives	Vote
Representative Austen Schauer	Y
Representative Bernie Satrom	Y
Representative Landon Bahl	N
Representative Collette Brown	Y
Representative Karen Grindberg	Y
Representative Karen Karls	Y
Representative Carrie McLeod	Y
Representative Karen Rohr	Y
Representative Mary Schneider	Y
Representative Vicky Steiner	Y
Representative Lori VanWinkle	Y
Representative Steve Vetter	N
Representative Christina Wolff	Y

12:11 p.m. Motion passed 11-2-0.

Vice-Chairman Satrom will carry the bill.

12:12 p.m. Chairman Schauer closed the meeting.

Jackson Toman, Committee Clerk

REPORT OF STANDING COMMITTEE
ENGROSSED SB 2130 (25.8101.02000)

Government and Veterans Affairs Committee (Rep. Schauer, Chairman) recommends **DO PASS** (11 YEAS, 2 NAYS, 0 ABSENT OR EXCUSED AND NOT VOTING). SB 2130 was placed on the Fourteenth order on the calendar.

TESTIMONY OF

BRIGADIER GENERAL JACKIE HUBER

DEPUTY ADJUTANT GENERAL

NORTH DAKOTA NATIONAL GUARD

BEFORE THE

HOUSE GOVERNMENT AND VETERANS AFFAIRS

6 MARCH 2025

SENATE BILL 2130

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In summary, SB 2130 gives us the authority we need to efficiently execute the projects necessary to maintain our facilities and ensure our continued readiness. The process proposed in this bill will allow us to fully leverage available federal funding, all the while adhering to the policy goals of Chapter 54-44.7. This bill strikes a balance between efficiency and competition. I ask for your support on SB 2130, and I am happy to stand for any questions you may have.